

ORIGINAL

Decision No. 41475

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
20th CENTURY DELIVERY SERVICE, INC.,)	
to extend its Los Angeles pickup limits)	
to include points within the Los Angeles)	
Drayage Area and to operate as a Highway)	Application No. 28494
Common Carrier between Los Angeles and)	
Los Angeles Drayage Area and within Los)	
Angeles Drayage Area.)	
-----)	
In the Matter of the Investigation on the)	
Commission's own motion into the operations.)	
rates, charges, contracts, and practices of)	Case No. 4887
20th Century Delivery Service, Inc., a cor-)	
poration, Cannonball Express & Messenger)	
Co., a corporation.)	

Franklin L. Knox, Jr., for 20th Century Delivery Service, Inc., applicant in Application No. 28494, and for 20th Century Delivery Service, Inc. and Cannonball Express & Messenger Co., respondents in Case No. 4887. Arlo D. Poe, for Louis M. Goodman doing business as Goodman Delivery Service, Inc., protestant in Application No. 28494, and interested party in Case No. 4887. W. A. Steiger, for Southern California Freight Lines and Southern California Freight Forwarders, protestants in Application No. 28494, and interested parties in Case No. 4887. Gordon & Knapp by Sanford A. Waugh, for Pacific Freight Lines and Pacific Freight Lines Express, protestants in Application No. 28494 and interested parties in Case No. 4887.

O P I N I O N

The 20th Century Delivery Service, Inc., applicant in Application No. 28494, and one of two respondents in Case No. 4887, is a California corporation operating under a prescriptive right as an express corporation as defined in Section 2(k) of the Public Utilities Act. The corporation is also the holder of Radial Highway Common Carrier Permit No. 19-855R, issued December 20, 1935,

City Carrier Permit No. 19-871C, issued December 21, 1935, and Contract Carrier Permit No. 19-14685, issued March 12, 1942.

Cannonball Express and Messenger Co., the second respondent in Case No. 4887, is a California corporation operating as a radial highway common carrier under Permit No. 19-13821, dated October 16, 1941, and as a city carrier under Permit No. 19-13822, dated October 16, 1941.

Case No. 4887, an investigation instituted upon the Commission's own motion, has a twofold purpose: (1) to determine whether respondents are conducting operations as a highway common carrier, as defined in Section 2 3/4 of the Public Utilities Act, without a certificate as required by Section 50 3/4 of said Public Utilities Act; (2) to determine whether or not respondents are conducting operations as an express corporation, as defined in Section 2(k) of said Public Utilities Act and also operations as a highway contract carrier, as defined in Section 1(i) of the Highway Carriers' Act, and if so, do such operations constitute a violation of Section 4 of said Highway Carriers' Act.

In Application No. 28494, 20th Century Delivery Service, Inc. seeks a certificate of public convenience and necessity to operate as a highway common carrier, as that term is defined in Section 2 3/4 of the Public Utilities Act, in the transportation of parcels and packages, not exceeding 100 pounds each in weight, between Los Angeles and the so-called Los Angeles Drayage Area, and within this drayage area, and also seeks to extend the pickup limits of its rights as an express corporation to include the Los Angeles Drayage Area.

Public hearing in these matters was held before Examiner Syphers at Los Angeles on November 12 and 13, 1947, the case and the application being consolidated for hearing. The parties were given time for the filing of briefs, which briefs have now been filed and the matter is ready for decision.

The testimony showed that Cannonball Express and Messenger Co. is a wholly owned subsidiary of the 20th Century Delivery Service, Inc. The offices and management personnel of the two companies are identical, and both companies operate out of the same terminal. However, Cannonball maintains a separate telephone and owns its office fixtures and equipment. Recently this company purchased "four or five" trucks which have not been put in use as yet. Heretofore, the operations have been conducted by means of leased equipment, the owners of which are employed by Cannonball as drivers. This company performs "on call" service, and only occasionally does it transport any shipments for 20th Century. Rather, it offers an expedited service to casual shippers. It has no contracts with any shippers. All of its operations are allegedly performed under the radial highway common carrier and city carrier permits heretofore mentioned.

20th Century, according to the testimony, conducts three types of operations, (1) an express service, (2) a heavier package contract carrier service, and (3) a smaller package contract carrier service.

The express service, conducted under the prescriptive right heretofore mentioned, consists principally in the handling, in intercity movements, of packages weighing not over 100 pounds, and measuring not more than 10 feet in length nor more than 160

inches in length and girth combined. These packages are picked up within a pickup area as described in this carrier's tariff⁽¹⁾ which, generally, includes Pasadena, Long Beach, and a specified area in Los Angeles. This area is portrayed on a map attached to Exhibit 2 in this case. The destination points of these express packages comprise a number of cities and towns in the vicinity of Los Angeles which are listed on the back of the map attached to Exhibit 2, previously mentioned. In those cases where applicant alleges it is performing an express service, 20th Century uses an underlying carrier, The United Parcel Service.

The so-called "heavier package" contract service is based upon contracts which 20th Century has with approximately eighty (80) shippers. These shippers are selected with regard to the type of merchandise, size of packages, volume of business, whether or not the commodities require special handling, and pick-up time desired. The packages usually weigh more than 100 pounds each and are hauled on equipment owned by 20th Century⁽²⁾. This hauling is performed over regular routes and between fixed termini.

To obtain this type of business 20th Century employs a salesman who follows various leads which come "mostly from the request of the shippers themselves". All of the contracts are written and the form of contract used was introduced as Exhibit 2. The shippers pay varying rates under these contracts but all are subject to a minimum charge of \$2.00 per week.

(1) 20th Century Delivery Service, Inc. Local Express Tariff
C.R.C. No. 6, p. 3

(2) The testimony indicated that 20th Century owns "between 75 and 100" panel trucks

The so-called "smaller package" contract service involves written agreements with approximately 400 shippers. The form of contract used was received as Exhibit 3. Under this type of arrangement the hauling is over regular routes and between fixed termini and is performed on equipment owned by 20th Century so far as shipments in the Los Angeles Drayage Area and Beverly Hills are concerned. Intercity shipments of these so-called smaller packages are made under 20th Century's express rights and underlying carriers are used to make the deliveries.

In obtaining this type of business 20th Century employs a salesman--the same salesman who handles the heavier package contracts heretofore mentioned. The evidence is conflicting as to whether or not there is any limitation made as to serving shippers.

The same trucks are used in handling "heavier" shipments under the "80" contracts, and "smaller" shipments under the "400" contracts. Also, the same trucks are used to pick up the express shipments. The same type of contract as is used for the "smaller package" contracts (Exhibit 7) is also used for hauling under the express rights.

The principal difference between shippers under the "smaller package" contracts and under the express service is a matter of the destination of the shipment.

On this record there is no evidence that Cannonball Express and Messenger Co. is operating in excess of its authority.

Regarding the activities of 20th Century with respect to the "smaller package" contracts, the testimony is to the effect that all shipments within the drayage area and Beverly Hills are

handled under the "contract rights" while the "intercity" shipments are handled under the express rights.

While this respondent does not claim to be performing any particular hauling under authority of its city carrier permit, still, we do not now ignore its effect. Such a permit authorizes hauling within the limits of a city, and such hauling is specifically excluded from the provisions of the Public Utilities Act, and also from the provisions of the Highway Carriers' Act.

However, we find no authorization for intercity hauling, by respondent, of these "smaller package" shipments. It cannot be justified under respondent's contract carrier permit since the alleged contract shipments are not distinguishable from the express shipments. In addition to the common ownership and control of the two activities, the same trucks are used to handle both types of shipments. As a matter of fact, the identical form of contract is used for both shippers by express and shippers by contract. If a shipper does not have a contract, then higher rates apply, and even under a contract the respondent can treat the shipment either as express or as a "contract" shipment. Such a practice must be condemned. This type of hauling can only be performed by an authorized common carrier.

20th Century does not have "highway common carrier" authority under the Public Utilities Act and it cannot derive such authority from its express rights. The activities of an express company are limited by statute to transportation over the lines of "any common carrier". It is well established that the common carrier must be properly authorized to perform the hauling (Railway

Express vs. Consolidated Package Service, 1932, 37 CRC 791,794; Southern Pacific vs. Stanbrough, 1932, 37 CRC 766,771; In Re Pacific States Express, 1923, 22 CRC 925,930).

In addition to the above requirement, it is observed that the hauling of these "smaller package" shipments is over regular routes and between fixed termini. Thus the common carrier performing such hauling must meet the requirements of the Public Utilities Act.

We conclude, therefore, that any hauling by 20th Century of "smaller packages" in other than intracity shipments, whether between Los Angeles and Beverly Hills or any other points, is not within the scope of the authority held by this respondent.

The remaining point for consideration encompasses the activities of 20th Century Delivery Service, Inc. as they relate to hauling of "heavier" shipments under approximately 80 contracts with as many shippers. These contracts, all written and all in the same form, cover shipments to intercity points, as well as to points within the city of Los Angeles. While the testimony was to the effect that shippers are selected with regard to such considerations as type of merchandise, size of packages, volume of business, special handling required, and pickup time, none of these items are covered in the contract. In other words, whether or not a shipper is given any special or particular service becomes a matter of discretion with the carrier and not a matter of contract.

A public holding out or offer of service has been held to be the essential test of a common carrier and such a holding out may exist even though there are contracts with all shippers

served. In this case we cannot escape the conclusion that respondent was providing a general hauling service for approximately 80 shippers. The only apparent difference between the type of business tendered by these shippers and the type of business tendered by the approximately 400 shippers heretofore discussed, is in the weight of the shipments. The testimony was to the effect that, so far as these 80 shippers were concerned, the packages were generally over 100 pounds in weight, although, apparently, there are packages less than 100 pounds. The contract itself provides for "shipments weighing 50 pounds or over." It would seem, therefore, that this is merely a device whereby the respondent has extended its service to heavier packages.

Where a carrier entered into written agreement with "his heaviest shippers" this Commission has held that that fact alone did not alter the carrier's common carrier status (Re Morris, 47 Cal. P. U. C. 267,277).

Much has been said in the briefs filed by both the respondent and the attorneys for this Commission, concerning the application of Section 4 of the Highway Carriers' Act, which section prohibits any person or corporation from engaging in the transportation of property on the public highways "both as a common carrier and as a highway contract carrier of the same commodities between the same points." In the light of our holding that respondent's activities under these 80 contracts constitute common carriage, any discussion as to the application of Section 4 of the Highway Carriers' Act is obviated.

Upon full consideration of all the facts we find that 20th Century Delivery Service, Inc., a corporation, is regularly

transporting property as a common carrier for compensation over the public highways, between fixed termini and over regular routes, between the following cities and towns: Los Angeles and Alhambra, Bandini, Bell, Bell Gardens, Bellflower, Belvedere, Beverly Hills, Burbank, Compton, Culver City, East Los Angeles, El Monte, El Segundo, Florence, Gardena, Glendale, Hawthorne, Huntington Park, Inglewood, Lennox, Lonita, Long Beach, Lynwood, Maywood, Monterey Park, Pasadena, Redondo Beach, San Pedro, Santa Monica, South Gate, South Pasadena, Temple City, Terminal Island, Torrance, Vernon, Walnut Park, and Wilmington, and is operating as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, without possessing a prior operative right therefor, or without first having obtained from this Commission a certificate of public convenience and necessity authorizing such operation, in violation of Section 50-3/4 of said Act.

In Application No. 28494, 20th Century Delivery Service, Inc., seeks to (1) extend the pickup area under its express rights and (2) operate as a highway common carrier. The present pickup area of this company includes Pasadena, Long Beach, and a described area in Los Angeles. Under the extension herein applied for it is proposed to include all of the Los Angeles Drayage Area.⁽³⁾

The proposal to operate as a highway common carrier embraces the hauling of packages not to exceed 100 pounds each, between Los Angeles and the Los Angeles Drayage Area, and within the Los Angeles Drayage Area.

Evidence introduced by applicant included testimony by the president of applicant company as to the alleged advantages of operating as a highway common carrier, as compared to operations as an

(3) Decision No. 32504, dated October 24, 1939, on Case No. 4121

express company. Among these advantages were said to be the avoidance of interchange shipments and greater ease in tracing shipments inasmuch as all of the records would be under the control of applicant. As an express company, some of the records of shipments are in the files of the underlying carriers. The proposed rates for the highway common carrier operation were those presently published by applicant company in its express tariff⁽⁴⁾.

Further testimony by this same witness was to the effect that the proposed operation as a highway common carrier would be substantially the same as present operations, both with respect to the approximately 80 "heavier package" shippers and to the approximately 400 "smaller package" shippers. The only real difference pointed out was that under a highway common carrier operation the applicant company would haul for the "smaller package" shippers to all points in the drayage area on its own equipment whereas now, under the express rights, underlying carriers are used for hauls to some points in the drayage area.

Testimony from public witnesses was practically all to the effect that certain shippers are now using the services of 20th Century and desire to continue to use these services. The witnesses testified that these services were satisfactory and adequately met their needs.

In opposition to this application, testimony was presented by Louis M. Goodman, who operates the Goodman Delivery Service, which company holds a highway common carrier certificate from this

(4) 20th Century Delivery, Inc. Local Express Tariff CRC 6.

Commission⁽⁵⁾. This company is presently operating and, allegedly, is ready, willing, and able to handle additional package hauling. The equipment of this company consists of twelve trucks presently in operating condition.

Also, testimony was presented by representatives of the Southern California Freight Lines and the Pacific Freight Lines. Both of these companies hold authority from this Commission authorizing the transportation of general freight including "smaller packages". Both of these companies, while they specialize in larger freight shipments, do handle packages. The testimony was to the effect that their rates for package hauling are higher than those proposed by applicant.

On this record we do not believe applicant's request for a certificate as a highway common carrier is justified. It is a well established principle of this Commission that a certificate of public convenience and necessity authorizing operation as a highway common carrier will not be granted upon a showing resting upon unlawful operations conducted by the applicant (Ritzman, 1928, 31 CRC 772,774; Decker, 1931, 36 CRC 317,320; Brooks, 1932, 37 CRC 672,675; Mangini, 1937, 41 CRC 49,53). In this case the evidence indicates that applicant has been conducting operations which we have found to be in excess of its existing authority. The testimony of the public witnesses is to the effect that these operations are now being conducted and that they desire their continuance. We have already found, in this opinion, that such operations are contrary to the law.

(5) Decision No. 32981, dated April 9, 1940, on Application No. 23380

It is true that this Commission has also held that the rule prohibiting the granting of a certificate upon a showing of unlawful operations should not be so applied as to deprive the public of the benefit of an essential service (Re Gilboy, 1942, 44 CRC 457,459). However, this exception does not appear applicable in the instant case. While there are some differences between the existing service of the protestants and the service proposed by applicant, still there is no positive showing that the public will be inconvenienced if this application be denied. We cannot condone unlawful hauling merely because it has proved satisfactory to certain shippers. Public convenience and necessity implies a broad view of the needs of all of the public or of the particular class of the public concerned, and these needs must be viewed in the light of the service of existing carriers as well as the need for any additional service. In this case the evidence indicates that the existing carriers can handle the hauling. Accordingly, we find that applicant has not established that the public convenience and necessity require its proposed services as a highway common carrier, as defined in Section 2 3/4 of the Public Utilities Act.

Concerning the other part of the application, involving the request to extend the pickup area under applicant's express rights, we are more favorably disposed. Applicant's present pickup area, under its express rights, embraces an area including Pasadena, Long Beach, and a described area in Los Angeles. The request is herein made to enlarge this area so as to include Los Angeles and the Los Angeles Drayage Area. This part of the application was unopposed and it can fairly be concluded from the testimony of the

public witnesses that there is a need for an express service to handle packages of less than 100 pounds in weight. This part of the application will be granted.

O R D E R

A public hearing having been held in the above-entitled proceedings, evidence having been received, the matter having been duly submitted, and the Commission being fully advised in the premises and hereby finding that public convenience and necessity so require,

IT IS ORDERED:

(1) That respondent in Case No. 4887, 20th Century Delivery Service, Inc., a corporation, cease and desist from operating, directly or indirectly, or by any subterfuge or device, any motor vehicle as a highway common carrier, as defined in Section 2 3/4 of the Public Utilities Act, for compensation, over the public highways of the State of California, between fixed termini or over regular routes, unless and until said 20th Century Delivery Service, Inc. shall have obtained from the Public Utilities Commission, a certificate of public convenience and necessity therefor.

(2) That a certificate of public convenience and necessity be, and it hereby is, granted to 20th Century Delivery Service, Inc., a corporation, applicant in Application No. 28494, authorizing the establishment and operation of a service as an express corporation, as that term is defined in Section 2(k) of the Public Utilities Act, from points in the Los Angeles Drayage Area, as described in Decision No. 32504, dated October 24, 1939, in Case No. 4121, 42 CRC 239, to

the points of delivery now served by this company under its existing authority as an express corporation, for the transportation of packages and parcels weighing not over 100 pounds and measuring not more than 10 feet in length, nor more than 160 inches in length and girth, combined.

(3) That in providing service pursuant to the certificate herein granted, the following service requirements shall be observed

- (a) Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days from the effective date hereof.
- (b) Applicant shall, within sixty (60) days from the effective date hereof and upon not less than five (5) days' notice to the Commission and the public, establish the service herein authorized and 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, tariffs and time schedules satisfactory to the Commission.
- (c) Applicant shall use the services of underlying common carriers which have proper authority from this Commission to conduct this type of hauling.

(4) In all other respects the application No. 28494 shall be denied.

IT IS FURTHER ORDERED that the Secretary of the Commission shall cause to be served upon 20th Century Delivery Service, Inc. a certified copy of this Order.

The effective date of this Order shall be twenty (20) days from the date of service upon said respondent.

Dated at San Francisco, California, this 13th day of April, 1948.

R. F. Ingersoll

Justus F. Craven

Quayle L. Lowell

Harold H. Kula

Kenneth R. Potter

COMMISSIONERS