Decision No. 45784

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SAVAGE TRANSPORTATION COMPANY, a corp., to transport commodities generally between San Francisco and San Diego, etc., and Sacramento and San Diego, etc., and certain other intermediate points.	Application No.23877
E. J. WILLIG TRUCK TRANSPORTATION CO., a corp., to transport commodities generally between San Francisco and San Diego, etc., and Sacramento and San Diego, etc., and certain other intermediate points.	Application No.24107
E. J. WILLIG TRUCK TRANSPORTATION CO., a corp., to establish joint rates with HIGHWAY TRANSPORT, INC., DELTA LINES, INC., JOHNSON TRUCK LINES, OREGON NEVADA CALIFORNIA FAST FREIGHT, INC., CALLISON TRUCK LINES, WILLIG FREIGHT LINES, M & W TRUCK LINE, and INTERCITY TRANSPORT LINES.	Application No. 30795
SAVAGE TRANSPORTATION CO. INC., to establish joint rates with MERCHANTS EXPRESS CORP., HIGHWAY TRANSPORT, INC., DELTA LINES, INC., JOHNSON TRUCK LINES, OREGON NEVADA CALIFORNIA FAST FREIGHT, INC., CALLISON TRUCK LINES, WILLIG FREIGHT LINES, DICKMAN OVERNITE CAR SERVICE, and INTERCITY TRANSPORT LINES.	Application No. 30796
SAVAGE TRANSPORTATION CO. INC., and E. J. WILLIG TRUCK TRANSPORTATION CO., to establish joint rates with PACIFIC FREIGHT LINES EXPRESS, a corporation.	Application No. 30824

Edward M. Berol for applicants.
Willard S. Johnson for Hills Transportation Co., intervener on behalf of applicants.
Wm. Meinhold for Southern Pacific Company and Pacific Motor Trucking Company; and Douglas Brookman for Valley Express Co., Valley Motor Lines, Inc., California Motor Express, Ltd. and California Motor Transport Co., Ltd., protestants.

OPINION ON REHEARING

This opinion relates to a proposal to establish joint through rates by Savage Transportation Co., Inc. (hereinafter called

Savage), E. J. Willig Truck Transportation Co. (hereinafter called Willig) and various other highway common carriers and certain express corporations or freight forwarders (1) between San Francisco Territory and points east and south of Los Angeles Territory and (2) between Los Angeles Territory and certain points located north, east and south of San Francisco Territory.

Savage, Willig and seven other carriers were granted certificates of public convenience and necessity on June 14, 1949, authorizing highway common carrier operations for the transportation of general commodities, with certain exceptions, between San Francisco and Los Angeles territories. (Decision No. 43003, embracing Applications Nos. 23877, 24107 and others of a similar nature, 48 Cal. P.U.C. 712). The certificates granted to Savage and Willig did not authorize the transportation of shipments from, to or between intermediate points. They were also subject to the condition that these carriers shall not, without the Commission's approval, operate as an underlying carrier for an express corporation, transport property for a freight forwarder or publish joint rates with an express corporation or freight forwarder.

By Decision No. 45136, dated December 12, 1950, in Applications Nos. 30795, 30796 and 30824, (50 Cal. P.U.C. 319), applicants were authorized to establish joint through highway common carrier rates. Decision No. 45137, concurrently decided, in Applications Nos. 23877 and 24107, amended the conditions governing the certificates granted to Savage and Willig by removing the restrictions against the publication of joint rates with express corporations and freight forwarders. Upon petition filed by certain protestants, orders were entered on January 30, 1951, in the five applications, granting a rehearing for the limited purpose of receiving oral argument. The rehearing was held before Examiner Bradshaw at San Francisco.

Section 50-3/4 (c) of the Public Utilities Act provides that two or more highway common carriers shall not establish any through route, or joint, through, combination or proportional rate without the express approval of the Commission. Prior approval, however, is not required with respect to the publication of joint rates between highway common carriers and express corporations or freight forwarders. (Pacific Southwest R.R. Assn. vs. California Motor Express Ltd., 46 C.R.C. 509.)

The Commission in Re Application of Anderson, 42 C.R.C. 15, held that the provisions of Section 50-3/4 of the Public Utilities Act should be construed as requiring a showing of public convenience and necessity before the establishment of joint rates by two or more highway common carriers may be approved. Subsequently, in Decision No. 45136, supra, we found that, because of changed conditions, the denial to the applicants herein of the right to establish joint rates would not only impede the free flow of commerce, but place upon applicants an artificial barrier to meet the competition of other carriers. We also held that in the light of these facts the Anderson Case is no longer controlling in a case of this nature and should not be followed.

Protestants contend that in entering Decision No. 45136 and the companion Decision, No. 45137, the Commission failed to regularly pursue its authority. Attention is called to various decisions rendered prior to 1935, under the Auto Truck Transportation Act (Stats. 1917, ch. 213, as amended), in which it was held that a showing of public convenience and necessity is essential before highway common carriers, then known as "transportation companies", may establish joint rates. They assert that when the Auto Truck Transportation Act was repealed, and its essential provisions incorporated in the Public Utilities Act (Stats. 1935, ch. 664), the action of the Legislature, in providing that joint rates may not be established "without the

express approval of the Commission", constituted a codification of the rule laid down by these decisions. The argument is advanced that it is, therefore, necessary that a finding of public convenience and necessity be made before joint rates may be authorized.

Protestants also allege that it would be impossible to establish public convenience and necessity upon the record in these proceedings. The reasons urged in support of this view are that (1) Applications Nos. 30795 and 30796 were filed before Savage and Willig commenced operations under their certificates and (2) the testimony is based upon prior operations as permitted carriers, rather than conditions as they have prevailed under operations as highway common carriers.

After carefully reconsidering this subject, we have come to the conclusion that the case of In Re Anderson, supra, and other cases decided by this Commission, which required a showing of public convenience and necessity as a condition precedent to authorizing highway common carriers to establish joint rates and through routes, were decided wrongly. While we have given careful consideration to the reasons that have been advanced in the past and are now advanced in the instant proceeding for differentiating between highway common carriers and other common carriers with regard to the establishment of joint rates and through routes, we cannot conclude that the Legislature intended that public convenience and necessity must be shown as a condition to the granting of such authority to highway common carriers. The question is answered conclusively by the statute. Section 50-3/4 of the Public Utilities Act does not specify that public convenience and necessity be found nor is there anything in that section which necessarily implies that the Commission require such showing. Neither commissions nor courts should

attempt, by construction or interpretation, to write a requirement into a statute which the Legislature did not see fit to incorporate therein. In other words, if the Legislature had intended that such standard as public convenience and necessity be a requirement as a condition precedent to establishment by highway common carriers of joint rates and through routes, it would have been easy enough for the Legislature to have said so.

Several sections of the Public Utilities Act require the proof of public convenience and necessity as a condition precedent to the grant of the several authorities specified in said sections. Section 50-3/4 of that Act requires the proof of public convenience and necessity (subject to exception not here material) as a condition to the granting of a certificate to operate as a highway common carrier. Therefore, it is seen that, whenever the Legislature intends that public convenience and necessity be the standard, it has written such requirement into the statute. We perceive no difference in law between the prohibition contained in Section 51 of the Public Utilities Act (relating to transfers of public utility property) and the prohibition in Section 50-3/4 of said Act (relating to the establishment by highway common carriers of joint rates and through routes). In each instance, the requirement is that the approval of the Commission must be secured before the authority contemplated by said sections may be exercised. The Supreme Court of this State, in interpreting Section 51, held, in the case of Hanlon v. Eshleman, 169 Cal. 200, 202-203, that, unless the Commission finds that a proposed transfer of public utility property is adverse to the public interest, the Commission should grant authority to transfer said property. Additionally, Sections 22 and 33 of the Public Utilities Act clearly show that, as applied to common carriers, other than highway common carriers, such common carriers are under a duty to establish joint rates

and through routes and, if such carriers do not perform their duty in this regard, the Commission is given authority, after hearing and upon the finding of public convenience and necessity, to require such common carriers to establish joint rates and through routes. (Pacific Southwest Railroad Association v. California Motor Express, 46 C.R.C. 509, 516.) In light of such a legislative attitude toward this subject, as applied to all common carriers except highway common carriers, it is difficult to understand why the requirement as to highway common carriers should be construed as implying the condition of public convenience and necessity as a requisite to the granting of authority to establish joint rates and through routes. Why such an exacting standard should be required of highway common carriers and not of other common carriers is not readily apparent, although we are not unmindful of the contention that operative rights are, in effect, extended by highway common carriers as a result of the establishment of joint rates and through routes. That contention does not appeal to us as sufficient to require the proof of public convenience and necessity as a condition to the granting of such authority. It is our opinion that it is sufficient to find that the authority sought is not adverse to the public interest as a condition precedent to the granting thereof. If such a finding is sufficient to grant authority to transfer public utility property (a most important authority from the standpoint of regulation), it is sufficient where highway common carriers seek to establish joint rates and through routes. The former subject is at least as important as the latter in our opinion.

The expressions "public convenience and necessity," "in the public interest" and "not adverse to the public interest" are terms well understood in the law and, although relating to the same

general subject, are not convertible or interchangeable. In our opinion, the standard "not adverse to the public interest" includes a very broad sweep of regulatory discretion and is sufficient to protect the public interest in so far as this particular subject of the establishment of joint rates and through routes is concerned. We must bear in mind that the public interest includes not only the interest of shippers and the general public, but it includes also the legitimate interests of those who are subject to regulation. In other words, if the requested authority by highway common carriers to establish joint rates and through routes should, in the opinion of the Commission, prejudicially affect the lawful interest or interests of another carrier or carriers without, at the same time, resulting in a benefit to the public outweighing any such prejudice, the Commission could well find that the requested authority is adverse to the public interest. Judged by such standards, the prohibition contained in Section 50-3/4 is given meaning commensurate with the objective sought to be attained and without reading into the section a condition or limitation not therein specified or necessarily implied.

It is, therefore, our opinion that any case, heretofore decided by this Commission, which held that the proof of public convenience and necessity was a condition precedent to the granting to highway common carriers of authority to establish joint rates and through routes, to the extent of such holding, should be overruled and they are hereby overruled.

While we hold that, in a case of this nature, it is not required that public convenience and necessity be shown as a condition precedent to the grant of the authority sought, we do point out

that the evidence in this proceeding does justify a finding of public convenience and necessity and we hereby make such finding upon the evidence.

ORDER ON REHEARING

A rehearing having been had in the above-entitled proceedings, the Commission being fully advised in the premises and, based upon the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED (1) that Decision No. 45136, dated December 12, 1950, in Applications Nos. 30795, 30796 and 30824 (except as otherwise provided herein) and (2) that Decision No. 45137, being a supplemental opinion and order, dated December 12, 1950, in Applications Nos. 23877 and 24107, be and they are hereby affirmed.

This decision on rehearing shall become effective twenty (20) days after the date hereof.

Dated at San Francisco, California, this 22nd day of May, 1951.

Commissioners