

Decision No. 44346

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission Investigation into the)
 operations and practices of DANIEL)
 H. SOUZA, doing business as THE)
 CITY DRAYAGE COMPANY.)

Case No. 5166

PUBLIC UTILITIES

John K. Power, for Transportation Department, Public
 Utilities Commission of the State of California.
Clair MacLeod, for Trans-Bay Company.
Clifton E. Brooks, for Delivery Service Company.
Spurgeon Avakian, for respondent.
Fred N. Bigelow, for Pacific Southwest Railroad
 Association.

O P I N I O N

On December 20, 1949, the Commission instituted an investigation on its own motion to determine whether the respondent, Daniel H. Souza, doing business as City Drayage Company, may have operated or may be operating as a highway common carrier (Public Utilities Act, Section 2-3/4) between San Francisco, East Bay points, San Jose and intermediate points,⁽¹⁾ without having obtained a certificate of public convenience and necessity or without having possessed or acquired a prior right to so operate, as required by Section 50-3/4 of the Public Utilities Act.

(1) Between San Francisco, on the one hand, and Oakland and Alameda, on the other, over the San Francisco-Oakland Bay Bridge; between Oakland, on the one hand, and Alameda, on the other; from San Francisco, Oakland and Alameda to San Pablo and intermediate points along U. S. Highway 40, Business 40, and other highways; from San Francisco, Oakland and Alameda to San Jose and intermediate East Bay points along State Highways 17 and 21; U. S. Highway 50, and other highways; and from San Francisco, Oakland, and Alameda to Peninsula points between and including San Bruno, on the north, and San Jose, on the south, along U. S. Highway 101 and 101 alternate, and other highways.

A public hearing was held in San Francisco on February 15, 1950, before Examiner Daly and the matter was submitted on briefs.

It was stipulated by counsel that respondent has engaged in the transportation of property for compensation under permits granted in January, 19⁽²⁾46. It was also stipulated that respondent has at no time possessed a certificate or prescriptive right to operate as a highway common carrier.

Respondent owns and operates eight pieces of trucking equipment and maintains an office and loading dock at 10433 - 44th Avenue, Oakland.

The Commission's preliminary investigation of respondent was conducted in March, 1949. As a result, an informal conference was held and respondent's attention was called to the fact that he was then serving approximately 20 contract accounts. He was advised that his operations would be subsequently checked, and if found substantially the same, a formal investigation would be recommended to determine whether or not they were those of a highway common carrier.

Two investigations were thereafter conducted covering the periods August 22, 1949, to and including August 26, 1949, and December 5, 1949, to and including December 9, 1949. The information obtained as a result of these investigations was summarized and introduced in evidence in the form of exhibits.

The chief points of origin were San Francisco, Oakland and Alameda. The principal points of destination were San Francisco, Oakland, Berkeley, Alameda, Richmond, San Leandro, Hayward, Centerville, San Jose, Palo Alto, Santa Clara, San Mateo, Sunnyvale and Mountain View. The principal commodity transported was drugs.

(2) Radial Highway Common Carrier Permit No. 1-4433; Contract Carrier Permit No. 1-4434; and City Carrier Permit No. 1-4435.

Candies, toilet preparations and salted nuts moving in substantial but smaller volume, and in still smaller volume were such commodities as tires, soap, margarine, electric bulbs and coffee and tea extracts.

Certain exhibits⁽³⁾ were introduced reflecting respondent's operations during the periods noted, except those wholly within the boundaries of an incorporated city, and disclosed the following information:

	<u>August 22 to 26, 1949</u>	<u>December 5 to 23, 1949</u>
(1) Number of consignors served	19	23
(2) Total number of shipments	651	676
(3) Number of parties who paid freight charges (4)	19	23
(4) Range of weight per shipment	1 to 4578 lbs.	1 to 10437 lbs.

Other exhibits⁽⁵⁾ covering the same periods reflecting the number of shipments transported by respondent between various points of origin and destination, also the number of times these points were served and the number of consignors served between points, disclosed the following:

	<u>August 22 to 26, 1949</u>	<u>December 5 to 9, 1949</u>
(1) Number of days points of destination were served from points of origin ranged from	1-5	1-5
(2) Number of shipments between specified points ranged from	1-137	1-193
(3) Number of consignors served between specified points ranged from	1-13	1-16

Copies of four contracts were received in evidence as Exhibit No. ⁽⁶⁾1. The salient provisions of these agreements provide

(3) Exhibits 3 and 5

(4) Respondent testified that he has an agreement with each of the shippers who paid the freight charges.

(5) Exhibits 4 and 6

(6) (1) Parke Davis & Co., dated September 16, 1947; (2) Drug Exchange, Inc., dated September 19, 1947; (3) E. R. Squibb & Sons, dated November 25, 1947; and (4) Par Soap Company, dated September 11, 1947.

that respondent will transport the shipper's products to a definite area. Three of the agreements call for a minimum of 100 pounds per month while the minimum weight of freight in the Squibb's agreement merely calls for a quantity to be determined by that company in accordance with its business requirements. The compensation is in accordance with the minimum rates prescribed and established by this Commission. The duration of each agreement is for a definite period of time and thereafter until cancelled upon a specified number of days' written notice by either party.

The office manager for Ciba Pharmacy Products, was called as a witness by the Commission and testified that he has used respondent's service for the past two years. His company has emergency shipments which require immediate delivery to hospitals in the East Bay. Previous use of common carriers had proved unsatisfactory and as a consequence he had been authorized to contact respondent and negotiate an oral agreement. This witness further testified that the products shipped by his company, consisting of drugs in glass bottles and tubes, require no special handling other than that ordinarily required of shipments in glass containers and that this care, along with an emergency pickup and direct delivery service to hospitals, is afforded by respondent.

The president of the East Bay Medical Supply Company, Inc., was also called as a witness by the Commission and stated that he had used respondent's service since 1948 under an oral agreement; that he ships via other carriers, including one certificated carrier, to the same area that he ships via respondent; that there is no special care required in the handling of his products other than that required in handling shipments in glass. He stated further that a fast, expeditious service on shipments of medicines is necessary and that respondent's service has been entirely satisfactory.

Respondent, testifying in his own behalf, stated that he had been employed for eleven years as a dispatcher for United Transfer Company before starting his transportation business under permits issued in 1946; that he solicited the business of M.J.B. Coffee Company prior to his acquisition of permits and his operations gradually increased to the point where he was at one time serving as many as twenty-six contract accounts. With the exception of the M.J.B. account he stated that he has never engaged in the solicitation of business; that each new account was acquired as a result of the shipper seeking his services in the first instance. Respondent further testified that he has refused requested service from other than contract accounts on an average of two and three times a month.

The record shows that he maintains no terminals other than the one in Oakland. Pickups are made at the same time as deliveries and are brought back to the loading dock in Oakland, where he personally does the routing. However, emergency shipments are delivered directly to destination even though off-route. A pickup made in the morning is delivered in the afternoon and one made in the afternoon is delivered the following morning. He is presently rendering service to twenty-three contract accounts, six under written agreements and seventeen under oral agreements. He acquired seven contracts in 1946, nine in 1947 and seven in 1948. He has served substantially the same accounts since July 1948. An emergency delivery is provided for drugs, candies, salted nuts and occasionally for tires.

Due to a fast delivery service he testified that he has been able to transport yeast without the need of refrigeration equipment. On shipments from M.J.B., pickups are made from an unmarked stock or supply at shippers' plant and no segregation or individual markings are made for each consignment. The drivers make deliveries upon information taken from a single manifest or from bills of lading.

According to respondent his equipment has no special features nor do his drivers require any special training; however, he desires to maintain a restricted operation distinguished from a common carrier service by the personal attention given shipments and by emergency deliveries. This he claims, could not be provided if he were required to operate as a common carrier.

The record shows that respondent is serving twenty-three different accounts; that during the periods covered by the Commission's investigation daily service had been maintained from San Francisco, Oakland and Alameda, to as many as twenty-six points of destination; that between certain points service is rendered to as many as sixteen consignors; that there is a wide range in the type of commodities transported; that of the twenty-three contract accounts, seventeen accounts are served under oral agreements; that no special equipment is used or is it required to render the present service; that the drivers require no special training or instructions; that respondent's operations actually increased in December, 1949, over those conducted in August, 1949.

The record also shows that respondent has not solicited any business, but rather has refused service on an average of two or three times a month; that the number of contract accounts has remained almost static since 1948; that his written agreements are definite as to commodities, duration and consideration, with provisions for a small minimum tonnage; that he has served substantially the same accounts since 1948; that the freight charges are paid by the parties with whom he has contracts except on minor occasions which are too inconsequential to prove material; that he personally dispatches each shipment; that an immediate pickup and direct delivery service is provided for individual emergency shipments of drugs to hospitals; that because of a fast delivery service, shipments of yeast are transported without need of refrigeration

equipment and shipments of coffee are handled without need of individual marking or segregation.

Following the guide posts which this Commission set forth in the Nielsen case, Decision No. 43557, Case No. 4820, we must conclude that respondent is and has been operating as a highway common carrier.

Referring to the number of contract accounts which respondent serves, we must conclude that it is too large to afford the close identity and association, which is ordinarily attributable to the relationship between a contract carrier and shipper. The wide variety of commodities handled, without need of special equipment in addition to the broad area served, frequency of service and employees who require no unusual training indicate an operation characteristic of a highway common carrier. Although respondent does personally supervise and dispatch shipments and provide an emergency service, which is the exception and not the general nature of his operations, these factors are not in themselves, when viewed in light of all of the evidence sufficiently restrictive to constitute respondent's operations those of a contract carrier. Accordingly we find that Souza's operations are those of a highway common carrier, as defined by Section 2-3/4 of the Public Utilities Act.

O R D E R

The above entitled proceeding being at issue, a hearing having been held, evidence received, the matter duly submitted and the Commission fully advised;

IT IS ORDERED:

(1) That respondent, Daniel H. Souza, doing business as City Drayage Company, be, and he is hereby directed and required to cease and desist from operating directly or indirectly, or by any

subterfuge or device, any auto truck as a highway common carrier (as defined by Section 2-3/4 of the Public Utilities Act), for compensation, over the public highways of the State of California, between fixed termini, to-wit: between San Francisco, on the one hand, and Alameda, on the other; between San Francisco, Oakland and Alameda, on the one hand, and San Pablo and intermediate points including Richmond, El Cerrito, Berkeley, Albany and Emeryville, on the other; between San Francisco, Oakland, and Alameda, on the one hand, and San Jose and intermediate East Bay points including Piedmont, Castro Valley, Niles, El Sobrante, San Leandro, San Lorenzo, Decoto, Hayward, Centerville and Newark; between San Francisco, Oakland and Alameda, on the one hand, and San Jose and intermediate peninsula points including Daly City, South San Francisco, San Bruno, Millbrae, Burlingame, San Mateo, San Carlos, Redwood City, Menlo Park, Palo Alto, Sunnyvale, Los Altos, Mountain View and Santa Clara, on the other hand, unless and until said Daniel H. Souza shall have obtained from the Public Utilities Commission a certificate of public convenience and necessity therefor.

(2) That Radial Highway Common Carrier Permit No. 1-4433 and Highway Contract Carrier Permit No. 1-4434 held by Daniel H. Souza, doing business as City Drayage Company, respondent herein, be and they are hereby suspended for a period of five (5) consecutive days from and after the effective date of this order.

(3) The Secretary is hereby directed to cause personal service of a certified copy of this decision to be made upon respondent, and this decision shall become effective upon the twentieth day after the date of such service.

Dated at San Francisco, California, this 20th
day of June, 1950.

R. Z. Inisurany

Joseph H. Powell

Harold P. Hill

Kenneth Pottel
Commissioners