

Decision No. 46189

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission investigation into the)
operations and practices of)
WALTER ALVES, doing business as) Case No. 5096
ALVES SERVICE TRANSPORTATION.)

Marquam C. George, for respondent.
J. T. Phelps, for Field Division,
Public Utilities Commission.

OPINION ON REHEARING

By Decision No. 45292, dated January 23, 1951, in this proceeding, the Commission found that respondent is a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act, operating between fixed termini and over regular routes without possessing a prior operative right therefor and without having obtained a certificate of public convenience and necessity, in violation of Section 50-3/4 of said act. An order was entered directing said respondent to cease and desist from such violations and suspended the radial highway common carrier and highway contract carrier permits held by respondent until the Commission should otherwise provide.

Thereafter, respondent filed a petition for an order setting aside Decision No. 45292 and dismissing Case No. 5096 or granting a rehearing, or, in the alternate, for a hearing before the Commission en banc. By order, entered April 3, 1951, rehearing was granted, limited, however, to oral argument. Such argument was had on August 29, 1951.

The facts are not in controversy, are discussed at length in our prior decision and need not be repeated here.

Respondent here contends that decisions of the Supreme Court of the State of California in Samuelson v. Public Utilities Commission, 36 A.C. 686, and Souza v. Public Utilities Commission, 37 A.C. 539, compel the conclusion that this respondent is not a common carrier.

We do not agree with such contention. We are aware that the court in the Samuelson and Souza cases (supra) rejected the test of "substantial restrictiveness" for determining whether a trucker is a common carrier, and of course we respect and accept its judgment. However, the evidence in this proceeding amply demonstrates that the respondent has held out his services to the public or a portion thereof as is indicated by the wide variety of commodities he transported, shipments of which ranged in weight from one pound to 198,180 pounds, and the large number of persons he served in addition to the one shipper with whom he had a written contract and four others with whom he had oral arrangements. This record cogently establishes that the respondent has evinced the unequivocal intention to dedicate his property to a public use required by the court's ruling in the Samuelson and Souza cases (supra), and we therefore find that the respondent is engaged in common carriage.

Further, the record denotes a readily discernible pattern of regularity between the following pairs of termini, viz:

- Crockett to Los Angeles
- Oakland to Los Angeles
- Oakland to Van Nuys
- San Leandro to Los Angeles
- Newark to Los Angeles
- Los Angeles to Berkeley
- Los Angeles to Oakland
- Los Angeles to San Leandro
- Los Angeles to San Francisco
- Van Nuys to Oakland
- Long Beach to Oakland
- Long Beach to San Leandro

and as to such points we find that respondent has engaged in operating auto trucks between fixed termini and over regular routes as a highway common carrier within the meaning of that term as defined in Section 2-3/4 of the Public Utilities Act, 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 herein found to be unlawful and suspending his permits to operate as a radial highway common carrier and highway contract carrier for three consecutive days.

The opinion contained in Decision No. 45292, dated January 23, 1951, is modified by deleting therefrom, the 2d, 3d and 4th paragraphs on page 10 and the 1st paragraph on page 11, and substituting therefor the findings and conclusions hereinabove set forth, and as so modified said opinion is affirmed.

ORDER ON REHEARING

Rehearing having been had and based upon the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED that the ordering portion of Decision No. 45292, dated January 23, 1951, in Case No. 5096, is amended to read as follows:

"(1) That Walter Alves, doing business as Alves Service Transportation, is directed and required 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 between fixed termini, to wit:

Crockett to Los Angeles
Oakland to Los Angeles
Oakland to Van Nuys
San Leandro to Los Angeles
Newark to Los Angeles
Los Angeles to Berkeley
Los Angeles to Oakland
Los Angeles to San Leandro
Los Angeles to San Francisco
Van Nuys to Oakland
Long Beach to Oakland
Long Beach to San Leandro

unless and until said Walter Alves shall have obtained from this Commission a certificate of public convenience and necessity therefor.

"(2) That Radial Highway Common Carrier Permit No. 1-4495 and Highway Contract Carrier Permit No. 1-4496, heretofore issued to Walter Alves, are suspended for a period of three days from and after the effective date of this order."

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

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

Dated at Los Angeles, California, this 18th day of September, 1951.

A. J. [Signature]
President
Justus J. Coenen
Harold H. Hulse
[Signature]
Commissioners