

Decision No. 44825

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
WARREN H. DESPER, doing business as)
Desper Terminal & Distributing Co.,)
for a certificate of public conven-)
ience and necessity to operate as a) Application No. 31268
highway common carrier for the trans-)
portation of crated new furniture and)
office equipment from Los Angeles,)
California, to various points in)
Southern California.)

James J. Broz, for applicant. Donald Murchison for
Pacific Freight Lines and Pacific Freight Lines Express; H. P.
Merry for Southern California Freight Lines and Southern California
Freight Forwarders; and Bailey & Poe, by Arlo D. Poe, for Western
Transportation Company, protestants.

O P I N I O N

The applicant, doing business as Desper Terminal & Distributing Co., has been engaged in the business of transporting crated new furniture and office equipment from his warehouse, located at 1916 East 51st Street, Vernon, to various points and places in the Counties of Los Angeles, Orange, San Diego, San Bernardino, and Riverside. Mr. Desper has maintained a storage warehouse in the Los Angeles area for several years, specializing in the storage of new furniture and office equipment, principally of eastern and northern manufacture. This furniture and equipment is sold by manufacturers' representatives, generally to dealers in surrounding territory, and most of it has been delivered by applicant in his equipment.

Mr. Desper, by his attorney, has filed a document entitled Stipulation of the Applicant, which the parties appearing have stipulated may be considered as an amendment to the application. By this so-called stipulation, the territory proposed to be served is limited by excluding points south of Santa Ana, Balboa, and Newport Beach. It also provides that applicant proposes to transport only the following commodities: (1) crated shipments of new furniture, office equipment, and rugs, as described in Western Classification, and (2) return shipments of damaged new furniture, office equipment and rugs for repair. By subsequent letter, addressed to the Commission, applicant's attorney has agreed to waive his request to include in the commodities to be carried such items as rugs and office equipment. Consequently, any authority granted applicant will be limited to crated new furniture moving out from the Los Angeles area and the return of such new furniture which is damaged.

Public hearings were held in Los Angeles before Examiner Rowe on May 24, and May 26, 1950, and applicant produced evidence, both oral and documentary. The matter was continued to August 1, 1950. However, prior to August 1, 1950, the parties, by stipulation, agreed that the matter should be submitted without the introduction of any evidence on behalf of protestants, but with the right to file briefs. These briefs are now on file and the matter is submitted and ready for decision.

Twenty-three witnesses testified as to the need for the offered highway common carrier service. They were unanimous in their praise of the manner in which applicant had handled their

shipments of crated furniture. Many of these witnesses also praised the manner in which Mr. Desper performed the incidental service of repairing damaged articles and of presenting their claims therefor against other carriers, generally the railroads. This latter service is not a part of the service to be certificated but, nevertheless, it has been considered by them to be of great assistance to both retailers and wholesalers.

The public witnesses stated that carriers of general commodities have not given the satisfactory service of applicant. Mixing of furniture, although crated, with other commodities, tends to result in damage, especially to polished surfaces and to glass. Applicant and one other permitted carrier appear to be the only truckers in the Los Angeles area offering this specialized service. Applicant proposes to render this service, also, to local manufacturers, some of whom prefer crating their product even when delivered in the area surrounding Los Angeles.

In their briefs, protestants Western Transportation Company, Pacific Freight Lines, and Pacific Freight Lines Express, contend that the proposed service cannot be considered to be a highway common carrier operation requiring a certificate from the Commission. The language quoted by them from *Rampone vs. Leonardini*, 39 CRC 562, appears to answer their contention. The Commission there said: "A 'radial highway common carrier' may operate within this defined area, over any public highway, subject of course, to the possibility that frequent operations between fixed termini or over any defined route may transform his operations into those of a 'highway common carrier', for which a certificate of public convenience and necessity is required".

The evidence in the record is convincing that, as presently operated, applicant has been operating over four defined routes with such regularity that, without a certificate, his service is of questionable legality. The volume and regularity over these routes is sought and expected by him to be increased. The record supports this expectation. A certificate is clearly required if such operations are to be legal. Additionally, the evidence of record clearly proves, and the Commission finds as a fact, that public convenience and necessity require the proposed operations over the four routes hereinafter defined, with periodic and more or less irregular departures from such routes, with his same equipment, within the hereinafter defined boundaries.

The record does not show that a denial of the application would benefit any of the protestants nor that the granting of this application would be materially harmful to them. If protestants had any evidence to such effect, it is assumed they would have offered it. Applicant is seeking the authority required by the character of his present operation. Applicant has proved that there is a public need and convenience for the continuance and expansion of the service he has been rendering. A certificate will, therefore, be granted in substantially the form requested.

Warren H. Desper, an individual, doing business as Desper Terminal and Distributing Co., is hereby placed upon notice that operative rights, as such, do not constitute a class of property which may be capitalized or 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 grant 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 held in the above-entitled proceeding, the evidence and the briefs on file having been fully considered, and basing this order upon the record and upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity be, and it hereby is, granted to Warren H. Desper, doing business as Desper Terminal and Distributing Co., authorizing him to operate as a highway common carrier, as defined in Section 2 3/4 of the Public Utilities Act, for the transportation of crated new furniture, as presently described in the Western Classification, from any points located within the Los Angeles Drayage Area, as established by the Commission in Case No. 4121, as amended, on the one hand, and on the other hand, the points of Pasadena, Alhambra, San Marino, Monterey Park, El Monte, Monrovia, Arcadia, Glendora, Covina, Pomona, Ontario, San Dimas, Laverne, San Bernardino, Redlands, Riverside, Colton, Santa Ana, Anaheim, Fullerton, Whittier, South Gate, Bell, Downey, Bellflower, Lynwood, Compton, Signal Hill, Long Beach, Wilmington, San Pedro, Torrance, Inglewood, Hawthorne, El Segundo, Manhattan Beach, Hermosa Beach, Redondo Beach, Santa Monica, Ocean Park, Venice, San Fernando, Glendale, Burbank, Van Nuys, and

North Hollywood, serving all intermediate points, and for the transportation in the reverse direction of return shipments of damaged new furniture as so described in said Western Classification.

(2) That, in the operation of the highway common carrier service, pursuant to the foregoing certificate, Warren H. Desper, doing business as Desper Terminal & Distributing Co., shall conform with and observe the following service regulations:

- (a) Within thirty (30) days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted.
- (b) Within sixty (60) days after the effective date hereof, and upon 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, tariffs and time schedules satisfactory to the Commission.
- (c) Subject to the authority of this Commission to change or modify such at any time, Warren H. Desper shall conduct said highway common carrier operation over and along the following routes:

- Route 1 Over and along U.S. Highway No. 66, also Nos. 60, 70, and 99, and lateral highways connecting U.S. No. 66 and U.S. Nos. 60, 70, and 99;
- Route 2 Over and along California State Highways Nos. 10, 11, 15, 19, and 107, and U.S. Highways Nos. 6 and 101-A;
- Route 3 Along California State Highways Nos. 7, 10, 107, and U.S. Highways Nos. 6, 66, and 101-A;
- Route 4 Over and along State Highways Nos. 7, 188, and 134, and U.S. Highways Nos. 9 and 101;

serving all intermediate points and all points and places located within five (5) miles on either side of the highways above named, traversing any and all public highways as necessary or convenient in serving such off-route points. Service to off-route points shall be conducted over and along the most appropriate route or routes.

(3) Except as herein authorized, Application No. 31268 is hereby denied.

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

Dated at San Francisco, California, this 19th day of September, 1950.

By J. D. [Signature]
Justus F. Craven
Secretary

COMMISSIONERS