

ORIGINAL

Decision No. 45211

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission investigation into
the operations and practices
of Glen D. Nolan, doing
business as Colma Drayage.

Case 5193

Marquam C. George for respondent
Joan K. Power for Field Division,
Public Utilities Commission

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 Glen D. Nolan, doing business as Colma Drayage, 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;
- (3) Whether respondent's permitted rights, or any of them, should be canceled, revoked or suspended.

Public hearings were held on July 26 and September 6, 1950, in San Francisco before Examiner Gillard, and the matter submitted on briefs, filed December 8, 1950.

Respondent commenced his trucking operations in 1946 under the authority of a radial highway common carrier permit and a city carrier permit. He has never possessed any certificated or prescriptive highway common carrier rights. In 1948 he also secured

a contract carrier permit. He presently operates five pieces of equipment and uses his home in Colma as his office. He has no garage, shop, terminal or dock facilities, and keeps his trucks overnight in a public garage in San Francisco. Except in rare instances, deliveries are made directly from the pickup truck. He does not operate a regular schedule, but conducts an "on call" service. Respondent drives one of the trucks himself, and his wife manages the office.

He secured his first contracts in June, 1949, at which time he claims to have entered into ten written and nine oral contracts. By May, 1950, he had canceled one written contract and had dropped two oral contracts and replaced them with two others. At the time of the hearing, he claimed to have canceled five of his written and four of his oral contracts, leaving a total of nine contracts in effect.

Respondent testified that he had difficulty getting written contracts in this area, because the head offices of the companies he contacted were back east, and the persons he talked with didn't have actual authority to sign contracts. He therefore only entered into "oral contracts" with these concerns. The written contracts were single sheet mimeographed forms with a few blanks to be filled in. All were effective for one year, and thereafter until canceled upon 30 days written notice. With respect to the five written contracts that were canceled respondent testified that neither party gave written notice; that they were canceled "just between the parties". With respect to the cancellation of oral contracts, he testified he either told the customer he couldn't have contracts, or he didn't "renew" them when the customers' shipments became more seasonal and less regular.

A representative of the Field Division examined respondent's records in September, 1949 and June, 1950, and on each occasion made a summary, from respondent's freight bills, of all inter-city operations during two weekly periods, each of which covered ten working days. One of the exhibits covers the periods August 1 to 7 and August 15 to 21, 1949, and the other summarizes April 30 to May 6, and May 14 to 20, 1950.

The earlier summary (Exhibit 2 herein) shows 408 shipments transported at the request of 25 shippers. An additional 74 persons were served as collect consignees or as consignors of prepaid shipments. Daily service was rendered from San Francisco to Oakland, Newark and San Jose, with less frequent service to intermediate and adjacent points, between intermediate points, and on back hauls to San Francisco. On two days service was rendered between San Francisco and Stockton-Tracy for two of respondent's largest customers - National Starch Company and Bank of America.

The later exhibit (Exhibit 1 herein) discloses 396 shipments transported at the request of 20 shippers. In addition, 79 persons were served as collect consignees or as consignors of prepaid freight where another person engaged respondent's services. Daily service was rendered, as before, from San Francisco to Oakland, Newark and San Jose, with a similar pattern of service to and between intermediate and adjacent points. Bank of America was served on three days between Stockton and San Francisco, while service in the Valley for National Starch Company was greatly increased - Manteca, Modesto, Escalon, Stockton, Lodi and Sacramento being added to points served. In each of the two weekly periods involved, one trip was made into the Valley with shipments from both of these concerns. In addition, five collect consignees were served on the

first trip (May 2, 1950) and four different collect consignees were served on the second trip (May 17, 1950).

Both the written contract with National Starch Company, and respondent's written memorandum of his oral contract with the Bank of America, specify that the commodities mentioned "are to be transported between the counties of San Mateo, Santa Clara, San Francisco and Alameda."

Among the commodities transported were cement paste, drugs, empty drums, office supplies, parts and tools, paint, paper and steel products, chemicals, hardware, pipe and fittings, printed matter, glue, and batteries.

Counsel for respondent contends that respondent conducts both a radial and a contract operation; that Exhibit 2 discloses that only 25 persons were served, and that 340 of the total of 408 shipments were transported for nine persons with whom respondent had entered into contracts; that Exhibit 1 shows 20 persons served and of the total of 396 shipments, 332 were transported for nine persons with whom respondent had entered into contracts.

Those contentions completely ignore respondent's history. Respondent testified that when he commenced operations he secured a radial permit only, and had never heard of a contract permit. About two years later he heard that if he operated too frequently in an area he was "out of line" as a radial carrier, and had better get contracts, and he could have 25 contracts and be all right. He immediately secured ten written contracts and nine oral contracts. Later on (inferentially in June, 1950, at the time of the second investigation herein) he heard he should have nine or less contracts, so he immediately reduced his contracts to nine. Respondent further

testified that for over two years, i.e. prior to securing his first contract, his accounts had remained the same and his operations had remained unchanged.

It thus appears that respondent served his regular customers as a common carrier under his radial permit until June, 1949. He then entered into "contracts" with 19 of them, and one year later canceled ten of these, all the while conducting exactly the same type of operation. While respondent's attempts to comply with what he believed to be the law are laudable, we cannot on that ground refuse to find that he was at all times a common carrier and never intended to be and never actually conducted himself as a private carrier.

The argument also ignores the fact that many other persons besides respondent's "regular" customers were served. Respondent attempted to avoid a finding that he was serving the collect consignees by producing as a witness the west coast manager for National Starch Company. He testified that his company determined, from a competitive viewpoint, whether to ship prepaid or collect. In either case, the customer may designate the carrier, and except in very rare instances, the company ships in accordance with the direction of the customer. He also stated that in the majority of cases the customer merely requests "ship best way", and in those cases the company designates the carrier.

General testimony of this kind which is not specific as to any particular consignee or group of consignees is insufficient to overcome the statement in the Staple Decision⁽¹⁾ that the expectation of payment of the freight charges by the consignee serves as a proper basis for presuming that the carrier is holding out his services to the collect consignee.

(1) Pacific Southwest Railroad Association, et al., v. Harold A. Staple, et al., Decision No. 43828 dated February 14, 1950.

Respondent rendered a daily service, as a common carrier from San Francisco to San Jose, and also from San Francisco to Oakland and Newark, and in the conduct of such operations became a highway common carrier. Likewise, in rendering service to the Valley points mentioned, on a once weekly basis, he has conducted his operations with sufficient regularity to constitute himself a highway common carrier. The other points served by respondent are intermediate or adjacent to the points served by him as a highway common carrier and are located within the territorial scope of his highway common carrier operation. They are for the most part points through which he must travel in rendering his highway common carrier service, and are therefore within the pattern of his highway common carrier service, even though served with less frequency than the terminal points.

Upon full consideration of the evidence, we accordingly find that respondent Glen D. Nolan, doing business as Colma Drayage, has been and is operating as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, between the points and places set forth in the ensuing order, without having obtained from this Commission a certificate of public convenience and necessity therefor, and without possessing a prior operative right therefor, 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 herein found to be unlawful and suspending his permits to operate as a highway contract carrier and radial highway common carrier until such time as the Commission by supplemental order may remove such suspension.

O R D E R

Public hearings having been held and based upon the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED:

(1) That Glen D. Nolan, doing business as Colma Drayage, be and he is hereby directed and required, unless and until said Glen D. Nolan shall have obtained from this Commission a certificate of public convenience and necessity therefor, to cease and desist from operating, directly or indirectly, or by any subterfuge or 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,

(a) between San Francisco on the one hand and the following points on the other hand:

San Jose	Berkeley	Millbrae
Santa Clara	Emeryville	San Bruno
Agnew	Alameda	South San Francisco
Sunnyvale	San Leandro	Daly City
Moffett Field	Hayward	Modesto
Mountain View	Decoto	Stockton
Palo Alto	Newark	Lodi
Menlo Park	Castro Valley	Sacramento
Redwood City	Tracy	Richmond
San Carlos	Manteca	Pittsburg
Belmont	Escalon	Crockett
San Mateo	Burlingame	Vallejo
Oakland		

(b) between San Jose on the one hand and the following points on the other hand:

San Francisco	San Carlos	Palo Alto
Colma	San Mateo	Richmond
San Bruno	Redwood City	Berkeley
Burlingame	Menlo Park	San Leandro
San Carlos	Mt. View	Oakland
Burlingame	Sunnyvale	

(c) between Oakland on the one hand and the following points on the other hand:

Centerville	Santa Clara	Redwood City
Newark	Sunnyvale	South San Francisco
San Jose	San Mateo	San Francisco
Campbell	San Bruno	

(d) between Redwood City on the one hand and the following points on the other hand:

Oakland	Newark	South San Francisco
Emeryville	San Jose	San Francisco
San Leandro	San Mateo	

(e) between Mountain View on the one hand and San Francisco, South San Francisco and Berkeley, on the other hand;

(f) between Newark on the one hand and Emeryville and South San Francisco on the other hand.

(2) That Radial Highway Common Carrier Permit No. 38-4415 and Highway Contract Carrier Permit No. 38-5128 heretofore issued to Glen D. Nolan be and they are hereby suspended until, for good cause shown, the Commission by supplemental order herein otherwise directs.

The Secretary is directed to cause a certified copy of this decision to be served personally upon respondent Glen D. Nolan.

The effective date of this order shall be forty (40) days after the date of such service.

Dated at San Francisco, California, this 3rd day of January, 1951.

R. B. Zimmerman
Harriet P. Hule
Resurrection Patten

 COMMISSIONERS