

Decision No. 39153

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

HIGHWAY TRANSPORT, INC., Complainant)
vs.)
C. A. BUCK, Defendant.)

Case No. 4547

ORIGINAL

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)
between Palo Alto, California, and San)
Francisco, California and intermediate)
points.)

Application No, 23612

- REGINALD L. VAUGHAN, for Highway Transport, Inc., petitioner to reopen proceedings; and protestant in Supplemental Application No. 23612.
- BEROL & HANDLER, by MARVIN HANDLER, for Valley Motor Lines, Inc., applicant in Supplemental Application No. 23612, and petitioner to extend time to consummate transaction.
- SCOTT ELDER, for Donald L. Williams, applicant in Supplemental Application No. 23612.
- E. C. CONNELLA, for C. A. Buck, defendant in petition to reopen proceedings; and petitioner to extend time to consummate transaction.

FIRST SUPPLEMENTAL OPINION

By Decision No. 37669, rendered herein February 6, 1945, C. A. Buck was authorized to transfer to Valley Motor Lines, Inc., an operative right as a highway common carrier for the transportation of general commodities between San Francisco and Palo Alto and intermediate points. Owing to a dispute between Buck and Valley, which subsequently culminated in litigation between them, this transfer never was consummated. Subsequently, both Buck and Valley, in order to conserve the subject of the litigation, sought an extension of time within which to file tariffs and time schedules, as provided by Decision No. 37669. Asserting that the operative right had been abandoned, Highway Transport, Inc., complainant in Case No. 4547,

(1) For brevity, Valley Motor Lines, Inc., will be referred to as Valley, and Highway Transport, Inc., as Highway.

sought a reopening of these proceedings and a revocation of the authority to transfer, granted by Decision No. 37669. Both Valley and Donald L. Williams joined in a supplemental application for permission to transfer the operative right in question to Williams, as assignee of Valley, Williams being substituted for Valley as the purchaser. Following a public hearing before Examiner Austin at San Francisco, the matters described (which were consolidated for hearing and decision), were submitted on briefs, since filed.

At the outset, it should be made clear that these proceedings have not been reopened. Highway seeks such an order, and contends that the decision previously rendered should be set aside. Upon this phase of the consolidated proceedings, it assumed the burden of proof; undertaking to establish that the operation had been abandoned.

The primary issue presented for consideration is the alleged abandonment of the operative right by Buck subsequent to May 1941, when the record underlying Decision No. 37669 was closed. Since that date, Highway asserts, Buck has discontinued the transportation of general commodities, excepting between Millbrae and Bay Meadows. The proof, we find, does not uphold this contention. Buck testified that he undertook the transportation of general commodities when offered, and had never rejected shipments of this character. In this respect he was corroborated by Mrs. Vivian Buck, his general manager. These commodities, it appears, have moved regularly. The equipment, it was shown, is adequate to provide the service.

Shipping documents covering the movement of general commodities were submitted by a traffic expert retained by Buck, who testified that they represented all shipments, other than furniture and household effects, transported during the period mentioned.

These records disclose that since May 1941, Buck has carried a wide variety of general commodities between the points he was authorized to serve. It is true that most of these shipments were billed at hourly rates, a circumstance which, Highway contends, indicates a disposition on Buck's part to regard the traffic as household goods rather than general commodities. The record, we believe, negatives any such intention. The fact that the shipments may have been billed erroneously does not change their essential character. Accordingly, we conclude that the operation has not been abandoned.

In support of the request for additional time within which to file tariffs and time schedules it was shown, through the testimony of Harold Frasher, president and general manager of Valley, that prior to the original decision in this matter Valley had acquired another operative right which included the points served by Buck; that in an effort to avoid unnecessary financial outlay, Valley sought a purchaser for the Buck operative right and ultimately entered into arrangements with Williams to acquire the right; and that he preferred not to consummate the transfer until it had been finally approved by the Interstate Commerce Commission. Although the delay in complying with our previous decision was long continued, it is excused, we believe, by the circumstances shown of record. Accordingly, the period for the filing of tariffs and time schedules will be extended, as provided by the following order.

The showing in support of the application to transfer the operative right to Williams, we believe, justifies the authority sought. Williams, it appears, is financially able to undertake the operation. Buck, though not joining in the application, has acquiesced in the proposed transfer. The application, accordingly, will be granted.

FIRST SUPPLEMENTAL ORDER

Upon due consideration, and it being found that public convenience and necessity so require,

IT IS ORDERED as follows:

(1) That the application of Highway Transport, Inc., to vacate Decision No. 37669, previously rendered herein, to reopen the above entitled proceedings, and for other relief, be and it hereby is denied.

(2) That applicants C. A. Buck and Valley Motor Lines, Inc., be and they are hereby severally relieved from their default in failing to file tariffs and time schedules within the period provided by Decision No. 37669; and that such tariffs and time schedules may be filed, as hereinafter provided.

(3) That C. A. Buck be, and he is hereby authorized to sell and transfer to Donald L. Williams, as assignee of Valley Motor Lines, Inc., and Donald L. Williams is hereby authorized to purchase and acquire from C. A. Buck, the operative right, as a highway common carrier, referred to and described in Decision No. 37669, and Donald L. Williams is authorized thereafter to operate thereunder.

(4) That if Donald L. Williams acquires said operative right and pays therefor the sum of \$8,750 he may charge to Account 1511, Franchises, a sum not exceeding \$50, he shall charge to Account 1550, Other Intangible Property, the remainder of such purchase price, viz., the sum of \$8,700, and during 1947 he shall write off said sum of \$8,700 by a charge of that amount to Account 2946, Other Debits to Surplus.

(5) That said C. A. Buck and Donald L. Williams 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 60 days from the effective date hereof and on not less than one day's notice to the Commission and the public.

(6) That, except as modified in Paragraph (3) of this order, Decision No, 37669 shall remain in full force and effect.

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

Dated at Los Angeles, California, this 25th
day of June, 1946.

Richard C. Anderson
Justice F. Cullen
Thomas D. Davis
Joseph F. Lowell
Harold S. Niles
COMMISSIONERS