

Decision No. 34652

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Benjamin Walters, an individual, to sell, and Valley Motor Lines, Inc., a corporation, to purchase, a common carrier vessel transportation right between Delta points on the one hand, and San Francisco Bay Terminals, except South San Francisco, on the other hand; also between certain other points on the inland waters of the State of California.

Application No. 23869

In the Matter of the Investigation by the Commission upon its own motion into the operative rights, operations, and practices, and into the rates, rules, regulations and charges of United Boat Lines, a corporation, operating as a common carrier by vessel between points on the inland waters of the State of California.

Case No. 4582

W. S. JOHNSON, for applicant Valley Motor Lines, Inc., in Application No. 23869, and as an interested party in Case No. 4582.

F. W. MIELKE, McCUTCHEON, OLNEY, MANNON & GREENE, for The River Lines, as an interested party in Case No. 4582.

W. G. STONE, for Sacramento Chamber of Commerce, as an interested party in both proceedings.

A. J. GAUDIO, for Southern Pacific Company, as an interested party in Case No. 4582.

BY THE COMMISSION:

O P I N I O N

The above-entitled proceedings involved (1) an application of Valley Motor Lines, Inc. to purchase the vessel operative rights of Benjamin Walters, an individual, doing

business as Island Transportation Company and Island Oil
Transportation Company, ⁽¹⁾ and (2) an investigation instituted
by the Commission upon its own motion into the operative
rights, operations and practices of United Boat Lines operat-
ing as a common carrier by vessel on the inland waters of
the State of California.

These matters were heard upon a joint record, to-
gether with Application No. 23868, before Examiner Broz at

(1) By Decision No. 29778, in Cases Nos. 3824 and 4012, dated
May 24, 1937, Benjamin Walters, an individual, was found
by the Commission to possess the following common carrier
vessel operative rights:

"ISLAND TRANSPORTATION COMPANY - An 'on call' service
for the transportation of:

1. Property between Delta points, and between Delta
points, on the one hand, and Stockton, Sacramento
and San Francisco Bay terminals, other than South
San Francisco, on the other hand.
2. Grain in lots of not less than 80,000 pounds
between Delta points and Stockton, on the one
hand, and Port Costa, South Vallejo and Petaluma,
on the other hand.
3. Mill stuffs in lots of not less than 80,000 pounds
between Delta points and Stockton, on the one hand,
and Port Costa and South Vallejo, on the other
hand; between Stockton and Petaluma; and between
Lower Sacramento River points and San Joaquin
River points, on the one hand, and Petaluma, on
the other hand.
4. Coal, flour, grain, mill stuff, hay, straw, lumber,
rice, tan bark and vegetables, each in lots of not
less than 20,000 pounds and bags in any quantity
between Stockton and San Francisco Bay terminals,
other than South San Francisco."

"ISLAND OIL TRANSPORTATION COMPANY - An 'on call' service
for the transportation of fuel oil in bulk from Oleum,
Pittsburg, Martinez and Port Costa to Stockton,
Sacramento, San Joaquin River and tributaries, Mokelumne
River and tributaries, Old River and tributaries, and
Sacramento River below Sacramento and tributaries, and
from Oleum to Pittsburg, Napa and Rodeo."

(2)
at San Francisco.

Applicant Valley Motor Lines, Inc. appeared and was represented by counsel but no appearance was entered on behalf of Benjamin Walters. (3) The River Lines, the Sacramento Chamber of Commerce and the Southern Pacific Company appeared as interested parties.

The general traffic manager of Valley Motor Lines, Inc. testified that his company desires to buy the Walters vessel rights and to operate vessels between San Francisco and East Bay cities, on the one hand, and Rio Vista, on the other hand, to connect with his company's truck line for the transportation of shipments of property in a regular scheduled daily service between San Francisco Bay points and Sacramento. The witness estimated the vessel service would cost about \$80 per day in each direction. He conceded that the estimated revenues from the proposed service would not be sufficient to make the operation self-sustaining but he pointed out that upon acquisition of the Walters rights, his company intended to petition the Commission for authority to substitute motor trucks for vessels in order to render through truck service between San Francisco and Sacramento. The consideration for the sale and transfer of the vessel operative rights here involved is \$2,500.

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- (2) Application No. 23868 involved an application of Valley Motor Lines to purchase the vessel operative rights of Higgins Transportation Company from the United Boat Lines, a corporation, and was dismissed by Decision No. 34353, dated June 24, 1941, at the request of the applicant.
- (3) Benjamin Walters subsequently appeared at an adjourned hearing in response to a subpoena duces tecum served upon him at the request of one of the interested parties herein.

The traffic manager of The River Lines next testified that Benjamin Walters, doing business as Island Transportation Company and Island Oil Transportation Company, has not conducted any vessel operations on the inland waters of the State of California since 1937. By Decision No. 30507 of January 10, 1938, the witness said Walters was authorized to suspend his vessel service for a period of six months ending July 1, 1938, and that while no authority was subsequently sought by him nor granted to him to further suspend service, no services were conducted by Walters during the years 1938, 1939 and 1940. (4)

Although, as previously stated, Benjamin Walters did not appear at the first hearing in these proceedings he appeared at an adjourned hearing in response to a subpoena duces tecum issued upon him and testified that he owns no vessels at the present time; is not conducting any common carrier vessel service on the inland waters of the State of California and could not state what, if any, shipments were transported by his companies in the past five years between San Francisco and Rio Vista. He asserted that he had no transportation records covering his operations for the years 1937 to 1940 because such records, although stored for safekeeping, had been destroyed. (5)

(4) The annual reports of the Island Transportation Company and Island Oil Transportation Company, filed with the Commission and incorporated in the record by reference, carry a statement that no operations were conducted in 1938, 1939 and 1940.

(5) Walters testified that he has been seriously ill for long periods of time in recent years and has been unable to personally conduct his vessel operations but that he made an arrangement to carry on such operations. No proof of such arrangement was offered in evidence, however, to substantiate his statement.

The sole question for determination here is whether Benjamin Walters owns a bona fide vessel operative right which can be the subject of a valid contract of sale and transfer to the Valley Motor Lines, Inc. for a consideration of \$2,500.

The annual reports of Island Transportation Company and Island Oil Transportation Company for the years 1938 to 1940, indicate that no vessel service was conducted by him during that period and it further appears that Walters neither owns nor operates any vessels at the present time.

The evidence of record shows that Benjamin Walters, upon the expiration of the authority granted to him to suspend service, did without authority of this Commission abandon his services and operations and that, by reason thereof, his operative rights are non-existent.

We are of the opinion and find that the application of Benjamin Walters to sell and Valley Motor Lines, Inc. to purchase said rights should be denied.

In view of Decision No. 34353, dismissing the application of Valley Motor Lines to purchase vessel operative rights from Higgins Transportation Company (Application No. 23868), there appears to be no necessity for continuing the investigation proceeding in Case No. 4582 and that matter may be dismissed.

O R D E R

A public hearing having been had in the above-entitled matters, and based upon the foregoing opinion and findings of the Commission,

IT IS ORDERED that the application of Benjamin Walters to sell to Valley Motor Lines, Inc. and the latter to purchase

common carrier vessel transportation rights for the transportation of property between Delta points, on the one hand, and San Francisco Bay terminals, except South San Francisco, on the other hand, and between other points on the inland waters of the State of California, be and it is hereby denied.

IT IS FURTHER ORDERED that the proceeding in Case No. 4582 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 17th day of October, 1941.

W. L. Kelly
W. R. Riley
Justus J. Coe
Francis D. Havenue
Richard Lachar
COMMISSIONERS