Decision No. 32765

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of CARLEY & HAMILTON, INC., a corporation, for leave to file its Tariff C.R.C. No. 3 as a "freight forwarder" as defined in Section 2(xa) of the Public Utilities Act.	Application No. 22327

Douglas Brookman, for Applicant.

Harold B. Frasher, for Frasher Truck Co., Valley Motor Lines, Inc., and Valley Express Co., Protestants.

J. F. Vizzard, for Draymen's Association of San Francisco.

Guy V. Shoup, R. E. Wedekind, J. J. Geary, M. G. Smith and A. L. Whittle, for Southern Pacific Company, Northwestern Pacific Railroad Company and Pacific Motor Trucking Company, Protestants.

W. G. Stone, for Sacramento Chamber of Commerce.

McCutchen, Olney, Mannon & Greene, by F. W. Mielke, for The River Lines, Protestant.

George D. Hart, for United Transfer Company.

Edward M. Berol and Marvin Handler, by Marvin Handler, for Valley Express Company, Protestant.

E. H. Hart, for Pacific Motor Tariff Bureau, Protestant.

Joe Robertson, for Highway Transport, Inc., Protestant.

F. M. Mott, for Merchants Express Corporation, Protestant.

BY THE COMMISSION:

O P I N I O N

Since about 1901 applicant and its predecessors have conducted a local drayage business in San Francisco. Applicant claims a prescriptive right to engage in freight forwarding business as well. It alleges that it has operated as a "freight forwarder" for over thirty years, and has held itself out as such between San

Francisco and all points in California reached by common carriers. The present application asks leave to file a new tariff to take the place of one ordered canceled in 1938. (41 C.R.C. 327.)

Forwarders of freight, persons who acted as brokers, agents or "dealers" in transportation, came into being because railroads charged a proportionately less rate for a carload of freight than for a smaller shipment comprising less than a carload. Carload rates were obtained by aggregating the shipments of various owners of merchandise, and while details of operation varied, compensation and profit were found in the difference between carload and less-than-carload rates.(1)

Prior to 1933 the Commission was without regulatory jurisdiction over forwarders. "Express corporations" were subject to rate and other regulations, but were not required to obtain certificates. They were defined by statute as those "engaged in or transacting the business of transporting any freight, merchandise or other property for compensation on the line of any common carrier," and were common carriers. (Public Utilities Act, secs. 2(k) and 2(l).) "Express corporations" ordinarily pay carriers, over whose lines they operate, rates fixed by contract, while forwarders pay the tariff rates of carriers to which they tender freight for shipment.

In 1932 the Commission completed a general investigation of transportation conditions in California, and in making certain legislative recommendations, stated in part as follows:

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(1) At one time certain railroads attempted to enforce rules which in effect forbade the combination of goods belonging to several owners for the purpose of obtaining a carload rating by means of forwarding agents. But the courts held that railroads did not have the right to make the ownership of goods tendered for common carriage the test of their duty to receive and carry. I.C.C. v. Delaware, etc. R. Co. (1911), 220 U.S. 235.

"In the past few years the number of so-called freight forwarders has materially increased. Their method of operation varies but in general they undertake to pick up shipments at store door by truck, transport them to destination over the lines of railroads, steamship lines or other common carriers and effect store door delivery at point of destination by motor trucks. Through rates are maintained for the entire transportation service and there is a general holding out to the public to undertake the through transportation of freight from store door to store door through the medium, in part, of other carriers. The Commission has construed Section 2(k) defining an express corporation to include the type of freight forwarders referred to above in Re Frost Fast Freight Service, 31 C.R.C. 668. All freight forwarders should be regulated."
Transportation Investigation, 38 C.R.C. 81, 91.

Two new sections were added to the Public Utilities Act in 1933. "Freight forwarders" were defined, declared to be common carriers, and both "express corporations" and "freight forwarders" were required to obtain certificates for all operations commenced or extended after August 1, 1933.(2) Several forwarders thereupon filed tariffs with the Commission. Applicant did not file tariffs immediately, but during the past five years has been involved in a number of proceedings before the Commission, to which brief reference should be made before considering the present application.

1934 Proceeding.

On March 16, 1934 applicant petitioned for leave to file a tariff, and explained its failure to file when the new section became effective by stating that the statutory amendments had not been called

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(2) Section 2(ka) defines a "freight forwarder" as one "who for compensation undertakes the collection and shipment of property of others, and as consignor or otherwise ships or arranges to ship the same via the line of any common carrier at the tariff rates of such carrier and/or acting as consignee of same receives such property," and is a common carrier.

Section 50(f) relates to certification.

to its attention until March of 1934. Applicant alleged prior operation as a "freight forwarder" between San Francisco and all points in California, via the lines of common carriers. The primary issue raised by that petition was whether or not applicant had been operating as a "freight forwarder" on or prior to August 1, 1933, and thus entitled to file tariffs as such without first obtaining a certificate. After public hearing the Commission found that applicant was a "freight forwarder," and authorized and directed the filing of a tariff.(3) In so doing, the Commission prescribed several conditions in the nature of specific instructions that the tariff to be filed should state explicitly the rates charged by applicant as a "freight forwarder." However, the Commission failed to make any finding as to the extent of applicant's 1933 operations.(4)

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(3) Decision 27102 in Application 19362, issued on May 28, 1934, found in part as follows:

"Applicant's operations consist of local drayage within the City and County of San Francisco; collection and shipment of property of others via the lines of common carriers to points both within and without the State of California, and acting as consignee and receiving and distributing property forwarded to San Francisco from points within and without the State of California. In other words, applicant 'for compensation undertakes the collection and shipment of property of others, and as consignor or otherwise, ships or arranges to ship the same via the line of any common carrier at the tariff rates of such carrier and/or acting as consignee of same receives such property.***'

"Applicant picks up property at the shipper's place of business, signs a hand tag or receipt therefor, prepares a bill of lading which it takes with the property to the depot of the carrier over whose lines the goods are to be transported. It likewise receives goods consigned to it as consignee, breaks bulk and delivers or reforwards the shipment, collects charges and issues freight bills. It does not issue bills of lading in its own name as a carrier nor have custody of the goods after delivery to another carrier on forwarded shipments or before receipt from carrier on inbound shipments. Its role is said to be that of an agent.

"No one challenged applicant's right to file a tariff."

(4) Since August 1, 1933 no forwarder may commence operation "between points" or extend operations "to or from any point or points" without first obtaining a certificate. (Section 50(f).)

Proceedings between 1934 and 1939.

Applicant filed a tariff in June of 1934, and in November of the same year Valley Express Co. filed a complaint (Case No. 3928) alleging that that tariff did not comply with the conditions of the 1934 order. Before hearing, and in December of 1934, applicant filed a second tariff, which was intended to supersede the first one. The second tariff, as to certain commodities, listed rates between various named points.(5) The River Lines filed a protest against the second tariff, in so far as it related to operations between San Francisco and Sacramento and Stockton, upon the ground that applicant had no prescriptive right between those points. The day before the second tariff was to become effective an order of suspension and investigation was issued by the Commission. (Case No. 3946.)

The two cases were consolidated, and at the hearing applicant submitted a third proposed tariff, asking the Commission to find that the third tariff complied with the 1934 order, or to modify the 1934 order so as to permit the filing of such tariff. Decision on the two matters was issued on September 30, 1935. (Decision No. 28252.) Modification of the 1934 order was denied, and it was found that the proposed third tariff did not comply with such order, and, as applicant had conceded that neither the first nor second tariff had been prepared properly, the second tariff then on file was ordered canceled. The 1935 decision also found that there was nothing in the record to show that applicant had been operating as a "freight

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(5) The first tariff did not contain any point to point rates. From the beginning applicant has asserted the existence of a prescriptive right as a forwarder between San Francisco and all points in California served by common carriers.

forwarder" between San Francisco and Sacramento and Stockton on August 1, 1933.

The effectiveness of the 1935 decision was stayed by the filing of applicant's petition for rehearing, which was granted.(6) Rehearing was sought upon the ground that to require publication of rates to destinations beyond San Francisco would compel applicant to engage in business as an "express corporation," that forwarding had no connection with transportation beyond San Francisco, and that applicant assumed no responsibility after shipments had been turned over to underlying carriers. On the same day that rehearing was granted the 1934 application was reopened for further hearing. Decision was issued in May of 1938. (Decision No. 30838; 41 C.R.C. 327.)

The 1938 decision stated that the distinction between "express corporations" and "freight forwarders" does not concern the relationship between the shipper and the express corporation or forwarder, but has to do with the relationship between the underlying carrier and the express corporation or forwarder. According to the opinion, underlying carriers ordinarily deal with an express corporation as another carrier, rather than as a shipper, and agree to handle its traffic at special contract rates, while forwarders are those who, "having assumed a carrier's undertaking with shippers," accomplish the transportation by tendering goods as a shipper to the underlying carrier at the latter's tariff rates, and not as another carrier under special contract charges. On the primary issue of the

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(6) Because the 1935 order was stayed, the second tariff was not canceled, but became effective on October 13, 1935, when the statutory period of suspension expired. Thus the first tariff was in effect from July 17, 1934 until October 13, 1935, while the second tariff was in effect from October 13, 1935 until canceled in June of 1938, as ordered by the decision on rehearing, hereinafter discussed.

proper form and content of forwarders' tariffs, the Commission concluded that such tariffs must specify rates for forwarders' transportation service between points which they undertake to serve, and that the 1934 and 1935 orders should not be modified in this respect.

However, the 1938 decision also found that applicant possessed no prescriptive right as a "freight forwarder,"(7) and ordered annulment of the 1934 and 1935 decisions, denial of the original 1934 application, and cancelation of applicant's tariff then on file. Petition for writ of review was denied.(8)

The present application for leave to file a tariff.

Applicant now seeks leave to file a new tariff to take the place of the one ordered canceled in 1938, alleging that the complete facts of its 1933 operations have never been presented to the Commission. A motion to dismiss the application upon the ground that the issues presented had been determined by the 1938 order was denied.

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(7) It was found that prior to August 1, 1933 applicant acted as a shipper's agent to forward goods, assumed no responsibility after delivery to line haul carriers, and was not then operating as a freight forwarder, but merely as a drayman and forwarding and receiving agent. However, the Commission found that after August 1, 1933 applicant made certain changes in its methods and practices, which resulted in applicant becoming a freight forwarder. These changes were found to have occurred after line haul carriers had published reduced quantity rates and so-called "split delivery rules," thereby increasing opportunities for profitable consolidation.

(8) Carley & Hamilton, Inc. v. Railroad Commission, S.F. No. 16091. The Commission's answer to the petition represented to the Court that the crucial question argued since the first hearing in May of 1934 was whether a freight forwarder is under the same duty as other common carriers to publish a tariff complying with statute and Commission rules, and that that was the only question presented in the Court proceeding. The answer pointed out that the Commission did not compel applicant to do anything other than to cancel its unlawful tariffs, and did not compel applicant to become an express corporation rather than a freight forwarder. "It did make a finding that petitioner was not actually a forwarder on August 1, 1933, but that finding was upon an issue collateral to the dominant issue argued throughout the proceedings."

(Decision No. 31676.) The matter was set for hearing on the merits because of allegations that the existence of a prescriptive right could be established by evidence never before presented, and to afford applicant an opportunity to support such allegations in a proceeding where the existence of such a right was the primary issue.(9)

Thus the question for determination is whether applicant's 1933 operations were those of a "freight forwarder" within the meaning of that term as clarified by the 1938 decision. Did applicant, in 1933, act as a common carrier by assuming responsibility to shippers for transportation of shipments to destination, and then accomplish such transportation by tendering goods to other common carriers as a shipper, paying the tariff rates of such common carriers? If so, between what points in California did applicant conduct such operations? Or did applicant, in 1933, act as a drayman and agent for shippers in hauling goods to depots, making out bills of lading, shipping such goods for transportation by common carriers, and assuming no responsibility for shipments after delivery to such common carriers?

Consideration of the above questions is complicated by the facts that applicant, at various times, has been advised by three different attorneys, and has presented conflicting testimony con-

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(9) "* * *, the primary issue in the past proceedings concerned the form of tariff which should be filed. No Commission decision prior to the one upon which the motion is based attempted to define with certainty the distinction between express corporations and freight forwarders. Inconsistencies in the position taken by applicant now and in the past may be due to the earlier uncertainty as to statutory construction. If applicant is able to present substantial evidence in support of a prescriptive right, an injustice will result if it is not permitted to do so in a proceeding where the existence of such a right is not only directly involved, but is recognized by all parties as being the dominant issue." (Decision No. 31676.)

cerning the nature of its 1933 business.

In the earlier proceedings applicant's then counsel contended that the statute described and applied only to those who functioned as "forwarding agents" by receiving goods from shippers and, as the latter's agent, shipping such goods to destination via the line of a common carrier, assuming and incurring no obligation with respect to the shipments after delivery to the common carrier.(10)

Applicant's earlier factual showing was consistent with the above theory. Its president testified that applicant did not contract with shippers to transport freight to final destination; that applicant's responsibility ceased upon receipt of a signed bill of lading from the carrier involved; and that there was no holding out or assumption of responsibility for loss or damage after delivery to the common carrier.

Applicant now contends that its 1933 operations were those of a "freight forwarder" within the meaning of that term as clarified by the 1938 decision. In the present proceeding applicant's president testified that in 1933 applicant did assume responsibility for the

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(10) This contention was a part of applicant's argument to the effect that to require publication of rates to destinations beyond San Francisco would compel operation as an "express corporation." Applicant then urged that forwarding had no connection with transportation beyond San Francisco, and that applicant could not be compelled to file rates beyond, because it assumed no responsibility after turning shipments over to carriers.

The first tariff filed after the 1934 order described applicant as a "forwarding agent," undertaking to pick up, haul to, and forward shipments over the lines of common carriers, but assuming no responsibility for loss, damage or delay after delivery to common carriers pursuant to shippers' instructions. In the absence of specific instructions, applicant undertook to forward shipments over the line having the lowest tariff rate. The second tariff contained similar provisions.

transportation of shipments through to final destination.(11)

The record in the present proceeding.

Applicant's entire factual showing in this proceeding was presented through its president. Applicant's office has been moved twice since 1933, and its president testified that while 1933 records and documents were available in 1934, most of the early records had since been destroyed because further retention was believed to be unnecessary, particularly in view of the 1934 order regarding status as a forwarder. However, copies of certain 1933 freight bills rendered by applicant were introduced in evidence(12), as well as copies of certain 1933 bills of lading.(13) These documents were used in connection with various shipments which applicant contends were handled by it as a freight forwarder.

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(11) In explanation of his conflicting testimony, given at different times, the witness stated as follows:

"A. At that time the attorney we had instructed me to so testify, and that was not my personal viewpoint on it, that was his interpretation of the law at that time because he said if we assumed the responsibility all the way through that we would become an express company.

Q. Did you at that time inform your attorney that it had always been the intent of Carley & Hamilton, and yourself personally, that it was to hold itself out? A. I told him that was my theory.

Q. And despite that fact you testified to the contrary because he told you to? A. On his advice, yes, sir." (Tr., p. 199.)

(12) According to the testimony the freight bills presented covered a portion only of the periods March 1 to June 1, 1933, and November and December of 1933.

(13) The copies of bills of lading were obtained by applicant from various common carriers, such as The Atchison, Topeka & Santa Fe Railway Company, Sausalito-Mill Valley Express Company, Southern Pacific Company, Merchants Express, Bay Cities Transportation Company, Pacific Motor Transport Company, Napa Transportation Company, Highway Transport Company, and South Coast Steamship Company.

Before adverting to such documents, some explanation must be given of the transportation function performed by applicant as a stockholder and member of Federated Terminals Company, Incorporated, which was organized in 1927. Stockholders of Federated Terminals consist exclusively of drayage concerns operating in San Francisco, and applicant was one of the original stockholders. When various common carriers entering San Francisco published "door to door" rates in addition to their "depot to depot" rates, they found it necessary to arrange for local "pick-up" and "delivery" of shipments handled by them under such new rates. Federated Terminals, a non-profit corporation, was organized because the line-haul carriers desired to do business with a single concern rather than with thirty or forty individual local drayage operators. Federated Terminals entered into contracts with line-haul carriers for the performance of such pick-up and delivery service. Line-haul carriers made contract payments for such service directly to Federated Terminals. Stockholder-draymen of Federated Terminals billed the latter for services rendered by them. Each drayman was paid by Federated Terminals only for shipments that such drayman had carried locally for and on behalf of Federated Terminals, which, in turn, had contracted with line-haul carriers to perform for them the local pick-up and delivery offered by such carriers as a part of their transportation service. As stated, applicant was a drayman member of Federated Terminals, and in that capacity was engaged in performing pick-up and delivery service for various railroads.

One other fact should be noted before discussing the shipping documents introduced in evidence. The 1933 tariff of The Atchison, Topeka & Santa Fe Railway Company (as well as tariffs of certain other carriers) provided for an allowance on "door to door" rates to a shipper

who performed his own "pick-up" service, that is, who caused his shipment to be taken to the rail depot and there tendered to the carrier.

With the above facts in mind, we turn to the 1933 bills of lading. Applicant contends that these bills of lading represent shipments which it handled as a "freight forwarder," and tendered to the line-haul carriers as a shipper under the regularly published rates of such carriers. A majority of such bills of lading represent "door to door" shipments via the Santa Fe railroad from San Francisco to San Joaquin Valley points, Stockton and Sacramento. Applicant carried those shipments by truck from door to rail depot in San Francisco. Santa Fe railroad paid Federated Terminals for causing these particular shipments to be hauled to the rail depot. Applicant, as a drayman-stockholder of Federated Terminals, was paid by the latter for "picking-up" those shipments for the railroad. The remuneration received by applicant therefor was larger in amount than the allowance which a shipper would have received from Santa Fe railroad for taking the goods to the rail depot. Applicant, as a local drayman, indirectly and through the medium of Federated Terminals, was employed and paid by the Santa Fe for hauling these goods. It could not have acted in the dual capacity of a local drayman (as to the railroad) and of a "freight forwarder" (as to the shipper) with respect to the same shipment.

The fact that applicant advanced the freight charges of line-haul carriers for its regular customers does not of itself establish forwarder status, for this was and is a common practice of San Francisco draymen, as well as connecting common carriers.(14) Such dray-

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(14) This practice was recognized by the Commission in establishing minimum rates for local drayage operation under the City Carriers' Act. (See San Francisco City Carriers' Tariff No. 1, Exhibit 45 herein.) Rule 100 of the drayage tariff, dealing with "Advance Charges," provides that "All charges on shipments advanced by a carrier" (local drayman) "for the account of a shipper or consignee will be payable on demand of the carrier making the advance."

men, including applicant, obtained powers of attorney which authorized them to act for and on behalf of shippers in making and receiving shipments and executing bills of lading.(15) These documents were and are filed by draymen with various line-haul carriers, together with bonds guaranteeing payment of freight charges.

Applicant introduced in evidence copies of a number of bills rendered by it in 1933. These bills may be divided into two classes, those by which applicant billed its customers for reimbursement of freight charges which applicant had advanced for them, and those by which customers were billed an additional amount for services performed by applicant.

The first type of bill may be illustrated by one rendered to Dennison Manufacturing Company (Bill No. 19992, Ex. 29), in connection with a shipment which moved from San Francisco to Brunswig Drug Company in Los Angeles via Pacific Motor Transport Company, which is an "express corporation." The bill reads: "For Amount Pacific Motor Transport Co.'s F/B #209977 attd..... 2.29." The $2.29 represented the transportation charge of Pacific Motor Transport from San Francisco to Los Angeles. This charge was advanced by applicant, which billed Dennison Manufacturing Company for reimbursement. The bill contains no charges for any services that applicant may have rendered. However, the Pacific Motor Transport tariff provided for an allowance to shippers of 5 cents per 100 pounds on shipments tendered to that carrier at its depot. Applicant received and retained that allowance on the Dennison shipment, and the amount thereof was

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(15) The facts that power of attorney forms were not signed by all customers nor filed with all line-haul carriers appear to be immaterial in the determination of status, in view of applicant's testimony that, so far as services and charges were concerned, no distinction was made between customers who had and those who had not signed such a form.

applicant's only remuneration, for the shipment was not consolidated with others.

The second type of 1933 billing contained an additional charge for services performed by applicant. For example, a bill rendered to Old Monk Olive Oil Company contained several items (16), the first of which related to a shipment of olives transported from San Francisco to Oakland by Bay Cities Transportation Company, a common carrier vessel operator. Applicant advanced the 52 cents comprising that carrier's charge, and billed Old Monk company for reimbursement of the 52-cent advance, plus 50 cents for its own services. Applicant's theory is that the total of those two charges ($1.02) represents applicant's charge as a "freight forwarder" for transportation to destination. In the language of applicant's president, the "drayage division" received 50 cents, while the "forwarding division" received 52 cents. As the applicant had advanced the 52 cents to the line-haul carrier, the "forwarding division" made no profit on the transaction. But in 1933 there were no such separate "divisions," and separate accounting records as to "drayage" and "forwarding" were not started until April of 1934. Recapitulation sheets of 1933 bills, produced by applicant, showed that the amounts of such bills were "broken down" into three classifications - drayage,

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(16) Bill No. 20017, Ex. 28, which is as follows:

	"10 Cs Olives	Our Shed	H. Bros. Oakland	320	50
	Bay Cities Trans Freight Bill #78204 attached				52
Dec 14	5 Ctn T Sauce	Store	S.F. Grocery Co	40	35
	6 Ctns Artichokes	Store	United Grocers		35
	8 Ctns T Sauce Etc	Store	United Grocers		50
	5 Ctns Sauce	Store	U Groc Oakland	100	25
	Bay Cities Trans Freight Bill #78312 attached				52
	Burton Partland Labeling bill attached				2 80
					5 79"

freight and tax. All advances by applicant to line-haul carriers were recorded as "freight," and all earnings for services performed by applicant were considered as "drayage" earnings.

Applicant's president attempted to distinguish between shipments which moved on applicant's own form of bill of lading (claimed to have been "freight forwarder" operation) and shipments which moved on a shipper's form of bill of lading (claimed to have been local drayage operation).(17) He testified further that a "different" charge was made on "forwarding service" than on drayage service, "because we prepare the bill of lading and assume the responsibility" of transportation to final destination. Yet the witness was unable to point out any difference in charges or revenue.(18)

It is significant that all of the 1933 documents introduced in evidence represent individual shipments, rather than "consolidated" shipments, particularly in view of the fact that the ability to consolidate shipments at a profit made freight forwarding operations possible and is responsible for their existence. The record shows that consolidated freight was not handled by applicant until 1934.

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(17) The bill of lading form prepared by applicant provided a space for the name of the carrier transporting the shipment. On such form applicant appeared as "Forwarding Agents for" the real shipper of the goods, and also as "shippers." The form did not designate applicant as the carrier.

(18) Regarding the "different charges," applicant's president testified in part as follows:

"What was the difference in net result in revenue to you between shipments moving on your own bill of lading and shipments moving on other bills of lading when you advanced the freight charge? A. I could not tell you the difference.

"Q. Was there any difference? A. I could not say. Q. Do you know of any differences? A. Not offhand, no.

"Q. You do not know any, that is the answer, isn't it? A. I don't know offhand, no." (Tr., p. 197.)

Local draymen, since August 1, 1933, as well as before that date, may carry separate shipments to carrier depots and advance carrier charges, (19) without having an operative right as a freight forwarder.

It was not until 1934 that the publication of reduced quantity rates (applicable to quantities of freight less than required to obtain true "carload" rates) and so-called "split delivery" rules by line-haul carriers increased opportunities for profitable consolidation. This statement requires a brief explanation. The publication of reduced quantity rates by line-haul carriers enabled applicant to handle small shipments at rates lower than the individual shipper could obtain from such carrier. This was accomplished by consolidating many small shipments into a single large lot, which applicant then shipped at the relatively lower tariff rates of line-haul carriers applicable to larger quantities. The "split delivery" rules, published later, made it possible for applicant to consolidate the shipments of various shippers destined to many different points, as well as those destined to the same point.

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(19) "Now, Mr. Carley, what is there that you can not do as a drayman with regard to separate shipments that you can do if you receive a certificate or recognition of prior operative rights as a forwarder? A. Well, in the first place under this recent decision 30370, the minimum rates are established and we must have a tariff on file.

"Q. I mean what is there that you can not do with respect to separate shipments when you operate merely as a city drayman that you can do when you operate as a forwarder? A. Well, as a forwarder we can consolidate.

"Q. I am asking you as to separate shipments? A. We can consolidate separate shipments, exactly. * * *

"Q. * * * Why do you need a forwarder's operative right, either by certificate or of the nature of a recognition of prior operative right, to handle separate individual shipments that you do not propose to consolidate? A. Well, in the first place to quote through rates and assume the responsibility, you must have a certificate if you were not doing it on the grandfather date.

"Q. You can transport shipments and advance carrier's charges whether you have an operative right or not, as a forwarder, isn't that true? A. But we can not make any profit out of it." (Tr., pp. 212-213.)

In 1934, upon publication of the rates mentioned above, applicant began consolidating shipments and enlarging its scope of operation. Not a single 1933 shipping document introduced by applicant represents a consolidated shipment, and applicant's testimony is to the effect that it commenced forwarding consolidated freight in April of 1934 via the lines of Valley Express Co.

The evidence adduced shows that in 1933 applicant acted as a local drayman, and as a shipper's agent for the delivery of shipments to line-haul carriers. True freight forwarding operations were not commenced until 1934. Under these circumstances, the application for leave to file a tariff as a "freight forwarder" must be denied.

O R D E R

Evidence in the above proceeding having been taken by Examiner Cassidy at public hearings in San Francisco, briefs having been filed, the matter having been submitted for decision, and based upon the record and upon the factual findings contained in the above opinion,

IT IS HEREBY FURTHER FOUND that Carley & Hamilton, Inc., a corporation, on and prior to August 1, 1933, was not operating as a "freight forwarder" within the meaning of sections 2(ka) and 50(f) of the Public Utilities Act, and possesses no prior operative right or certificate of public convenience and necessity as a "freight forwarder."

IT IS ORDERED that Application No. 22327 be and the same

is hereby denied.

Dated, ~~San Francisco~~ Los Angeles, California, this 23rd day of January, 1939.

Commissioners.