

**ORIGINAL**

Decision No. 45104

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission investigation into )  
 the operations and practices of ) Case No. 5149  
 E. J. Willig Truck Transportation )  
 Company, a corporation. )

Edward M. Berol for respondent  
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 E. J. Willig Truck Transportation Company, a corporation, hereinafter called respondent, to determine:

- (1) whether respondent has operated, or is operating as a highway common carrier without prior authority, in violation of Section 50 3/4 of the Public Utilities Act;
- (2) whether respondent should be ordered to cease and desist from operating as a highway common carrier; and
- (3) whether the permitted or certificated rights, or any of them, of respondent should be cancelled, revoked or suspended.

A public hearing was held in San Francisco before Examiner Gillard on September 8, 1950, and the matter submitted for decision.

Respondent owns, controls, operates or manages auto trucks used in the transportation of property for compensation over public highways in California. Since 1936 it has held permits to operate as a highway contract carrier and radial highway common carrier, as defined in the Highway Carriers' Act, and since 1948 it has held a permit to operate as a city carrier, as defined in the City Carriers' Act. In addition, it has possessed, since August 29, 1949, pursuant

to Decision No. 43003, a certificate of public convenience and necessity to operate as a highway common carrier. This certificate authorizes the transportation of general commodities with specific exceptions (i.e., uncrated household goods, livestock, explosives, and commodities in bulk, of extraordinary value, or injurious or contaminating to other lading) over any and all routes between San Francisco territory and Los Angeles territory.

The case presented by the Field Division, in brief, concerns itself with a highway common carrier certificated to operate only between San Francisco and Los Angeles territories which is also transporting commodities to points other than between San Francisco and Los Angeles under a highway contract carrier's permit, and the question presented is whether or not such a dual operation, when conducted with the same facilities, equipment, and personnel, becomes unlawful under the integration theory set forth in the Stapel  
(1)  
decision.

To establish operations by respondent beyond the scope of its certificate, the Field Division introduced into evidence two exhibits which were compiled from respondent's freight bills, covering transportation by respondent on February 27 and 28, and March 15 and 16, 1950.

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(1) Pacific Southwest Railroad Assn. et al, vs. Harold A. Stapel et al, Decision No. 43828, dated February 14, 1950, 49 Cal. P.U.C. 407.

One of these (Exhibit No. 3 herein) is entitled "Summary of all non-certificated operations of E. J. Willig Truck Transportation Company, a corporation, to or from points beyond San Francisco or Los Angeles territories at a combination of local rates, during the periods noted." Although the data set forth on this exhibit was taken only from respondent's freight bills, the Field Division representative who compiled the same testified that respondent's truck manifests showed that it only transported the shipments in question between San Francisco and Los Angeles territories. Respondent's traffic manager testified that all such shipments were received and transported only after telling the shipper that respondent would carry the commodities solely between its certificated points, and that all beyond movements would be carried by another carrier at a combination of local rates. This exhibit was received into evidence subject to a stipulation between counsel that respondent had transported the shipments in question only between its certificated points, and that all movements beyond San Francisco or Los Angeles territories were transported by another carrier at a combination of local rates.

In our opinion, in view of the evidence and stipulation, this exhibit discloses no illegal or improper transportation service by respondent.

The other exhibit (No. 2 herein) is entitled "Summary of all non-certificated operations of E. J. Willig Truck Transportation Company, a corporation, except those performed to or from points beyond San Francisco or Los Angeles territories at a combination of local rates, during the periods noted." (February 27 and 28, and March 15 and 16, 1950). The exhibit discloses that for a total of

six different firms during all the days referred to respondent transported 74 shipments beyond the scope of its certificate, that is, when both point of origin and destination were not the San Francisco and Los Angeles territories. One of these shipments, from El Monte to Oakland, was for the Ampruf Paint Co., Inc., a firm with which respondent did not hold a contract. The evidence shows no other such shipment for any firm which does not have a contract with respondent, and the traffic manager of the latter testified he knew of no other instance, since he assumed his position on April 1, 1950, where respondent had performed transportation service beyond the scope of its certificate except for firms with which it had contracts.

The other 73 shipments were transported for five firms with which respondent had contracts, distributed as follows:

<u>Name of Shipper</u>	<u>Number of Shipments</u>
San Francisco Brewing Corporation	58
Los Angeles Soap Company	6
Shell Oil Company	4
Borun Bros.	3
The Best Foods, Inc.	2

All of these shipments either originated at or were destined to San Francisco or Los Angeles, with the other end of the movement at some point other than either of the two mentioned. The other points involved lie both between San Francisco and Los Angeles, and beyond either of them. The Borun Bros. shipments, for example, all originated at Los Angeles, and were delivered in Salinas and Santa Rosa.

Of the 74 shipments in question, 58, or 78% were transported for the San Francisco Brewing Corporation (Burgermeister Beer). From

San Francisco, shipments of beer were made in the Valley to Mt. Shasta, Redding, Red Bluff, Chico, Marysville, Altaville, Sacramento, Stockton, Modesto, Merced, Fresno, Visalia, Tulare, Coalinga and Bakersfield, and on the Coast to Eureka, Fort Bragg, Santa Rosa, Napa, Vallejo, Pittsburg, Santa Cruz, Salinas, Monterey and Santa Barbara. Return shipments of empty bottles were made from similar points to San Francisco.

The Field Division representative who examined respondent's freight bills testified that E. J. Willig told him in March of this year that respondent had nine contracts, three of which were oral and the rest written. No evidence of the terms of the oral contracts was introduced. Photostatic copies of the six written contracts were introduced into evidence. They were executed at various dates from December 1, 1936, the earliest, to November 23, 1949, the latest. Each specifies a different commodity to be transported, viz: roofing materials, petroleum products, candy malt beverages, food products and soap. Most of them designate the points to be served and all mention minimum weights to be shipped during specified periods at either the Commission's minimum rates or for amounts detailed therein. In most instances the contracts are effective for specified periods and thereafter until cancelled on thirty days' written notice. Also set forth are general provisions concerning liability for losses, insurance, nonperformance and the independent contractor status of respondent.

Respondent had at the date of the hearing cancelled five of these contracts (two oral and three written) leaving in effect one oral contract (Borun Bros.) and three written contracts (San Francisco Brewing Corporation, Shell Oil Company and Certain-Toed

Products Corporation). Respondent has served one of these for four years and the others for more than ten years. Of the five shippers whose contracts were cancelled, two are now being served by respondent in its certificated operation while for the other three no service at all is being rendered. There is no evidence in the record as to whether these five contract shippers, while their contracts were still in effect, were also served by respondent between its certificated points. Of the four whose contracts are still in effect, three (San Francisco Brewing Corporation, Borun Bros. and Certain-Teed Products Corporation) are also being served under respondent's certificate between San Francisco and Los Angeles, while the record is silent on this point as to the fourth. No evidence was introduced concerning the names or number of shippers served, nor commodities carried by respondent in its certificated operation.

The evidence also shows that respondent has terminals and offices in San Francisco and Los Angeles which are used for both phases of its operation. All documents are issued from and maintained at the San Francisco office. The freight bills used in the contract operation are distinguishable from the others by the printing but substantially the same data is contained on each. The same tractors and trailers are, at times at least, used for both the contract and common carrier operation. On the Borun contract, for example, no other freight is carried north from Los Angeles, but on the return, common carrier freight would be hauled by the same equipment if no contract shipment was ready. No special driver training is provided, but respondent has two sets of drivers, one for each phase of its operation, and the drivers are not exchanged, one to the other, except in emergency.

Respondent's traffic manager testified that all contract hauls are loaded directly on 35 foot trailers, while in the common carrier operation, pickup trucks are used and loads consolidated at the terminals. For the San Francisco Brewing Company contract, respondent has painted several of its vans white, with blue trimming and the word "Burgermeister" along the full length of the van. All shipments under this contract are made in these vans. These same vans are used by respondent to carry beer under its certificate from San Francisco to Los Angeles, and on the return to San Francisco these vans would carry general commodities if a full load of empty cases could not be obtained.

In deciding the question presented, we believe that the shipment for Ampruf Paint Company may be disregarded, since it was the only radial movement shown and respondent's traffic manager testified no other radial shipment had been transported.

We believe that the evidence presented shows that the operations of respondent conducted outside the scope of its certificate do not constitute highway common carriage, and we accordingly find that respondent is not operating as a highway common carrier without authority. An appropriate order discontinuing this proceeding will be entered.

O R D E R

A public hearing having been held, and based upon the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED:

That the investigation concerning E. J. Willig Truck Transportation Company, a corporation, be and it is hereby discontinued, and Case No. 5149 is hereby dismissed.

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

Dated at San Francisco, California, this 5<sup>th</sup> day of December, 1950.

A. Z. Zimmerman  
Justin F. Craven  
Wesley L. Powell  
Harold P. Kule  
Herbert L. Pottel  
COMMISSIONERS