

Decision No. 44528

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
J. J. LEONARDINI, an individual, doing)
business as O. K. TRUCKING CO., for a)
certificate of public convenience and)
necessity to operate as a highway common)
carrier for the transportation of fresh)
fruits and fresh vegetables between)
San Francisco, and from those points on)
San Francisco Bay, Richmond on the north,)
to Hayward on the south, on the one hand,)
and specified points and places in)
Southern California, on the other hand.)

Application No. 30943

Edward M. Berol and Bertram S. Silver for applicant.
Donald Murchison for Pacific Freight Lines and Pacific Freight
Lines Express, protestants.
Frederick E. Fuhrman for Southern Pacific Company, Northwestern
Pacific Company and Pacific Motor Trucking Co., protestants.
Warren V. Glass, Jr., and H. J. Bischoff for Southern
California Freight Lines, protestant.
Willard Johnson for J. Christenson Co., as its interest may
appear.
Reginald L. Vaughan, Varnum Paul and John G. Lyons for
Coast Line Truck Service, Inc., protestants.

O P I N I O N

J. J. Leonardini, by the instant application, as amended, seeks a certificate of public convenience and necessity authorizing operations as a highway common carrier for the transportation of fresh fruits and vegetables between San Francisco and those points in San Francisco Bay, Richmond, on the north, to Hayward, on the south, on the one hand, and points and places in Central and Southern California, on the other hand as follows:

- (1) U. S. Highway 99 between Fresno and the Mexican Border.
- (2) U. S. Highway 101 and 101-A between Santa Maria and the Mexican Border.
- (3) U. S. Highway 60 between Los Angeles and Blythe.

Public hearings were held on April 24 and April 25, 1950, at San Francisco, and on May 25, 1950, at Los Angeles before Examiner Silverhart and the matter submitted for decision.

Applicant for many years has been engaged as a highway common carrier in the transportation of fresh fruit and vegetables between various points and places in northern California pursuant to authority heretofore granted by this Commission. He also has transported fresh fruits and vegetables as a permitted carrier between the points set forth in the application and the San Francisco Bay area. Applicant testified that throughout the year, dependent upon the marketing season, there is a movement of fresh oranges, grapefruit, lemons, potatoes, carrots, cabbage, lettuce, beans, tomatoes, cucumbers, squash, corn and other fresh fruits and vegetables to the San Francisco Bay area from the points and places in Central and Southern California encompassed within the scope of the application. He stated he could transport cherries, apricots, asparagus and pears in the southbound movement. Empty containers will also be carried on return movements. The service proposed herein will be furnished on-call, at the rates established in Highway Carriers' Tariff No. 8 and will be limited to shipments of not less than 10,000 pounds or shipments that will carry a charge no lower than that applicable to shipments of not less than 10,000 pounds. Fresh fruits and vegetables, being highly perishable require transportation to market promptly upon severance from their habitat. A regular scheduled service, with fixed times of arrival does not possess sufficient flexibility to adequately meet such equipment. According to the testimony it is necessary that fresh fruit and vegetables be delivered at such time as to permit an inventory, segregation and display thereof prior to the opening of

the produce market for the transaction of business (5 a.m. in the summer, 6 a.m. in the winter). It was stated that if such timely delivery was not made, a loss of sales would ensue and further the dealer would be required to retain such fruit and vegetables for the next day's market with a resultant reduction in freshness and value. Applicant stated that, if authorized so to do, he will furnish direct overnight service, without interchange of equipment or lading, to the San Francisco and Oakland produce markets arriving between 4:00 a.m. and 4:30 a.m. in the summer and between 5:00 a.m. and 5:30 a.m. in the winter and will furnish a similar service to the Los Angeles market. It is proposed to furnish lateral service within twenty miles of the above-named highways to farmers, growers and packers who are not located thereon. Local or intermediate point service will not be provided (1) between Fresno and the Mexican Border, (2) between Santa Maria and the Mexican Border and (3) between Los Angeles and Blythe.

The trucking equipment owned and operated by applicant is listed as including four pickup trucks; seven trucks; twenty-two tractors; twenty-one semi-trailers; one dolly and twenty-five trailers. Terminal, garage facilities and machine shop are maintained at San Leandro. Applicant stated he would purchase whatever additional equipment was necessary and establish terminals in Los Angeles and Indio. The evidence shows applicant possesses adequate financial resources to institute and maintain the proposed service.

Produce dealers, distributors, wholesalers, brokers and a consignment merchant who maintain places for the transaction of business in the San Francisco and Oakland markets and who obtain

fresh fruits and vegetables from the areas concerned, testified on behalf of applicant. They asserted that fresh fruits and vegetables require special handling; that the type of service which applicant has rendered in the past and proposes to establish herein is designed to meet their transportation requirements. Most of them declared that they did not know of any other service which is comparable to that proposed by applicant.

It was stipulated that no service would be rendered herein between any point in Santa Clara County, on the one hand, and any point in the Los Angeles territory as described in Highway Carriers' Tariff No. 2, on the other hand. It was further stipulated that no service would be rendered herein for the transportation of farm perishable products between points and places in Monterey, Santa Cruz and San Mateo Counties along California State Highway No. 1 and 10 miles on either side thereof extending from the City of Santa Cruz north on said highway to Half Moon Bay, on the one hand, and said Los Angeles Territory, on the other hand, whereupon Coast Line Truck Service, Inc., withdrew as a protestant.

Pacific Freight Lines and Pacific Freight Lines Express, Southern Pacific Company, Northwestern Pacific Company, Pacific Motor Trucking Company and Southern California Freight Lines, protested the granting of the application.

An official of the Southern California Freight Lines described the freight service it rendered. Shipments to San Francisco from Imperial Valley points, Coachella Valley points and the Oceanside territory are first transported to its Los Angeles terminal. There the shipments are dispatched to San Francisco after being transferred to line haul equipment and an exchange of drivers effected.

It appears from his testimony that although overnight service is furnished, such shipments do not arrive in San Francisco at any given time. Several produce dealers and jobbers located in Los Angeles testified upon behalf of this protestant and stated that its service was satisfactory to them.

The freight service rendered by Pacific Freight Lines was described by its representative. He stated that Pacific Freight Lines provided a direct overnight service from the points under consideration which arrived in San Francisco in the afternoon of the following day. His testimony disclosed that Pacific Freight Lines presently transports fresh fruits and vegetables between the San Joaquin Valley and Los Angeles territory and between Santa Maria Valley and Los Angeles territory but as yet has not transported fresh fruits and vegetables from and to the points described in this application. Further, this witness testified that Pacific Freight Lines has not been engaged to transport substantial shipments of fresh fruits and vegetables to the northern points because of the presence in the field of specialized carriers such as applicant; that his company was so occupied with movement of dry freight it had been unable to notify shippers and receivers in the San Francisco area that it was prepared to carry fresh fruits and vegetables.

Protestants Southern Pacific Company, Northwestern Pacific Company and Pacific Motor Trucking Company did not testify nor offer any evidence in their own behalf.

The evidence adequately demonstrates that at the date of the hearing herein, protestants did not specialize in the transportation of fresh fruits and vegetables and did not provide a service

to the San Francisco and Oakland produce markets sufficient to satisfy the peculiar requirements of fresh fruit and vegetable brokers and dealers.

Upon the evidence presented, we find that public convenience and necessity require the establishment and operation by applicant of a highway common carrier service for the transportation of fresh fruit and vegetables between the points and places mentioned in the application, as amended.

J. J. Leonardini is hereby placed upon notice that operative rights, as such, do not constitute a class of property which may be used as an element of value in rate-fixing, for any amount of money in excess of that originally paid to the State as the consideration for the granting of such rights. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the State, which is not, in any respect, limited to the number of rights which may be given.

O R D E R

Public hearings having been had and basing this order upon the evidence adduced therein,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity be and it is hereby granted to J. J. Leonardini authorizing the establishment and operation of a service as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, for the

transportation of fresh fruits and fresh vegetables of all kinds, and empty containers therefor, in shipments of not less than 10,000 pounds or shipments which will carry charges applicable to shipments of 10,000 pounds, upon an "on-call" basis, between San Francisco, Richmond, El Cerrito, Albany, Berkeley, Oakland, Alameda, San Leandro and Hayward, on the one hand, and such points and places in Central and Southern California, on the other hand, as are set forth below:

1. U. S. Highway 99 between Fresno and the Mexican Border.
2. U. S. Highway 101 and 101-A between Santa Maria and the Mexican Border.
3. U. S. Highway 60 between Los Angeles and Blythe with the right to serve off-highway points within 20 miles of above-named highways.

(2) That the certificate herein granted is subject to the following conditions:

- 27.2
- a. Applicant shall not transport vegetables and fruits in a frozen state.
 - b. Applicant shall not render service between any point in Santa Clara County, on the one hand, and any point in Los Angeles Territory, as described in Highway Carriers' Tariff No. 2, on the other hand, nor between points in Monterey, Santa Cruz and San Mateo Counties along State Highway No. 1 and 10 miles within either side thereof extending from the City of Santa Cruz north on said highway to Half Moon Bay, on the one hand, and the Los Angeles Territory, on the other hand.
 - c. Applicant shall not render service where both origin and destination are (aa) between Fresno (bb) between Santa Maria and the Mexican Border (cc) between Los Angeles and Blythe.

(3) That in providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

- (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) Within sixty (60) days from the effective date hereof and on not less than five (5) days' notice to the Commission and the public, applicant shall 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 appropriate tariffs and time tables.

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

Dated at San Francisco, California, this 11th day of July, 1950.

R. E. Zimmerman
Justice J. C. Warner
August Lowell
Harold Kula
Herbert Potter
COMMISSIONERS