Cs. 4575 - GN

Decision No. 39090

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

PACIFIC SOUTHWEST RAILROAD ASSOCIATION,

Complainant,

vs.

CALIFORNIA MOTOR EXPRESS, LTD., WESTERN TRUCK LINES, LTD., WEST BERKELEY EXPRESS & DRAYING CO., SAUSALITO-MILL VALLEY & SAN FRANCISCO EXPRESS, PETALUMA & SANTA ROSA EXPRESS COMPANY, JOHNSON TRUCK LINES, HOLMES EXPRESS, OREGON-NEVADA-CALIFORNIA FAST FREIGHT, INC., INTERCITY TRANSPORT LINES, HIGHWAY TRANSPORT, INC., LEWIS W. CHANDLER and EDWIN R. CHANDLER, doing business as SAN DIEGO FORWARDING COMPANY, T. I. BLUIE, doing business as BELLFLOWER TRANSFER COMPANY, INTERURBAN EXPRESS CORPORATION, KELLOGG EXPRESS & DRAYING COMPANY, PACIFIC MOTOR EXPRESS, SECURITY VAN & STORAGE CO., INC., SOUTHERN CALIFORNIA FREIGHT FORWARDERS, SOUTHERN CALIFORNIA FREIGHT LINES, VALLEY EXPRESS COMPANY, and CALIFORNIA MOTOR TRANSPORT COMPANY, LTD.

Defendants.

ORIGINAL

Case No. 4575

WM. MEINHOLD, FRED N. BIGELOW and EDWARD STERN, for complainant.
BEROL & HANDLER, by EDWARD M. BEROL, for Oregon-Nevada-California Fast Freight and Highway Transport, Inc., defendants.
DOUGLAS BROOKMAN, for California Motor Express Ltd., California Motor Transport Company, and Marin-Sonoma Fast Freight, defendants.
REGINALD L. VAUGHAN, for West Berkeley Express & Draying Company, Holmes Express, Interurban Express Corporation, and Kellogg Express & Draying Company, defendants.
HAROLD M. HAYS, for Intercity Transport Lines, defendant.
AARON H. GLICKMAN, for Johnson Truck Lines, defendant.

O P I N I O N

In this proceeding complainant, Pacific Southwest Railroad Association, has challenged as unlawful the establishment, without the Commission's prior approval, of joint rates between the defendants above named, operating as express corporations and as

highway common carriers, respectively. An order is sought requiring defendants to desist and refrain from maintaining and participating in such rates. Following a public hearing held before Examiner Austin at San Francisco, the matter was submitted on briefs, since filed.

Complainant, Pacific Southwest Railroad Association, is a voluntary association composed of railroads, both trunk and short line, and express corporations operating over railway lines as underlying carriers. The defendants severally are engaged in business as express corporations operating over the lines of underlying highway common carriers,(1) as freight forwarders,(2) and as highway common carriers.(3) The complaint was dismissed as to defendant Valley Express Company, which was not a party to the tariff involved. Some of the defendants neither answered nor appeared,

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(1) Defendants California Motor Express, Ltd., Pacific Motor Express and Intercity Transport Lines operate as express corporations, as defined by Section 2(k), Public Utilities Act, over the lines of underlying highway common carriers.

(2) Defendants Southern California Freight Forwarders, and Lewis W. Chandler and Edwin R. Chandler, doing business as San Diego Forwarding Company, allegedly operate as freight forwarders, as defined by Section 2(ka), Public Utilities Act.

(3) Defendants Western Truck Lines, Ltd., West Berkeley Express & Draying Co., Marin-Sonoma Fast Freight (substituted for defendants Sausalito-Mill Valley & San Francisco Express and Petaluma and Santa Rosa Express Company), Johnson Truck Lines, Holmes Express, Oregon-Nevada-California Fast Freight, Inc., Highway Transport, Inc., T. I. Bluie, doing business as Bellflower Transfer Company, Interurban Express Corporation, Kellogg Express & Draying Company, Security Van & Storage Co., Southern California Freight Lines and California Motor Transport Company, Ltd., are highway common carriers, respectively, as defined by Section 2-3/4, Public Utilities Act.

although all were served with process.[4] Those answering denied the material allegations of the complaint.

Defendants other than California Motor Express, Ltd., so the complaint alleges, have concurred in and are named as participating carriers in a tariff[5] issued by California Motor Express, Ltd., under which they are named as connecting carriers with the latter for the transportation of shipments to and from points beyond San Francisco and Los Angeles, or intermediate thereto, which are transported by California Motor Express, Ltd., between San Francisco and Los Angeles. All of the defendants, assertedly, are engaged in the transportstion of property, in accordance with this tariff, notwithstanding the absence of a certificate of public convenience and necessity, issued by this Commission, authorizing the establishment of joint rates by the defendants, or the maintenance of through service by California Motor Express, Ltd., and any or all of the remaining defendants.

Stated generally, the question before us involves the right of an express corporation, as defined by Section 2(k), Public

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(4) Answers were filed by all of the defendants named in the complaint excepting Sausalito-Mill Valley & San Francisco Express and Petaluma & Santa Rosa Express Company (for which Marin-Sonoma Fast Freight was substituted), Pacific Motor Express, Southern California Freight Forwarders, Southern California Freight Lines, and California Motor Transport Company, Ltd. At the hearing all of the defendants entered appearances excepting Western Truck Lines, Ltd.; Lewis W. Chandler and Edwin R. Chandler, doing business as San Diego Forwarding Company; T. I. Bluie, doing business as Bellflower Transfer Company; Pacific Motor Express; Security Van & Storage Co., Inc.; Southern California Freight Forwarders; and Southern California Freight Lines.

(5) The Tariff is identified as Local and Joint Express Tariff No. 13, C.R.C. No. 19, issued by James C. Coughlin, President California Motor Express, Ltd., August 10, 1940, effective September 10, 1940, and filed by the express company with the Commission.

Utilities Act, to establish joint rates with a highway common carrier, as defined by Section 2-3/4 of that Act, or with another express corporation, where both origin and destination points are not common to each of those carriers, without having obtained a certificate of public convenience and necessity or other prior approval from the Commission.

Specifically, the following issues are presented for consideration, viz.:

(1) Does the establishment of joint rates by the defendants, and the performance of transportation thereunder, result as to defendant highway common carriers in the unauthorized combination, unification or consolidation of their operative rights, contrary to the provisions of Section 50-3/4(c) of the Public Utilities Act?

(2) Does the concurrence by defendant highway common carriers in the tariff described result in the establishment of through routes and joint rates without the Commission's express approval, in violation of Section 50-3/4(c), Public Utilities Act?

(3) Does the transportation of property by defendants, pursuant to said tariff, under the joint rates therein provided, result in an extension of operations by defendant, California Motor Express, Ltd., contrary to the terms of Section 50(f), Public Utilities Act?

At the hearing the essential facts were established. The tariff in question was made a part of the record by reference. The joint rates prescribed therein, so the tariff discloses on its face, apply throughout a wide territory, extending generally from San Francisco north to Crescent City and Redding via the coast and the valley routes, respectively; from San Francisco and Oakland to points in Contra Costa, Marin, Solano, Napa and Sonoma Counties;

from San Francisco to coast route points, including Salinas, Santa Cruz, and Monterey; from San Francisco to Los Angeles; and from Los Angeles to points in Southern California, extending to San Diego, San Bernardino, Hemet, Calexico, Blythe and Bishop. The tariff provides that shipments originating at, or destined to, the points named therein, other than Los Angeles, San Francisco, Oakland, Alameda, Berkeley and Emeryville, will be interchanged between California Motor Express, Ltd., and connecting carriers at San Francisco, Oakland or Los Angeles.

The movement of traffic under the joint rates prescribed by the tariff was neither conceded nor established. However, the parties stipulated that the tariff itself must be viewed as a holding out by the participating carriers to provide service at the rates prescribed therein; that all shipments offered under the tariff would be accepted and transported by the participating carriers; that traffic accepted under the tariff by any such carrier would move to points beyond the territorial limits of its operative right, as defined by the certificate of public convenience and necessity which it may hold; and that such traffic would be interchanged at the points specified in the tariff.

To the extent that they may engage in the transportation of freight under the tariff mentioned, defendant express corporations, it was shown, operate exclusively over the lines of highway common carriers, as underlying carriers. Between San Francisco and Oakland, and Los Angeles, defendant California Motor Transport Company, Ltd., serves defendant California Motor Express, Ltd., as its underlying carrier.

We turn now to a consideration of the questions presented for determination. For convenience, the first and the third

issues mentioned above will be discussed, before passing to the second.

1. Consolidation of Highway Common Carrier Operative Rights

At the outset we shall summarize the contentions advanced by the parties, respectively.

It is complainant's position, essentially, that since the underlying carriers serving the defendant express corporations are themselves highway common carriers, a forbidden linking together of their operative rights occurs whenever there is a movement of traffic, under the joint rates mentioned, over and beyond the several lines of the express carriers or the highway common carriers which are parties to the tariff. The distinction between an express corporation and a highway common carrier, as defined in the Public Utilities Act, is conceded. It is not claimed that the certificating provisions of that Act, applicable to the latter, extend also to the former type of carrier.

Complainant asserts that an underlying common carrier cannot perform on behalf of its overlying express carrier any greater service than it is itself authorized to conduct. Every highway common carrier acting as an underlying carrier for an express corporation, it is claimed, is bound by the restrictions of Section 50-3/4(c), Public Utilities Act, equally with one which deals directly with the public in conducting its transportation service, the statute making no distinction between the carriers in this respect. The amendment of 1941 to this section (Stats. 1941, Ch. 612), sanctioning the establishment of through routes and joint rates between all points served by any one highway common carrier under all certificates or operative rights which it may

possess, did not, it is claimed, impair the rule which formerly prevailed, to the extent that it forbade the unauthorized consolidation of operative rights owned by separate carriers. Where traffic is transported under joint rates there is a consolidation, assertedly, of highway common carrier operative rights within the meaning of this section.

Defendants, on the other hand, contend that an express corporation performs a type of common carrier transportation service separate and distinct from that provided by a highway common carrier; that, unless prohibited by statute, both express corporations and highway common carriers rest under the duty of establishing and maintaining joint rates between themselves; and that no statutory provision exists forbidding the establishment of joint rates between connecting express corporations and highway common carriers.

The resolution of these conflicting claims requires a consideration of the rule of decision, long observed by the Commission, governing the consolidation or unification of the operative rights of connecting highway common carriers; the statutory provisions wherein this rule has since become embedded; the status of an express corporation and its relation to the underlying highway common carrier which serves it; the duty, if any, resting upon common carriers of the types involved herein to establish joint rates; and the scope of the recognized exceptions to that rule. These will be discussed in proper order.

Very early in its administration of the statutes regulating the operation of common carriers over the public highways, the Commission promulgated the rules governing the unification or consolidation of distinct operative rights, whether held in separate or in common ownership. With respect to "transportation companies",

as defined by the Auto Truck Transportation Act (Stats. 1917, Ch. 213, as amended), such a consolidation would be effected, it was held, by the establishment of through operation, or by the publication of joint or proportional rates between points situated on distinct, connecting operative rights. Such consolidation, without the Commission's prior approval, was forbidden.(6) This restrictive policy was designed to prevent the enlargement of such a carrier's operations beyond those permitted by his certificate or "grandfather" operative right;(7) its adoption was necessitated by the facility with which highway carriers, as distinguished from other types of common carriers, could expand the scope of their operations.

Originally, the rule forbidding unauthorized consolidation extended to all distinct and separate operative rights, whether held by the same or by different owners. When the Auto Truck Transportation Act was repealed and carriers of this type were first subjected to regulation under the Public Utilities Act, the

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(6) Through operation between points on distinct, connecting operative rights, commonly owned by a transportation company, was declared unlawful, in the absence of a certificate of public convenience and necessity authorizing such through service. (Re Western Motor Transport Co. 20 C.R.C. 1038) Through rates between distinct, connecting operative rights, commonly owned by a single carrier, may be established only with the Commission's approval. (Re Oakland-San Jose Transp. Company, 24 C.R.C. 660; Re Highway Transport Co., 26 C.R.C. 942) Joint rates between points on connecting operative rights held by separate highway common carriers may not be established without first securing a certificate of public convenience and necessity; such a course, it was held, would result in the consolidation of the operations. (Re Anderson, 42 C.R.C. 15) Proportional rates may not be established between connecting highway common carriers, in the absence of the Commission's approval, it appearing that such rates were designed to circumvent the rule against unauthorized consolidation. (Motor Service Express v. Baker 31 C.R.C. 231; see also Re Harm and Frasher - Valley Motor Lines, 34 C.R.C. 821)

(7) Motor Service Express v. Baker, 31 C.R.C. 231; Re Sacramento Motor Transport, 39 C.R.C. 115.

rule, as announced by the Commission's decisions, was codified. (Section 50-3/4, Public Utilities Act, added by Stats. 1935, Ch. 664) Subsequently, the statute was amended so as to exclude operative rights held by a single owner from the application of this rule, but operative rights separately owned remained subject to its provisions. (Section 50-3/4(c), as amended by Stats. 1941, Ch. 612)(8)

The prohibition against the unification or consolidation of separate operative rights is limited, in its application, to highway common carriers; no similar restriction affecting other types of carriers is found in the Public Utilities Act.(9) Moreover, the statutory restrictions affecting highway common carriers never previously have been construed as applying to other types of common carriers.

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(8) The prohibition against the consolidation of separately owned operative rights, or the establishment of joint rates between them, in the absence of the Commission's consent, appearing in Section 50-3/4(c) (as amended by Stats. 1941, Ch. 612, and Stats. 1945, Ch. 1175) reads as follows:

"Without the express approval of the Commission, no certificate of public convenience and necessity issued to one highway common carrier under the provisions of this section, or heretofore issued by the Commission to one highway common carrier for the transportation of property by auto truck or self-propelled vehicle, nor any operative right of one highway common carrier founded upon operations actually conducted in good faith on July 26, 1917, shall be combined, united or consolidated with another such certificate or operative right issued to or possessed by another highway common carrier so as to permit through service between any point or points served, by one highway common carrier, on the one hand, and any point or points served, by another highway common carrier, on the other hand; nor, without the express approval of the commission, shall any through route or joint, through, combination, or proportional rate be established by one highway common carrier between any point or points which it serves, on the one hand, and any point or points served by another highway common carrier, on the other hand. 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."

(9) Re E. V. Rideout, 41 C.R.C. 81.

Unlike other common carriers, an "express corporation" does not itself actually transport the freight which it undertakes to carry.[10] This service is performed for it by another carrier, usually referred to as the "underlying carrier". As defined by Section 2(k), Public Utilities Act, an express corporation is one who (a) engages in or transacts the business (b) of transporting property (c) for compensation (d) on the line of any common carrier, stage or auto stage line. Implicit in this definition is the requirement that an express corporation must undertake to serve the public generally, since it is itself a common carrier.[11] The elements of expedition and custodial service, sometimes viewed as attributes of an express corporation,[12] are not essential ingredients. Under the statutory definition, the circumstance that an express corporation operates "on the line" of another common carrier is its distinguishing characteristic.

The relationship between an express corporation and its underlying carrier is a factor to be considered. Through the instrumentality of another common carrier, the former undertakes to provide a complete transportation service. Their operations are mutually complementary, the express corporation dealing with the shipper directly while the underlying carrier actually carries the traffic. With respect to the underlying carrier, the express corporation occupies the role of a carrier, not a shipper.[13] Only a common carrier may provide the underlying service; an express

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(10) Frequently an express corporation provides, through its own facilities, a pickup and delivery service. The line-haul service, however, is performed by the underlying carrier.

(11) Public Utilities Act, Sections 2(l) and 2(dd); Re J.N. Kagerise 42 C.R.C. 675, 685, 686.

(12) Valley Express Co. v. Carley & Hamilton, Inc., 41 C.R.C. 327, 336.

(13) Re E. E. Frost & Co., 31 C.R.C. 668, 670; Valley Express Co. v. Carley & Hamilton, 41 C.R.C. 327, 336.

corporation cannot lawfully operate over the line of a private carrier.[14] The arrangements between them concerning the method of operations and the rates payable to the underlying carrier ordinarily are evidenced by a written contract, which must be filed with the Commission.[15]

In supplying an underlying service for an express corporation, a highway common carrier is bound by the limitations inherent in its operating authority.[16] However, the former, unless otherwise prevented from so doing, is at liberty to provide the service through another underlying carrier not subject to these restrictions. The express corporation itself may be forbidden by its own certificate from so doing; or it may have lost the right, through abandonment, to conduct the service.

Section 22, Public Utilities Act, in terms imposes upon "every common carrier" the duty of establishing through routes and joint rates. By that section, the carrier is required to facilitate the prompt and efficient interchange of traffic between its lines and those of another common carrier; to accomplish such interchange promptly and without discrimination; and to publish

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(14) Southern Pacific Company v. Stanbrough, 37 C.R.C. 767; Kagerise v. Coast Truck Line, 41 C.R.C. 34, 39; Re Pacific Freight Lines & Valley Motor Lines, Inc., 43 C.R.C. 559, 563.

(15) Re Pacific States Express, 22 C.R.C. 925.

(16) Re Valley & Coast Transit Co., 45 C.R.C. 502, 509; Re Coast Line Express, 45 C.R.C. 519, 528; Re Pacific States Express, 22 C.R.C. 925, 930.

joint rates applicable to the transportation of this traffic.[17] By Section 33, the Commission is authorized to require the establishment of through routes and joint rates between common carriers. Clearly, this duty rests upon every type or class of common carrier, unless specifically exempted by law from the performance of this obligation.

Under the provisions of Section 50-3/4(c), highway common carriers may not establish joint rates between points on their respective lines without first obtaining the Commission's consent.[18]

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(17) Section 22(a), Public Utilities Act, provides as follows:

> "Every common carrier shall afford all reasonable, proper and equal facilities for the prompt and efficient interchange and transfer of passengers, tonnage and cars, loaded or empty, between the lines owned, operated, controlled or leased by it and the lines of every other common carrier, and shall make such interchange and transfer promptly without discrimination between shippers, passengers or carriers either as to compensation charged, service rendered or facilities afforded. Every railroad corporation shall receive from every other railroad corporation, at any point of connection, freight cars of proper standard and in proper condition, and shall haul the same either to destination, if the destination be upon a line owned, operated or controlled by such railroad corporation, or to point of transfer according to route billed, if the destination be upon the line of some other railroad corporation.
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> "Nothing in this section contained shall be construed as in anywise limiting or modifying the duty of a common carrier to establish joint rates, fares and charges for the transportation of passengers and property over the lines owned, operated, controlled or leased by it and the lines of other common carriers, nor as in any manner limiting or modifying the power of the Commission to require the establishment of such joint rates, fares and charges."

(18) Section 50-3/4(c) provides, in part:

> "...nor, without the express approval of the commission, shall any through route or joint, through, combination, or proportional rate be established by one highway common carrier between any point or points which it serves, on the one hand, and any point or points served by another highway common carrier, on the other hand."

As stated, this merely codified the rule of decision formerly observed. This prohibition extends only to the publication of joint rates by separate highway common carriers; between points on distinct operative rights held by a single carrier, "joint", or more properly, through rates may now be established without prior approval.(19) Undeniably, highway common carriers, to the extent specified by Section 50-3/4(c), have been excused from the performance of the obligations imposed by Section 22.

Prior to the enactment of Section 50-3/4(c), the Commission held in Re Sacramento Motor Transport, (39 C.R.C. 115), that a transportation company was at liberty to enter into joint rates with a vessel line, notwithstanding the restrictive policy governing the establishment of such rates between transportation companies themselves. There, the Commission had suspended certain joint rates established by a transportation company and a common carrier vessel line which, unlike the former, was subject to regulation under the Public Utilities Act. Section 22 of that Act accorded common carriers subject to its provisions the right to enter into joint rate arrangements with other common carriers. The Auto Truck Transportation Act, however, conferred no similar right upon transportation companies, the latter possessing no authority to enter into joint rate agreements between themselves without first obtaining the Commission's sanction. We there held, in substance, that the restrictive policy pertaining to transportation companies would not be extended to carriers of another class, where no enlargement of the physical service of the participating carriers

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(19) Authority to publish through rates between all points served, whether situated upon the same or upon distinct operative rights, was conferred upon individual highway common carriers by the 1941 amendment to Section 50-3/4(c). (Stats. 1941, Ch. 612)

would result from the establishment of joint rates. Although the opinion dealt with matters of policy, the decision, quite obviously, hinged upon the legal right of a common carrier subject to the Public Utilities Act to enter into joint rates with a common carrier not subject to regulation thereunder. Clearly, the existence of such a right was affirmed.(20)

Here, we are not called upon to decide whether an express corporation may establish joint rates with another type of common carrier, not falling within the purview of the Public Utilities Act. Highway common carriers, equally with express corporations, are now subject to regulation under that Act. Unless restrained from so doing by specific statutory provisions, these carriers are free to enter into joint rate arrangements, in which both may participate.

Complainant contends that there can be no distinction, in fact, between a highway common carrier and an express corporation operating over the line of a highway common carrier. In each case, assertedly, the physical operations are identical, and the rate divisions may be substantially similar. We cannot, however, ignore the legal distinction between an express corporation and its underlying carrier. The office of the latter is limited to providing the actual transportation service. True, in so doing, it acts as a common carrier but it does not serve the public directly. The express corporation, on the other hand, exacts from the shippers its own tariff charges, and it controls the routing, the billing, and the pickup and delivery of the traffic. Within their respective spheres each carrier performs a distinct function differing substantially from that performed by the other.

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(20) See also Re E. V. Rideout, 41 C.R.C. 81, 85, 86.

With respect to its capacity to serve as an underlying carrier for an express corporation which, in turn, undertakes to establish joint rates, complainant would differentiate a highway common carrier from other types of common carriers. It concedes, impliedly, that an express corporation operating over a rail or a water line might enter into joint rates with another common carrier, subject to the Public Utilities Act, (other than a highway common carrier) without securing the Commission's approval. We are unable, however, to perceive any distinction, in this regard, between these types of carriers. The degree of control exercised by the overlying express corporation does not vary according to the changes which may occur in the class of carrier performing the underlying service. A railway, for example, would participate to no greater degree than a truck line in the service performed directly for the public.

The statutory limitations affecting highway common carriers, forbidding the consolidation of their lines by means of through operation or of joint rates may not, we are convinced, be imputed to an express corporation which employs such a carrier to provide the underlying service. In the absence of a showing that the express corporation is a mere sham, set up as a device to evade regulation, we cannot ignore its status as an independent carrier wholly distinct from the underlying carrier. That such was the case here, is not even intimated. As an overlying carrier, it lawfully may enter into joint rates with other common carriers, including highway common carriers.

The specific prohibitions of Section 50-3/4(c), it is clear, do not extend beyond the establishment of joint rates between highway common carriers themselves. Such carriers are free to participate in joint rates with other types of carriers. The

Commission's approval, we conclude, is not required as a prerequisite to the establishment of such rates.

This brings us to complainant's third contention, mentioned above.

II. Expansion of Express Corporation Operative Rights

Briefly, complainant contends that defendants' participation in transportation under the published joint rates results in an expansion of the operations conducted by California Motor Express, Ltd., as an express corporation, beyond the field defined by its operative right. Assertedly, highway common carriers may not, through the subterfuge of an organization engaged in business as an express corporation, combine their operative rights so as to render a through service. The restrictive policy governing unification of operative rights should apply, without distinction, so complainant contends, both to highway common carriers and to express corporations operating over the lines of underlying highway common carriers, since the operations of each may be expanded with equal facility. From an operating standpoint, it is claimed, the service performed by an express corporation within the scope of its operative right under a contract with an underlying highway common carrier, is indistinguishable from that provided to and from points beyond its operative right, through the medium of joint rates in which both the express corporation and a connecting highway common carrier may participate.

On the other hand, defendants deny that participation by an express corporation in joint rates with a connecting highway common carrier effectuates an enlargement of its operative right. It is an essential characteristic of an express corporation, so they state, that it operate over the line of another common carrier.

Such a joint rate necessarily involves a movement between a point on the operative right of an express corporation and one situated on the operative right of a connecting highway common carrier or other express corporation. Assertedly, a shipment moving over the connecting operative right no longer moves over the operative right of the initial express corporation. There is no statutory prohibition against the establishment of such joint rates, it is claimed; allegedly, the right to do so was recognized by the ruling in the Sacramento Motor Transport case, supra.

An express corporation may not, under Section 50(f), Public Utilities Act, expand the field of its operations beyond that authorized by its certificate or "grandfather" operative right, without obtaining the Commission's consent.(21) A common carrier of this type, as we have pointed out, is wholly separate and distinct from its underlying common carrier. The express corporation, not its underlying carrier, directly serves the public.

As stated, an express corporation, under the terms of Section 22, Public Utilities Act, is obligated to participate in joint rate arrangements with connecting common carriers, subject to regulation under that Act. Within this group, highway common carriers must be included. The provisions of Section 22, quoted above, are prospective in their operation; they cannot be limited, as complainant contends, to the types or classes of common carriers

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(21) Section 50(f), so far as pertinent, provides as follows:

"(f) No express corporation or freight forwarder shall after August 1, 1933, commence operating between points in this State or extend its operations to or from any point or points in this State not theretofore served by it, unless and until it shall first secure from the Railroad Commission, upon formal application therefor, a certificate that public convenience and necessity require such operation."

in existence when that section originally was enacted. Clearly, an express corporation must be considered as a distinct class of carrier, regardless of the nature of its underlying carrier; we do not construe the decision in Re Sacramento Motor Transport, supra, as holding otherwise.

There is nothing in the record which would impugn defendants' good faith in entering into the challenged joint rate arrangements. Although the physical operations surrounding the service provided by an express corporation, through an underlying highway common carrier, may be similar to those accompanying the service accorded under joint rates between such an express corporation and a connecting highway common carrier, this cannot outweigh the circumstance that the express corporation, from a legal standpoint, must be viewed as a distinct and independent carrier. Nothing in this record would entitle us to question the status, as such, of defendant express corporations. Unlike the situation presented in Motor Service Express v. Cowan,(32 C.R.C. 544), no fictitious express corporation has been set up as a subterfuge, in an effort to circumvent the terms of a previous order.

In providing service under joint rates, both an express corporation and its connecting highway common carrier serve within their respective spheres, neither operating over the line of the other. The concept of joint rates contemplates a continuous movement of traffic, through the junction point, over the lines of connecting carriers. Clearly, this traffic, while in the custody of one of the participating carriers is not moving over the line of the other. Such a movement, we are convinced, does not result in an enlargement of the operations of the express corporation.

This brings us to complainant's second contention, which we shall now consider.

III. Establishment of Joint Rates by Highway Common Carriers

Under the tariff involved, traffic may move over the lines of highway common carriers, both prior and subsequent to its transportation by an intervening express corporation. For example, a shipment may move from Santa Rosa over the line of a highway common carrier to San Francisco, thence via California Motor Express, Ltd., to Los Angeles, and finally over the line of a highway common carrier to San Diego, its ultimate destination. Considered independently of the intervening express corporation, the highway common carriers themselves, so complainant contends, thus perform a through service under the published joint rates. The establishment of such rates requires the Commission's consent, it is claimed. Under Section 16, Public Utilities Act, it is said a tariff providing joint rates need be filed by but one of the parties to it, provided each of the other parties concurs therein.(22)

As stated above, an express corporation not only has the right to establish joint rates with a highway common carrier, but it rests under a duty to do so. The restrictions governing the establishment of joint rates by highway common carriers apply to them alone; they do not affect the establishment of such rates between highway common carriers and other types of common carriers.

If, as we have held, highway common carriers may freely enter into joint rate arrangements with an express corporation, then in order to give effect to this right, two or more highway common carriers should be entitled to participate in these rates.

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(22) Re E. V. Rideout, 41 C.R.C. 81, 84

Should carriers of this class be singled out, and prevented from enjoying the benefits of such an arrangement, then the authority extended to them under the conclusions previously reached herein would indeed be but a barren privilege. Such a construction of the statute would be unreasonable, impracticable and self-defeating; it should be avoided, if possible. In our judgment, the participation by defendant highway common carriers in the traffic, under the circumstances shown, cannot be deemed a violation of the provisions of Section 50-3/4(c).

In view of our conclusions, the complaint must be dismissed and such, accordingly, will be the order.

ORDER

Public hearing having been had, the matter having been duly submitted, and the Commission being now fully advised,

IT IS ORDERED that the complaint in the above entitled proceeding be, and it hereby is dismissed.

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

Dated at San Francisco, California, this 18th day of June, 1946.

COMMISSIONERS