

Decision No. 46476

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SOUTHERN CALIFORNIA FREIGHT LINES,)
a corporation,)
Plaintiff,)
v.)

Case No. 5247

PACIFIC FREIGHT LINES, a corpora-)
tion, and PACIFIC FREIGHT LINES)
EXPRESS, a corporation,)
Defendants.)

H. J. Bischoff, for complainant.
Gordon, Knapp & Gill by Hugh Gordon, for
defendants Pacific Freight Lines and
Pacific Freight Lines Express.

O P I N I O N

By this complaint, Southern California Freight Lines, a corporation, and a highway common carrier, seeks to have declared void the highway common carrier operative right granted to defendant Pacific Freight Lines, a corporation, by Decision No. 32732, as amended, ⁽¹⁾ and requests that said defendant be ordered to cease and desist from transporting property pursuant to the authority granted by said decision.

Public hearings were held in Los Angeles before Examiner Chiesa. Oral and documentary evidence having been adduced, the matter was submitted for decision.

Upon the evidence of record, we find the facts to be as follows: ✓

That, by Decision No. 32732, dated January 16, 1940, as amended, Pacific Freight Lines, a corporation, and a highway common

(1) Decision No. 32732 was amended by Decisions Nos. 32873, 33331, 33774 and 33956.

carrier, one of the defendants herein, was authorized to establish and operate an automotive service as a highway common carrier between San Bernardino and Highlands, East Highlands, Patton, Redlands, Del Rosa, Mentone, Bryn Mawr, Loma Linda, Fontana, Bloomington, Colton, Rialto and Riverside, and all intermediate points, over and along the principal highways connecting said points, including a lateral right five (5) miles on each side of the highways traversed, as an extension and enlargement of applicant's existing rights and consolidated therewith.

That the aforesaid operating right was granted subject to certain conditions, the following being those which are material to this proceeding:

"Pacific Freight Lines Express shall, contemporaneously with the establishment and operation of service by Pacific Freight Lines as herein authorized, file with the Commission its application to discontinue and abandon all of its operations as an express corporation, as such is defined in Section 2(k) of the Public Utilities Act, between all points involved in this proceeding, which it now serves through the instrumentality of Pacific Freight Lines, as an underlying carrier.

"Keystone Express System shall, contemporaneously with the establishment and operation by Pacific Freight Lines of the service herein authorized, file with the Commission its application to discontinue and abandon all of its service as a highway common carrier between all points involved in this proceeding now served by it and by Pacific Freight Lines, as highway common carriers, which are common to the lines of both of said carriers.

"The authority herein granted shall lapse and be void if applicant shall not have complied with all of the conditions within the periods of time fixed herein unless, for good cause shown, the time shall be extended by further order of the Commission."

That Pacific Freight Lines Express is an express corporation as defined in Section 219 of the Public Utilities Code, and Keystone Express System was a highway common carrier as defined in Section 213 of said code; that each of said companies operated, in their respective capacities, between the same points and places

authorized to be served in Decision No. 32732, as amended; and that said companies were wholly owned subsidiaries of Pacific Freight Lines.

That by Decision No. 33569, dated October 1, 1940, Pacific Freight Lines and Keystone Express System were authorized to merge pursuant to an agreement of merger filed as an exhibit accompanying Application No. 23511, and as then provided by Section 361 of the Civil Code of the State of California.

That, pursuant to said agreement of merger, Pacific Freight Lines, the survivor corporation, among other things, acquired the highway common carrier operative rights of said Keystone Express System, subject, however, to a condition prohibiting the consolidation of the said operating rights so acquired with the rights then owned by Pacific Freight Lines.⁽²⁾

That the legislature of this state in 1941, by amendment to Section 50-3/4 of the Public Utilities Act, provided that "any one highway common carrier may establish through routes and joint rates, charges, and classifications between any and all points served by such highway common carrier under any and all certificates or operative rights issued to or possessed by such highway common carrier."

That, upon Application No. 24019, dated February 27, 1941, Pacific Freight Lines Express and Keystone Express System were authorized by Decision No. 33990, dated March 11, 1941, to discontinue and abandon their respective services as an express corporation and as a highway common carrier as required by the conditions of Decision No. 32732, as amended.

(2) It appears that the merger agreement was executed February 26, 1941, and that the merger was consummated March 1, 1941.

That Pacific Freight Lines Express has not abandoned said express service between the points named in Decision No. 32732, nor has it canceled its tariff and time schedules applying to said service as provided in Decision No. 33990.

That Keystone Express System did not comply with the terms and conditions of Decision No. 33990.

We conclude from the above facts as follows:

That Pacific Freight Lines did not acquire any operating right by Decision No. 32732, as amended, by reason of the failure of compliance by Pacific Freight Lines, Pacific Freight Lines Express, and Keystone Express System, with the terms and conditions of said Decisions Nos. 32732 and 33990, and that said Decision No. 32732, as amended, has lapsed and become void.

That, by reason of the merger of Keystone Express System with Pacific Freight Lines, the latter company did, however, acquire extensive operating rights, including rights between San Bernardino, Redlands and Riverside and intermediate points, which were similar to the operating right which had been authorized in Decision No. 32732.⁽³⁾

That, pursuant to the 1941 amendment to Section 50-3/4 of the Public Utilities Act, above referred to, Pacific Freight Lines could consolidate its operating rights with the rights acquired by said merger agreement.

In view of the above findings of fact and conclusions, it is not necessary to declare a lapse and forfeiture of the operating right described in Decision No. 32732, as said right was not realized, nor does it appear that a cease and desist order is justified. The complaint will be dismissed. ✓

(3) For an exposition of the operating authority of L. R. Kagarise, predecessor of Keystone Express System, see Decision No. 30406, dated December 13, 1937.

ORDER

A public hearing having been held in the above-entitled proceeding, the Commission being fully advised in the premises and good cause appearing,

IT IS ORDERED that the complaint of Southern California Freight Lines, a corporation, as set forth in Case No. 5247, be, and it hereby is, dismissed.

Dated at San Francisco, California, this 4th day of December, 1951.

A. F. [Signature]
President
Justice F. [Signature]
Harold P. [Signature]
[Signature]
[Signature]
Commissioners