

ORIGINALDecision No. 46613

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission investigation into)
 the operations and practices of)
 FREDA PEARSON, doing business)
 as HALLOWAY EXPRESS CO.)

Case No. 5192

Halsey L. Rixford, for the Field Division, Transportation Department, Public Utilities Commission. Freda Pearson, in propria persona.

O P I N I O N

This proceeding was instituted upon the Commission's own motion to determine whether Freda Pearson, doing business as Halloway Express Co., hereinafter called respondent, has operated, or is operating, as a highway common carrier without having obtained a certificate of public convenience and necessity as required by Section 1063 of the Public Utilities Code. ✓

A public hearing was held in Los Angeles on November 29, 1950, evidence was presented, and the matter was submitted. It is now ready for decision. ✓

It was stipulated that respondent, between August 11, 1947, and December 30, 1947, owned, controlled, operated, or managed two auto trucks used in the business of transportation of property for compensation over one or more public highways of California, and that, ever since a date prior to December 30, 1947, respondent has owned, controlled, operated, or managed, and now owns, controls, operates, or manages, three auto trucks used in the transportation of property for compensation over one or more public highways of California. It was further stipulated that respondent possesses, and at all times since August 11, 1947, has possessed, a city carrier's permit and a radial highway common carrier's permit; that respondent does not

possess, and at no time possessed, any certificate or prescriptive rights to operate as a highway common carrier within California; and that respondent has maintained, since about August 1, 1947, and now maintains, an office at 1524 West 81st Street, Los Angeles, and for at least one year last past has maintained, and now maintains, an assembly space in a small garage on an alley back of 2309 South Flower Street, Los Angeles, California.

A transportation representative of the Commission testified that respondent stated that she serves a group of points which would fit into a rough square bounded by a line between Pasadena and Santa Monica on the north, Long Beach and Pasadena on the east, and the Pacific Ocean on the west and south. Respondent also told this witness that she serves Pasadena, Inglewood, Santa Monica, Hermosa Beach, Redondo Beach, and Long Beach "very likely" daily, and that other towns in the rough square are served once a week to three times a week, and that about 65% of respondent's business is in the group of towns served daily. Each of respondent's trucks is used for all types of work performed; no truck is used for a particular section or over a particular route. Respondent informed this witness that she has no contract carrier's permit.

The representative stated that he examined respondent's records for the periods of July 11 to 15, inclusive, 1949, August 1 to 5, inclusive, 1949, September 12 to 16, inclusive, 1949, and April 3 to 7, inclusive, 1950, a total of 20 working days. From these records he prepared Exhibit No. 2, covering the three periods in 1949, and Exhibit No. 3, covering the specified period in 1950. These exhibits list all of respondent's intercity shipments during the periods, and set forth the consignor, consignee, point of origin, point of destination, commodity description, number of shipments, parties who engaged respondent, and frequency of service between points.

In the instant case, there was no evidence concerning the routes over which the merchandise was transported in reaching the various destinations.

Respondent purportedly is operating pursuant to authority as a radial highway common carrier, whereas the complaint herein states that respondent is operating as a highway common carrier. The principal difference other than differences as to tariffs and certification between the two types of carriers is that a highway common carrier is one operating "between fixed termini or over a regular route and not operating exclusively within the limits of an incorporated city or town or city and county " (Section 213, Public Utilities Code.) and a radial highway common carrier is defined to include "every highway carrier operating as a common carrier not heretofore subject to regulation as such under the Public Utilities Act of the State of California, as amended." (Section 3516, Public Utilities Code.)

Accordingly, our inquiry herein must concern itself with two problems: (1) do the activities of the respondent constitute a "holding out" as a common carrier, or in other words do they indicate an "unequivocal intention to dedicate property to public use," (Samuelson v. Public Utilities Commission, California Supreme Court, February 9, 1951, 36 A. C. 686, 696) and (2) do these activities constitute hauling between fixed termini.

The evidence herein shows the variance of service to points of origin and destination for the 20 working days included in the check periods.

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During such check periods the respondent carrier handled a total of 516 shipments ranging in weight from 1 to 1,790 pounds. Fifty (50) different persons delivered prepaid shipments to the carrier, and collect shipments were delivered to 120 different persons. Seventy-three (73) persons engaged the carrier's services. The total number of persons served, after eliminating duplications, amounted to 175. ✓

Respondent testified that she has been in business for three years and four months, operating under a radial highway common carrier permit and a city carrier permit, and that she understood that she needed no other type of authority. Respondent refuses to transport merchandise to any point outside the area heretofore described.

From the foregoing evidence we hereby find that the hauling activities of respondent constitute common carriage. The volume of hauling, the number of points served, the frequency of service all indicate an unequivocal holding out and dedication of property to public use to substantiate this finding. Furthermore, the intention of respondent to engage in common carriage is further indicated by the evidence showing that the only authority respondent has secured for operations other than those within the scope of a city carrier's permit, is a radial highway common carrier's permit. ✓

The element of "fixed termini" remains to be decided. Section 213 of the Public Utilities Code insofar as pertinent, provides: ✓

"The words 'between fixed termini . . . ' when used in this act, mean the termini . . . between . . . which any highway common carrier usually or ordinarily operates any auto truck or other self-propelled vehicle, even though there may be departures from said termini . . . , whether such departures be periodic or irregular." ✓

In the light of these statutory provisions, and from a full consideration of the evidence herein, we further find that the *delictum* transportation between Los Angeles, on the one hand, and, on the other, Glendale, Burbank, Santa Monica, Inglewood, Hawthorne, Hermosa Beach, Redondo Beach, Lomita, Long Beach, and Pasadena, is transportation between fixed termini and accordingly falls within the definition of a highway common carrier. ✓

Based upon the evidence in this proceeding, we hereby find that Freda Pearson has been and now is operating auto trucks as a highway common carrier, as defined in Section 213 of the Public Utilities Code, as amended, between Los Angeles, on the one hand, and, on the other, Glendale, Burbank, Santa Monica, Inglewood, Hawthorne, Hermosa Beach, Redondo Beach, Lomita, Long Beach, and Pasadena.

As to the remaining shipments, due to the short period covered coupled with the infrequency of movement, we believe the evidence to be insufficient to find that they are operations between fixed termini.

An order will be issued directing respondent to cease and desist from conducting the operations herein found to be unlawful.

O R D E R

A public hearing having been held in the above-entitled matter, and based upon the evidence adduced and the findings set forth in the foregoing opinion,

IT IS ORDERED:

(1) That Freda Pearson be, and she hereby is, directed 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 by Section 213 of the Public Utilities Code), for compensation, over the public highways of the State of California, between

fixed termini, to-wit: between Los Angeles, on the one hand, and, on the other, Glendale, Burbank, Santa Monica, Inglewood, Hawthorne, Hermosa Beach, Redondo Beach, Lomita, Long Beach and Pasadena, ^{deletioni} unless ✓
and until said Freda Pearson shall have obtained from this Commission a certificate of public convenience and necessity therefor.

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

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, 1952.

A. E. [unclear]
Justus J. Calver
Margaret Hule
Kenneth Potter
Edw. E. Mitchell

~~CONSIDERED AS A TRUE COPY~~

 Secretary,
 Public Utilities Commission
 of the State of California