

ORIGINAL

Decision No. 44491

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission investigation into the operations)
and practices of COAST LINE TRUCK SERVICE, INC.,)
a California corporation, and of EDWARD LESTER) Case No. 5169
and WILLETTE STONESON, partners doing business)
under the partnership name of PRODUCE EXPRESS.)

Young, Rabinowitz & Choutau, by Harry S. Young and
Reginald L. Vaughan, for respondents.
Scott Elder, for Western Transport Company, interested
party.
Boris H. Lakusta, for Field Division, Public Utilities
Commission of the State of California.

O P I N I O N

This proceeding is an investigation instituted on the Commission's own motion into the operations and practices of Coast Line Truck Service, Inc., a corporation, and of Edward Lester and Willette Stoneson, copartners doing business as Produce Express.

The purposes of the investigation are to determine

- (1) whether respondents have operated, or may be operating, as highway common carriers, as defined in Section 2-3/4 of the Public Utilities Act, without having obtained a certificate of public convenience and necessity or having possessed or acquired a prior right so to operate, as required by Section 50-3/4 of the same Act;
- (2) whether respondents should be ordered to cease and desist from operating as a highway common carrier or as highway common carriers until they shall obtain authority so to do;
- (3) whether respondents Lester and Stoneson have operated, or may be operating, as an express corporation, as defined in Section 2(k) of the Public Utilities Act, between points in the State of California, without having obtained a certificate of public convenience and necessity or having possessed or acquired a prior right so to operate, as required by Section 50(f) of the Public Utilities Act;

- (4) whether respondents Lester and Stoneson should be ordered to cease and desist from operating as an express corporation until they shall obtain authority so to do; and
- (5) whether the permitted or certificated rights, or any of them, held by respondents, or either of them, should be cancelled, revoked or suspended.

A hearing was held before Commissioner Potter and Examiner Bradshaw at San Francisco. Most of the facts of record are set forth in two written stipulations entered into between counsel for the Commission's field division and respondents.

Coast Line Truck Service, Inc., hereinafter called Coast Line, owns, controls, operates or manages auto trucks used in the transportation of property for compensation over public highways in the State of California. It holds permits to operate as a highway contract carrier and radial highway common carrier, as defined in the Highway Carriers' Act, and as a city carrier, as defined in the City Carriers' Act. In addition, this corporation possesses certain certificates of public convenience and necessity authorizing operations as a highway common carrier.

The certificates of public convenience and necessity held by Coast Line are covered by Decisions Nos. 26960, 32456, 32733, 41969 and 42351, in Applications Nos. 20111, 22407, 22856, 29537 and 27082, respectively. In general, the authority conferred by these certificates embraces the transportation of

- (1) fresh fruits, vegetables and certain other commodities from the Santa Cruz area to commission houses, canneries and packing houses at Oakland, San Leandro and Emeryville;
- (2) fresh fruits and vegetables, other than potatoes, onions, apples and berries (a) from Los Angeles to San Francisco, Oakland, Salinas, San Jose, Watsonville and Santa Cruz, and (b) from the Santa Cruz, Watsonville and Salinas areas, as well as certain other producing territories south of San Francisco and San Leandro, to Los Angeles;

- (3) fresh fruits and vegetables from Santa Clara County points to San Francisco and Oakland; and
- (4) general commodities between Los Angeles and points in the vicinity thereof, on the one hand, and Salinas, Monterey, Pacific Grove, Watsonville, Santa Cruz and Davenport and points intermediate thereto in Monterey and Santa Cruz counties, on the other hand.

Lester and Stoneson, doing business as Produce Express, own, control, operate or manage auto trucks used in the transportation of property for compensation over public highways in this State. They possess permits to operate as a highway contract carrier and radial highway common carrier, but do not hold and have never held authority to operate as a highway common carrier or as an express corporation.

It appears that Coast Line and Produce Express are and since 1942 have been substantially under the same management and control and that Lester and Stoneson are and during the period mentioned have been president and vice-president, respectively, of Coast Line. For some time prior to and including the date on which this proceeding was instituted Coast Line owned approximately 100 vehicles and maintained terminals at San Francisco, San Jose, Watsonville, Salinas and Los Angeles, including a clerical and operating force. During 1949, its quarterly gross operating revenues exceeded \$100,000.

Produce Express, on the other hand, up to the time of the institution of this investigation had no paid employees and owned no facilities except one or two trucks. Telephone listings were maintained showing the same number as that of Coast Line. Produce Express' quarterly gross operating revenues also exceeded \$100,000 during 1949.

An arrangement existed between respondents whereby Coast Line's trucks, terminals, offices, other facilities and employees were available to Produce Express. It appears that Coast Line received from Produce Express, as compensation, \$1,500 a month, subject to minor adjustments at the end of each calendar year, plus 95 per cent of the gross revenue received by Produce Express for transportation performed in trucks owned or operated by Coast Line. Under the practice in effect, when orders for transportation involved commodities and termini covered by Coast Line's operative rights shipping documents were made out in the name of that carrier. However, if the commodity or termini, or both, were not included therein shipments would be handled in the name of Produce Express. It further appears that no distinction has been made in the physical handling as between freight moving on Coast Line billing and that handled on Produce Express documents. Certain commodities handled on Coast Line documents and others on Produce Express documents have not infrequently been included in manifests covering single truck movements.

Appended to one of the stipulations are four statements outlining non-certificated operations conducted by Coast Line (other than in service wholly within an incorporated city), as well as the operations of Produce Express, between certain dates. According to the stipulation, these statements are representative of respondents' operations as conducted during 1949 and through the month of January, 1950.

The staff's study of Coast Line's non-certificated operations covers the periods from June 6 to 20, inclusive, 1949, and from January 22 to 28, inclusive, 1950. During the first

period of 13 days, exclusive of Sundays, it appears that non-certificated operations were performed on 12 of the days, while similar service was rendered on each of the seven days commencing January 22, 1950. A total of 51 shipments was handled during the period in June. Fourteen different consignors were served. According to the shipping documents, freight charges were assessed against 12 different parties. The carrier indicated that a total of 13 different parties had engaged its services. Eleven shipments were handled during the January, 1950, period and the shipping documents indicate that freight charges were assessed against five different parties. The shipments during the periods considered moved largely between the Bay cities and Los Angeles; from, to or between intermediate points; or to points in southern California beyond Los Angeles.

The data respecting traffic handled by Produce Express cover four seven-day periods, viz.: May 16 to 22, June 6 to 12, and June 20 to 26, 1949; and January 22 to 28, 1950, inclusive. Service was rendered on each of the days comprising these periods. A summary of the operations appears in the following tabulation:

	<u>May 16 to 22, June 6 to 12, June 20 to 26, 1949, incl.</u>	<u>January 22 to 28, 1950, in- clusive</u>
Number of shipments	691	147
Number of different consignors	92	51
Number of different parties to whom freight charges were assessed	120	31
Number of different parties indicated by carrier as having engaged its services	90	#

Not shown.

Most of the shipments moved (1) from San Francisco Bay and Santa Clara Valley points to Los Angeles and points in the vicinity thereof, including intermediate points; (2) from Los Angeles and points east and south thereof to Monterey County, Santa Clara County and San Francisco Bay points; and (3) between points in Santa Clara County. While a number of miscellaneous commodities between central and southern California points were included in the traffic handled, shipments of citrus fruit from southern California to Bay points, canned goods from Santa Clara County origins to southern California destinations, nursery stock from Monrovia to San Francisco Bay and Santa Clara County points and strawberries between Santa Clara County points or from such points to Los Angeles predominated.

According to testimony given by Lester, Willette Stoneson (who is his sister), her husband, Lester and his wife own stock in Coast Line; that the witness and his sister purchased Produce Express in 1942; and that a short time prior thereto he became president and general manager of Coast Line. No attempt has been made, the witness testified, to maintain a separation in the office or trucking facilities as between the two operations. He asserted that from the beginning it has been the general practice, when orders are received by Coast Line for service not embraced within its certificated rights, to handle shipments upon Produce Express billing.

The witness declared that Produce Express' contracts with shippers does not cover transportation of any commodities which Coast Line is authorized to haul between the same points; that Coast Line does not have any such contracts; and that the radial permit of Produce Express has been used very infrequently.

Lester asserted that, upon learning that this proceeding had been instituted, terminal managers were instructed to refuse any shipments not covered by Coast Line's certificated rights other than those tendered by or for 17 shippers with whom Produce Express has contracts in effect. It was stated that these contracts cover movements principally from the citrus belt in southern California to San Francisco.

According to the testimony, if Coast Line is granted a certificate it is seeking in Application No. 30421, authorizing the transportation of citrus fruit, about one-half of the 17 contracts will be cancelled and Coast Line will take over the hauling of this traffic. Reference was also made to a pending proceeding (Application No. 22856), in which Coast Line is urging that certain restrictions in its operative rights be removed, as well as to another proceeding (Application No. 30953) involving the proposed acquisition by Coast Line of the stock of Clark Bros. Motor Transport, Inc. and the merger of the two operations. It was testified that, in the event the three applications are granted, Produce Express will discontinue operations and the business will thereafter be handled by Coast Line as a highway common carrier.

The record in this proceeding establishes beyond any uncertainty that each of the respondents, by their operating methods and conduct, resorted to a scheme designed to unlawfully circumvent and nullify the restrictions and territorial limitations to which Coast Line's authority to operate as a highway common carrier have been subject. It is also clear that the operations of Lester and Stoneson, doing business as Produce Express, as shown by the record, do not fall within the authority they possess as a radial highway common carrier and highway contract carrier, but

constitute operations as an express corporation, as defined in Section 2(k) of the Public Utilities Act.

After carefully considering the entire record, the Commission is of the opinion and finds as follows:

1. That respondents Edward Lester and Willette Stoneson, copartners doing business as Produce Express, have been, and still are, engaged in or transacting the business of transporting freight, merchandise or other property as an express corporation (as defined in Section 2(k) of the Public Utilities Act) for compensation within this State; and that said respondents have conducted, and still conduct, such business without possessing a prior operative right therefor, and without first having obtained from this Commission a certificate of public convenience and necessity authorizing such operations, in violation of Section 50(f) of said Act.

2. That respondent Coast Line Truck Service, Inc., a corporation, in transporting certain freight in its own name and as underlying carrier for respondents Edward Lester and Willette Stoneson, has operated, and is still operating, auto trucks used in the business of transporting property as a highway common carrier (as defined in Section 2-3/4 of the Public Utilities Act), for compensation, over the public highways of this State between fixed termini or over regular routes; and that said respondent has conducted, and still conducts, such operations without possessing a prior operative right therefor, and without first having obtained from this Commission a certificate of public convenience and necessity authorizing such operations, in violation of Section 50-3/4 of said Act.

In our opinion, the evidence is insufficient in detail to enable us to determine whether respondents Lester and Stoneson,

doing business as Produce Express, have been or are operating as a highway common carrier.

An order will be entered directing respondents to cease and desist from conducting the operations herein found to be unlawful and suspending for an indefinite period of time their permits to operate as a radial highway common carrier and highway contract carrier, with the understanding that respondents may file a petition for the termination of said suspensions, accompanied by a detailed showing of the nature of whatever operations they, or either of them, may desire to render in the future as a radial highway common carrier or highway contract carrier, or both.

O R D E R

A public hearing having been had in the above entitled proceeding and, based upon the evidence received and the conclusions and findings set forth in the preceding opinion,

IT IS ORDERED:

(1) That Edward Lester and Willette Stoneson, copartners doing business as Produce Express, be and they are hereby directed and required to cease and desist from transacting, directly or indirectly, or by any subterfuge or device, the business of transporting freight, merchandise or other property as an express corporation (as defined in Section 2(k) of the Public Utilities Act), for compensation, within this State, unless and until said Edward Lester and Willette Stoneson shall have obtained from this Commission a certificate of public convenience and necessity authorizing such operations.

(2) That Coast Line Truck Service, Inc., a corporation,

be and it is hereby directed and required to cease and desist from operating, directly or indirectly, or by any subterfuge or device, any auto truck or transporting any commodity 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 from or to any point or place said Coast Line Truck Service, Inc. is not authorized to serve by virtue of Decisions Nos. 28960, 32456, 32733, 41969 or 42351, in Applications Nos. 20111, 22407, 22856, 29537 and 27082, respectively, unless and until said Coast Line Truck Service, Inc. shall have obtained from this Commission a certificate of public convenience and necessity authorizing such operations.

(3) That Radial Highway Common Carrier Permit No. 44-627 and Highway Contract Carrier Permit No. 44-611, heretofore granted to Edward Lester and Willette Stoneson, copartners, and Radial Highway Common Carrier Permit No. 44-409 and Highway Contract Carrier Permit No. 44-217, heretofore granted to Coast Line Truck Service, Inc., a corporation, be and they are hereby suspended until such time as the Commission may, upon petition, otherwise direct by supplemental order in this proceeding.

The Secretary is directed to cause a certified copy of this decision to be served, personally or by registered mail, upon each respondent.

The effective date of this order shall be twenty (20) days after the date of such service.

Dated at San Francisco, California, this 27th day
of June, 1950.

R. F. Morrison
James F. Calver
Robert H. McCall
Harold P. Kula
COMMISSIONERS