

Decision No. 44761

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

ORIGINAL

OPINION AND ORDER DENYING REHEARING  
AND EXTENDING EFFECTIVE DATE

Daniel H. Souza, doing business as The City Drayage Company, has petitioned for rehearing in respect to Decision No. 44346. The Commission has considered each of the allegations in the petition and is of the opinion that no good cause has been shown for the granting of a rehearing. However, the Commission recognizes that the decision is somewhat cryptic and, therefore, takes occasion here to spell out in more detail the underlying reasoning.

In Pacific Southwest Railroad Association, et al. v. Stabel, et al. (1950), 49 Cal. P.U.C. 407, the problem of determining the status of a carrier was examined in the light of the statutory distinction between a highway common carrier, where the termini are "fixed" or the routes are "regular," or both, and a radial highway common carrier, where the reverse is true. After referring to the language in Public Utilities Act Section 2-3/4(b), which defines "between fixed termini or over a regular route" to mean "the termini or route between or over which any highway common carrier usually or ordinarily operates," we said (49 Cal. P.U.C. 412, 413):

"The phrase 'usually or ordinarily' as used in the language of the statute quoted above /Public Utilities Act, Sec. 2-3/4/ does not admit of any precise content and is difficult to apply to a situation like that involved here where there are numerous termini, each one being served with a different degree of frequency from that of the

others.

"We believe that, in such cases, to consider the carrier's operations in segments, with each pair of termini representing a distinct segment, leads to impractical and arbitrary results, and that a more reasonable approach is to consider the operations as a whole.

.....

"In administering the present statute, however, we believe we are justified in holding that where, as here, the evidence shows operations by a common carrier on a daily basis between any two or more points, or over any definable route, being conducted on such a scale, or in such a manner, as to exhibit a permanent or indefinitely continuing nature, such points are 'fixed termini' within the meaning of the statute. And where the carrier serves other points, or traverses other routes, as a common carrier, making use of the same personnel, equipment and facilities for all his operations, then the entire service is unlawful in the absence of a certificate of public convenience and necessity."

The record in the instant proceeding revealed a holding out to serve the public or a limited portion thereof, despite the existence of contracts. (See the discussion in Pacific Southwest Railroad Association, et al. v. Nielsen (1949), 49 Cal. P.U.C. 216.) The record further revealed an operation of a permanent or indefinitely continuing nature, with service daily between some points and service less than daily between others. The entire operation was conducted as a single integrated business unit with the use of the same personnel, equipment and facilities for all portions thereof. Under such circumstances, the conclusion was justified, upon the reasoning of the Stapel decision, that Souza's entire operation constituted highway common carriage. Accordingly, it would have been improper to find highway common carriage only as to particular pairs of points or particular routes, or to indicate that a particular number of persons could be served as to each pair of points or over each route without subjecting Souza to highway common carriage status.

While we are denying petitioner's request for rehearing, we recognize that substantial legal questions are involved. Because of this fact and the statement in the petition that Supreme Court review will be sought in the event of a denial of the petition, it seems appropriate to grant petitioner's request that the effective date of the order be stayed pending the outcome of such petition for review.

The Commission having considered the several allegations in the petition for rehearing herein and being of the opinion that no good cause has been shown for the granting of a rehearing, IT IS ORDERED that said petition be and it is hereby denied.

IT IS FURTHER ORDERED that the effective date of Decision No. 44346 shall be extended to and until September 25, 1950. If, however, petitioner shall have, within the time prescribed by law, petitioned for writ of review in the Supreme Court of California, IT IS HEREBY FURTHER ORDERED that the effective date of said decision shall be further extended during the pendency of the proceeding unless hereafter ordered otherwise.

Dated this 22nd day of August, 1950, at San Francisco, California.

R. Z. Dunderman  
Justin F. Coe  
Robert F. Luce  
Harold P. Hilo  
Kenneth P. Patton  
Commissioners