

ORIGINAL

Decision No. 36779

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of PAUL R. KEMP and JACK B. KEMP, copartners, doing business under the fictitious name of California Delivery Service.) Application No. 25699

In the Matter of the Investigation by the Commission upon its own motion into the rates, rules, regulations, operations, and practices of PAUL R. KEMP and JACK B. KEMP, doing business as California Delivery Service, as a highway common carrier.) Case No. 4700

FARIES & McDOWELL by McIntyre Faries, for Applicant and Respondent.

EDWARD STERN, for Railway Express Agency, Inc., Interested Party.

PRESTON W. DAVIS, for United Parcel Service of Los Angeles.

WYMAN C. KNAPP, for Transportation Department, Railroad Commission.

BY THE COMMISSION:

O P I N I O N

By Decision No. 29917 of July 1, 1937, in Application No. 19837, Paul R. Kemp and Jack B. Kemp, copartners, doing business as California Delivery Service, were granted a certificate of public convenience and necessity to transport automobile parts and accessories "by motorcycles only, as defined in the Vehicle Code of the State of California," between Los Angeles and other points in the Los Angeles metropolitan area. In that decision, the Commission defined, with particularity, seven different routes over which the operations were to be conducted.

In Application No. 25699, the Kemps seek an order authorizing suspension of such operations for a period not to exceed six months after the cessation of present hostilities.

Case No. 4700 is an investigation by the Commission on its own motion for the purpose of inquiring into the lawfulness and propriety of transportation operations currently being conducted by the Kemps, of determining whether highway common carrier operative rights should be cancelled, instead of being merely suspended, as sought in the application proceeding here involved, and of directing the Kemps to cease unlawful operations, if any are found to exist. (1)

Public hearing was had before Examiner Hunter at Los Angeles on November 12, 1943, the matters being submitted upon a common record in accordance with the stipulation of the parties.

Paul R. Kemp testified in behalf of the copartnership. He stated that following the granting of the certificate by Decision No. 29917, his company performed the transportation services thereby authorized, by motorcycle, under frequent daily schedules. He

(1) Specifically, the Order of Investigation was instituted for the purpose of determining:

- "(a) Whether any or all service performed under operative rights granted respondents by Decision No. 29917, in Application No. 19837, to conduct an automotive service by motorcycle only as a highway common carrier between points in Los Angeles County via routes designated in said Decision has been discontinued without the authority of the Commission;
- "(b) Whether any or all operative rights granted respondents by Decision No. 29917 should be cancelled or revoked;
- "(c) Whether respondents, or either of them, have been conducting a highway common carrier service by motor vehicle, other than by motorcycle, between the points and along the routes which they were authorized to render an automotive service by motorcycle only, without first having obtained authority from this Commission to conduct such operations; and
- "(d) Whether respondents should be ordered to cease and desist from engaging in the transportation of property as such highway common carrier by motor vehicle, other than by motorcycle, without first having been authorized to conduct such operations by this Commission."

stated further that approximately two years ago the co-partnership discontinued such service, due to inability to obtain motorcycle equipment, parts, and motorcycle riders. Companies which had previously manufactured equipment and parts, he said, had converted their facilities to production of war materiel and rider personnel had been attracted to more profitable employment in defense industries. According to the witness, appropriate public liability and property damage insurance coverage was prohibitive for motorcycle operations.

While the copartnership ceased rendering the transportation service which it had been authorized to perform, it did not discontinue business. The witness stated that the withdrawal of motorcycle service merely marked the advent of highway common carrier service by light trucks. He testified that the co-partnership adjusted operations to a truck delivery basis and continued to serve the same patrons, along the same routes, as were previously accorded motorcycle deliveries. The highway common carrier truck service is being performed at the present time. The only change in service, the witness testified, is in the number of deliveries rendered. As a result of Office of Defense Transportation orders, he said, service had been reduced from three deliveries to one delivery per day. Witness admitted that such transportation had been performed without first having received appropriate Commission authority. He explained that business had been continued, even though unlawfully rendered, so that the patronage built up during the period of motorcycle deliveries might be retained.

The record conclusively demonstrates that the copartnership has long since discontinued operations heretofore authorized by Decision No. 29917. Conversely, it continued to conduct, and is now

conducting, a highway common carrier transportation service by motor truck, without first having sought or obtained appropriate authorization. In view of these circumstances, we find that the co-partnership has abandoned its highway common carrier operations by motorcycle, and that the operating right under which motorcycle delivery operations were previously conducted should be revoked. We find, further, that the co-partnership is conducting a motor truck transportation service, within the meaning of Section 2-3/4 of the Public Utilities Act, without first having obtained the necessary authority required by Section 50-3/4 thereof, and should be ordered and directed to cease and desist from continuing such unlawful operations.

O R D E R

A public hearing having been had, on the above-entitled matters and based upon the foregoing findings of facts,

IT IS ORDERED that Application No. 25699 is hereby denied.

IT IS FURTHER ORDERED that the certificate of public convenience and necessity granted by said Decision No. 29917 is hereby revoked and annulled.

IT IS FURTHER ORDERED that Paul R. Kemp and Jack B. Kemp, doing business as California Delivery Service, and each of them, shall cease and desist, on or before January 1, 1944, and thereafter abstain from operating the common carrier service in the Los Angeles metropolitan area, which has been conducted without authority, as found in the foregoing opinion, unless and until said parties shall first have obtained from the Railroad Commission a certificate of public convenience and necessity authorizing the operation of such a highway common carrier service.

That the Secretary is directed to cause service of this decision to be made upon said respondents, Paul R. Kemp and Jack B. Kemp, and each of them.

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

Dated at San Francisco, California, this 21st day of December, 1943.

Frank D. Havens

Edward Sachs
Wm. W. Ward
COMMISSIONERS