

Decision No. 31103

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
WALDON CARNALL, HARRY C. CONKLIN,
J. ERNEST CLINE
for permission to transfer to Carnall
Trucks, a corporation.

}
} Application No. 21890
}

In the Matter of the Application of
CARNALL TRUCKS
for a permit authorizing it to issue
its securities.

}
} Application No. 21970
}

BY THE COMMISSION:

ORIGINAL

O P I N I O N

In Application No. 21890, as originally filed, the Commission was asked to make its order authorizing Waldon Carnall to transfer to Harry C. Conklin and J. Ernest Cline an undivided two-thirds interest in and to the business known as Carnall Trucks. In a supplemental petition thereafter filed, however, the Commission is asked to authorize the transfer of the properties of Waldon Carnall used in the operation of Carnall Trucks, to Carnall Trucks, a corporation.

In Application No. 21970 the Commission is asked to authorize Carnall Trucks, a corporation, to issue three shares of its common capital stock of the par value of \$50. each.

Waldon Carnall has been engaged in the operation of auto trucks for the transportation of property. Under authority granted by Decision No. 29179, dated October 13, 1936, in Application No. 20780, he acquired from F. W. Granger a certificate of public convenience and necessity permitting the operation of the service as a highway common carrier between Los Angeles, Riverside, San Bernardino, Redlands, Elsinore, Laguna and Huntington Beach and intermediate points. For the year 1937, his first full year of operations, he reports total

revenues of \$18,237.96, total expenses of \$15,402.10 and net profit of \$2,835.86.

These proceedings show that on February 19, 1938 Mr. Carnall entered into an agreement whereby he agreed to transfer to Harry C. Conklin and J. Ernest Cline an undivided two-thirds interest in his operations and said Harry C. Conklin and J. Ernest Cline agreed, in consideration, to invest the sum of \$8,150.00 in cash in the business. Subsequently on April 28, 1938 the three parties entered into another agreement to effect the sale of the entire interest of Mr. Carnall in the co-partnership to Harry C. Conklin and J. Ernest Cline in consideration for the transfer to him of one International truck and one Utility trailer. Following the second agreement the parties have made arrangements for the transfer of the properties to be made directly from Waldon Carnall to a new corporation, Carnall Trucks, which they have caused to be organized. To conclude these transactions then, the new corporation, Carnall Trucks, asks permission to issue three shares of stock, of the par value of \$50. a share, in consideration of the assignment and transfer to it of the interests of the remaining two partners.

The information submitted to the Commission in these matters indicates that Harry C. Conklin, or Harry C. Conklin and J. Ernest Cline, obtained the capital they have invested, or have agreed to invest, in the business from W. H. Munro and Anna E. Munro and in evidence thereof have issued, or agreed to issue, a promissory note in the principal amount of \$13,319.00 payable in semi-annual installments of \$500.00 or more, commencing September 15, 1940 and continuing to March 15, 1942, with the balance due and payable on March 15, 1943, with interest at the rate of ten per cent. per annum.

There is nothing in either of the applications to indicate that the indebtedness will be assumed by the corporation. No request has been made by the corporation for authority to do so.

If such a request should be made, we may, as a condition precedent to the granting of the same, require a reduction in the rate of interest.

The order herein accordingly will authorize the transfer of the properties but such authority should not be construed as authorizing the corporation to assume the payment of said note for \$13,319.00 or any other indebtedness which by its terms is payable, in whole or in part, at periods later than twelve months after the execution of such indebtedness. In this connection the attention of applicants is directed to the provisions of Section 52½ of the Public Utilities Act.

In making this order the Commission wishes to place Carnall Trucks, a corporation, upon notice that operative rights do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

O R D E R

Applications having been made to the Railroad Commission for an order authorizing the transfer of operative rights, properties and assets and the issue of \$150.00 of stock, and the Commission having considered the applications and being of the opinion that they are not matters in which public hearings are necessary, that the transfer should be authorized, as herein provided, that the money, property or labor to be procured or paid for through the issue of such stock is reasonably required for the purposes specified herein and that the expenditures for such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income,

IT IS HEREBY ORDERED that Waldon Carnall be, and he hereby is authorized to transfer his certificate of public convenience and necessity and properties used in the operation of Carnall Trucks to Carnall Trucks, a corporation, and Carnall Trucks, a corporation, be,

and it is hereby authorized, in consideration for such transfer, to issue three shares of stock of the aggregate par value of \$150.00.

The authority herein granted is subject to the following conditions:-

1. Waldon Carnall and Carnall Trucks, a corporation, applicants herein, shall join in common supplement to be filed in triplicate to the tariffs on file with the Commission in the names of Waldon Carnall, said Waldon Carnall on the one hand withdrawing from such tariffs and said corporation on the other hand adopting and establishing as its own such tariffs and all effective supplements thereto.

2. Waldon Carnall shall within twenty(20) days after the effective date of this order withdraw all time schedules filed in his name with the Railroad Commission, and Carnall Trucks shall file in duplicate, time schedules covering its service under the operating rights herein authorized to be transferred to it, such time schedules to be identical with those heretofore filed by said Waldon Carnall or time schedules satisfactory to the Commission.

3. The rights and privileges herein authorized to be transferred may not hereafter be sold, transferred, leased nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission has first been secured.

4. No vehicle may be operated by Carnall Trucks under the authority herein granted, unless such vehicle is owned by it or is leased by it under a contract or agreement on a basis satisfactory to the Commission.

5. Carnall Trucks shall keep such record of the issue of the stock herein authorized as will enable it to file within thirty(30) days thereafter, a verified report such as is required by the Railroad Commission's General Order No. 24-A, which order insofar as applicable, is made a part of this order.

6. The authority herein granted to sell and transfer the rights and/or property shall lapse and be void if the parties hereto shall not have complied with all the conditions within the periods of time fixed herein unless, for good cause shown, the time shall be extended by further order of the Commission.

7. Carnall Trucks shall, prior to the commencement of service, authorized and continuously thereafter, comply with all of the provisions of the Commission's General Orders Nos. 91 and 93.

IT IS HEREBY FURTHER ORDERED that the authority herein granted, will become effective twenty(20) days after the date hereof.

DATED at San Francisco, California, this 15th day of July, 1938.

William H. ...
Leon ...
Orville ...

Commissioners.