

ORIGINAL

Decision No. 34716

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on)
the Commission's own motion into the)
operations, rates, charges, contracts)
and practices of WESTERN MANUFACTURERS) Case No. 4592
TRADE ASSOCIATION, a corporation, and)
COAST LINE TRUCK SERVICE, INC., a cor-)
poration.)

CARL R. SCHEULZ and HUGH CENTER, for Coast
Line Truck Service, Inc., Respondent.

FRANK TURCOTTE and M. N. HOLLISTER, for
Western Manufacturers Trade Association,
Respondent.

CECIL W. COLLINS, for Western Manufacturers
Trade Association, Respondent, and
O'Keefe & Merrit Co., Interested Party.

H. J. BISCHOFF, for Southern California Freight
Lines, Interested Party.

T. J. SCHELL, for California Motor Express,
Interested Party.

BY THE COMMISSION:

O P I N I O N

This proceeding was commenced on the Commission's own motion for the purpose of determining whether or not respondent, Western Manufacturers Trade Association, hereinafter called the Association, has been acting as an express corporation or freight forwarder between the Los Angeles and San Francisco areas and intermediate points without a certificate of public convenience and necessity from the Commission; whether or not respondent, Coast Line Truck Service, Inc., hereinafter called Coast Line, and the Association have, or either of them has, been operating

as a highway common carrier between said points without a certificate of public convenience and necessity from the Commission; and whether or not Coast Line, as a highway contract or radial highway common carrier, has been charging less than the minimum rates established by the Commission.

Public hearings were held in Los Angeles on July 24 and August 4, 21 and 22 before Examiner Gorman, and the matter was duly submitted on the latter date and is now ready for decision.

Coast Line, a corporation, holds a certificate of public convenience and necessity as a highway common carrier, but that certificate is restricted primarily to the transportation of fresh fruits and vegetables and does not authorize transportation of general merchandise such as is involved herein. It also holds permits to operate as a highway contract, radial highway common and city carrier.

The Association was organized in December, 1939, as a nonprofit California corporation. According to its bylaws, its "membership shall be open to merchants and manufacturers, as well as individuals shipping freight from the Los Angeles area." The purpose of the Association, as alleged by its organizers, was that of consolidating the freight of its members and shipping the composite lot each day as a single shipment. It was contemplated that the quantity rates assessed on the composite lot shipped each day would produce a substantial reduction in rates for the members using the service, as compared with the any-quantity rates applicable to the component parts if billed as separate shipments. The Association commenced operating in February, 1940, and since then has used various carriers purporting to operate under highway

contract carrier permits for performance of the line-haul from Los Angeles to San Francisco, Oakland, Sacramento and intermediate points. Coast Line, purporting to operate as a highway contract carrier, performed the line-haul between November, 1940, and July, 1941.

The contract between Coast Line and the Association called for the payment of specified rates by the latter to the former for the line-haul service. The Association performed a pickup service from store door to Coast Line's Los Angeles terminal for those of its members who chose to use it. Some of the members, however, utilized their own trucks to transport their shipments to Coast Line's terminal. Coast Line's employees took physical custody of the component parts of each day's traffic at various times during the day and sorted and stacked the same on the dock according to destination. When delivery to the terminal was made by the members themselves, Coast Line gave a receipt for such property to the drivers of the delivery trucks. When such delivery was made by the Association with its pick-up trucks, however, no receipt was given by Coast Line at that time, but the various members shipping the property were given receipts by the Association's pick-up drivers.

The receipts were usually given on memorandum standard bills of lading showing the members' store doors as points of origin and the consignees' store doors as points of destination of the property. These documents sometimes showed the Association and sometimes Coast Line as the carrier. Usually, but not always, they indicated, either by a sticker or by words stamped thereon, that the property was a component part of a composite shipment, and that the Association was the shipper.

From copies of these delivery receipts, Coast Line prepared in quintuplet a freight bill form for each component part, and such freight bill form was used to obtain the consignee's receipt and also to show Coast Line's billing. Copies of all the freight bills for each day, with the respective rates and charges shown thereon, were subsequently presented to the Association with an invoice showing Coast Line's total charges on that day's traffic. The Association paid Coast Line and then billed each of its members in an amount representing the line-haul charge on that member's traffic as shown by Coast Line's freight bill, plus a fixed percentage thereof specified by the Directors of the Association, plus a charge for pick-up if the Association's trucks performed the pick-up service. These various items were not stated separately, but rather comprised a single charge.

Respondents also entered into a verbal rental agreement, commencing in November, 1940, whereby Coast Line leased office space at its Los Angeles terminal to the Association and whereby the Association purportedly acquired exclusive custody and use of Coast Line's outside dock space each afternoon. This dock space was used for accumulation of each day's traffic prior to the loading of the line-haul trucks. Actually, however, Coast Line's employees, rather than the Association's, regularly performed the work of receiving the freight at the dock and sorting and stacking it.

It is apparent that the members of the Association have been receiving a transportation service performed by means of motor vehicles over the public highways in this State between fixed termini and over regular routes. If this service has been

performed for the general public or a substantial portion thereof, it is a highway common carrier service as defined in Section 2-3/4 of the Public Utilities Act, and may be performed only under the authority of a certificate of public convenience and necessity from the Commission. We proceed to a consideration of that question.

The incorporators of the Association were five individuals, all but one of whom were officers or employees of firms who later joined the Association and utilized its services. One of these incorporators, who also served as a member of the first Board of Directors, testified that the Directors planned a campaign whereby sufficient members would be enrolled to assure a regular flow of shipments large enough in volume to obtain quantity rates each day. To this end, the Secretary was instructed to call on shippers whose names were given him from time to time by the Directors or members and solicit their membership. The chief requisites for eligibility to membership were a regular flow of shipments and a good financial reputation. The Secretary thereupon obtained applications for membership from a large number of shippers, all of whom were admitted to membership. Although the bylaws provide that "the authorized number of members of the Association shall be determined by the Board of Directors from time to time," the Directors have never limited the number of members. The only action taken in this regard was an instruction to the Secretary to secure the applications of not more than fifty firms. The Secretary testified that he understood from this instruction that the Directors desired to keep the membership at a level of approximately fifty, and he has acted accordingly. Thus, while there have been no more than fifty or sixty members at any particular time, approximately ninety

firms have been members at one time or another. In addition, the service has been made available to affiliates or subsidiaries of the members.

It is evident that the only limitation placed on the availability of the Association's service to the general public was the number of shippers required to maintain a steady flow of traffic sufficient to assure substantial quantities each day. Until it reached that goal, the Association actively sought additional members, and as memberships were withdrawn or cancelled others were added to replace them. The Association had ten members at the end of February, 1940, the month in which it commenced operating. This number was increased to fifteen in March of that year, twenty-one in April, thirty-one in May, forty-four in June, forty-seven in July, forty-eight in August, and fifty in September. In October, 1940, four members withdrew from membership, but five new ones were admitted. In November, three withdrew and five were admitted. In December, four withdrew and five were admitted. Four more were admitted in January, 1941, and no memberships were withdrawn in that month. In February, 1941, four members withdrew and two were admitted. In March, six withdrew and five were admitted. In May, four withdrew and two were admitted, and in June, five withdrew and two were admitted, leaving membership at the end of June at exactly fifty. Thus, ever since the desired level was reached in July, 1940, the number of members currently in good standing has remained fairly constant between forty-seven and fifty-eight. The Association's disinclination to secure an even greater membership was quite apparently due to the fact that the point of maximum profit for the members had been reached rather than to any desire to place effective limitations on the availability of the service

to responsible shippers in general. We conclude, therefore, that the service has been made available to the public generally.

The fact that this service has been offered and performed partially by one respondent and partially by the other, instead of wholly by a single party, is of small moment. A through truck service has been given the members of the Association and their affiliates and subsidiaries. The shipping documents show a through service, and the rates and charges assessed against the members, who are the real shippers, are based on a through service. Coast Line's responsible officials have been aware of the true nature of the transactions in which they participated, since the Association's purpose and function were well known to them at all times. Generally speaking, Coast Line has operated the line-haul trucks by means of which this highway common carrier service was performed, and the Association, in addition to operating pick-up trucks, has been the medium through which the service has been made available to the shippers. There is no need to delineate here between the responsibilities assumed by each of these respondents, individually, since it is clear that the two together have rendered a highway common carrier service. Neither is there occasion for determining whether the actions of either one alone, if considered entirely apart from those of the other, have been those of a highway common carrier.

Since no certificate of public convenience and necessity authorizing such service has been issued to either respondent for the transportation of the commodities involved in this proceeding, an appropriate cease and desist order should be issued.

The finding that the operations conducted by respondents during the period under investigation have been those of a highway common carrier also disposes of the other issues raised by the order instituting investigation.

The record contains some evidence to the effect that during August, 1941, Coast Line was no longer performing the line-haul, and that the Association was consolidating the shipments of its members and shipping the same over the line of California Motor Express, a common carrier, at its tariff rates. If, as these facts tend to show, the Association is undertaking the collection and shipment of property of others, and as consignor or otherwise is shipping or arranging to ship the same over the line of a common carrier at the tariff rates of such carrier, it is operating as a freight forwarder within the meaning of Section 2(ka) of the Public Utilities Act (See Investigation of Kagarise, et al, 42 C.R.C. 675) and it should immediately discontinue such operation until it obtains a certificate of public convenience and necessity therefor.

A cease and desist order of the Commission directing that unlawful operations be discontinued is in effect not unlike an injunction by a court. A violation of such order constitutes contempt of the Commission. The California Constitution and Public Utilities Act vest the Commission with power and authority to punish for contempt in the same manner and to the same extent as courts of record. In the event a party is adjudged guilty of contempt, he may be fined in the amount of \$500 or imprisoned for five days or both. C.C.P. Sec. 1218; Motor Freight Terminal

Co. v. Bray, 37 C.R.C. 224; Re Ball & Hayes, 37 C.R.C. 407; Wermuth v. Stamper, 36 C.R.C. 458; Pioneer Express Co. v. Keller, 33 C.R.C. 571.

Public hearings herein having been held, evidence having been received, and the matter having been duly submitted, the Commission hereby finds that respondents, Western Manufacturers Trade Association, a corporation, and Coast Line Truck Service, Inc., a corporation, have been engaged in the ownership, control, operation and management of auto trucks used in the business of transportation of property as a common carrier for compensation over the public highways in this State between fixed termini, to wit, Los Angeles and territory proximate thereto, on the one hand, and San Francisco and territory proximate thereto and intermediate points, on the other hand, and over regular routes, to wit, U. S. Highways Nos. 99 and 101, as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act, without first having obtained from the Commission a certificate of public convenience and necessity therefor, in violation of Section 50-3/4 of said act.

O R D E R

IT IS HEREBY ORDERED that Western Manufacturers Trade Association, a corporation, and Coast Line Truck Service, Inc., a corporation, and each of them, cease and desist and hereafter abstain from conducting, directly or indirectly, or by any subterfuge or device, any and all operations as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act, over the public highways of this State between Los Angeles and

territory proximate thereto, on the one hand, and San Francisco and territory proximate thereto and intermediate points, on the other hand, except under the authority of a certificate of public convenience and necessity issued by the Railroad Commission authorizing such operations.

IT IS HEREBY FURTHER ORDERED that in all other respects this proceeding be and it hereby is discontinued.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Railroad Commission cause a certified copy of this decision to be personally served upon each of said respondents, and as to each said respondent this opinion and order shall become effective twenty days after the date of such service.

RLM
Dated at San Francisco, California, this 28th day of October, 1941.

Richard K. King
W. W. Miller
Justus J. Coe
Francis J. Havens
Richard K. King
COMMISSIONERS