

Decision No. 31040

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CERTIFICATED HIGHWAY CARRIERS, INC.,)

Complainant,)

vs.)

Case No. 3918)

L. R. KAGARISE, an individual, and)
L. R. KAGARISE, doing business)
under the fictitious firm name and)
style of KEYSTONE EXPRESS SYSTEM,)

Defendant.)

ORIGINAL

WARREN E. LIEBY and DOUGLAS BROOKMAN, for defendant.

PHIL JACOBSON, for complainant.

ROBERT BRENNAN and WILLIAM F. BROOKS, for The
Atchison, Topeka and Santa Fe Railway Company,
intervenor on behalf of complainant.

H. J. BISCHOFF, intervenor on behalf of complainant.

BY THE COMMISSION:

O P I N I O N

In this proceeding, complainant alleges that defendant is engaged in the transportation of property for compensation by automotive equipment between Los Angeles, and Wilmington and San Pedro (Los Angeles Harbor points) without first having obtained from the Railroad Commission a certificate of public convenience and necessity therefor.

A public hearing thereon was held, evidence adduced and the matter, having been submitted on briefs duly filed, is now ready for decision.

About the time of the hearing in this proceeding the Commission, on its own motion, instituted an investigation (Case No. 3990) into the operations, etc. of L. R. Kagarise, respondent herein,

et al. In Decision No. 30406, dated December 13, 1937, on Case No. 3990, the Commission made the following interpretation and construction of the operative rights of respondent L. R. Kagarise between Los Angeles and Torrance and between Torrance and the steamship wharves at Wilmington and San Pedro:

"(c) Los Angeles and Torrance.

"Decision No. 6518, dated July 24, 1919, on Application No. 4591, granted a certificate to H. M. Tolson for the operation 'of an automobile truck service as a common carrier of freight and express between Los Angeles and Torrance;...'. No intermediate service was authorized. While no route was established in the certificate as granted, H. M. Tolson in his Local Freight Tariff, C.R.C. No. 1 (Torrance Transfer) filed with the Commission August 25, 1919, subsequent to the issuance of Decision No. 6518 and made effective February 20, 1919, set forth the following route as that of his operation:

"'Going to Los Angeles, El Prado St., to Main St., to Washington Street, to Los Angeles Street. Return by same route.'

"(d) Torrance and Steamship Wharves at Wilmington and San Pedro.

"Decision No. 14606, dated February 26, 1925, on Application No. 10286, in addition to authorizing certain transfers described next below in (e) and (f), granted a separate certificate to Tolson Transportation System, Inc., for the transportation of property and the establishment and operation,

"'...of a demand service without schedule, between Torrance and the steamship wharves at Wilmington and San Pedro, in the harbor district of the City of Los Angeles, and to no other points, over and along the following route:

"(a) Via Narbonne Avenue, through Lomita, and Wilmington-Redondo Road to the wharves at Wilmington.

"(b) Via Lomita, Harbor City and San Pedro Boulevard to wharves at San Pedro.'

"The opinion of Decision No. 14606 recites in effect, and is herein so construed, that the order would provide for the establishment of a demand service with the understanding that only property originating in Torrance and destined to the wharves of the steamship companies at

Wilmington and San Pedro, or vice versa, should be transported, and further, that the certificate as granted should not in any sense be construed as an extension of the then existing rights between Los Angeles and Torrance so as to provide a through service between Los Angeles and the harbor district. No intermediate service was authorized."

From the foregoing abstracts from Decision No. 30406, it does not appear to be necessary to add any further comment in regard to the certificated operative right formerly held by L. R. Kagarise, defendant herein, between such points.

Defendant contends that by Decision No. 27237, as amended by Decision No. 27316, on Application No. 19539, he acquired not only the certificated operative rights above referred to but, in addition thereto, acquired a certain alleged prescriptive operative right between Los Angeles, Torrance and Harbor City. The alleged prescriptive right is the one upon which defendant admittedly relies. Such contention is based upon the testimony of W. H. Tolson in regard to the operations of his brother, H. M. Tolson, doing business as Torrance Transfer Company, subsequent to authority obtained from the Commission by Decision No. 6518, dated July 24, 1919, on Application No. 4591 supra, for the establishment and operation of an automotive truck service between Los Angeles and Torrance. Such contention is further based upon certain allegations set forth in said Application No. 4591 as justification for the authority therein sought that the father of applicant H. M. Tolson had been operating over the proposed route for a period of five years previous to the filing of said application.

As cited above Decision No. 6518 granted a certificate to Tolson for operations between Los Angeles and Torrance. Obviously any right terminating at Torrance could be extended only by obtaining from the Commission formal authority therefor. The corporate city limits of Torrance fixed the limit of the right at Torrance.

The contention that E. M. Tolson possessed a prescriptive operating right between Los Angeles, Torrance and Harbor City by virtue of operations of his father during the period five years prior to the filing of Application No. 4591 by E. M. Tolson seems to be untenable. No showing was made herein, or on Application No. 4591, that E. M. Tolson had ever acquired lawfully or otherwise the alleged prescriptive operative right of his father.

Since the submission of the matters involved in this proceeding, all operative rights of L. R. Kagarise, doing business as Keystone Express System, have been transferred to the corporation, Keystone Express System. As a result of such transfer and in view of the construction and interpretation by the Commission in Decision No. 30406 of all operative rights of L. R. Kagarise as owned at that time, it appears appropriate to dismiss the instant proceeding.

Nothing herein contained shall be construed as in any way affecting the matters contained in Decision No. 30406, dated December 13, 1937, in Case No. 3990;

O R D E R

The above entitled proceeding having been duly heard, evidence adduced therein, and the matter taken under submission,

IT IS ORDERED that said proceeding is hereby dismissed.

Dated at San Francisco, California, this 27th day of June, 1938.

William M. ...
Frank R. ...
Raymond ...
Raymond ...
COMMISSIONERS.