

Decision No. 37695

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of DALE C.)
 RAMSEY dba VALLEY TRUCK CO. for an extension)
 of certificate of public convenience and)
 necessity to operate an automobile truck)
 service as a highway common carrier for the)
 transportation of commodities generally,)
 with certain exceptions, from Los Angeles)
 Drayage Area to Imperial Valley territory;)
 for the transportation of farm products and)
 dairy products from all points and places)
 within Imperial Valley territory to Los)
 Angeles territory; for the transportation of)
 dry ice from Imperial Valley territory to)
 Los Angeles; and for the transportation of)
 newspapers and newspaper supplements from)
 Los Angeles, California, to Bloomington,)
 Indio, Coachella, Thermal, Oasis and)
 Calexico and all intermediate points between)
 Bloomington and Calexico.)

ORIGINAL

Application
No. 24211

F. W. TURCOTTE, for Dale C. Ramsey, doing business
as Valley Truck Co., applicant.

E. L. H. BISSINGER, for Southern Pacific Company,
Pacific Motor Trucking Company and Pacific
Electric Railway Company, protestants.

WALLACE K. DOWNEY and HUGH GORDON, for Pacific
Freight Lines and Pacific Freight Lines Express,
protestants.

EDWARD STERN and W. J. MARTINDALE, for Railway
Express Agency, Incorporated, protestant.

H. J. BISCHOFF and H. P. MERRY, for Southern
California Freight Lines and Southern California
Freight Forwarders, protestants.

LLOYD R. GUERRA, for Western Truck Lines, Ltd.,
protestant.

HAROLD W. DILL, for The Truck and Warehouse Association
of San Diego and Imperial Counties, protestant.

CHESTER McNUTT and LON THOMPSON, protestants, in pro per.

PERCY C. THACKER, for Pioneer Truck and Transfer
Company, interested party.

BY THE COMMISSION:

O P I N I O N

By his application, as amended, Dale C. Ramsey, an individual doing business as Valley Truck Co., seeks a certificate of public convenience and necessity under Section 50-3/4, Public Utilities Act, authorizing the operation of a highway common carrier service, subject to certain limitations, between Los Angeles and surrounding points, on the one hand, and Imperial Valley points, on the other hand. The common carriers now occupying the field protested the granting of the application. They comprised Southern Pacific Company and its subsidiaries, Pacific Electric Railway Company and Pacific Motor Trucking Company; Railway Express Agency, Incorporated; Pacific Freight Lines, and its affiliate, Pacific Freight Lines Express; Southern California Freight Lines, and its affiliate, Southern California Freight Forwarders; and Western Truck Lines, Ltd. Protests were also entered by Chester McNutt and Lon Thompson, highway contract carriers, and by The Truck and Warehouse Association of San Diego and Imperial Counties. Pioneer Truck and Transfer Company appeared as an interested party. Public hearings were had at Los Angeles and El Centro before Examiner Broz and, subsequently, before Examiner Austin. Thereafter the matter was submitted.

By its petition filed December 13, 1944, protestant Pacific Freight Lines alleged that subsequent to such submission applicant had abandoned operation as a highway common carrier between Los Angeles and Imperial Valley points under the certificate which he then held; and that applicant had exacted rates for transportation performed between such points in excess of those

authorized by his published tariffs. For these reasons, assertedly, applicant was not qualified to operate as a common carrier under the Commission's authority, and protestant, accordingly, requested that the proceeding be reopened. Further hearing was had before Commissioner Craemer and Examiner Austin at Los Angeles on January 17, 18 and 25, 1945, when the matter was resubmitted. In support of its petition, protestant Pacific Freight Lines called Dana E. Ketchum and Milton F. Lawrence, a member of the firm operating as Atlas Truck Lines, and the accountant employed by that carrier, respectively. Applicant Dale C. Ramsey testified in his own behalf.⁽¹⁾

Under a certificate acquired by Ramsey in 1940, agricultural products may be transported from certain Imperial Valley points to Los Angeles. The service could be provided, however, only during the season extending from November to the succeeding August.⁽²⁾

That Valley had abandoned its certificated operation, protestant contends, was shown by the record. It points to Ramsey's efforts to sell the operation, involving, assertedly, the trafficking in operative rights; to his expressed intention to retire from

(1) For brevity, Valley Truck Co. and Atlas Truck Lines will be referred to as Valley and as Atlas, respectively.

(2) Under the certificate authorizing this service, acquired from Charles B. Lee pursuant to Decision No. 32783, dated February 6, 1940, in Application No. 23099, applicant may engage in the transportation of fresh fruits and vegetables, edible nuts, and fresh or dried beans and peas from El Centro, Niland and Westmoreland and an area within a fifteen mile radius of each of these points, to Los Angeles, as a seasonal service, from approximately November 1 of each year to approximately August 1 of the succeeding year.

business; and to the transfer of the El Centro terminal to Atlas. Applicant, on the other hand, asserts that Atlas acquired merely a highway contract carrier operation (including the El Centro terminal), Valley continuing to conduct the certificated produce operation; that from the latter operation Valley derived a substantial revenue from traffic other than that which it received from Atlas; and that no intention to abandon had been shown.

In our judgment, the proof was insufficient to establish the abandonment of Valley's highway common carrier operation. It is true that, because of the strike of its line-drivers, Valley turned over to Atlas a substantial share of its highway contract carrier operations, but this it could lawfully do. Since most of Valley's revenues flowed from such operations, it is apparent that Atlas' control of the El Centro terminal did not disable Valley from continuing its common carrier service. And throughout the period involved, Valley transported produce from Imperial Valley to Los Angeles under its certificate, receiving a substantial part of the tonnage from shippers who had no connection with Atlas. It is true that Atlas billing was used, but the preponderance of the evidence, we are convinced, indicates that this was done without Ramsey's knowledge and in violation of his instructions. Moreover, he was incapacitated by illness, during the greater part of this period, from supervising the business. Although Ramsey, in the past, had offered to sell the business, it is his present intention, the record shows, to continue the operation of his certificated produce service; and he is now bound by no commitment to sell the operating right sought in the pending proceeding.

In support of its claim that Valley had collected charges in excess of those authorized under its published tariffs,

protestant refers to the stipulation of the parties conceding that such rates had been exacted upon shipments of fruits and vegetables moving from Imperial Valley to Los Angeles and handled in connection with Atlas; and to the testimony that these rates had been suggested initially by Ramsey to Ketchum, and later had been increased by Atlas itself. Applicant asserts he had no knowledge that charges higher than those prescribed by the tariff had been assessed; that upon learning this, he immediately disclosed to the Commission all of the facts and circumstances and took immediate steps to refund the overcharges. Atlas' refusal to permit an inspection of its records is attributed by Ramsey to its desire to obtain a certificate under which that carrier itself would duplicate the service which Valley now seeks to conduct.

That Valley, in connection with Atlas' traffic, collected rates in excess of those permissible under its tariffs must be regarded as an established fact. Ramsey, however, made no attempt to conceal the situation; on the contrary, the facts were fully revealed to the Commission. Under the circumstances, his action does not warrant so severe a penalty as the denial of the pending application.

We turn now to a consideration of the application upon its merits. Specifically, applicant proposes to engage in the transportation of certain commodities between designated points, as follows:

- (3)
1. Farm supplies from the Los Angeles Drayage area, as

(3) The term farm supplies, as used in the application, comprehends bale ties, sacks, machinery and parts, fertilizer, box shock, empty wooden boxes, brushing paper, fruit and vegetable wraps, and box and crate liners.

(4)
described in the margin, to Alamo, Brawley, Calexico, Calipatria, El Centro, Heber, Holtville, Imperial, Kane Springs, Mt. Signal, Niland, Sandia, Seeley and Westmoreland and to all points and places in Imperial County within a fifteen mile radius of each of the points named.

2. General commodities other than farm supplies (subject to certain exceptions)⁽⁵⁾, from the Los Angeles Drayage area to the Imperial Valley points specified in paragraph 1, and to all points and places in Imperial County within lateral zones extending five miles on each side of the authorized routes traversed, south of Truckhaven.

3. Newspapers and newspaper supplements from Los Angeles to Bloomington, Indio, Coachella, Thermal and Calexico, including intermediate points between Bloomington and Calexico via authorized routes.

4. Farm and dairy products from Imperial Valley territory (comprising the Valley points specified in paragraph 1, and all farms, points and places in Imperial County within a radius of

(4) As described in the application, the area mentioned is co-extensive with the Los Angeles Drayage area, as defined by Decision No. 32504, rendered October 24, 1939, in Case No. 4121 (42 C.R.C. 239). There it was said to embrace "...the more centrally located manufacturing, wholesale and retail districts of the city of Los Angeles and certain contiguous territory. Included therein are the cities of Vernon, Huntington Park, Maywood and Bell, as well as various other municipalities and certain unincorporated territory." (42 C.R.C. 240)

(5) Certain commodities are excepted, viz., high explosives, automobiles, livestock, commodities in bulk, commodities requiring special equipment, unpacked and uncrated furniture, used household goods, newspapers and newspaper supplements.

fifteen miles of any of such points) to Los Angeles territory,
(6)
as described in the margin.

5. Dry ice from Imperial Valley territory to Los Angeles.

The route traversed would follow U. S. Highway No. 99 from Los Angeles to the Imperial Valley. Between Coachella and Oasis, an alternate route over State Highway No. 195, via Thermal, would also be used. Within the Valley, applicant would follow the most direct routes between the points served.

No service would be rendered locally in the Los Angeles Drayage area, nor between points in the Imperial Valley. However, pickup and delivery service would be performed within each of these areas.

For many years Ramsey has served this territory as a highway contract carrier. As stated, he conducts a restricted service, as a highway common carrier, between Los Angeles and Imperial Valley. Applicant, so the record shows, is financially qualified to carry on the service contemplated.

In his testimony, applicant described the nature of the proposed operation. He dealt with the terminals to be

(6) Los Angeles territory, as described in the application, comprises the area situated, generally, within the following boundaries:

From Pomona through Monrovia to Pasadena; to Sunland, Santa Monica, Redondo Beach, San Pedro, Long Beach, Seal Beach; to Fullerton, and Pomona.

In general, it coincides with, although it is somewhat more extensive than Los Angeles territory as defined in Decision No. 31606, in Case No. 4246. (41 C.R.C. 671)

established, the schedules observed, the pickup and delivery service performed, the rates published, and the equipment used.

Terminals would be established at Los Angeles, El Centro, Brawley and Niland (during the peak season only), where agencies also would be maintained. Schedules designed to accommodate the traffic would be observed. At the outset, four regular schedules would be maintained daily (except Saturdays and days preceding holidays), under which an overnight service would be provided between Los Angeles and the Valley. Westbound produce shipments would reach Los Angeles by 3:00 A.M. An extensive pickup and delivery service would be provided within the Los Angeles Drayage area and throughout the Imperial Valley. Traffic would be distributed from the terminals mentioned, thus affording early morning delivery at Valley communities. In general, the rates established would conform to the minimum rates prescribed in Case No. 4246, being no lower on exempted commodities than those currently maintained by the common carriers in the field. Applicant's present equipment would be used to provide the service. During the peak season, this would be augmented, if necessary, by leased trucks.

Operating as a highway contract carrier, applicant has served some sixty shippers engaged in business within the Los Angeles Drayage area and throughout the Imperial Valley. The annual movement totaled some 7,500 tons originating in the Los Angeles Drayage area, and 8,000 tons handled westbound from the Valley. From a survey which he had made, applicant estimated that the anticipated traffic would amount annually to some 7,500 tons

(7)
moving eastbound, and 9,500 tons westbound.

In support of his proposal, applicant produced shipper witness-s both at the Los Angeles and the El Centro hearings. Representative growers and distributors of agricultural products were also called.

Some seven shipper witnesses, produced at Los Angeles and representing wholesale dealers and distributors engaged in business in the Los Angeles Drayage area, testified they would use applicant's service, if he were permitted to operate as a highway common carrier. All had entered into transportation agreements with Ramsey. Expedited movement and early first morning delivery at Valley points are essential, they stated; such a service, assertedly had been provided by Ramsey, as a highway contract carrier. The service of the common carriers now occupying the field, most of them stated, was unsatisfactory, shipments having been delivered too late to meet their requirements. In still other respects, some testified, the service was objectionable. (8)

(7) The traffic moving annually from Imperial Valley points to Los Angeles territory, applicant testified, would be distributed in the following proportions:

	<u>Tons</u>
Green produce	5,000
Grain	250
Flax	500
Hay	500
Empty containers returned; and refused or damaged freight, returned	250
Dry Ice	<u>3,000</u>
Total.	9,500

(8) One witness testified that split pickups were delayed; another asserted that transfers en route were objectionable; still another stated that the service to off-rail points was not satisfactory.

The requirements of the Los Angeles Examiner for an expedited transportation service to the Imperial Valley were described by its country and suburban circulation manager. For several years, Ramsey had carried the traffic under contract, serving the communities between Bloomington and Calexico. The service, he stated, had been adequate, and he would continue to use it if applicant were certificated.

At El Centro spokesmen for some nineteen shippers, engaged in business at Valley towns, were called in support of applicant's proposal. The general purport of their testimony may be briefly stated: In the past, applicant had carried their shipments from Los Angeles to the Valley, as a highway contract carrier. An early delivery, they uniformly stated, is desirable and necessary in their business. Applicant had provided such a service, they said. Their principal complaint concerned the late delivery service provided by the existing common carriers, both rail and truck. Twelve so testified, four of whom were engaged in business at Calexico, and eight at El Centro. Under a contract with the producer, applicant has carried dry ice to Los Angeles from a plant near Niland. The traffic, which averages 3,000 tons annually, moves throughout the year. An expeditious service is essential.

Grain and agricultural products grown in the Imperial Valley move in substantial volume to Los Angeles and the surrounding area, it was shown. Included among them are flax, wheat, milo maize and barley. From Los Angeles, concentrates and fertilizers are shipped to the Valley. Some 48,000 tons of flax are produced annually, of which the larger part moves direct from the field to three processing plants situated in the Los

Angeles area.

To accommodate this traffic, many of the local highway contract carriers have been employed. During the peak of the shipping season, and usually in June, so one large shipper testified, a shortage of transportation facilities, both rail and truck, has been experienced. Were applicant certificated, he would participate extensively in the movement of this traffic, it was (9) shown.

We turn now to protestants' showing offered in support of their objections to the application. The character of their service was described by operating officials, and shipper witnesses were produced both at the Los Angeles and the El Centro hearings.

For many years, Pacific Freight Lines has served Southern California, operating over a comprehensive network extending from San Luis Obispo and Fresno on the north to the Imperial Valley on the south. It reaches the principal towns, including Westmoreland, Brawley, Imperial, El Centro, H-b-r, Calexico, Holtville, Seeley and Calipatria, as well as points situated within a lateral zone extending five miles on each side of the highways traversed. Terminals are maintained at Los Angeles, Brawley and El Centro; and agency stations, in the Valley, are situated at Brawley, El Centro and Calexico.

(9) Balfour, Guthrie & Company, so its representative testified, would employ Ramsey, if his service were equivalent to that provided by other truck operators, for the transportation of all of its outbound traffic (other than rail movements), comprising shipments of flax, wheat and barley. During the peak season, this would amount approximately to 10,000 tons.

A pickup and delivery service is provided both at Los Angeles and at Imperial Valley points. Freight moves to the terminals at Brawley and El Centro, where it is distributed throughout the surrounding territory. To accommodate the outbound traffic, consisting of farm products, a field pickup service is maintained. These shipments move through the terminals mentioned, reaching the Los Angeles produce markets during the early morning hours. This protestant, it was shown, has sufficient equipment of various types to serve the territory adequately.

Operating officials of both Southern Pacific Company and its subsidiary, Pacific Motor Trucking Company, described the service offered by those carriers. From Los Angeles to the Valley, Southern Pacific maintains an overnight rail service providing first morning delivery, available daily excepting on days preceding Sundays and holidays. At Miland, freight is transferred to a mixed train which arrives at Valley points during the early morning hours. Westbound rail traffic leaves the Valley in the early morning, and reaches Los Angeles that evening.

Through its own facilities, or those of local draymen with whom it has contracted, Pacific Motor Trucking Company conducts a pickup and delivery service at Imperial Valley rail points. Field pickup service for farm products is not provided beyond the boundaries of the pickup and delivery zones described in the published tariffs. A study of the service performed at certain points during a representative period indicates that at the three largest communities, viz., Brawley, El Centro and Calexico, deliveries frequently were not completed until midafternoon. At El Centro, but one truck was used to provide the service; the same situation also existed at Brawley.

Between Los Angeles and the Valley, Railway Express Agency, Incorporated maintains a daily overnight service, furnished through the passenger train facilities of Southern Pacific Company; and beyond Niland, through the passenger stage facilities of Pacific Greyhound Lines. Collection and delivery service is offered at Los Angeles and at Imperial Valley rail points. In connection with the outbound movement of fruits and vegetables, the pickup service at Valley points is performed by Southern California Freight Lines, under an arrangement with the express company.

Protestants called fifteen shipper witnesses at Los Angeles, and seven at El Centro. At Los Angeles, the shippers testified, they had employed protestants, or some of them, to transport their freight from the Los Angeles Drayage area to Imperial Valley points. The service, they stated, had been satisfactory. No complaints had been received from consignees, many asserted. From their standpoint, so they testified, no need exists for an additional highway common carrier operation. The Imperial Valley shippers testified substantially to the same effect.

Between Los Angeles and the Imperial Valley, so the record discloses, traffic moves in substantial volume. Merchandise and farm supplies are received from Los Angeles, and from the Valley there is a heavy seasonal movement of agricultural products. In the past applicant, operating as a highway contract carrier, has participated in this traffic. A need exists, it was shown, that applicant be permitted to serve the territory as a highway common carrier. Such a service would be more adequate and dependable than that which he now provides as a private carrier. The protesting common carriers, it appears, have not served the

public adequately, inbound traffic having been delivered too late to meet the shippers' requirements. At times deliveries were not completed at the principal Valley cities until midafternoon or later. As to outbound traffic, the evidence discloses that during the peak season the facilities of the carriers, both private and common, are insufficient to meet the public needs, thus occasioning substantial delays in the movement of traffic. Under the circumstances, the application will be granted, and a certificate will be issued accordingly.

Dale C. Ramsey is hereby 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; and the Commission now finding that public convenience and necessity so require,

IT IS ORDERED as follows:

- (1) That a certificate of public convenience and

necessity be and it hereby is granted to Dale C. Ramsey, an individual doing business as Valley Truck Co., authorizing the establishment and operation of a service as a highway common carrier, as defined by Section 2-3/4, Public Utilities Act, for the transportation of certain commodities between designated points, as follows:

1. For the transportation of farm supplies, as defined in the preceding opinion, from the Los Angeles Drayage area, as described in such opinion, to Alamo, Brawley, Calexico, Calipatria, El Centro, Heber, Holtville, Imperial, Kane Springs, Mt. Signal, Niland, Sandia, Seeley and Westmoreland and to all points and places in Imperial County within a fifteen mile radius of each of the points named.

2. For the transportation of general commodities, other than farm supplies (excepting high explosives, automobiles, livestock, commodities in bulk, commodities requiring special equipment, unpacked and uncrated furniture, used household goods, newspapers and newspaper supplements) from said Los Angeles Drayage area to the Imperial Valley points specified in subparagraph 1 hereof, and to all points and places in Imperial County within lateral zones extending five miles on each side of the authorized routes traversed, south of Truckhaven.

3. For the transportation of newspapers and newspaper supplements from Los Angeles to Bloomington, Indio, Coachella, Thermal and Calexico, including intermediate points between Bloomington and Calexico via authorized routes.

4. For the transportation of farm and dairy products from Alamo, Brawley, Calexico, Calipatria, El Centro, Heber, Holtville,

Imperial, Kane Springs, Mt. Signal, Niland, Sandia, Seeley, and Westmoreland and all farms, points and places in Imperial Valley within a radius of fifteen miles of any of said points to Los Angeles territory, as described in the preceding opinion.

5. For the transportation of dry ice from the points specified in subparagraph 4 hereof to Los Angeles.

(2) That in providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

1. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days from the effective date hereof.
2. Applicant 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 schedules within sixty (60) days from the effective date hereof and on not less than five (5) days' notice to the Commission and the public.
3. Subject to the authority of the Commission to change or modify them by further order, applicant shall conduct operations, pursuant to the certificate herein granted, over and along the following routes:
 - (1) Over any and all available streets and public highways between points (a) in the Los Angeles Drayage area, and (b) in Los Angeles Territory, respectively:
 - (2) From Los Angeles to Calexico, via Truckhaven, Kane Springs, Westmoreland, Brawley, Imperial, El Centro and Heber, over U. S. Highway No. 99.
 - (3) From Coachella southerly to Oasis, via Thermal, over California State Highway No. 195.
 - (4) From Brawley, northerly to Niland via Calipatria, over the Brawley-Niland county road; also from Westmoreland easterly via the county road known as the Rockwood cut-off, to its intersection with the Brawley-Niland county road.

- (5) From Imperial easterly via California State Highway No. 111 to its intersection with county road, about five miles south of Sandia; thence northerly over such road to Sandia.
- (6) From El Centro easterly via U.S. Highway No. 80 to Holtville; also via California State Highway No. 111 easterly from its intersection with the Sandia road, described in route (5) to its intersection with county road approximately five miles north of Holtville; thence southerly via said county road to Holtville.
- (7) From Holtville southeasterly via county road to Alamo, thence southerly via county road, approximately six miles, to its intersection with California State Highway No. 98, thence westerly via California State Highway No. 98 to Calexico.
- (8) From El Centro westerly via U.S. Highway No. 80 to Seeley; from Seeley southerly and easterly via California State Highway No. 98 to Mt. Signal; from Mt. Signal easterly via California State Highway No. 98 to Calexico.
- (9) To farms, points and places within the zones described in subparagraphs 1, 2, 4 and 5, respectively, of paragraph (1) of the order herein, via any and all available public highways.

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

Dated at San Francisco California, this 27th day of February, 1945.

A. Harold Anderson
James J. Carr
Richard L. Lach

Frank J. Rouse
 COMMISSIONERS