

Decision No. 43354

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission Investigation into the operations )  
and practices of C. N. Grady, Fred O. Stanley )  
and Estelle Seeley, doing business as Express ) Case No. 5080  
Freight Lines, operating between Los Angeles )  
and vicinity, on the one hand, and San Diego )  
and vicinity, on the other. )

O P I N I O N

On May 17, 1949, the Commission instituted this investigation to determine whether the above-named respondents, or any of them, have operated, or are operating, as a highway common carrier over regular routes and between fixed termini within the State of California, without previously having obtained a certificate of public convenience and necessity, or possessed or acquired a prior right so to operate, as required by Section 50-3/4 of the Public Utilities Act, and for the purpose of determining whether they, or any of them, should be ordered to cease and desist from operating as a highway common carrier until possessed of the requisite certificate of public convenience and necessity, and for the purpose of determining whether their permitted rights should be cancelled, revoked or suspended. .

A public hearing was held before Examiner Rowe in Los Angeles on July 7, 1949, at which time oral and documentary evidence was received.

From the testimony, it appears that the assets, good will, and name of Express Freight Lines were acquired by C. N. Grady, Fred O. Stanley, and Estelle Seeley in March of 1947. Approximately one and one-half years before the hearing, respondent Seeley withdrew from the partnership and has had no connection with the business or its operations since that time. Following the withdrawal of

Miss Seeley, respondents Grady and Stanley have owned and operated the business.

Respondents hold permits authorizing them to conduct operations as a highway contract carrier (No. 19-36338) as a radial highway common carrier (No. 19-36337) and as a city carrier (No. 19-36339). Four trucks and two trailers were used in the business.

The extent of respondents' operations as indicated by a study of their records discloses that, during October 4, 5 and 6, 1948, respondents carried a total of 113 shipments varying from 12 to 7,775 pounds for 43 consignors. These shipments were made between Los Angeles and San Diego except for a few shipments to intermediate points. Forty-two different parties paid the freight on these shipments.

A similar situation is revealed by a check made for the period of November 17, 18 and 19, 1948, when 117 shipments were made between these points for 37 shippers. Likewise, during December 27, 28, and 29, 1948, a total of 94 shipments, varying in size from 26 to 25,203 pounds, were made for 27 shippers. These three-day periods are typical of respondents' operations during the months in which they occurred. No binding contracts, either written or oral, were made with any shipper or receiver of freight.

Both respondents Grady and Stanley testified in their own behalf. Mr. Stanley stated that Express Freight Lines refused to take shipments from some prospective customers because the offered business did not appear profitable.

The evidence of record shows that respondents' operation was being conducted at a loss and was only continued because both Grady and Stanley believed they were obligated as purchasers of a permitted carrier business to continue to render service. They learned at the hearing that no such obligation rested upon them.

Subsequent to the submission of this matter for decision, respondents filed an application requesting this Commission to revoke the permits then held by them on the ground that they had been operating at a loss for over a year and felt that further continuance would be unsound. Pursuant to such request their three permits were revoked on July 25, 1949.

We find, from the evidence, that respondents Grady and Stanley, doing business as Express Freight Lines transported property, as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act between Los Angeles, San Diego, and intermediate points via U. S. Highways 101 and 101A, without first having obtained a certificate of public convenience and necessity authorizing operation as a highway common carrier in accordance with the provisions of Section 50-3/4 of the Public Utilities Act and without possessing prescriptive operative rights to so serve. However as respondents' permits have been revoked and they are no longer engaged in the for hire trucking business an order requiring them to cease and desist such unlawful operations would be meaningless. Consequently the Commission's investigation will be discontinued.

O R D E R

IT IS ORDERED: That Case No. 5080 be and it is hereby discontinued.

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

Dated at San Francisco California, this 4<sup>th</sup> day of October, 1949.

A. Z. Anderson  
Justin J. Galloway  
Ernest L. Russell  
Harold P. Kula  
Kenneth P. Potter  
Commissioners