

Decision No. 36142

ORIGINAL

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, rules, reg- )	Case No. 4667
ulations, contracts, and practices of )	
R. K. DAVIES, INC. )	

WYMAN KNAPP, for Division of Investigation

R. K. DAVIES, for respondent, in propria  
persona.

BY THE COMMISSION:

O P I N I O N

In this proceeding the Commission instituted, on its own motion, an investigation into the operations of respondent, R. K. Davies, Inc., a corporation, to determine whether, during February and July, 1942, respondent had operated as a highway carrier other than a highway common carrier, when no effective permit was in force; whether respondent had failed to report its gross operating revenue for the months of July, August and September, 1942, and to pay any fee which may have accrued, as provided by the Transportation Rate Fund Act; whether respondent should be required to discontinue any unauthorized operation; and whether any operating permit held by respondent should be suspended or revoked. A public hearing was held at Los Angeles on December 29, 1942, before Examiner Austin, when the matter was submitted. On behalf of the Division of Investigation, J. Lane Barbour, Supervising Investigator, and Fred B. Hughes, Investigator, were

called as witnesses. Respondent called Mrs. Marcella W. Pinney who performs, under contract, certain accounting services for it. R. K. Davies, president of respondent, though present at the hearing, did not take the stand.

Specifically it is charged that respondent had engaged in business as a radial highway common carrier and as a highway contract carrier, <sup>(1)</sup> between February 13 and February 24, 1942, and between July 2 and July 28, 1942, when he held no effective operating permits. It was shown that permits authorizing operation as a radial and as a contract carrier were issued to respondent October 30, 1940, and were cancelled on February 13, 1942 for failure to maintain adequate insurance. On February 21, respondent applied for permits as a radial and as a contract carrier which were issued March 13, 1942, the delay having been caused by the fact that respondent's check, tendered in payment of the filing fee, was dishonored. These permits in turn were cancelled June 24, 1942 because of respondent's failure to pay the license fee for the quarter ending March 31, 1942, as provided by the Transportation Rate Fund Act. Respondent once more applied for similar permits on July 9, 1942, which were issued July 28, 1942, the delay having been occasioned by a defective description, in the application, of the equipment, assertedly covered by the insurance policy. These permits are still in force.

It was established by the testimony of the witnesses called by the Division of Investigation that respondent had regularly engaged in the transportation of property between points

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(1) For convenience, these will be referred to as radial and contract operations, respectively, and the permits will be so designated.

in this state during part of the periods when it held no effective permits, viz., between February 13 and February 24, 1942, and between July 2 and July 28, 1942. During the earlier period this traffic moved between Los Angeles and Glendale, on the one hand, and Berkeley, San Jose, Salinas and Fort Ord, on the other hand; and during the latter period it moved between Los Angeles, on the one hand, and Locke, Mikon, Manton, Woodland, Newcastle, San Francisco and Fresno, on the other hand. These shipments were handled under respondent's standard billing. Upon this traffic charges were collected conforming to the established minimum rates.

It also appears that respondent failed to submit any report of its gross operating revenue for the quarter ending September 30, 1942 or to pay the fee of one-quarter of one per cent of such revenue, as provided by the Transportation Rate Fund Act. During this period respondent's gross operating revenue, it was shown, aggregated \$8,108.80.

On behalf of respondent, its present accountant, who now performs that service under a contractual arrangement, expressed the view that its former accountant had been lax in the performance of his duties and that his negligence, to some extent, had contributed to respondent's failure to make a proper return. The latter, she stated, was a small operator employing not over two drivers. However, the record shows that respondent continued its operations, without a break, during two periods when it held no permits.

Although a suspension of respondent's radial and contract permits would be justified under the present record, it

does not seem advisable, in view of the pressing need for transportation facilities to accommodate existing emergency requirements, that such a step should be taken. Respondent, however, will not be permitted to go unpunished. The Commission's attorneys will be directed to institute an action against him to recover appropriate penalties for his violation of the Highway Carriers' Act.


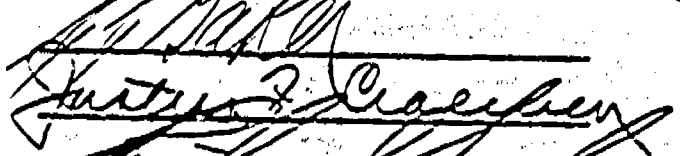
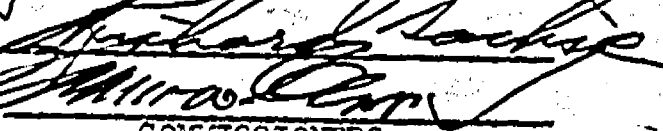

### O R D E R

The Commission having instituted an investigation as above entitled, a public hearing having been had, the matter having duly been submitted, and the Commission now being fully advised:

IT IS ORDERED that the above entitled proceeding be and it hereby is dismissed, without prejudice, however, to the institution of an action, at the instance of the Commission, to recover appropriate penalties, under the terms of the Highway Carriers' Act, for respondent's violation of the provisions of said Act.

The effective date of this order shall be twenty (20) days after the date of service hereof upon respondent.

Dated at San Francisco, California, this 2nd day of February, 1943.

  
  
  
  
 COMMISSIONERS