

ORIGINAL

Decision No. 40878

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

vs.

Case No. 4845

G. F. D. LINES, INC.

Defendant

W. A. Steiger for Southern California Freight Lines and Southern California Freight Forwarders, complainants; Wm. F. Brooks, for The Atchison, Topeka and Santa Fe Railway Company, Intervenor on behalf of complainants; Phil Jacobson for G. F. D. Lines, Inc., defendant.

O P I N I O N

Complainants Southern California Freight Lines and Southern California Freight Forwarders are engaged in the transportation of property between Los Angeles and San Diego, and intermediate points, as highway common carrier and freight forwarder, respectively, under the jurisdiction of this Commission.

Said complainants⁽¹⁾ charge that G. F. D. Lines, Inc., defendant herein, is unlawfully engaged in the business of transporting general commodities, other than films and related articles,

(1) Complainants Pacific Freight Lines and Pacific Freight Lines Express did not enter an appearance at the hearing and intervenor, The Atchison, Topeka and Santa Fe Railway Company, a common carrier by rail between Los Angeles and San Diego, offered no evidence.

as a highway common carrier between Los Angeles and San Diego and intermediate points.

Complainants ask that a cease and desist order be issued restraining defendant from continuing said unlawful operations unless and until it obtains the necessary authority from this Commission.

Defendant, in its answer, denies the charge and further alleges it operates between said cities as a highway contract carrier or a highway common carrier of films and related articles, as authorized by a highway contract carrier's permit and certificate of public convenience and necessity granted by this Commission, or as a highway common carrier of general commodities as authorized by a certificate of public convenience and necessity granted by the Interstate Commerce Commission.

The issues having been joined, a public hearing was held in Los Angeles on February 27, 1947. Evidence, oral and documentary, having been adduced, the matter was duly submitted for decision.

The evidence in this proceeding consists of the testimony of one witness called by complainants, W. Earl Goldberg, defendant's secretary-treasurer, and one exhibit offered by defendant. The exhibit lists 53 shipments of general commodities, other than films and related articles, transported by defendant from Los Angeles to San Diego from July 1 to August 16, 1946. All of said shipments were transported on 16 different days during said period. Sixteen of the shipments were in interstate commerce; the remaining 37 being listed as contract shipments. Of the latter, 17 shipments were transported for Western Truck Lines and the

remaining 20 shipments were transported for eight other shippers. Therefore, the daily average number of intrastate shipments was approximately 2.3 for the sixteen days during this 47-day period.

Although defendant's secretary-treasurer testified that his company has oral contracts with each of the shippers listed in the exhibit ⁽²⁾ the evidence clearly shows that the contracts are indefinite and do not meet the requirements prescribed by this Commission for a "highway contract carrier" service (Rampone vs. Leonardini, Decision No. 28526, 39 CRC 562).

However, the record in this proceeding does not support complainant's charge of unlawful common carrier operation. There is a lack of evidence that defendant has dedicated or holds out its transportation service to the public generally, or a substantial portion thereof. No shipper witnesses were called to testify, and the testimony of the sole witness indicates that defendant did not solicit or otherwise seek the business in question and that the transportation service was performed for a limited number of shippers with whom it had contractual arrangements, however inadequate.

Although it was shown that defendant operates on a regular daily schedule between Los Angeles and San Diego, the fact is not significant in this case as defendant maintains one of its principal intrastate and interstate highway common carrier schedules between these two cities.

(2) Mr. Goldberg also testified that defendant serves approximately 25 contract shippers in each direction between Los Angeles and San Diego; however, no evidence of any shipments other than those shown on Exhibit No. 1 was introduced.

Upon the evidence adduced in this proceeding we are unable to find that defendant is unlawfully operating as a "highway common carrier" of general commodities, other than films and related articles, between Los Angeles and San Diego and intermediate points, in violation of Section 50 3/4(c) of the Public Utilities Act, and, therefore, the complaint will be dismissed.

O R D E R

A public hearing having been held in the above-entitled complaint, the matter having been duly submitted, the Commission being fully advised, and being unable to find that defendant is unlawfully operating as a highway common carrier as charged;

IT IS ORDERED that the complaint be, and same hereby is, dismissed.

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

Dated at San Francisco, California, this 4th day of November, 1947.

Harold P. Kule
Justice F. Crocker
John H. Wallace
R. J. Morrison

COMMISSIONERS