

ORIGINAL

Decision No. 45099

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission Investigation into the)
operations and practices of)
Western Truck Lines, Ltd., a)
corporation.)

Case No. 5143

Phil Jacobson and Lloyd R. Guerra for respondent.
Gordon & Knapp by Hugh Gordon for Pacific Freight Lines and
Pacific Freight Lines Express; Douglas Brookman for
Valley Express Co., Valley Motor Lines, Inc., California
Motor Express, Ltd. and California Motor Transport Co., Ltd.;
H. P. Merry and Laird M. Hail for Southern California
Freight Lines and Southern California Freight Forwarders;
James J. Broz for Zimmerman Transportation Company; and
Willard S. Johnson in propria persona, interested parties.
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 October 18,
1949, on the Commission's own motion into the operations and prac-
tices of Western Truck Lines, Ltd., hereinafter called respondent.
The purposes of the investigation are to determine

- (1) whether respondent has operated since June 20, 1949,
or is operating, as a highway common carrier, as
defined in Section 2-3/4 of the Public Utilities
Act, without authority;
- (2) whether respondent should be ordered to cease and desist
from operating as a highway common carrier until it
shall obtain authority so to do; and
- (3) whether the permitted or certificated rights, or any
of them, held by respondent should be cancelled, revoked or
suspended.

Hearings were held before Examiner Bradshaw at Los Angeles.

Respondent, a California corporation, is engaged in the
operation of auto trucks used in the business of transporting property
for compensation over public highways in this and several other states.
It holds permits to operate as a radial highway common carrier and

highway contract carrier, as defined in the Highway Carriers' Act, and as a city carrier, as defined in the City Carriers' Act. Respondent also possesses various certificates of public convenience and necessity authorizing operations as a highway common carrier, as defined in the Public Utilities Act.

One of the highway common carrier certificates held by respondent was granted by Decision No. 43003, dated June 14, 1949, in Application No. 27100. By this decision, authority was granted to operate between San Francisco and Los Angeles territories, for the transportation of general commodities, subject to certain exceptions and restrictions. No authority was conferred permitting transportation from, to or between intermediate points. Operations pursuant to this certificate were commenced on October 3, 1949. Respondent also claims rights as a highway common carrier, pursuant to other certificates, permitting operations between, among other places (a) Los Angeles and Glendale, (b) Los Angeles and certain points east and northeast thereof and (c) Sacramento and Lake Tahoe.

According to a stipulation of record entered into between counsel for the Commission's field division and respondent, the operating rights held by respondent do not authorize the transportation of intrastate traffic as a highway common carrier (1) between Los Angeles and certain specified points in the vicinity thereof as well as east of Los Angeles, on the one hand, and certain specified points in the San Joaquin Valley, Sacramento and Placerville, on the other hand; (2) between Sacramento and Stockton and other San Joaquin Valley points; or (3) from Long Beach to San Diego, La Mesa and El Cajon.

An assistant transportation rate expert in the employ of the Commission's field division, following an examination of respondent's records and interviews with its officers, prepared and presented a report outlining respondent's non-certificated operations during the five-day period from November 14 to 18, 1949, inclusive. The report indicates that during this period 304 shipments were transported between the points set forth in the stipulation and that such transportation service was performed by respondent on each of the days covered by the study.

It also appears that the shipments referred to were from 81 consignors, that respondent's services were engaged by 79 parties and that the freight charges were paid by 114 parties. According to respondent's traffic manager, only one of these shipments was transported under its permit to operate as a radial highway common carrier. While in some instances the shipments from and to certain points were few in number, the volume which moved from and to other points was substantial. When considered as a whole, the exhibit discloses a definite regularity of service between the Los Angeles area and Sacramento, including intermediate points in the San Joaquin Valley. Some examples of the transportation performed from and to the larger communities appear in the following tabulations:

<u>From</u>	<u>To</u>	<u>Number of Shipments Transported</u>	<u>Number of Days on Which Service Performed</u>
Los Angeles	Fresno	45	5
Los Angeles	Modesto	11	4
Los Angeles	Stockton	24	4
Los Angeles	Sacramento	65	5
Sacramento	Los Angeles	16	4
Stockton	" "	29	4

Respondent's traffic manager presented evidence to indicate the territory served, equipment in operation, points at which terminals

and pickup trucks are located, service rendered, general nature of the traffic handled and number of shippers served by respondent, both as an intrastate and interstate carrier. He stressed the fact that the total number of shipments handled and shippers using respondent's facilities greatly exceeded the number of intrastate shipments transported between the points involved in this proceeding and the number of shippers by whom they were shipped.

An exhibit of record indicates that respondent's interstate common carrier rights include authority to operate between Los Angeles Harbor and Sacramento, with the right to provide service to and from certain intermediate points, including Bakersfield and Fresno, and on northbound traffic to Stockton and Lodi. It was stated that service for interstate shipments has been rendered between the Los Angeles area and San Joaquin Valley points and Sacramento since January 1, 1942.

According to respondent's witness, steps were taken about 30 days before commencing operations pursuant to Decision No. 43003 to discontinue service under contracts as quickly as possible and as fast as those having contracts could make other transportation arrangements. He asserted that difficulties were encountered in carrying out respondent's plans. Inability to make proper contacts with shippers for the purpose of explaining, and enabling them to understand, the situation was ascribed as a reason for the delay in completing the program. It was also asserted that resistance on the part of some shippers was experienced. This witness conceded, however, that respondent agreed to continue to handle so-called contract-carrier traffic for certain shippers until they were able to find other means of transportation, because it did not intend to permit those who had used its facilities to be without service. According to the testimony

at the final hearing held on May 5, 1950, all contract carrier arrangements have now been discontinued and respondent has no intention, under present conditions, of attempting to engage in contract carrier operations.

An exhibit purporting to show respondent's intrastate revenues for transporting traffic in its highway common carrier and radial and contract-carrier operations, by months, for the period from October, 1948, through March, 1950, was received in evidence. The figures commencing with May, 1949, follow:

<u>Month</u> (1949)	<u>Highway Common Carrier Revenue</u>	<u>Contract and Radial Carrier Revenue</u>
May	\$ 42,825	\$ 44,667
June	56,606	49,963
July	58,277	47,198
August	48,947	58,762
September	41,390	59,406
October	75,701	23,708
November	73,068	19,868
December	65,630	17,561
(1950)		
January	\$ 68,856	\$ 15,616
February	60,715	10,942
March	80,381	2,415*

*Covers purported radial carrier revenue exclusively.

Although it appears that operations under so-called contracts have been discontinued, respondent's traffic manager testified that certain truckload shipments are occasionally transported for a beverage shipper at Los Angeles. The shipments are destined principally to Fresno. He claimed that they are handled as a radial highway common carrier and asserted that respondent proposes to continue to engage in such transportation. The witness further declared that in the event a shipment should be tendered to respondent at Los Angeles

destined to an intermediate point on one of its routes between Los Angeles and San Francisco, it would accept the same as a radial highway common carrier, if the traffic was considered attractive.

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

(1) That the transportation service conducted by respondent for the shipper of beverages hereinabove referred to, and the transportation of other occasional shipments, between Los Angeles Territory and intermediate points between Los Angeles and San Francisco territories do not constitute operations as a radial highway common carrier.

(2) That since June 20, 1949, respondent operated 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 the State of California between fixed termini and over regular routes, to wit:

- a) between Los Angeles and other points in Southern California, on the one hand, and points in the San Joaquin Valley, Sacramento and Placerville, on the other hand; and
- b) between Sacramento and Stockton and other San Joaquin Valley points;

that said respondent conducted such operations without possessing a prior operative right therefor and without having obtained a certificate of public convenience and necessity authorizing such operations, in violation of Section 50-3/4 of said Act.

(3) That respondent is 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 the State of California between fixed termini and over regular routes, to-wit: between Los Angeles Territory on the one hand, and intermediate points between Los Angeles Territory and San Francisco Territory located upon routes over which it is authorized to operate through service pursuant to the provisions of Decision No. 43003, dated June 14, 1949, in Application No. 27100, on the other hand; that said respondent conducts such operations without possessing a prior operative right therefor and without having obtained a certificate of public convenience and necessity authorizing such operations, in violation of Section 50-3/4 of said Act.

An order will be entered directing respondent to cease and desist from conducting the operations between Los Angeles Territory and intermediate points between Los Angeles and San Francisco territories herein found to be unlawful and suspending its permit to operate as a radial highway common carrier. Inasmuch as respondent has discontinued the highway common carrier operations herein found to have been unlawful between other points and it appears that respondent has no intention of attempting to engage in highway contract carrier operations in the future between points involved in this proceeding, we are of the opinion that the cancellation, revocation or suspension of its permit to operate as a highway contract carrier is not justified. The entry of a cease and desist order with respect to the operations which have been discontinued is not considered necessary.

O R D E R

Public hearings having been held in the above entitled proceeding, evidence having been received and duly considered, the Commission now being fully advised and basing its order upon the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED:

(1) That Western Truck Lines, Ltd., a corporation, be and it is hereby directed and required to cease and desist from operating, directly or indirectly, or by any subterfuge and device, any auto truck 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 between Los Angeles Territory, as described in Appendix "C" to Decision No. 43003, dated June 14, 1949, in Application No. 27100, on the one hand, and intermediate points between said Los Angeles Territory and San Francisco Territory, as described in Appendix "B" to said Decision No. 43003, located upon routes which said Western Truck Lines, Ltd. is authorized to operate through service pursuant to the provisions of said Decision No. 43003, on the other hand, unless and until said Western Truck Lines, Ltd. shall have obtained from this Commission a certificate of public convenience and necessity therefor.

* (2) That Radial Highway Common Carrier Permit No. 19-597 held by respondent be and it is hereby suspended beginning forty (40) days after the effective date of this order. If, however, respondent should satisfy the Commission for any reason that such suspension should not become operative, a supplemental order to that effect will be issued.

The Secretary is hereby directed to cause personal service of a certified copy of this decision to be made upon said respondent.

This decision shall become effective upon the twentieth (20th) day after the date of such service.

Dated at San Francisco, California, this 5th day of December, 1950.

R. Z. [Signature]
Justice J. Quinn
Edward [Signature]
Harold [Signature]
Pennington [Signature]
Commissioners