

ORIGINAL

Decision No. 36569

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
UNION TRANSFER AND STORAGE COMPANY )  
OF LOS ANGELES, for a clarification ) Application No. 22855  
of its operative rights. )

WARE & BEROL, by Wallace L. Ware and  
Marvin Handler, for applicant.

FRANK KARR and E. L. H. BISSINGER, by  
E. L. H. Bissinger, for Pacific  
Electric Railway Company, interested  
party.

HENRY J. BISCHOFF, for Southern California  
Freight Lines and Southern California  
Freight Forwarders.

E. G. RICE, for Security Van and Storage  
Company of Santa Monica, protestant.

BY THE COMMISSION:

C O P I N I O N

Union Transfer and Storage Company, a corporation,  
filed its application seeking an order of the Commission  
clarifying its operative rights as a highway common carrier  
between Los Angeles, Venice and Santa Monica and intermediate  
points via three routes, and the granting of appropriate  
authority to render service between said points.

A public hearing was held before Examiner Austin in  
Los Angeles at the conclusion of which the matter was submitted  
on briefs.

Applicant alleges that the immediate reason for the  
filing of the application is the fact that the right to serve  
Beverly Hills as an intermediate point had been questioned by

interested parties and that there existed some doubt as to its right to traverse certain routes in serving the points named.

More specifically the issues may be stated in this way:

1. Has the applicant the right to serve Beverly Hills and all other intermediate points between Los Angeles and Santa Monica along the Santa Monica Boulevard route, Pico Boulevard route and Washington Boulevard route, and
2. Has applicant the right to use all three of these routes between the points involved, or only the latter two routes as described in the certificate of public convenience and necessity issued by the Commission?

With respect to the Santa Monica Boulevard route and the Washington Boulevard route, applicant claims to have acquired a prescriptive right from its predecessors in interest by virtue of operations actually conducted in good faith prior to July 26, 1917 and continuously thereafter, between Los Angeles and Santa Monica and all intermediate points, including Beverly Hills, via both of these routes.

As part of the record herein there is included, either as exhibits or by reference, all of the applications and tariffs filed by applicant and its predecessors in interest, as well as the decisions rendered on said applications. In addition, the time schedules filed by applicant's predecessors from June 6, 1921 to September 12, 1935, were introduced as exhibits.

At the outset it will best insure a proper and final determination of the questions at issue if we set forth a chronological summary of the operative rights granted by the several certificates of public convenience and necessity to the various predecessors in interest of applicant. Accordingly, these will be taken up in sequence.

Following a public hearing, the Commission, on July 24, 1919, rendered its Decision No. 6519, on Application No. 4600. Therein Frank J. Barton, doing business as Union Transfer and Storage Company, was granted a certificate of public convenience and necessity to operate an automobile truck line as a common carrier of express and baggage between Santa Monica, Venice and Los Angeles and intermediate points. The decision recited that applicant Barton "had been engaged in a general baggage and transfer business over the routes for which authorization has been requested.....for approximately four years, but not regularly and as a common carrier." He handled principally baggage and household goods belonging to parties who resided part of the year in Los Angeles and part in one of the beach resorts around Santa Monica Bay, but handled also furniture, pianos, trunks, suit cases and parcels.

However, Barton's offer of service was that of a "general express business principally for tourists and parties transferring to and from beach resorts." In granting the application, the Commission called attention to the fact that the service provided by Barton included pickup and delivery "which is essential in the prompt transportation of baggage and the class of household goods in which applicant specializes."

The decision merely authorized service "between Santa Monica, Venice and Los Angeles and intermediate points," with no specific mention of any such points. The route was not designated although the proposed time schedule attached to the application

(1)  
designated the route over Washington Boulevard.

By Decision No. 6882, rendered November 28, 1919, on Application No. 5133, Frank J. Barton was authorized to transfer the operative right acquired by Decision No. 6519, supra, to Joseph L. and Mark W. Zerboni. It is well established that the rights acquired by a purchaser are identical with those originally granted to the vendor, and that in this case the Zerbonis obtained all of the rights possessed by Barton.

We next find the Zerbonis, doing business under the fictitious name of Union Transfer and Storage Company, before the Commission supporting Application No. 6517, filed on February 1, 1921, requesting permission to transport express "and freight" between the cities of Santa Monica, Venice and Los Angeles. Following a hearing, Decision No. 8969, dated May 12, 1921, was issued on this application. The order authorized the Zerbonis to operate "an automobile truck service as a common carrier of express and freight between Santa Monica, Venice

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(1) The authorized routes of operation were as follows:

Leaving Venice (1705 Trolleyway) at 1:00 p.m. daily (except Sundays and holidays) over Washington Boulevard to Crenshaw; Crenshaw to Pico; to Grand; Grand to Sixth; to 516 West Sixth Street, Los Angeles.

Leaving Los Angeles at 2:10 p.m., 516 West Sixth Street, over Sixth to Grand; Grand to Pico; Pico to Crenshaw, Crenshaw to Washington; Washington Boulevard to Venice; Speedway to Santa Monica.

(2)  
and Los Angeles."

Though the order granting the certificate of public convenience and necessity did not specifically mention the matter of service at intermediate points, nor the route of operation, it seems clear from the documents of record that the right to serve such points over and along the Washington Boulevard route was sought, and was approved by the Commission.

This interpretation of our Decision No. 8969, supra, is supported by the proposed rate and time schedules attached to and made a part of the application, and which were, pursuant to the decision, formally filed with the Commission on June 6, 1921. The tariff schedule (C.R.C. No. 1) named rates between Los Angeles, Culver City, Palms, Venice, Ocean Park, Santa Monica and intermediate points; and time schedule No. 3 provided for a round trip daily between Santa Monica and Los Angeles via Venice, Palms and Culver City over and along the Washington Boulevard route.

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(2) In respect to the testimony offered by applicants and public witnesses supporting the application, the decision recites that:

"The testimony shows that the applicants have heretofore operated an adequate and satisfactory express and baggage business and have been patronized by a large number of merchants and business men at Santa Monica and Venice and intermediate points. It appears that many of the patrons of applicants often desire to make freight shipments and have been compelled to ship such freight as express over applicants' line, or patronize some other common carrier, and this has been unsatisfactory and works an inconvenience to many of these merchants.

"Applicants testified to the effect that there are daily demands upon them by many of their patrons to carry both express and freight shipments and this extension of authority is sought to keep within their operative rights."

On April 17, 1924, the Commission rendered its Decision No. 13433, on Application No. 9958, transferring the operative right acquired under Decision No. 8969, supra, from Joseph L. Zerboni and Mark W. Zerboni, as co-partners, to Joseph L. Zerboni, as an individual. This amounted merely to a dissolution of partnership in which one partner took over the trucking operation and the other continued with the storage and warehouse business.

Subsequent to the rendition of the above decision, applicant Joseph L. Zerboni, still operating under the fictitious name of Union Transfer and Storage Company, filed a supplemental application for a certificate authorizing operation over Pico Boulevard as an alternate route to the regular route over Washington Boulevard. <sup>(3)</sup> This was granted to him in Decision No. 27761, subject to the condition, however, that applicant was not authorized to serve any intermediate points on the alternate route which he did not have a right to serve on his regular route.

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(3) As justification for operation over Pico Boulevard, Supplemental Application No. 9958 stated in part that:

Applicant.....is engaged in operation of motor freight transportation service between Los Angeles, Culver City, Palms, Venice, Ocean Park, Santa Monica and intermediate points via Washington Boulevard under a certificate heretofore granted in.....Decision No. 13433.....

Applicant frequently has full truck loads of merchandise to handle between Los Angeles and Venice, Ocean Park and Santa Monica district, and as a matter of economy desires to route such trucks via Pico Boulevard, a more direct and less congested route.

This application does not contemplate the abandonment of any service now being rendered nor does applicant seek authority to render any service not now authorized, but requests authority only to use such alternate route when more economical to do so.

In this Decision (No. 27761) reference is made to the order in Decision No. 8969, supra, which did not specifically set forth the route of operation authorized and we there said (Decision No. 27761) that the operation conducted by applicant for a number of years had been over the Washington Boulevard route "which determines the route of his operative right."<sup>(4)</sup>

In the meantime applicant sought and was denied permission to serve Beverly Hills. Application No. 10579 was filed on October 28, 1924 by Joseph L. Zerboni and among other things requested "permission to establish service.....between Los Angeles, Hollywood, Sherman, Beverly Hills, Sawtelle and Westgate and intermediate points.....and that the same shall be in addition to the present franchise of applicant." The application further recited that "the franchise theretofore granted.... to the Beverly Hills-Sherman Transportation Company has been discontinued by the order of the Commission.....and that necessitates some other transportation company to take charge of the business that formerly went to the aforesaid company." It was further contended by applicant that there had been a great increase in population in the district sought to be served, requiring a more adequate service. The Commission found, in its

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(4) The operative right over the Washington Boulevard route is more particularly described in Decision No. 27761, as follows:

Leave terminal at 353 South Central Avenue (Los Angeles); south on Central Avenue to Washington Boulevard (Washington Street); west on Washington Boulevard to Rose Avenue (Venice); west on Rose Avenue to Main Street; north on Main Street to Hill Street (Ocean Park Terminal); and north on Main Street to Santa Monica terminal (716 Colorado Street).

Decision No. 14796 on the above application, that the existing service satisfied all reasonable requirements and that there was no necessity for additional service in the territory alluded to. Accordingly, the application was denied.<sup>(5)</sup>

The operative rights acquired by Joseph L. Zerboni, under the above mentioned decisions of the Commission, were sold at sheriff's sale to William H. Cooper, and in turn were transferred to the Union Transfer and Storage Company of Los Angeles, applicant herein, by Decision No. 28176, rendered August 19, 1935, on Application No. 20082.

By virtue of the foregoing decisions applicant contends that it is authorized to serve the public as a common carrier between Los Angeles, Venice, Santa Monica and intermediate points and that Beverly Hills is such an intermediate point since it is an incorporated city wholly surrounded by the city of Los Angeles.

Applicant alleges that it has been rendering service to Beverly Hills under a claim of right for a number of years; that said service has been rendered in good faith, and that Beverly Hills is named in applicant's tariff, as a point to and from which

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(5) It was noted in this decision (No. 14796) that all of the points covered by the application were within the municipal limits of the city of Los Angeles except Beverly Hills, an incorporated city of the sixth class, and the unincorporated territory of Sherman. It was also found that applicant needed no certificate to give service to Hollywood since that was a part of the city of Los Angeles; and service to Sawtelle and Westgate over the route selected by applicant (via Santa Monica Boulevard) appeared without affirmative proof of necessity.

While the Commission in Decision No. 14796 denied to the applicant, Joseph Zerboni, what he requested in Application No. 10579, nevertheless, it was recited in said decision that applicant was authorized to serve (by Decision No. 8969) the following points via Washington Boulevard:

Los Angeles, Culver City, Palms, Venice, Ocean Park and Santa Monica.



commodities are transported; that prior to naming it as a tariff point, Beverly Hills was served by applicant and its predecessors under the immediate application rule which has existed in the tariffs filed.

Applicant further alleges it is authorized to serve between Los Angeles, Culver City, Palms, Venice, Ocean Park, Santa Monica and all points and places within the city limits of Los Angeles, and all incorporated cities which are physically within the territorial boundaries of Los Angeles.

The foregoing constitutes the documentary record in this case prior to the hearing of the instant application. For the most part, the testimony discloses an arbitrary and unwarranted assumption of an operating right over an unauthorized route. Five witnesses were called in support of the application.

Joseph L. Zerboni, President and Manager of applicant company, testified that he and his father started in the transfer business together in 1908. Simultaneously, Frank Barton was engaged in a similar business in Venice and the two mutually arranged to interchange freight shipments between Santa Monica and Los Angeles. The route followed by Barton was from Venice to Ocean Park, Santa Monica, out Santa Monica Boulevard, Sawtelle, Beverly Hills and Los Angeles returning via Washington Boulevard through Palms and Culver City to Venice.

In 1919 the witness, in association with his brother, Mark, bought out Barton and thus acquired all the operative rights granted to Barton in Decision No. 6519. He continued to operate the business over the same route and in the same manner, except that he applied for and was granted the right to transport freight,

the operation being also over Pico Boulevard. Witness testified that he would diverge from the Pico Boulevard route into Beverly Hills in picking up freight. At the nearest point, the Pico Boulevard route is a short distance from the municipal boundary line of Beverly Hills. <sup>(6)</sup>

The witness further testified that he has continuously since 1919 rendered service to Los Angeles, Beverly Hills, West Hollywood, Santa Monica, Culver City and Sawtelle. He stated he had never received notice from the Commission advising him that he had no operative right into Beverly Hills and that he filed the instant application only "because there is a question."

Referring to Application No. 10579, witness stated that he had applied for permission to establish service for the transportation of freight, express and household goods "between Los Angeles and other points involved, including Beverly Hills and that the same should be in addition to the present franchise of the applicant." This application was denied.

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- (6) Witness testified that he operated over the two routes which had been authorized by the Commission and he described these routes in detail as follows:

WASHINGTON BOULEVARD

From Fourth and Central Avenue, the Los Angeles terminal, down Central Avenue to Washington, that is south on Central to Washington, west on Washington through Culver City and Palms into Venice, Ocean Park and Santa Monica.

PICO BOULEVARD

South on Central to Twelfth Street, west on Twelfth Street to San Pedro, south on San Pedro to Pico, west on Pico close to Beverly Hills, to Beverly Hills, through West Los Angeles and into Santa Monica.

Asked under cross-examination why he was seeking authority to serve a territory which he was at the time in fact serving, the witness stated he did so because of the doubt and uncertainty existing, and to clarify his rights.

The witness was not clear in his testimony as to why he was requesting service to Beverly Hills "in addition to his present franchise," when he was actually rendering and had been rendering service to that point. He was asked why he continued to operate to Beverly Hills after the Commission had denied his application to serve that community. (Decision No. 8969, on Application No. 6517). He replied, "Because I had my rights under the Union Transfer and Storage Company." As to volume of deliveries to Beverly Hills, it was his testimony that applicant gave three services a day with from 35 to 40 deliveries aggregating from 5 to 6 tons.

Harry E. Fleischer called as a witness for applicant, testified that he had acquired the Los Angeles-Oxnard Express which he operated from 1916 to 1930 interchanging business with applicant between Oxnard and Santa Monica and other points including Beverly Hills. In 1930, he sold out, but continued operating the Crown City-Los Angeles Express, observing the same interchange arrangements with applicant.

Lee Roisier testified that he originally was a truck driver for Barton who maintained a daily service over Santa Monica

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(7) This statement is confusing in view of the fact that the application was filed in the name of Union Transfer and Storage Company, as applicant, and sets forth that Mark Zerboni and Joseph L. Zerboni were co-partners in business under the firm name of Union Transfer and Storage Company.

Boulevard and Washington Boulevard, serving Beverly Hills on his route.

Mark W. Zerboni, a brother of the applicant testified that he was a driver and at one time a partner, and recalled an arrangement between his father and Barton regarding interchange of truck loads. There was no Beverly Hills, he stated, until 1914. All three routes were used, according to this witness, with Beverly Hills shipments reaching from 15 to 35 daily after 1921.

Henry J. Bischoff appeared as a witness for Southern California Freight Lines, protestant in this proceeding, and testified that said protestant was rendering a twice daily scheduled service to all points involved in this application and that it had ample facilities to meet the public requirements.

Applicant introduced in evidence, and by reference, tariffs and time schedules filed with the Commission over a period of years extending from 1919 to 1936 but for the most part these did not include Beverly Hills as an intermediate point to be served. <sup>(8)</sup> In many instances, however, the tariffs indicated Washington Boulevard and later Pico Boulevard, as being the routes over which applicant operated his service.

A careful reading of Decision No. 8969, rendered on May 21, 1921 and the accompanying order does not in any sense substantiate the claim of Zerboni that he was authorized to interpret the operative rights granted to him therein to include

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(8) The current tariff on file (Local Freight Tariff No. 1B C.R.C. No. 5) effective May 10, 1941, contains no reference to Beverly Hills, though the filing immediately preceding did.

Beverly Hills. On the contrary, his rights were very definitely fixed, not alone in this decision but in the original Barton rights which were subsequently transferred to the Zerbonis. Briefly, a certificate was granted to Barton to transport express and baggage between Santa Monica, Venice and Los Angeles and intermediate points. That operative right was then transferred to the Zerbonis and was subsequently enlarged.

It is contended by applicant that since no intermediate points were specifically designated in the grant of a certificate to Frank Barton (Decision No. 6519), it is reasonable to assume that applicant was justified in serving all intermediate points, citing the case of J. E. Price vs. Pickwick Stages.<sup>(9)</sup> But it should be borne in mind that although the route was not indicated, the time schedule attached to the application designated the route to be over Washington Boulevard, and obviously Beverly Hills, by no stretch of the imagination, could be considered an intermediate on the Washington Boulevard route.

Upon this record we find:

1. That applicant Union Transfer and Storage Company, a corporation, now owns and holds an operative right as a highway common carrier as defined in section 2-3/4 of the Public Utilities Act, under which it may engage in the transportation of property between Los Angeles, Venice and Santa Monica and intermediate points over and along Washington Boulevard and also over Pico Boulevard, as an alternate route, subject however to the condition that applicant is not authorized to serve any intermediate points on said alternate route which it does not have a right to serve on its regular route.

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(9) 21 C.R.C. 890.

2. That under said operative right applicant Union Transfer and Storage Company does not possess the authority to operate as a highway common carrier between Los Angeles, Venice and Santa Monica and intermediate points over and along Santa Monica Boulevard or over any street or highway other than those described in paragraph 1 of these findings.

3. That under said operative right applicant, Union Transfer and Storage Company, does not possess the authority to serve Beverly Hills, Sherman or Sawtelle as points intermediate to Los Angeles, Venice and Santa Monica.

O R D E R

Application having been made as above entitled, a public hearing having been had, the matter having been duly submitted, and the Commission being now fully advised:

IT IS ORDERED that on or before the ninetieth day after the effective date of this decision, applicant Union Transfer and Storage Company, a corporation, shall cease and desist and thereafter refrain from operating or causing to be operated any service as such highway common carrier to or from Beverly Hills, Sherman and Sawtelle, or any of said points unless said Union Transfer and Storage Company shall have first obtained from the Commission a certificate of public convenience and necessity authorizing it to do so.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, August 24, 1943.

Francis J. Havens  
W. D. Hall  
Arthur J. Galbreath  
Richard Jackson  
Arthur Owen  
COMMISSIONERS