

Decision No. 32565

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Northwestern Pacific Railroad Company,

Complainant,

vs.

ALFRED R. KELLY, JR., operating under the fictitious firm name of Redwood Motor Freight, and FLOYD S. BRIDGES, Operating under the fictitious firm name of Eureka - Garberville Truck Line, and Intercity Transport Lines, Inc., an express corporation,

Defendant,

CASE NO. 4001

In the Matter of the Application of REDWOOD MOTOR FREIGHT, ALFRED R. KELLY, JR., owner, and EUREKA-GARBERVILLE TRUCK LINE, FLOYD S. BRIDGES, owner, to interchange equipment at Garberville, California, in connection with the transportation of property between San Francisco and Eureka, California, for Intercity Transport Lines, Inc., an express corporation, without transferring loadings from the equipment of one applicant company to the equipment of the other applicant company.

APPLICATION No. 19666

REGINALD L. VAUGHAN, for Defendants and Applicants.

H. W. HOBBS, for Northwestern Pacific Company and Pacific Motor Transport Company, Complainants and Protestants.

EDWARD STERN and H. W. HOBBS, for Railway Express Agency, Inc., Protestants.

BY THE COMMISSION:

O P I N I O N

Northwestern Pacific Railroad Company, complainant in Case No. 4001, alleges that Alfred R. Kelly, Jr., operating under the fictitious name of Redwood Motor Freight, Floyd S. Bridges, operating under the fictitious name of Eureka-Garberville Truck Line, and Intercity Transport Lines, Inc., a corporation, defendants in said proceeding, have been conducting certain unlawful operations in connection with the interchange of equipment of the first two named defendants, as authorized in Decision No. 27545, in Application No. 19666, and requests that the operative rights of defendants as carriers be revoked and that they be ordered to cease and desist from such operations.

By supplemental application in Application No. 19666, Bridges and Kelly seek authority to perform the operation complained of, in the event that such operation as now conducted is held unlawful.

Public hearing in these proceedings was held in San Francisco, the matters were taken under submission on a consolidated record upon the filing of briefs, and they are now ready for decision.

Kelly and Bridges are each engaged in the transportation of property as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act (Statutes 1915, Chapter 91, as amended), the former between San Francisco and Garberville, and the latter between Garberville and Eureka. Intercity Transport Lines, Inc., herein called Intercity, operates as an express corporation, as defined in Section 2(k) of said act, between San Francisco and

Eureka, using Kelly and Bridges, respectively, as underlying carriers. By said Decision No. 27545 Kelly and Bridges were authorized to interchange their equipment under lease at Garberville in order to permit through transportation of Intercity shipments without a physical transfer of such shipments from the equipment of one carrier to that of the other at Garberville. The substance of the complaint herein is that Bridges and Kelly have used the interchanged equipment to transport their own local shipments as well as the Intercity shipments, whereas it is alleged said decision authorized the transportation only of the latter on the interchanged equipment.

Defendants filed separate answers, which in effect admit that Bridges and Kelly have each transported local shipments on the interchanged equipment, but allege that all such local shipments have had both point of origin and destination at or between the termini of one or the other of said carriers, respectively, and further allege that that Decision No. 27545 authorized such use of the interchanged equipment. In the event that the latter contention should be decided adversely to them, however, Bridges and Kelly, by Supplemental Application in Application No. 19666, seek authority to operate in the manner indicated.

Thus the questions before us in these proceedings, which have been consolidated, are, first, whether or not Decision No. 27545, in authorizing Bridges and Kelly to interchange equipment under lease for the transportation of Intercity shipments, also permitted them to transport their own local shipments on the interchanged equipment, and, secondly, if said decision did not contain such authority, whether or not that authority should now be granted.

An examination of Decision No. 27545 shows that while Kelly and Bridges were authorized to interchange their equipment at Garberville instead of transferring shipments from the equipment of one to the equipment of the other, that authority was limited by the following proviso:

" . . . provided, further, that the authority herein granted shall apply only to the interchange of equipment at Garberville when loadings contained therein are in transit exclusively for the account of Intercity Transport Lines, Inc., between points on the lines or beyond the lines of Floyd S. Bridges, Eureka-Garberville Truck Line, and points on the lines or beyond the lines of Alfred R. Kelly, Redwood Motor Freight."

This limitation in the order, together with references in the opinion to testimony that trucks other than the interchanged equipment would be used by each carrier for his local business, clearly reveals that only Intercity shipments may be transported on the interchanged equipment. However, defendant's contention that such testimony related to the use of other trucks for local business only in the event that through traffic sufficient to tax the capacity of interchanged equipment was available appears tenable and of certain mitigating effect.

The evidence presented in support of the supplemental application relates to the convenience and economy of the operation of the carriers, Bridges and Kelly and also revealed that local patrons of the respective underlying carriers would share in the daily service now afforded by reason of the through operations for Intercity rather than the three times weekly service which present local traffic justifies. Such convenience and economy are of course self-evident as both delay and additional expense would be incurred by the use of two trucks at the same time, each only partially loaded,

one carrying only Intercity shipments and the other carrying only local shipments. The affording of daily service to local patrons of Kelly and Bridges⁽¹⁾ would, of course, be of advantage and represents a definite benefit to the public. No good reason, therefore, appears for prohibiting the parties from using a single truck for both types of shipments. Each carrier is the operator of the interchanged equipment in his own territory. No new operative rights would arise from the granting of the supplemental application, since the points served by each carrier would be only the ones already served by him. The supplemental application seeks to avoid wasteful expenditure in an existing service and will result in an improvement in the quantity and quality of service being offered to the public. Such elimination of needless expense plus increased service by a common carrier appears to be in the public interest and should be authorized.

We are therefore of the opinion that the supplemental application herein should be granted by authorizing each applicant to transport local shipments along his route in the interchanged equipment, provided, of course, that neither applicant may carry any shipments from or to a point beyond his route, except as underlying carrier for Intercity. The granting of such authority dispenses with the need for issuing a cease and desist order in the complaint proceeding herein.

O R D E R

The above matters having been duly heard and submitted, and the Commission now being fully advised,

IT IS HEREBY ORDERED that condition No. 5 attached to Decision No. 25891, dated May 1, 1933, in Application No. 18247

(1) The Commission records disclose that subsequent to the submission of these proceedings, the operative rights of Kelly and Bridges here involved, have passed into the hands of new owners with Commission approval.

of Alfred R. Kelly, operating under the fictitious name of Redwood Motor Freight, as amended in Decision No. ²⁷⁵⁴⁵~~26545~~ in Application No. 19666, be and it is hereby amended to read as follows:

No vehicle may be operated by applicant herein 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; provided, however, that to provide through transportation for express shipments, only, of Intercity Transport Lines, Inc., an express corporation, over the lines of applicant and the lines of F. S. Bridges, operating as Eureka-Garberville Truck Line, a connecting carrier of such express shipments, applicant shall have authority (a) to cease the physical transfer of such express shipments at the connecting point, viz: Garberville, (b) to lease from said F. S. Bridges at Garberville, for one trip at a time, equipment containing loadings in transit exclusively for the account of said Intercity Transport Lines, Inc. between points on or beyond the lines of F. S. Bridges, and points on or beyond the lines of applicant, and (c) to operate said equipment under applicant's certificate and over applicant's lines between Garberville and San Francisco and return, and upon its return to Garberville to restore possession of said equipment, containing such express loadings exclusively, to said F. S. Bridges; and applicant is further authorized reciprocally to lease to said F. S. Bridges, at Garberville, for one trip at a time, applicant's equipment containing such express shipments exclusively, to be operated by and over the lines of said F. S. Bridges between Garberville and Eureka and return; provided further, however, that before ceasing said physical transfer of such express shipments at Garberville and before entering upon such leasing of equipment, a satisfactory lease therefor shall first be filed with and approved by this Commission.

IT IS HEREBY FURTHER ORDERED that condition No. 5 attached to Decision No. 12861, dated November 26, 1923, in Application No. 9539 of C. W. Burris to transfer to Henry J. and F. S. Bridges, as amended by Decision No. 27545 in Application No. 19666, be and it is hereby amended to read as follows:

Now vehicle may be operated by applicant herein 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; provided, however, that to provide through transportation for express shipments, only, of Intercity Transport Lines, Inc., an express corporation, over the lines of applicant and the lines of Alfred R. Kelly, Jr., operating as Redwood Motor Freight, a connecting carrier of such express shipments, applicant shall have authority (a) to cease the physical transfer of such express shipments at the connecting point, viz: Garberville, (b) to lease from said Alfred R. Kelly, Jr. at Garberville, for one trip at a time, equipment containing loadings in transit exclusively for the account of said Intercity Transport Lines, Inc. between points on or beyond the lines of Alfred R. Kelly, Jr. and points on or beyond the lines of applicant, and (c) to operate said equipment under applicant's certificate and over applicant's lines between Garberville and Eureka and return, and upon its return to Garberville to restore possession of said equipment, containing such express loadings exclusively, to said Alfred R. Kelly, Jr.; and applicant is further authorized reciprocally to lease to said Alfred R. Kelly, Jr., at Garberville, for one trip at a time, applicant's equipment containing such express shipments exclusively, to be operated by and over the lines of said Alfred R. Kelly, Jr. between Garberville and San Francisco and return; provided further, however, that before ceasing said physical transfer of such express shipments at Garberville and before entering upon such leasing of equipment, a satisfactory lease therefor shall first be filed with and approved by this Commission.

IT IS HEREBY FURTHER ORDERED that the complaint in Case No. 4001 herein be and it is hereby dismissed.

The effective date of this order shall be twenty(20) days from the date hereof.

Dated at San Francisco, California, this 14th day of November, 1939.

Raymond
Francis R. Sullivan
W. L. Riley
W. H. H. H.
Justus F. Currier
COMMISSIONERS