

ORIGINAL

Decision No. 37669

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

HIGHWAY TRANSPORT, INC., Complainant)	
)	
vs.)	Case No. 4547
)	
C. A. BUCK, Defendant.)	

In the Matter of the Application of)	
C. A. BUCK to sell, and VALLEY MOTOR)	
LINES, INC., a corporation, to purchase)	
an automobile freight line operating)	Application No. 23612
between Palo Alto, California, and San)	
Francisco, California and intermediate)	
points.)	

J. F. VIZZARD, for Highway Transport, Inc., complainant in Case No. 4547 and protestant in Application No. 23612.

REGINALD L. VAUGHAN, for Pioneer Express Company and Intercity Transport Lines, intervenors on behalf of complainant in Case No. 4547 and protestants in Application No. 23612.

WILLARD S. JOHNSON, for C. A. Buck, defendant in Case No. 4547, for Valley Motor Lines, Inc., intervenor on behalf of defendant in Case No. 4547, and for C. A. Buck and Valley Motor Lines, Inc., applicants in Application No. 23612.

F. X. VIEIRA and E. L. VAN DELLEN, for Pacific Motor Trucking Company, interested party.

BY THE COMMISSION:

O P I N I O N

These proceedings, which were consolidated for hearing and decision, involve a determination of the scope and extent of a highway common carrier operative right sought to be transferred by C. A. Buck to Valley Motor Lines, Inc.. By Application No. 23612, C. A. Buck seeks authority to transfer to Valley Motor Lines, Inc., and the latter proposes to acquire, an operative

right as a highway common carrier allegedly comprehending the transportation of general commodities between San Francisco and Palo Alto and intermediate points. In Case No. 4547 complainant, Highway Transport, Inc., which also appeared as a protestant in the application proceeding, challenges the validity of this operative right, asserting it had been wholly abandoned, and it seeks an order denying the transfer and revoking the operative right. Pioneer Express Company and Intercity Transport Lines intervened on behalf of complainant, and also appeared as protestants in the application proceeding. Pacific Motor Trucking Company participated as an interested party. A public hearing was had before Examiner Austin at San Francisco, when the matter was submitted.

Although the complaint alleged that Buck's operative right had been abandoned in toto, the scope of the issues was narrowed substantially at the hearing. Complainants concede, and the record shows, that Buck continuously had carried household goods and used furniture between San Francisco and Palo Alto and intermediate points, and general commodities between Millbrae and Bay Meadows and intermediate points. There thus remains for our consideration the question whether Buck had engaged in the transportation of commodities other than household goods between San

(1) For convenience the complainant, Highway Transport, Inc., and the intervenors, Pioneer Express Company and Intercity Transport Lines, whose interests coincide, will be referred to collectively as complainants; and applicant, Valley Motor Lines, Inc., will be designated as Valley. C. A. Buck will be referred to as the defendant.

(2) Defendant Buck performs a pickup and delivery service at San Mateo and Burlingame for Southern Pacific Company, handling general commodities under an arrangement which he had entered into with the railroad. Essentially, this is a drayage service.

Francisco and Palo Alto and intermediate points, exclusive of the territory between Millbrae and Bay Meadows (inclusive) and intermediate points. Complainants assert, and defendant and Valley deny, that such service had not been provided. The evidence dealt with defendant's operations between these points during the period, February 8, 1935 to August 13, 1940.

The operative right involved, acquired in 1935 by Buck from J. B. Peckham Company, originally contemplated "the Transportation of property between San Francisco and Palo Alto and intermediate points." The Commission earlier had found that the latter company was operating "in good faith as a common carrier" between the points last mentioned.⁽⁴⁾ Complainants concede that when the operating right was acquired by Buck it permitted the transportation of general commodities between these points. The issue presented, therefore, is whether defendant Buck has so conducted the operation, since acquiring it, as to limit the kind of commodities that may be transported, as indicated above. In short, has the service been discontinued in part, and is the operative right, to that extent, subject to revocation because of its partial abandonment?

Long before he acquired the Peckham right Buck had served this territory as a highway common carrier, transporting household goods alone. This operation, which rests upon a "grandfather" operative right acquired under the provisions of the Auto Stage and Truck Transportation Act of 1917 (Statutes 1917, Chapter 213),

(3) By Decision No. 27687, rendered January 21, 1935, in Application No. 19778, C. A. Buck was authorized to acquire this operative right from J. B. Peckham Company.

(4) Re J. B. Peckham Company, Decision No. 19152, in Application No. 12519, dated December 23, 1927. (30 C.R.C. 851)

dates back to 1912. In a decision defining its scope, the Commission held that Buck was authorized to operate between San Francisco and East Bay points, respectively, and Coast points extending south to Morgan Hill. ⁽⁵⁾ Within the territory common to this operation and the Peckham right, a unified service appears to have been provided.

The evidence offered by complainants to support their charge of abandonment dealt with defendant's asserted knowledge of the extent of the Peckham operative right, and with the nature of the traffic actually handled. We shall consider these subjects in the order mentioned.

Defendant Buck, it appears, was acquainted generally with the scope of the Peckham right. Before acquiring it in 1935 he investigated the business and familiarized himself with the operations, tariffs and time schedules. The physical property transferred included equipment of a type suited essentially to the movement of household goods. A few accounts were acquired which included customers offering general freight for transportation. Among the stationery supplies obtained was a form designed to estimate the charges for handling household goods, which defendant used for a time in his own business. In order to attract former customers, he continued the Peckham telephone listing for about a year. He also adopted the Peckham tariffs and time schedules.

To establish the character of defendant's operations, officials of complainants were called, who testified they had examined all of defendant's freight bills covering the traffic handled during the five-year period preceding August, 1940. These

(5) Decision No. 26993. rendered April 30, 1934, in Case No. 3478.

records represented a minimum of 16,000 shipments which moved subsequent to February, 1935. Assertedly, as a result of this examination, they had been unable to find any freight bills covering the movement of commodities other than household goods, excepting certain shipments the identity of which was not clearly disclosed. They also testified that after examining the freight bills covering the traffic moving between August, 1938 and October 1939, they had found only twenty-seven shipments to and from Palo Alto; and that, based on a similar examination covering the traffic moving between July, 1938 and February, 1940, only sixty-five shipments to and from San Francisco could be found. None of these shipments, which consisted entirely of household goods, moved between San Francisco and Palo Alto themselves; all were handled to or from intermediate points.

Defendant's showing dealt with the nature of his operations and the character of the traffic handled. It was presented through defendant's manager, Elwood N. Buck, and Valley's traffic manager, F. K. Clifford.

Defendant's manager described generally the nature of the operations. He testified that defendant had solicited traffic other than household goods but had met with slight response, due largely to the circumstance that a semi-weekly service only was provided. He asserted that defendant had not discouraged the movement of general commodities, nor had he rejected shipments of this character when offered for transportation. No advertisements

(6) Counsel stipulated that complainants' witnesses had examined all the freight bills, described above, and had been unable to find any shipments of property other than household goods and personal effects, excepting those represented by certain bills, which, however, were not then clearly identified for the record nor offered in evidence. Although defendant later offered evidence regarding specific shipments of commodities other than household goods, it does not appear that these coincided with those referred to by complainants.

soliciting general freight were published in any newspaper or trade journal. However, he was listed in the telephone directory as a carrier and storer of household goods.

The character of the traffic was described by defendant's manager and by Valley's traffic manager. Tabulations summarizing representative shipments were offered, and freight bills and shipping orders covering certain types of traffic were submitted. The purpose of this showing was twofold: first, to establish the movement of general commodities, and secondly, to show that service had been extended to all points reached by defendant. Each, in turn, will be considered.

To indicate the extent that defendant had engaged in the transportation of general commodities, a traffic summary was offered, and the freight bills covering certain shipments were produced. The summary specifies some 2,968 shipments which moved during the five-year period, January, 1935 to August, 1940, comprising a majority of those transported during that period between Palo Alto and San Francisco and intermediate points, excepting, assertedly, shipments moving between Millbrae and Bay Meadows. The exhibit, however, discloses some 228 shipments that were handled between the latter points. The shipments shown in the summary are included among those represented by the 16,000 freight bills, mentioned above.

Freight bills and shipping orders were offered, covering a total of 351 shipments carried during the five-year period specified. Of these, some 130 represent shipments moving between Millbrae and Bay Meadows and intermediate points, where defendant's right to handle general commodities was conceded. Disregarding these, there remains a total of 221 shipments moving between the points in question, which, it is claimed, comprehended commodities other than household goods.

Of the freight bills produced, only 30 related to shipments described in the summary. Adding the remaining 191 shipments covered by the bills submitted to the 2,968 shown in the summary, we arrive at a total of 3,159 shipments, which may be regarded as fairly representative of defendant's operation between these points during the period mentioned. ⁽⁷⁾

The freight bills submitted indicate that during the period described defendant was engaged in the transportation of a wide range of commodities. The traffic moved regularly and was distributed extensively throughout the territory with which we are concerned. The details appear in the margin. ⁽⁸⁾

(7) The shipments described in the summary (Exhibit 8) and in the 191 freight bills mentioned above (Exhibit 11) were distributed throughout the five-year period mentioned, as follows:

<u>Year</u>	<u>No. of Shipments</u>
1935	588
1936	606
1937	553
1938	508
1939	518
1940	386
Total	<u>3,159</u>

Of these shipments, seven were interstate in character.

(8) The shipments represented by the 221 freight bills contained in Exhibits 11 and 14, were distributed among approximately 100 commodities, other than household goods. Included among these commodities are automobile chassis; bird cages, K.D.; boat cradle, K.D.; boilers, iron or steel; books; bottles; bulbs; cabinets, steel kitchen; cable, iron or steel; casings, furnace; cement; chopping blocks; compressors; conduit; costumes; dishes; display, advertising; display, kitchen; dog houses; drugs; electric equipment; exhibit, health; fence material; fertilizer; fire works; fixtures, bar and fountain; furniture, office and household, new; gates, iron; glass; glassware; groceries; heaters, water; incinerators; ironers, electric; kitchens, sectional, electric; ladders, iron or steel; lawn mowers, power; lawn spring; liquors, alcoholic; loud speakers; lumber; machines (clothes pressing, dictating, dish washing, linotype, popcorn, stitch or binding, sewing, teletype); machinery NOS.; mantel, marble; maps, mounted; marble; masonite; merchandise NOS.; office supplies; oil, lubricating; paintings, boxed; panels, wood; paper, newsprint; phonograph, electric ~~radio~~; photographic equipment; pianos, not boxed; plants, potted; play pens; plumbing fixtures; plywood; pottery; printed matter; printer supplies; projectors, moving picture; push carts; radiator covers; radios, boxed; refrigerators; restaurant equipment; rugs; safes; screens; seats; shade material; shoes; show cases, glass; shrubs; sign boards; small arms; sporting goods; statuary; steam tables; stoves; switchboard, electric; tables, operating; tanks, NOS.; telephone booths; tents; tool chests; tools, hand; toys; trucks, low bed; vacuum cleaners; washing machines; well boring equipment; wine; wringers, clothes.

Most of these shipments, it appears, originally were rated upon an hourly rather than a weight basis. Hence, complainants contend, they were billed in a manner consistent only with the movement of household goods, under the provisions of defendant's tariffs. This circumstance, however, does not change the nature of the commodities actually handled; it is of no controlling significance here.

Upon most of the freight bills submitted, covering the movement of general commodities, alterations appear which, generally speaking, purport to show, in each instance, the weight of the shipment and a more detailed description of the commodity. Complainants allege that these changes were made with intent to deceive and mislead the Commission as to the essential character of the traffic. This defendant emphatically denies. He asserts, on the contrary, that following an examination of the freight bills undertaken by Valley, in the course of an investigation of defendant's business, he was advised by Valley's traffic manager that many of the shipping documents, in their original form, described the shipments inaccurately, or failed to specify the applicable rates. Defendant's manager, so he testified, thereupon revised the freight bills accordingly.

Complainants' contention, we are convinced, is not supported by the record. Though some errors appear in the computation of the rates and weights, this circumstance, obviously, does not manifest a design to deceive. The alterations in these freight bills, it was shown, were made for the purpose of revising them so they would more accurately describe the shipments. Admittedly, they were made after the shipments actually had moved. Information concerning the weights was obtained from the most reliable sources available. With the exception of a few instances, the rates inserted

conformed to applicable tariff provisions.

It must be regarded as an established fact that throughout the five-year period mentioned, shipments have moved regularly between all of the points which defendant was authorized to serve under the operative right now sought to be transferred. Of those shown in the traffic summary, some 90 and 279 originated at or were (9) destined to Palo Alto and San Francisco, respectively. Points intermediate to Palo Alto and San Francisco were also regularly served. Most of this traffic, it is true, consisted of household furniture. However, the shipping documents submitted disclose that the movement of general commodities was distributed generally (10) throughout the entire territory.

From the record it is clear that complainants have not established their contention that defendant had abandoned operations as a common carrier of general commodities, and had limited its

(9) The details appear in Exhibits 9 and 10, specifying shipments moving to and from Palo Alto and San Francisco, respectively. Of the 90 shipments shown in Exhibit 9, some 32 moved directly between Palo Alto and San Francisco; and of the 411 shipments described in Exhibit 10, only two moved directly between those points.

(10) An analysis of Exhibits 11 and 14 (which exclude shipments between Millbrae and Bay Meadows) indicates the following distribution of the traffic:

San Francisco	Pts. Int. S.F. and Burlingame	Burlingame	San Mateo	Hillsborough	Pts. Int. San Mateo and Palo Alto	Palo Alto	Total
From	From	From	From	From	From	From	
89	12	56	46	4	10	4	221
To	To	To	To	To	To	To	
64	31	47	30	9	32	8	221

service to the carriage of household goods alone. On the contrary, the evidence shows that during the five years used as a test period, defendant had regularly transported a wide range of commodities. Under the circumstances, we cannot find that the service had been discontinued, as charged. Complainants having failed to sustain the burden of proof resting upon them, the complaint will therefore be dismissed.

This brings us to the showing made in support of the application to transfer the operative right.

At the hearing it was not only established, but conceded, that Valley was qualified financially and by experience to conduct the service were it permitted to acquire the operative right.

C. A. Buck has agreed to sell the operative right to Valley at a price of \$8,750, payable by Valley within five days after the Commission has authorized the transfer. Section 52(b) of the Public Utilities Act reads, in part, as follows:

"The commission shall have no power to authorize the capitalization of the right to be a corporation, or to authorize the capitalization of any franchise or permit whatsoever or the right to own, operate or enjoy any such franchise or permit, in excess of the amount (exclusive of any tax or annual charge) actually paid to the State or to a political subdivision thereof as the consideration for the grant of such franchise, permit or right;..."

Upon the transfer of such operative right to C. A. Buck, a fifty (\$50.00) dollar filing fee was paid to the State of California. Valley may charge that amount to Account 1511, Franchises. The remainder of the purchase price, to-wit: \$8,700, should by Valley be charged to Account 1550, Other Intangible Property, and during 194⁵ written off by a charge to Account 2946, Other Debits to Surplus.

The application, accordingly, will be granted.

Valley Motor Lines, Inc. 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 grant 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.

O R D E R

Application having been made as above entitled; a public hearing having been had; the matter having been duly submitted; the Commission being now fully informed therein; and good cause appearing;

IT IS ORDERED as follows:

(1) That the complaint in Case No. 4547 be and it hereby is dismissed.

(2) That C. A. Buck is authorized to sell and transfer, and Valley Motor Lines, Inc., a corporation, to purchase and acquire the operative right, as a highway common carrier, referred to in the foregoing opinion and thereafter to operate thereunder.

(3) That if applicant Valley Motor Lines, Inc. acquires said operative right and pays therefor the sum of \$8,750

it may charge to Account 1511, Franchises, a sum not exceeding \$50, it shall charge to Account 1550, Other Intangible Property the remainder of such purchase price, viz., the sum of \$8,700, and during 194⁵ it shall write off said sum of \$8,700 by a charge of that amount to Account 2946, Other Debits to Surplus.

(4) That applicants shall comply with the provisions of General Order No. 80 and Part IV of General Order No. 93-A by filing, in triplicate, and concurrently making effective, appropriate tariffs and time tables within sixty (60) days from the effective date hereof and on not less than one (1) day's notice to the Commission and the public.

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

Dated at San Francisco, California, this 6th day of February, 194⁵.

12/24

Harold Bullock
Justin F. Coe
Francis J. ...
Earl ...
COMMISSIONERS