

Decision No. 38959

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Investigation by the Commission on its own motion into the lawfulness of the operations of the California Motor Transport Company, Ltd., and California Motor Express, Ltd., with respect to the transportation of property between San Francisco Bay points and Fresno and other San Joaquin Valley points via Pacheco Pass.

ORIGINAL

Case No. 4811

DOUGLAS BROOKMAN, for California Motor Express, Ltd., and California Motor Transport, Ltd., respondents.  
BEROL & HANDLER, by MARVIN HANDLER, for Valley Motor Lines, Inc., and Valley Express Company.  
FRANK LOUGHRAN, for Pacific Southwest Railroad Association.  
PHIL JACOBSON, in propria persona.  
JOHN M. GREGORY, of the Commission's staff.  
HUGH GORDON and WYMAN C. KNAPP, by WYMAN C. KNAPP, for Pacific Freight Lines and Pacific Freight Lines Express.

CRAEMER, Commissioner:

O. P. I. N I O N.

This proceeding was instituted by the Commission to determine whether the operations of California Motor Transport Co., Ltd., and California Motor Express, Ltd., between San Francisco Bay points and San Joaquin Valley points via Pacheco Pass are lawful.

The matter was heard in San Francisco February 1, 1946, at which time evidence was received and oral argument presented. The case was submitted on that date subject to the filing of briefs which now have been received and considered in conjunction with the evidence of record.

To simplify production and presentation of evidence a stipulation was entered into, between the attorney from the Commission's staff and the counsel for respondents, which described

the operation in question. The facts thus presented show that California Motor Transport Co., Ltd., hereinafter called Transport Co., is a highway common carrier, as defined by Section 2-3/4 of the Public Utilities Act, and that California Motor Express, Ltd., hereinafter referred to as Express Co., is an express corporation, as defined by Section 2(k) of the Public Utilities Act.

It is admitted by respondents that Transport Co. is, and for some months past has been, transporting property between San Francisco and Fresno via Pacheco Pass as underlying carrier for the Express Co. While the stipulation only referred specifically to the points of San Francisco and Fresno to raise the issue as to the lawfulness of respondents' operations via Pacheco Pass, it was understood and agreed that if it is determined that Transport Co. has no right to operate via Pacheco Pass as underlying carrier for the Express Co. between San Francisco and Fresno, such decision likewise will apply to all operations of Transport Co. via Pacheco Pass serving any other point in the San Joaquin Valley. The order of investigation included East Bay points as well as San Francisco but respondents' counsel stated Transport Co. had no operative rights authorizing service between East Bay points and San Joaquin Valley points, and did not render such service. Express Co. has authority to handle East Bay traffic but uses another underlying carrier in that territory. No evidence of unlawful operation by respondents in East Bay territory was presented at the hearing, hence the declaration of respondents' counsel was accepted as correctly stating the facts relative thereto.

The only operative authority claimed by respondents is that granted by decisions of this Commission or which results from the provisions of the 1941 amendment to Section 50-3/4 of the Public Utilities Act (Ch. 612, Stats. 1941).

Transport Co. has a certificate authorizing it to operate between San Francisco and Los Angeles via the coast route to carry traffic of the Express Co. Such certificate was originally granted to Ernest Sundberg by Decision No. 22274, in Application No. 16027, and was acquired by respondent Transport Co. by Decision No. 22509, in Application No. 16544. This right is subject to the condition "that no service be given between intermediate points between San Francisco and Los Angeles, nor between the terminals and intermediate points". Decision No. 22509 was subsequently enlarged by Decision No. 27063, in Application No. 19436, which authorized Transport Co. to use the Pacheco Pass and the valley route (U.S. Highway 99) as an alternate and additional route between San Francisco and Los Angeles subject to the existing restriction prohibiting intermediate point service.

Transport Co. also acquired a certificate to operate, among other points, between San Francisco and Paso Robles via the coast route. This certificate was granted originally to Valley & Coast Transit Co. by Decision No. 23643, in Application No. 16704 (36 C.R.C. 213) and was acquired by Transport Co. by Decision No. 37472, in Application No. 24371 (45 C.R.C. 502). This operative right is used, in part, to transport traffic of the Express Co. The latter decision also authorized Transport Co. to acquire other rights held by Valley & Coast Transit Co. which were created by Decision No. 19651, in Application No. 12258. Operative authority thus was obtained to render an on-call service for truck loads of not less than 5,000 pounds each between coast line points and San Joaquin Valley points which included, among other points, service between Paso Robles and Fresno.

It is respondents' contention that, as owner of the above enumerated operative rights, Transport Co. may use any of the routes

specified therein to transport traffic of the Express Co. between San Francisco and Fresno, including that via Pacheco Pass. Respondents also claim the right to use such routes by virtue of said certificates and the provisions of the 1941 amendment to Section 50-3/4 of the Public Utilities Act which reads as follows:

"Any one highway common carrier may establish through routes and joint rates, charges, and classifications between any and all points served by such highway common carrier under any and all certificates or operative rights issued to or possessed by such highway common carrier."

It is the position of the Commission's legal representative and that of the attorneys for the intervenors that respondents have no operative rights authorizing them to serve between San Francisco and Fresno via Pacheco Pass, and that Section 50-3/4 of the Public Utilities Act does not supply such authority. It is conceded Transport Co. may serve between San Francisco and Fresno and other San Joaquin Valley points via Paso Robles, as underlying carrier for the Express Co. This operative authority was acquired from Valley & Coast Transit Co. by the transfer previously referred to. However, it did not include the right to use the Pacheco Pass route. It is not questioned that Transport Co. possessed the right, before such transfer, to carry traffic of the Express Co. between San Francisco and Los Angeles over the valley route via Pacheco Pass, as well as the coast route, subject to the specific prohibition that no service be given between intermediate points between San Francisco and Los Angeles nor between the terminals and intermediate points.

It is argued by respondents that having the right to use Pacheco Pass in rendering service between San Francisco and Los Angeles, although such right did not authorize intermediate point service, nevertheless, when they subsequently acquired the right, by transfer, to serve Fresno and other San Joaquin Valley points, the

limitation on the original authority disappeared. It is contended the result is to permit service from San Francisco to Fresno or any other San Joaquin Valley point via Pacheco Pass. Respondents aver that even if the acquisition of the rights of Valley & Coast Transit Co. did not abrogate the restriction in respondents' original right prohibiting service to intermediate points, the 1941 amendment of Section 50-3/4 of the Public Utilities Act had that effect.

Respondents' contention, that the restriction against intermediate service in its original right was removed when it was authorized to acquire the Valley & Coast Transit Co. operative rights, will be considered first. Transport Co. had certificates authorizing it to render through service as underlying carrier for the Express Co. between San Francisco and Los Angeles over two routes, the valley, via Pacheco Pass, and the coast. Such certificates specifically prohibited intermediate point service. Respondents sought to acquire through transfer the rights of Valley & Coast Transit Co. which authorized service, among other points, between San Francisco and San Joaquin Valley points via Paso Robles. The Commission knew of the limitations on respondents' existing rights and the exact nature of the operative rights it sought to acquire. It does not appear from the record in the transfer proceeding that the use of the Pacheco Pass route was in issue. However, it must be presumed that had the Commission intended, when approving such transfer, to permit respondents to use their original right via Pacheco Pass to serve intermediate points in the San Joaquin Valley, such as Fresno, it would have removed the restriction against intermediate point service or authorized respondents to consolidate and unify the Valley & Coast Transit Co. operations with their existing rights. Having done neither, it is

evident that the limitation on the original rights remains in effect and precludes lawful service between San Francisco and Fresno or other San Joaquin Valley points via Pacheco Pass.

The other contention of respondents is that their operative rights, together with the provisions of the 1941 amendment to Section 50-3/4 of the Public Utilities Act, authorized them to use Pacheco Pass in rendering service between San Francisco and Fresno, as well as other San Joaquin Valley points. This contention is similar to that raised in the case of In re Tunzi, 45 C.R.C. 143, and is disposed of by the conclusions reached in that decision. There as here the proceeding dealt with restrictions contained in certificates held by the transferees. There the transferee, relying on the 1941 amendment to Section 50-3/4 of the Public Utilities Act, undertook to consolidate the rights it acquired with its preexisting rights without regard to restrictions imposed on the latter. The Commission held that to construe the amendment as operating to dissolve restrictions in an operative right upon its transfer, which the Commission was empowered under Section 50-3/4 to impose when granting the certificate, would deprive the Commission of much of the authority it possesses now to insure the continuance of adequate public service. The Commission believes so unreasonable a construction should be avoided. The Tunzi case was cited with approval and the principles announced therein were followed in the proceeding authorizing respondents to acquire the Valley & Coast Transit Co. rights here involved. See In re Valley & Coast Transit Co., 45 C.R.C., 502. If no specific limitation had been imposed upon respondents' operative rights, it is believed the 1941 amendment to Section 50-3/4 of the Public Utilities Act would have had the effect for which respondents' counsel contends. However, where, as here, a direct prohibition was imposed, the statute should not be construed

as abrogating such restriction or rendering its imposition, to protect existing carriers, a nullity.

After full consideration of the evidence and the argument presented, both orally and in the briefs, the Commission concludes that the certificates held by respondents do not authorize them to render service between San Francisco and San Joaquin Valley points, including Fresno, via Pacheco Pass. It is concluded also that the 1941 amendment to Section 50-3/4 of the Public Utilities Act considered in connection with respondents' certificates do not authorize them to serve via Pacheco Pass. Because of such conclusions, respondents must be ordered to cease and desist rendering service between San Francisco and Fresno and other San Joaquin Valley points via Pacheco Pass until they first show that public convenience and necessity require the authorization of such service.

#### O R D E R

A public hearing having been held, the case submitted, and the evidence and argument fully considered, and good cause appearing,

IT IS ORDERED that California Motor Transport Co., Ltd., cease and desist, and hereafter refrain, from transporting property as a highway common carrier as underlying carrier for California Motor Express, Ltd.; or otherwise, via Pacheco Pass between San Francisco and Fresno and other San Joaquin Valley points, unless it first obtains from the Commission a certificate of public convenience and necessity authorizing such operation:

IT IS FURTHER ORDERED that California Motor Express, Ltd., cease and desist, and hereafter refrain, from using California Motor Transport Co., Ltd., as an underlying carrier for the transportation of express traffic via Pacheco Pass between San Francisco and Fresno and other San Joaquin Valley points, unless California Motor Transport Co., Ltd., first obtains from the Commission a certificate of public convenience and necessity authorizing California Motor Transport Co., Ltd., to operate as a highway common carrier between San Francisco and San Joaquin Valley points via Pacheco Pass.

The effective date of this order shall be 30 days from the date hereof:

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14<sup>th</sup> day of May, 1946.

David Anderson  
James F. Cassen  
James P. Kelle  
 COMMISSIONERS