

Decision No. 31354

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
SUN TRANSPORT COMPANY, a corporation,
to sell and transfer, and CALIFORNIA
MILK TRANSPORT, INC., a corporation, to
purchase and acquire, operative rights
as a highway transportation company here-
tofore acquired and held under Certificate
of Public Convenience and Necessity granted
by Decisions Nos. 27768 and 28636, on Ap-
plications Nos. A-19672 and 20211.

Application
No. 22120

ORIGINAL

BY THE COMMISSION:

C. C. STRATTON and PRENTISS MOORE for applicants.

W. R. WILLIAMS for Gregory G. Panopolus, protestant.

O P I N I O N

In this application, as amended, Sun Transport Company, a corporation, has petitioned the Railroad Commission for an order approving the sale and transfer by it to California Milk Transport, Inc., a corporation, of operating rights for the automotive transportation as a highway common carrier of milk, cream and dairy products between Los Angeles and various points in Los Angeles County; and California Milk Transport, Inc., has petitioned for authority to purchase and acquire said operating rights and to hereafter operate thereunder, the sale and transfer to be in accordance with an agreement, a copy of which, marked Exhibit "A" is attached to the application herein and made a part thereof.

The consideration to be paid for the property herein proposed to be transferred is given as \$16,000. Of this sum \$4,000 is alleged by the applicant to be the value of the equipment and \$12,000 is alleged to be the value of the intangibles.

The operating rights herein proposed to be transferred were created by Decision No. 27768, dated February 25, 1935, on Application No. 19672, and Decision No. 28636, dated March 16, 1936, on Application No. 20211.

A public hearing was held at Los Angeles on November 7 before Examiner Paul upon the conclusion of which the matter was taken under submission and is now ready for decision.

Gregory G. Panopolus protested the granting of the authority requested; however he made no showing that the transfer of operative rights, as sought, would adversely affect his interests.

Protestant developed the fact that a transfer of the highway common carrier business and equipment of applicant Sun Transport Company to applicant California Milk Transport, Inc. had been effected as of October 17, 1938 without the authority of the Commission. This fact was readily admitted by applicants and in regard thereto and as a mitigating circumstance therefor, C. S. Stratton testified substantially and in effect as follows:

That during the month of July 1938 certain negotiations were entered into by and between applicants for the transfer of operative rights, as more particularly hereinbefore set forth, for a stock consideration, and an application for authority therefor was prepared and filed with the Railroad Commission; that the agreement reached as a result of such negotiations was later abrogated; that during the month of said July 1938, Sun Transport Company was transporting approximately 800 cans of milk daily; that by the time a new agreement was finally consummated during the early part of October 1938 the traffic of Sun Transport had shrunk to approximately 600 cans of milk daily; that such shrinkage was the result of open solicitation by certain operators offering to transport milk at rates less than those of applicants; that in order to prevent further loss of traffic an amended application was filed with the Commission on October 17, 1938, in which, among other things, applicants requested the Commission to authorize the transfer of operative rights effective as of October 17, 1938. Stratton further testified that it was his belief and he so advised his client that inasmuch as an application

had been made to the Commission to authorize the transfer effective on a date specified in such application the transfer could properly be made on such date awaiting the nunc pro tunc authorization of the Commission. Stratton further testified that on or about November 2, 1938 he first learned that it was contrary to the policy of the Commission to permit such transfers until properly authorized and thereupon took immediate steps to see that Sun Transport Company resumed its certificated service by returning to it sufficient automotive equipment to reestablish such service.

George Kardashian, President of Sun Transport Company, testified that said company resumed its certificated operations on November 3, 1938; that proper insurance is maintained on all automotive equipment used.

The record shows that on or about October 17, 1938 the pink slips evidencing legal ownership of the trucks of Sun Transport were assigned to and are now held by California Milk Transport, Inc. but that the white slips evidencing the registered ownership are still in the name of Sun Transport Company.

It is clear from the record that Sun Transport Company has violated condition No. 4 of Decision No. 27768 dated February 25, 1935 on Application No. 19672 in transferring its operative right without first obtaining the authority of the Commission. The Commission cannot condone such violations. However, this record does not indicate any attempt on the part of applicants to wilfully disregard any of the provisions of the Commission's orders. It is quite apparant that in their zeal to preserve their traffic applicants have acted without due regard for the consequences which might ensue from the unauthorized transfer.

A careful review of the entire record leads to the conclusion that the authority requested should be granted. The order will so provide.

California Milk Transport, Inc., is hereby placed 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

IT IS ORDERED that Sun Transport Company is hereby authorized to sell and transfer and California Milk Transport, Inc., is hereby authorized to purchase and acquire the operative rights heretofore created by Decision No. 27768, dated February 25, 1935, and Decision No. 28636, dated March 16, 1936, subject to the following conditions:

1. The consideration to be paid for the property herein authorized to be transferred shall never be urged before this Commission, or any other rate fixing body, as a measure of value of said property for rate fixing, or for any purpose other than the transfer herein authorized.
2. Applicant Sun Transport Company shall within twenty (20) days after the effective date of the order herein unite with applicant California Milk Transport, Inc., in common supplement to the tariffs on file with the Commission, covering service given under the certificate herein authorized to be transferred, applicant Sun Transport Company withdrawing and applicant California Milk Transport, Inc. accepting and establishing such tariffs and all effective supplements thereto.
3. Applicant Sun Transport Company shall within twenty (20) days after the effective date of the order herein withdraw all time schedules filed in its name with the Railroad Commission and applicant California Milk Transport, Inc. shall within twenty (20) days after the effective date of the order herein file, in duplicate, in its own name time schedules covering service heretofore given by applicant Sun Transport Company which time schedules shall be identical with the time schedules now on file with the

Railroad Commission, in the name of applicant Sun Transport Company or time schedules satisfactory to the Railroad Commission.

4. The rights and privileges herein authorized may not be sold, leased, transferred nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been obtained.

5. No vehicle may be operated by applicant California Milk Transport, Inc. unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

6. The authority herein granted 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.

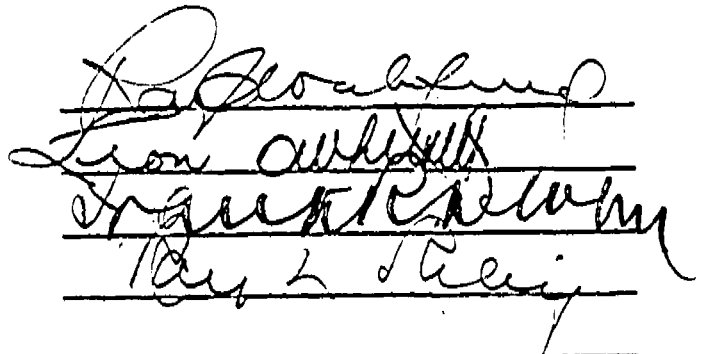
7. Applicant shall, prior to the commencement of service authorized herein and continuously thereafter, comply with all the provisions of this Commission's General Order No. 91.

IT IS FURTHER ORDERED that the operative rights herein authorized to be acquired shall be acquired as an extension and enlargement of the operative rights heretofore created and now owned by California Milk Transport, Inc., as follows:

The operative rights created by Decision No. 27768, dated February 25, 1935, are hereby consolidated with the operative rights created by Decision No. 24503, dated February 23, 1932; and, the operative rights created by Decision No. 28636, dated March 16, 1936, are hereby consolidated with the operative rights created by Decision No. 29374, dated December 15, 1936.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 10th day of November, 1938.



COMMISSIONERS