

ORIGINAL

Decision No. 40829

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SOUTHERN CALIFORNIA FREIGHT LINES,
SOUTHERN CALIFORNIA FREIGHT FORWARDERS,
PACIFIC FREIGHT LINES, and PACIFIC
FREIGHT LINES EXPRESS

Complainants

Case No. 4847

vs

CALIFORNIA CARTAGE COMPANY, INC.

Defendant

W. A. STEIGER, for Southern California Freight Lines and Southern California Freight Forwarders, complainants.
ARTHUR GLANZ and PHIL H. CURRY, for California Cartage Company, Inc., defendant.
J. H. CULMINS, for The Atchison, Topeka & Santa Fe Railway Company and Santa Fe Transportation Company, interveners on behalf of complainants.
VIRGIL B. WINDLE, for San Diego Forwarding Company, interested party.
EDWARD STERN, for Railway Express Agency, Inc., interested party.

O P I N I O N

(1)

The complainants above named allege that defendant, California Cartage Company, Inc., has been engaged in the transportation of general commodities, as a highway common carrier, between Los Angeles and San Diego and intermediate points, without first having obtained from the Commission a certificate of public convenience and necessity as required by Section 50-3/4, Public

(1) Although both Pacific Freight Lines and Pacific Freight Lines Express had joined as complainants in the complaint herein, neither of them appeared at the hearing. The remaining complainants, however, comprising Southern California Freight Lines and Southern California Freight Forwarders, appeared and offered evidence in support of their contentions. Since the latter carriers are closely affiliated, they will be referred to collectively as the complainant.

Utilities Act. An order is sought requiring the discontinuance of such operations. The charge is denied by defendant, which also alleges by way of affirmative defense that its operations have been conducted as a highway contract carrier, as a radial highway common carrier and as a city carrier, under permits issued by the Commission.

A public hearing was held before Examiner Gannon at Los Angeles on June 24, 1947, when the matter was submitted on briefs which have since been filed.

To establish the allegations of the complaint, the complainant called both the vice-president and the general manager of defendant corporation, who described the latter's operations. No shipper witnesses were produced. Defendant offered no evidence in its own behalf.

Defendant, a California corporation, has been engaged in business continuously since its organization in June, 1944. Its general offices and headquarters are situated at Los Angeles, an office being also maintained at San Diego. It does not deny that it has no certificate, authorizing operation as a highway common carrier, issued by this Commission. However, it does hold permits as a highway contract carrier, as a radial highway common carrier, and as a city carrier, as well as a certificate issued by the Interstate Commerce Commission, authorizing common carrier service by motor vehicle between various points in Southern California. In addition, defendant conducts a local drayage service, at both Los Angeles and San Diego, and it also distributes freight for certain freight forwarders.

The nature of defendant's operations was described in detail. To provide the over-all service, it has available 65 units

of equipment, comprising trucks, tractors, trailers, and semi-trailers. Of these, 11 units usually are stationed at San Diego. It has some 60 employees, 10 of whom are located at San Diego.

Between Los Angeles and San Diego it engages in both intrastate and interstate operations, about 60 per cent of its equipment being required to handle the latter type of traffic. In the performance of its intrastate operations no daily schedule is observed, freight being transported in both directions whenever it is offered. However, this traffic moves with sufficient frequency so that it may be said that a regular service is provided. Both the inland and the coast routes are followed.

The volume of intrastate traffic (with which alone we
(2) are concerned here) handled between these points varies, averaging two to three truck-and-trailer loads daily. The tonnage was not
(3) shown. Both truck-load and less-truck-load shipments are handled.

The service performed by defendant between Los Angeles and San Diego, its officials testified, has been that of a highway contract carrier. Defendant asserts that it has endeavored to conform its operations to those of other highway contract carriers in this territory, which it has observed. Its investment in the business is substantial. It sought to operate lawfully, being guided, in this respect, by the advice of counsel.

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- (2) Unless otherwise specified, any reference to defendant's operations, appearing hereafter, relates only to those of an intrastate character, as distinguished from interstate operations.
- (3) About 20 per cent of defendant's income, it is estimated, is derived from operations conducted purportedly as a highway contract carrier between Los Angeles and San Diego.

The contractual arrangements existing between defendant and the shippers whose freight it had transported between Los Angeles and San Diego were also described. The shippers thus served did not number more than 27, it was said. With all of them, defendant claims to have entered into agreements covering the transportation services to be performed, many of which, it was stated, had been in effect since defendant embarked in business during 1944. But few changes, so the record shows, have occurred in the identity of the shippers served and none has been added recently.

Of the transportation agreements mentioned, three are in writing and the remaining 24 are oral. Many of the shippers holding oral contracts, it was shown, previously had entered into written agreements with defendant but these no longer are in effect, their respective terms of existence having expired. The parties, however, have continued to observe the provisions of these contracts, with some slight modifications. Although negotiations have been undertaken with a view of reducing these oral agreements to writing, this has been held in abeyance, on advice of counsel, pending the outcome of the instant proceeding. Since the new contracts will be framed to meet the individual requirements of the several shippers their provisions will lack uniformity, it was stated.

The existing contracts, these witnesses testified, were not consummated as the result of any solicitation on defendant's part. On the contrary, it was said, prospective shippers requested

(4) None of the written agreements mentioned was received in evidence. With few exceptions, the terms and provisions of the oral agreements were not shown in adequate detail.

defendant to provide a transportation service for them. The latter accepted only those offering a substantial volume of freight which would move regularly.

Defendant apparently undertook to meet the special requirements of shippers with whom it had entered into transportation agreements. It offered both day and night service, which some shippers found desirable. Also, it would accept shipments of unusual size, shape, or weight, such as partially knocked-down airplanes, for one example.

Defendant's general manager described, in some detail, the shipments transported during a three-day period in April, 1947, which had been received from, or delivered to, some 25 specified firms located at San Diego. ⁽⁵⁾ Eliminating those whose shipments had moved interstate, or between points not shown, or between points not material here, there remain 12 of these firms which had received, and two which had offered, shipments transported between Los Angeles and San Diego. Since the latter two also had received such shipments, the total number of firms shown to have participated in this traffic during the period selected did not exceed twelve.

The evidence dealt with the extent to which shipments offered or received by these shippers were transported by defendant under the contractual arrangements described. Of the twelve shippers

(5) Defendant's general manager was questioned concerning shipments which defendant had transported for certain firms, located at San Diego, during the three-day period, April 1st, 2d, and 3d, 1947. These shippers were named in a subpoena duces tecum, previously served, listing 21 consignees and six consignors. Allowing for duplications, two consignors being also included among the consignors named, there remains a total of 25 separate shippers served during this period.

above mentioned, only four had entered into transportation agreements with defendant. As to six of these shippers, their freight, it appears, moved under contracts which either they or their consignors had consummated. In these instances, the consignor (or consignee, as the case may be) paid the charges. On a few occasions, it was shown, shipments either moved collect from consignors to consignees who had entered into no such agreements, or they moved prepaid from consignors holding no contracts to consignees. As to some of these shipments, the evidence failed to show who had paid the charges or whether any contract existed.

It is incumbent upon the Commission to determine whether the facts, shown of record, would justify a finding that defendant must be regarded as a highway common carrier operating, without proper authority, between the points involved.

The showing concerning the details of the shipments transported covered only the space of three days. During this period no more than 12 shippers located at San Diego offered for transportation or received shipments which moved between the points involved. Only four of the latter had entered into contracts with defendant; and as to six, it appears that their freight moved under agreements to which they or their consignors were parties, the consignor (or consignee) paying the charges. The record also indicates that in some instances the freight charges were paid by consignors or consignees who were not parties to such an agreement.

While no definite rule can be laid down, it is clear that in a case of this character, a showing should be made depicting, in detail, the nature and extent of the operations conducted by the defendant carrier throughout a period sufficiently compre-

hensive to fairly reflect a cross section of its operations in general. The record in this case, we believe, does not measure up to this requirement. Complainants having thus failed to sustain the burden of establishing their contentions, it follows that the complaint must be dismissed. An order will be entered accordingly.

O R D E R

This proceeding being at issue; a public hearing having been held therein; evidence having been received; the matter having been duly submitted and the Commission being fully advised in the premises,

IT IS ORDERED that 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 21st day of October, 1947.

Harold P. Kula
Justice F. Calver
A. E. Drummond
Herbert L. Patten
COMMISSIONERS