

Decision No. 46051

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission investigation into the	)	
operations and practices of	)	
KENNETH R. MOORE and FRANK L. MOORE,	)	Case No. 5210
doing business as Moore Truck Line.	)	
-----	)	

Marquam C. George for respondents.  
Wilson E. Cline for Field Division,  
 Public Utilities Commission.

O P I N I O N

This proceeding was instituted upon the Commission's own motion to determine whether Kenneth R. Moore and Frank L. Moore, hereinafter called respondents, have operated as highway common carriers without having obtained a certificate of public convenience and necessity or having possessed a prior right so to operate, as required by Section 50-3/4 of the Public Utilities Act.

A public hearing was held on October 17, 1950, at San Francisco before Examiner Silverhart and subsequently on December 21, 1950, oral argument was held and the matter then submitted for decision.

It was stipulated that respondents possess city, highway contract and radial highway common carrier permits, and that they do not possess any certificated or prescriptive right to operate as a highway common carrier; that for four years last past they have owned, controlled, operated or managed, one or more auto trucks over public highways in California; that their principal place of business is located at 1408 East 6th Street, Stockton.

A summary of all respondents' highway carrier operations (except those performed wholly within the boundaries of an incorporated city) covering the periods January 12 and 13, February 15 and 16, and March 20 and 21, 1950, prepared as a result of an examination of

their shipping records, was introduced into evidence as Exhibit 5.

This exhibit discloses that respondents transported various commodities during the periods surveyed, in the following manner:

<u>From</u>	<u>To</u>	<u>Number of Shipments</u>	<u>Number of Days Served</u>	<u>Commodity</u>
Berkeley	Merced	1	1	Pumps
"	Modesto	2	2	Paint
"	Livingston	1	1	Pumps
"	Fresno	8	4	Paint
Dinuba	San Leandro	1	1	Paper
	Sacramento	2	2	Putty, fence
Oakland	Lodi	5	4	Paints, Batteries
"	Stockton	3	3	Putty, Pipe, Fence Post
"	Modesto	10	6	Tires, Putty, Fence Paint, Pipe
"	Los Banos	1	1	Pipe
"	Merced	6	4	Putty, Pipe, Paint
"	Fresno	9	5	Pipe, Paint, Fence, Paper Containers
"	Sanger	1	1	Fence
"	Dinuba	4	3	Fence, Paint,
"	Visalia	7	6	Paint, Batteries, Paper Containers
"	Tulare	2	1	Paint
"	Porterville	2	2	Fence
San Leandro	Modesto	2	2	Paper
"	"	15	6	Paper, Pickles
"	"	5	3	Paper, Pickles
"	"	2	2	Paper
"	"	1	1	Pickles

The traffic manager of Wesco Waterpaints, Inc., was called as a witness by the Field Division and testified that he has used respondents' service for approximately 3 years. The witness stated that respondents transported 95% of his company's paint shipments to valley points as far as Fresno, Visalia and Hanford; that another carrier is used only upon the request of a consignee; that respondents pick up his freight daily; that respondents and Wesco Waterpaints, Inc., have a written contract; that 90% of the shipments moved transportation charges collect; that paint shipments require no special handling other than should be accorded any freight. The contract above-mentioned was received in evidence as Exhibit 1, and provides, in

substance, for a minimum poundage per month, rates as set forth in Highway Carrier's Tariff Number Two and termination upon ten days written notice by either party thereto. The contract is silent as to the term thereof, the specific points to be served and commodities to be transported.

The Field Division also called a shipping clerk in the employ of Advance Pump Company, as a witness. He testified that respondents' service was utilized to transport shipments of pressure pumps and tanks to Stockton, Modesto, Fresno, Visalia, and Tulare; that shipments were made daily to at least one of such points; that respondents and his company have a written contract (Exhibit 2 in evidence); that 95% of their shipments moved transportation charges collect; that their shipments require careful handling but not special equipment. Exhibit 2 is a duplicate of Exhibit 1, merely the date, shipper and minimum monthly poundage being dissimilar.

Frank L. Moore, one of the respondents testified that they have been engaged in the transportation business since 1947; that the business is operated by his brother and himself with the assistance of their respective wives and one employee.

Respondent stated that his telephone listing in Oakland was a telephone exchange service through which calls and messages were received and relayed to him; that respondents did not possess terminal or office facilities in Oakland; that their headquarters were located in the home of Kenneth R. Moore in Stockton. Respondent testified that he had six written and two oral contracts; that the oral contracts were the same in essence as Exhibit 1; that he transports shipments for 4 shippers with whom he has no contracts on a radial basis. The witness asserted that respondents were not interested in expanding at the present time; that they were committed first to their contract

customers; that if equipment was then available they were willing to accept freight, preferably to San Joaquin Valley points but not from "just anybody."

Respondents, during the six days encompassed by Exhibit 5, served four different points of origin and 16 different points of destination comprising 22 pairs of termini; three pairs received service each day, one pair five days, three pairs four days, three pairs three days, five pairs two days, and seven pairs one day.

After a thorough consideration of the facts in this case, and in accordance with the holding of the Supreme Court of California (Souza v. Public Utilities Commission, July 6, 1951, S.F. 18 245), we hereby find that the hauling activities of the respondent as disclosed by this record, do not show "an unequivocal intention to dedicate property to a public use," and accordingly should not be classified as common carriage.

O R D E R

A public hearing having been held, evidence having been received and duly considered, the Commission now being fully advised and basing its order upon such evidence and the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED that this proceeding be and it hereby is dismissed.

Cs. 5210 GH\*\*

The Secretary is hereby directed to cause a copy of this decision to be served upon respondents.

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

Dated at San Francisco, California, this 7<sup>th</sup> day of August, 1951.

Justin F. Casanova  
Harold A. Auld  
Lawrence H. Dutton  
Edward L. Mitchell

Commissioners