

Decision No. 36853

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Investigation)
by the Commission, upon its own)
motion, into the operations of)
WESTERN CONSOLIDATED EXPRESS, a)
corporation.)

Case No. 4675

In the Matter of the Application)
of WESTERN CONSOLIDATED EXPRESS,)
a corporation, to suspend service.)

Application No. 25453

In the Matter of the Application of)
WESTERN CONSOLIDATED EXPRESS, a cor-)
poration, for authority to sell and)
transfer all of its intrastate express)
operative rights to CALIFORNIA MOTOR)
EXPRESS, LTD., a corporation.)

Application No. 25562

BY THE COMMISSION:

Appearances

Douglas Brookman, for California Motor Express, Ltd.;
Gwyn H. Baker, for Western Consolidated Express;
Edward Stern, for Railway Express Agency, Inc., as
its interest may appear;
Berol & Handler by Edward M. Berol, for Valley Express
Company, as its interest may appear;
William Meinhold, for Pacific Motor Trucking Company
and Southern Pacific Company, as their interests
may appear.

O P I N I O N

The investigation in Case No. 4675 is for the purpose of determining if any or all operative rights which Western Consolidated Express may possess should be revoked because of discontinuance or suspension of service without first obtaining appropriate authority from the Commission. The investigation was instituted following receipt of amended Application No. 25453, wherein the Commission is requested to ratify an embargo issued by Western Consolidated

Express against its California operations, which took effect February 1, 1943, and authorize a temporary suspension of operations. This carrier now requests authority to sell its express operative rights to California Motor Express, Ltd. (Application No. 25562). The latter carrier requests authority to purchase and merge these operative rights with its present rights. The consideration for the sale of these operative rights is \$2,500, payable in cash. No tangible property is proposed to be sold.

These matters were publicly heard on a consolidated record at San Francisco, on June 7, 1943.

Western Consolidated Express and California Motor Express, Ltd. declare themselves to be express corporations as that term is defined in Section 2(k) of the Public Utilities Act, and to be operating under prescriptive rights.¹ Their tariffs on file with the Commission name local rates from San Francisco, and certain East Bay points on the one hand to southern California points on the other hand. In addition, Western Consolidated Express publishes rates from a limited number of these latter points, including Los Angeles, to numerous points located throughout northern California and California Motor Express, Ltd. publishes rates from Los Angeles to specifically named San Francisco Bay points, Stockton and Sacramento.

The record shows that Western Consolidated Express filed its original application for suspension of operations January 8, 1943,² that it actually discontinued or suspended operations effective

1

These prescriptive rights were created by virtue of operations conducted prior to August 1, 1933, the date after which a certificate of public convenience and necessity has been required to conduct operations as an express corporation.

2 The amended application was filed on January 28, 1943.

February 1, 1943, and that such operations have not been resumed. The carrier's president testified that operations were suspended only after it became evident that further operations would result in bankruptcy³ and that, by suspending operations when it did, Western Consolidated Express could discharge its financial obligations in full. He added, that these obligations could not have been fully met had the carrier continued its operations.

A witness for California Motor Express, Ltd. testified that it has the facilities and personnel necessary to conduct operations under the rights it seeks authority to purchase and that it would not experience important operating difficulties which were experienced by Western Consolidated Express because of the close operating relationship it enjoys with its underlying carrier between San Francisco and Los Angeles. The 1942 annual report of California Motor Express, Ltd., which was made a part of the record by reference to show its financial condition, indicates a net operating income of \$37,873.46 after federal income taxes.⁴

Other common carriers participated in the cross-examination of applicants' witnesses but did not oppose granting of the applications.

The record shows that operations by Western Consolidated Express were suspended before the Commission had taken any action

3

Its unsatisfactory condition as of March 1, 1943, was attributed to a shortage of competent labor and to increases in virtually all of its operating costs, including increases in express privilege payments to underlying carriers and to payments made to draymen; to deterioration of the service given by its underlying carriers; and to the substantial increase in loss and damage claims and decrease in traffic volume resulting from the deterioration in service. He pointed out, for example, that whereas in normal times its underlying carrier between San Francisco and Los Angeles was according overnight service, a minimum of 4 days is now required.

4

Its 1941 net operating income, according to its annual report, was \$41,235.91 after federal income taxes.

upon its application for authority to suspend service temporarily, in order that the carrier might avoid bankruptcy and discharge its financial obligations. In our opinion the circumstances surrounding this unauthorized suspension do not warrant the revocation of the operative rights which Western Consolidated Express may possess. Moreover, it appears that California Motor Express, Ltd. has the experience and is financially able to conduct operations under the operative rights here involved and that the best interests of the public would be served by permitting it to purchase and merge these operative rights with its existing rights. Under such a procedure the Western Consolidated Express application temporarily to suspend operations can be dismissed.

It should be clearly understood that the authorization hereinafter granted is not an approval of the purchase price of these operative rights in any respect, nor a finding of value for the purpose of rate fixing, issuance of securities, accounting or for any other purpose. By the authorization, moreover, the Commission is not determining either the existence, character or extent of the operative rights involved but is merely permitting California Motor Express, Ltd. to acquire whatever express operative rights are held by Western States Express.

California Motor Express, Ltd. is placed upon notice that "operative rights" as such do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the granting of such rights.

Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the State which is not in any respect limited to the number of rights which may be given.

For the reasons stated in the foregoing opinion it is hereby ordered as follows:

ORDER

A public hearing having been held in the above entitled proceedings and based upon the evidence received at the hearing and upon the conclusions set forth in the preceding opinion,

IT IS HEREBY ORDERED that Western Consolidated Express, a corporation, be and it is hereby authorized to sell and transfer to California Motor Express, Ltd., a corporation, whatever operative rights it may now possess to conduct operations as an express corporation.

IT IS HEREBY FURTHER ORDERED that the authority herein granted is subject to the provisions of Section 52(b) of the Public Utilities Act and further to the condition that California Motor Express, Ltd., its successors or assigns, shall never claim before this Commission, or any court or other public body, a value for said operative rights or claim as the cost thereof, an amount in excess of that paid to the State as the consideration for said rights.

IT IS HEREBY FURTHER ORDERED that all tariffs on file with the Commission naming rates, rules and regulations governing operations conducted under the express operative rights hereinabove

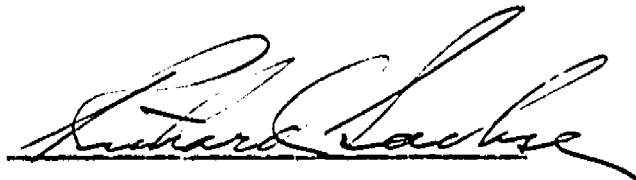
authorized to be sold, shall be canceled simultaneously with the transfer of said operative rights on not less than five (5) days' notice to the Commission and to the public and that effective concurrently with their cancellation California Motor Express, Ltd. shall merge said operative rights with its existing operative rights and shall file rates, rules and regulations which are no higher than those named in the tariffs to be canceled.

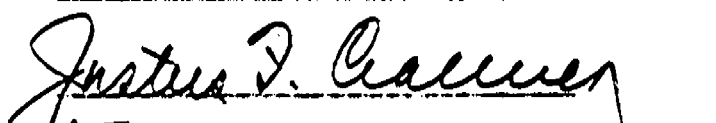


IT IS HEREBY FURTHER ORDERED that the investigation instituted in Case No. 4675 be and it is hereby discontinued.

IT IS HEREBY FURTHER ORDERED that Application No. 25453 be and it is hereby dismissed without prejudice.

This order shall become effective twenty (20) days from the date hereof.

Dated at San Francisco, California, this 8th day of February, 1944.


Richard Lachse


Justice J. Calver

Francis R. Havenue

Charles Wilson

Commissioners