Decision No. 31358

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

THE RIVER LINES (The California Transportation Company, Sacramento Navigation Company, and Fay Transportation Company), W. E. HIBBITT, doing business as Sacramento Motor Transport, THE WESTERN PACIFIC RAILROAD COMPANY, SACRAMENTO NORTHERN RAILWAY, Complainants, vs. VALLEY MOTOR LINES, INC., Defendant.	Case No. 4132

McCUTCHEN, OLNEY, MANNON & GREENE, by F. W. Mielke and J. E. Monro, for The River Lines and W. E. Hibbitt, Complainants;

L. N. BRADSHAW for Western Pacific Railroad Company and Sacramento Northern Railway, Complainants;

SANBORN, ROEHL & McLEOD and JAMES J. BROZ., by H. H. Sanborn, for Defendants;

G. E. DUFFY for The Atchison, Topeka & Santa Fe Railway Company, interested party;

R. E. WEDEKIND for Southern Pacific Company and Pacific Motor Transport Company, interested parties.

BY THE COMMISSION:

O P I N I O N

The complainants in this proceeding, The River Lines, W. E. Hibbitt, doing business as Sacramento Motor Transport, The Western Pacific Railroad Company, and Sacramento Northern Railway Company, are common carriers engaged in the transportation of

property between various points in California, including San Francisco and East Bay points, on the one hand, and Sacramento, on the other hand. The defendant, Valley Motor Lines, Inc., a California corporation, is likewise engaged in the transportation of property as a common carrier within this state. By their complaint filed in this proceeding, the complainants have alleged that defendant has been engaged in the transportation of property, as a highway common carrier, contrary to and in violation of the terms of an express condition contained in certain certificates of public convenience and necessity previously granted defendant to the effect that defendant would enter into no contract, agreement, or understanding, directly or indirectly, with the Valley Express Company or any other express or motor truck company for the transportation between Stockton and Sacramento of property originating at San Francisco Bay points and destined to Sacramento, or vice versa, "at rates to the general public lower than the combination of local rates over Stockton." It is also asserted that such operations are violative of Sections 30 and 50-3/4, Public Utilities Act. By its answer, defendant denied these charges.

A public hearing was had before Examiner Austin at San Francisco, when evidence was offered, the matter submitted, briefs filed, and it is now ready for decision.

Essentially the complaint rests upon the contention that defendant Valley Motor Lines, Inc., a highway common carrier, through an arrangement with Valley Express Company, an express corporation, is engaged in the transportation of property between Stockton and Sacramento, originating at San Francisco Bay points

and destined to Sacramento, or vice versa, at rates to the general public lower than the combination of defendant's local rates over Stockton. The condition, the alleged violation of which constitutes the gravamen of this complaint, appears in two certificates granted defendant, which we shall designate, for convenience, as the Sacramento certificates.

By Decision No.27640 on Application No.19069, dated January 7, 1935, a certificate of public convenience and necessity was granted to Valley Motor Lines, Inc. authorizing the operation of a motor truck service for the transportation of property as a common carrier "between Sacramento and Stockton only, via Lodi, Galt and Arno, California." A condition incorporated in the order expressly prohibited the performance of any service "between Sacramento and Stockton on the one hand, and on the other hand, intermediate points between Sacramento and Stockton or between any of said intermediate points." There also appeared in the order a condition reading as follows:

> "That Valley Motor Lines, Inc. shall not make or enter into any contract, agreement or understanding, directly or indirectly, with Valley Express Company or any other express or motor truck company for the transportation between Stockton and Sacramento of any traffic which originates at said San Francisco bay points and is destined to Sacramento, or which originates at Sacramento and is destined to said San Francisco Bay points, at rates to the general public lower than the combination of local rates over Stockton."

Subsequently, by Decision No.27898 on Application No.18237, dated April 22, 1935, a certificate of public convenience and necessity authorizing more extensive operations was granted to Valley Motor Lines, Inc. However, the condition quoted above was incorporated in Decision No.27898.

By a condition appearing in the order, Valley Motor Lines, Inc. was required to file, within a given period, its acceptance of the certificate granted by Decision No.27898, stipulating therein, among other things, "that the right granted applicant (defendant herein) between Sacramento and Stockton herein is accepted in lieu of the right granted by Decision No.27640, on Application No.19069; and, further, that all the restrictions on any right, other than as herein altered, modified or removed, shall remain in full force and effect." Thus, the certificate granted by Decision No.27640 has become merged with that granted by Decision No.27898, except to the extent that there may be contained in the former any restrictions on the operative right therein granted which were not altered, modified, or removed by Decision No.27898. No modification was made in the restriction relating to applicant's rights between San Francisco Bay points and Stockton and Sacramento.

At the hearing of Application No.19069, a stipulation, introduced in evidence in the present record,(2) was entered into between the applicant therein, Valley Motor Lines, Inc. and the protestants therein, The River Lines and Sacramento Motor Transport, to the effect that that application did not involve, contemplate, or propose any service or transportation respecting freight originating at San Francisco Bay points and destined to Sacramento, or originating at Sacramento and destined to San Francisco Bay points; that should the application be granted, Valley Motor Lines, Inc. would enter into no contract, agreement, or understanding with Valley Express Company or any other express or motor truck company for the transportation, between Stockton and Sacramento, of traffic originating at San Francisco Bay points and destined to Sacramento, or vice versa, at rates to the general public lower

(2) Exhibit 3, Tr. p.8

than the combination of local rates over Stockton; and that nothing contained in the stipulation should be construed as imputing to protestants any belief or opinion that the granting of such certificate for service between Stockton and Sacramento would confer upon applicant the right to transport freight or express originating at or destined to San Francisco Bay points. The pertinent provisions of this stipulation are quoted (3) below.

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(3) So far as material here, the stipulation consummated by the parties in Application No.19069 provided as follows:

"It is understood and agreed, and is hereby stipulated, as follows:

(1) That Application No.19069 of Valley Motor Lines, Inc., now pending before the Railroad Commission of the State of California does not involve, contemplate or propose any service or transportation with respect to freight originating at San Francisco Bay points, viz., San Francisco, Oakland, Berkeley, Alameda, Richmond, San Leandro, and Emeryville, and destined to Sacramento, or originating at Sacramento and destined to such San Francisco Bay points; and

(2) That, in the event the Commission should grant the application No.19069, in this proceeding, applicant, Valley Motor Lines, Inc. will not make or enter into, or undertake to make or enter into, any contract, agreement, or understanding, directly or indirectly, with Valley Express Company or any other express or motor truck company, for the transportation between Stockton and Sacramento of any traffic which originates at said San Francisco Bay points and is destined to Sacramento, or which originates at Sacramento and is destined to said San Francisco Bay points, at rates to the general public lower than the combination of local rates over Stockton. It is the intent hereof that this said traffic may not be handled by any express company over the proposed line of the applicant between Stockton and Sacramento, or by applicant itself, at through rates to the general public lower than the combination of local rates via Stockton now or hereafter in effect under tariffs on file with the Railroad Commission of the State of California.

* * *

(5) It is expressly understood that no statement or provision contained in this stipulation shall be construed to mean or imply that any of said protestants are of the belief or opinion that if the certificate of public convenience and necessity sought by said applicant with respect to service between Stockton and Sacramento is granted, said applicant will have the right to transport any freight or express matter originating at or destined to any of said San Francisco Bay points."

Valley Express Company admittedly transports property for the public between San Francisco Bay points and Sacramento at rates contained in its published tariffs. It is denied, however, that Valley Motor Lines, Inc. engages in transportation between these points.

Valley Express Company is closely affiliated with Valley Motor Lines, Inc.; the shares of stock of each corporation are held in about the same proportions by the same individuals; both companies have common executive officers; they maintain joint offices at San Francisco, Oakland, and Sacramento;(4) and at these and other points many of their employees serve both companies, dividing their time between them.

The operations of Valley Express Company, however, are by no means co-extensive with the territory served by Valley Motor Lines, Inc.; on the contrary, they occupy a much broader field. Operating as an "express corporation" under Section 2(k), Public Utilities Act, Valley Express Company is engaged extensively in the transportation of property on the lines of other common carriers throughout the State. In particular, this service is conducted over the lines of Pacific Freight Lines, Southern California Freight Lines and other carriers serving Southern California; between San Francisco and Sacramento, a substantial share of its traffic moves via The River Lines. It receives and delivers shipments from and to the public direct, performing in this connection, with its own trucks, a pickup and delivery service; however, the line-haul facilities are provided by the underlying carriers.

Footnote (3), - continued
from page 5 -

It is also provided that protestants withdrew their objections to the application, and that should the application be granted, "any order that may be entered by the Commission pursuant thereto shall contain provisions in accordance with this stipulation."

(4) At Sacramento, Valley Motor Lines, Inc. represents the Valley Express Company, no employees of the latter being stationed there. All inquires regarding Valley Express are handled by Valley Motor Lines' employees. (Tr. pp. 39, 40).

In the transportation of property by Valley Express Company between San Francisco and Sacramento, that company performs the pickup service at San Francisco through its local fleet of pickup trucks, but the actual line-haul transportation and the delivery service at Sacramento are performed by Valley Motor Lines, Inc. The Express Company deals directly with the public, handling the traffic under its own billing. Valley Motor Lines, in turn, physically transports the freight between these points, but in so doing undertakes to deal with it as three distinct shipments moving, respectively, between San Francisco and Manteca, between Manteca and Stockton, and between Stockton and Sacramento. Each evening all express traffic tendered during the day at San Francisco is billed by defendant as a single shipment consigned from the Express Company to itself at Manteca. There, possession of the tonnage is taken by an employee of the Express Company.(5) The truck is unloaded and the freight reloaded into another truck or, if none is available, into the same truck. This freight, together with that originating elsewhere, such as points in the San Joaquin Valley, is again re-billed as a distinct shipment from Manteca to Stockton, the Express Company appearing as both consignor and consignee. At Stockton the truck is once more unloaded and the tonnage transferred as at Manteca, delivery being taken by an employee of the Express Company. Beyond Stockton the traffic moves under a single bill of lading. At Sacramento the delivery service is accomplished by Valley Motor Lines.

(5) Those who unload the truck at Manteca are employed by the Express Company alone; they are not joint employees of that company and defendant. However, the truck driver, a Valley Motor employee, sometimes assists in performing the transfer (Tr. p.21). At Stockton freight is transferred in a similar manner. (Tr. p.23).

Traffic moves daily, in the manner prescribed, from San Francisco Bay points to Sacramento. The daily tonnage varies from 1,000 pounds to 10,000 pounds, averaging 15 shipments weighing approximately 350 pounds each, or around 5,250 pounds. This does not include the substantial volume of Valley Express traffic transported from San Francisco to Sacramento via The River Lines.

Though the record is indefinite as to the frequency and volume of the movement from Sacramento to San Francisco, it appears that this is billed in the same manner as the traffic moving from San Francisco, i.e., to Stockton, to Manteca, and to San Francisco.

No contractual relations exist between Valley Express Company and Valley Motor Lines, Inc., fixing their obligations and duties in respect to the transportation of express between San Francisco and points north of Manteca; instead, all such traffic moves under the published tariff rates of Valley Motor Lines, Inc. From San Francisco to Manteca the traffic is transported as a single shipment under the depot to depot class rates. Upon the billing appears separately the weight of the tonnage embraced within each class, from first to fourth class, respectively, and the appropriate rate is applied. From Manteca to Stockton the traffic moves as a single, consolidated shipment under one bill of lading. On this traffic the Express Company is charged the depot to depot rate of 7½ cents, which applies only upon minimum shipments of 10,000 pounds. From Stockton the traffic, though moving under a single bill of lading, is segregated as to number of shipments, number of minimum shipments, and the weight included in each class. The Express Company pays, upon this movement, the depot to store-door rates. For the total charges thus incurred, an expense bill is submitted to Valley Express Company which, in turn, pays Valley Motor Lines, Inc.

Upon the traffic so handled by Valley Motor Lines for the Express Company, rates are assessed in accordance with a rule contained in defendant's tariff, which provides that the shipper would be accorded a reduction of 60% of the published rates where he performed the pickup and delivery, and the loading and unloading services.[6] This rule, which long anteceded the decisions prescribing the restriction upon which this complaint is predicated, was justified, so defendant asserted, by investigations which disclosed that of the total cost of transporting less-than-carload traffic, 40% should be allocated to the line-haul and the remaining 60% to the cost of loading and unloading, pickup and delivery, and to overhead.

The main issue here for determination is whether or not defendant directly or indirectly violated the terms of the certificate granted to it by the Commission.

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(6) This rule, known as Rule 6 (Exhibit 6, Tr. pp. 66, 67; 84, 85), was originally published by Valley Motor Lines in its tariff effective April 21, 1932; effective August 16, 1933, it was transferred to page 9-A of its Tariff No.2, C.R.C. No.5. It reads as follows:

> "Freight delivered to this Company's depot and there loaded on this Company's equipment by the shipper, or his Agent, and on arrival at destination unloaded from this Company's equipment by the Consignee or his Agent, will be assessed forty per cent (40%) of the Class or Commodity rates published herein; PROVIDED HOWEVER, that no commodity will be transported between San Francisco, Oakland or Bay points and Fresno for less than 13 cents per 100 pounds, and no commodity will be transported between San Francisco, Oakland or Bay points and Modesto, for less than 8 cents per 100 pounds; and PROVIDED FURTHER, that freight transported subject to this rule will be transported only at this Company's convenience within 72 hours from receipt of shipment. All charges must be PREPAID."

By the condition contained in defendant's certificate, and heretofore quoted in full, Valley Motor Lines is prohibited from entering into any "contract, agreement, or understanding, directly or indirectly," with Valley Express Company or any other motor truck company, for the transportation between Stockton and Sacramento of traffic moving between San Francisco Bay points and Sacramento, and originating at or destined to such points, "at rates to the general public lower than the combination of local rates over Stockton." By its terms, this prohibition runs against both formal agreements and informal understandings. It provides that traffic of a certain character, though it may move, shall not be handled at rates to the general public lower than the combination of locals over Stockton. What is the purport of the phrase "rates to the general public?" This may relate either to the rates charged by the defendant itself or to those assessed by the express company. If the prohibition had been directed solely to rates imposed by the defendant, it would seem that any reference to the express company or to the relations between it and defendant would have been entirely superfluous. Moreover, it is not customary for the underlying carrier, in the performance of transportation through an express company, to deal directly with the public in the collection of transportation charges; its activities are limited to the carriage of shipments for the express company. The language of this condition, therefore, must be viewed as a limitation upon the authority it would otherwise enjoy respecting the arrangements it might enter into with an express company for the performance of transportation. Although ordinarily, in the absence of any provision to the contrary, an underlying carrier would have no control over the rates to be charged the public by an express corporation operating over its lines, here a different situation is presented. The language of this condition bounds and circumscribes the nature of the contract or arrangement which the underlying carrier is at liberty to consummate with any express corporation. By these provisions

defendant is required, in consummating any such agreement or arrangement, to insist that the express corporation obligate itself to charge and collect from the shipping public rates no lower than those therein prescribed. Defendant may enter into no such contract or arrangement providing for the exaction of lower rates. That such is the meaning of this provision is apparent from the language of the opinion in Decision No.27898, on Application No.18237, granting the final certificate. There, following a description of the extensive operations of Valley Express Company, appears the statement that:

> " ... The instant application is being pressed palpably for the benefit and use of the express company,- in fact, the ownership of Valley Motor Lines, Inc. and Valley Express Company, a corporation, is identical. The trucking operation is the servant of the express corporation. Any certificate granted to applicant would be used for the transportation of property in the custody of Valley Express Company. If the express company, which has rates on file with this Commission for practically all points between Tracy and Fresno, continues its deliveries to such points, it must necessarily use the rail service in the absence of any other. Should it be required to do so, it must perforce mingle its shipments with those of its competing carriers, both express and rail, and subject its business to the same danger of acquisition as pointed out by rail lines in their objections to applicant's service. Only by possessing a certificate authorizing the transportation of traffic in the custody of Valley Express Company may applicant be put on the same basis as the competing rail carriers."

This clearly contemplates that the service to the public shall be performed directly by the express company. The language of the condition must therefore be construed as being directed to the rates to be charged by that carrier. Moreover, it is apparent from the decisions that these operative rights were created primarily to meet the needs of traffic moving between Sacramento and San Joaquin Valley points south of Stockton. The transportation needs of the San Francisco Bay territory were not primarily involved. That this is true appears from the stipulation to which we have adverted, which, though not binding upon the Commission,

may be referred to for the purpose of determining the meaning of the condition. Had it not been intended by these decisions to impose limitations upon the rates of the express company, the restriction would have been meaningless, for it then might readily have been defeated through the combination of local rates.

Though the rates to be charged the general public are those of the express company, by what standard are they to be tested? Must they be limited to the combined local rates over Stockton, published by the express company itself, or to those established by the underlying carrier? The decisions in question created distinct operative rights entirely separate from those under which the lines of the defendant were extended to San Francisco Bay territory. The condition obviously sought to prevent the unification of these operative rights except to a limited extent. It seems clear that the combination of rates was intended to comprehend those applying over the various operatige rights of the defendant. The operative rights of the express company were not divided in this manner; since the purpose of the condition was restrictive, it would seem that the language employed contemplated rates applying to the distinct operative rights of the defendant. The local rates, therefore, must be deemed those of the underlying carrier with whose operative rights the Commission was then concerned. In view of what has been said, this condition must be interpreted as prohibiting the defendant Valley Motor Lines from entering into any contract or understanding, directly or indirectly, with Valley Express Company or any express or motor truck company for the transportation between Stockton and Sacramento of traffic moving between San Francisco Bay points and Sacramento, and originating at or destined to such points, whereby such express company or other motor truck company would be permitted to exact from the general public rates lower than the combination of defendant's local rates over Stockton.

Though the record does not disclose that defendant has entered into any written contract with Valley Express Company, it is clear that the plan or method under which the operations have been conducted, providing as they do for the loading and unloading of defendant's trucks by employees of the express company, thus enabling the latter company to take advantage of Rule 6, can be viewed only as an agreement or understanding between the two companies. The character of the billing and the regularity of the operations negative any conclusion that this transportation was performed in any haphazard manner. The handling of this traffic, therefore, must be deemed as having been performed pursuant to an "agreement or understanding" between the two companies within the meaning of the condition.

In view of what we have said, it is not necessary to determine whether any discrimination has resulted from defendant's methods of operation in this territory. They are contrary to the terms of the condition, whether or not they have created any preference. Nor, in the light of our conclusion is it essential to decide whether or not defendant has established any through route or through or combination rates between San Francisco Bay points and Sacramento without authority from the Commission, contrary to the provisions of Section 50-3/4(c), Public Utilities Act.

In consonance with the conclusions announced, our order will require the defendant to conduct its operations in this territory, whether they be performed directly or through the medium of Valley Express Company, at rates available to the shipping public which are no lower than the combination of defendant's local rates over Stockton.

FINDINGS OF FACT

Upon full consideration of the evidence herein and of the statements of fact contained in the foregoing opinion, the Commission hereby finds the facts to be as follows:

1. That by Decision No. 27640 on Application No. 19069, dated January 7, 1935, and by Decision No. 27898 on Application No. 18237, dated April 22, 1935, wherein the certificate granted by the former decision was merged, the Railroad Commission granted to defendant herein a certificate of public convenience and necessity authorizing the operation by defendant of an automotive service as a highway common carrier between Stockton and Sacramento. That said certificate granted by said Decision No. 27898 was made subject to the following condition, to-wit:

> "Applicant shall not make or enter into any contract, agreement or understanding, directly or indirectly, with Valley Express Company or any express or motor truck company for the transportation between Stockton and Sacramento of any traffic which originates at San Francisco bay points and is destined to Sacramento, or which originates at Sacramento and is destined to San Francisco bay points, at rates to the general public lower than the combination of local rates over Stockton."

2. That at the time of the filing of the complaint herein, the defendant was engaged in the transportation of property between Stockton and Sacramento, originating at San Francisco Bay points and destined to Sacramento, and originating at Sacramento and destined to San Francisco Bay points, which property was transported at rates to the public lower than the combination of local rates over Stockton concurrently maintained by defendant.

3. That at the time of the filing of the complaint herein, the defendant was engaged in the transportation, at rates to the general public charged by Valley Express Company lower than

the combination of local rates over Stockton concurrently maintained by defendant, of property between Stockton and Sacramento, originating at Sacramento and destined to San Francisco Bay points, and also property originating at San Francisco Bay points and destined to Sacramento.

4. That at the time of the filing of the complaint herein, defendant was engaged in the transportation of property between Stockton and Sacramento, originating at San Francisco Bay points and destined to Sacramento, and also property originating at Sacramento and destined to San Francisco Bay points, pursuant to an agreement or understanding with Valley Express Company, at rates to the general public charged by Valley Express Company lower than the combination of local rates over Stockton concurrently maintained by defendant.

5. That prior to the time of the filing of the complaint herein, defendant had entered into an agreement or understanding with Valley Express Company whereby property would be transported by defendant, as an underlying carrier, between Stockton and Sacramento, originating at San Francisco Bay points and destined to Sacramento, and also property originating at Sacramento and destined to San Francisco Bay points, at rates charged the general public by said Valley Express Company lower than the combination of local rates over Stockton concurrently maintained by defendant; that pursuant to said agreement or understanding, defendant was, at the time of the filing of the complaint herein, engaged in the transportation of property, as an underlying carrier for said Valley Express Company, between Stockton and Sacramento, originating at San Francisco Bay points and destined to Sacramento, and also

property originating at Sacramento and destined to San Francisco Bay points, at rates charged the general public by said Valley Express Company lower than the combination of local rates over Stockton concurrently maintained by defendant.

O R D E R

A public hearing having been had in the above entitled proceeding, evidence having been received, briefs filed, the matter having been submitted, and the Commission being now fully advised,

IT IS HEREBY ORDERED that the defendant VALLEY MOTOR LINES, INC., a corporation, be and it is hereby required to cease and desist and hereafter abstain from:

(a) Engaging or continuing to engage in the transportation of property between Sacramento and Stockton, originating at San Francisco Bay points and destined to Sacramento, or originating at Sacramento and destined to San Francisco Bay points, which property is transported at rates to the general public lower than the combination of local rates over Stockton concurrently maintained by defendant.

(b) Engaging or continuing to engage in the transportation, at rates to the general public charged by Valley Express Company lower than the combination of local rates over Stockton concurrently maintained by defendant, of property between Stockton and Sacramento, originating at Sacramento and destined to San Francisco Bay points, or originating at San Francisco Bay points and destined to Sacramento points.

(c) Engaging or continuing to engage in the transportation of property between Stockton and Sacramento, originating at

San Francisco Bay points and destined to Sacramento, or originating at Sacramento and destined to San Francisco Bay points, pursuant to any agreement, understanding or arrangement with Valley Express Company, at rates to the general public charged by Valley Express Company lower than the combination of local rates over Stockton concurrently maintained by defendant.

(d) Continuing to observe, carry out, or comply with any arrangement, agreement or understanding heretofore entered into with Valley Express Company, whereby property will be transported by defendant, as an underlying carrier, between Stockton and Sacramento, originating at San Francisco Bay points and destined to Sacramento, or originating at Sacramento and destined to San Francisco Bay points, at rates charged the general public by said Valley Express Company lower than the combination of local rates over Stockton concurrently maintained by defendant.

IT IS HEREBY FURTHER ORDERED that the effective date of this order shall be twenty (20) days from and after service thereof upon defendant.

Dated at San Francisco, California, this 17th day of October, 1938.

Commissioners.