

Decision No. 34274

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Valley Express Co., a corporation,

Complainant,

vs.

E. L. McCONNELL, doing business as
COAST LINE EXPRESS,

Defendant.

ORIGINAL

Case No. 3988

JAMES J. BROZ, for Complainant.

HUGH GORDON and DOUGLAS BROOKMAN, for Defendant.

BY THE COMMISSION:

O P I N I O N

Valley Express Co., a corporation, complainant herein, alleges that defendant, E. L. McConnell, doing business as Coast Line Express, has engaged in unlawful operations, as an express corporation, as defined in section 2(k) of the Public Utilities Act, between Bay Area points and points in the San Joaquin Valley.

Public hearing was held in San Francisco, the matter submitted on briefs duly filed, and it is now ready for decision.

The evidence of record is very brief, consisting chiefly of references to certain decisions of the Commission and to certain tariffs on file with the Commission. Additionally, it was stipulated that defendant has been engaged in transporting property in any quantity shipments from the San Francisco Bay area to points in the San Joaquin Valley.

Defendant's operative rights as an express corporation are based on operations conducted prior to August 1, 1933, and rest on what is commonly termed a "grandfather right." Though the complaint questions defendant's authority under such "grandfather" right, to serve some of the points named in his tariff on file with this Commission, there is no evidence in the record indicating that defendant may not lawfully serve these points; we must assume, therefore, for the purposes of this proceeding, that defendant's "grandfather" rights as an express corporation embrace all the points named in his tariff.

Defendant is also manager of Valley and Coast Transit Company, a corporation, operating as a highway common carrier, as defined in section 2-3/4 of the Public Utilities Act, under certificates of public convenience and necessity granted by this Commission. This corporation is the successor to a transportation business formerly conducted by defendant as an individual. Defendant, in his operations as an express corporation, utilizes Valley and Coast Transit Company, among others, as an underlying carrier, to transport his shipments. Complainant contends that defendant is utilizing Valley and Coast Transit Company as an underlying carrier to transport said shipments which the latter has no authority to transport because of certain limitations in its operative rights. The highway common carrier operative rights of Valley and Coast Transit Company may be described generally as consisting, first, of a scheduled service from San Francisco, on the one hand, to King City and points south thereof, on the other hand, and secondly, of an "on-call" service between points south of King City, on the one hand, and points in the San Joaquin Valley, on the other hand. The "on-call" service is limited to

single or consolidated shipments, subject to a minimum load of 5000 pounds per truck, and is further subject to the condition that no freight may be transported between San Joaquin Valley points, on the one hand, and King City and points north thereof, on the other hand (Application of McConnell, 31 CRC, 628). We are asked in this proceeding to construe these limitations as precluding defendant from operating between the San Francisco Bay area, on the one hand, and San Joaquin Valley points, on the other hand, over the lines of Valley and Coast Transit Company.

As indicated above, very little evidence was adduced in this matter, and the record is silent as to the manner in which defendant transports his shipments between the points in question. It was stipulated at the hearing that defendant has moved shipments between such points over the lines of Valley and Coast Transit Company and other carriers, but there is no indication as to the manner in which Valley and Coast Transit Company performed such transportation or the extent to which it participated therein. It should also be noted that while a construction of Valley and Coast Transit Company's operating rights is one of the chief issues involved herein, that company is not a party to the proceeding and was not present at the hearing to explain or justify the manner in which it operates.

Since the evidence of record is insufficient to establish the alleged violation, the complaint should be dismissed.

O R D E R

Public hearing having been held in the above-entitled proceeding, the matter having been duly submitted, and the Commission now being fully advised in the premises,

IT IS HEREBY ORDERED that Case No. 3988 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 3rd day of July, 1940.

Ray L. Rice
Frank A. Miller
Walter W. Wagoner
W. H. Hall
Justin J. Quercus
Commissioners.