

Decision No. 46921**ORIGINAL**

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission investigation into the )  
 operations and practices of BECKMAN ) Case No. 5254  
 EXPRESS & WAREHOUSE CO., a corpora- )  
 tion. )

Scott Elder, for respondent.  
Hyland Hinman, for Haslett Warehouse Company; Joseph  
 Jeans, for West Berkeley Express & Draying Co.;  
Edward S. Waldie, for Inter-Urban Express Corporation;  
C. H. Atthowe, for East Bay Drayage & Warehouse Co.,  
 interested parties.  
Halsey L. Rixford, for Field Division, Public Utilities  
 Commission of the State of California.

O P I N I O N

This proceeding was instituted upon the Commission's own motion to determine whether Beckman Express & Warehouse Co., hereinafter called respondent, has operated or is operating as a highway common carrier without having obtained a certificate of public convenience and necessity or having possessed a prior right so to operate, as required by Section 1063 of the Public Utilities Code.

Public hearings were held at San Francisco before Examiner Silverhart and the matter submitted.

The evidence shows that respondent possesses city, highway contract and radial highway common carrier permits, and that it does not possess any certificated or prescriptive right to operate as a highway common carrier; that since November, 1947, it has owned, controlled, operated or managed one or more auto trucks used in the business of transporting property for compensation over public highways in California; that its principal place of business is located at 1235 - 4th Street, Berkeley.

An employee of the Commission's field division testified that on August 3, 1950, he had a conversation with Henry Beckman, president of the respondent, during the course of which Mr. Beckman stated respondent rendered service daily between the East Bay drayage area and San Francisco; between Oakland and Berkeley and Vallejo; and between San Francisco and San Jose. The witness examined respondent's freight bills for the month of June, 1950, as a result of which he prepared an exhibit, in evidence herein as Exhibit 2, setting forth all intercity shipments transported by respondent during the period June 26, 1950, to June 30, 1950, inclusive. This exhibit discloses that respondent carried 38 different commodities during the period surveyed.

Henry Beckman testified that he has been president of the respondent since its incorporation in 1947; that between such date and 1924 he had owned and conducted the business in an individual capacity; that his two sisters and he own all the capital stock issued by respondent; that respondent employs 11 truck drivers, one dispatcher, and one office assistant; that respondent's office and garage are located at 1235 - 4th Street, Berkeley; that it does not own or use a freight platform.

The witness stated that respondent possesses special equipment such as lift-gate trucks and cranes for loading; that it furnishes an on-call service to and from any point within a 200-mile radius of Berkeley; that the shipments it transports range from 100 pounds to 20 tons; that it maintains a telephone only in Berkeley; that it does not employ solicitors and does not and did not engage in solicitation of business; that its customers consist, for the most part, of manufacturers within East Bay cities; that the greater part of its business is derived from 35 permanent customers; that no operations were conducted pursuant to its highway contract carrier permit.

The record shows that of the 170 shipments transported by respondent, 50 moved between Berkeley and San Francisco and 48 between Berkeley and Oakland; that 60 of the 70 persons served by respondent were located in San Francisco, Oakland and Berkeley, collectively; that 28 of the 38 commodities moved between San Francisco, Berkeley and Oakland.

During the five days encompassed within the scope of Exhibit 2, respondent served six different points of origin and 27 different points of destination comprising 35 pairs of termini; two pairs received service each day, four pairs four days, three pairs three days, seven pairs two days, and 19 pairs one day.

The respondent has, through the testimony of its president, conceded that it conducted the operations here involved as a common carrier. The issue that presents itself, therefore, is whether respondent was acting herein as a highway common carrier.

Section 213 of the Public Utilities Code provides, in part, as follows:

"'Highway common carrier' means every corporation or person owning, controlling, operating, or managing any auto truck, or other self-propelled vehicle not operated upon rails, used in the business of transportation of property as a common carrier for compensation over any public highway in this State between fixed termini or over a regular route, and not operating exclusively within the limits of an incorporated city, or city and county, ... ."

The evidence discloses that a pattern of regularity is readily discernible between the following pairs of termini, viz.:

Berkeley and San Francisco  
Berkeley and Emeryville  
Berkeley and Oakland  
Berkeley and Hayward  
Berkeley and Sunnyvale  
Berkeley and Richmond  
Oakland and San Francisco.

We find that respondent has been engaged in the transportation of property as a highway common carrier for compensation over

the public highways of the State of California between fixed termini and over regular routes, only as to the points and places set forth in the paragraph next above, without possessing a prior operative right therefor and without first having secured a certificate of public convenience and necessity, in violation of Section 1063 of the Public Utilities Code.

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

O R D E R

Public hearings having been held and based upon the evidence therein adduced and the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED that Beckman Express & Warehouse Co., a corporation, 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 213 of the Public Utilities Code), for compensation over the public highways of the State of California between fixed termini, to wit: between Berkeley and San Francisco; Berkeley and Emeryville; Berkeley and Oakland; Berkeley and Hayward; Berkeley and Sunnyvale; Berkeley and Richmond; Oakland and San Francisco; unless and until said Beckman Express & Warehouse Co. shall have obtained from this Commission a certificate of public convenience and necessity therefor.

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

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

Dated at San Francisco, California, this 1<sup>st</sup> day of April, 1952.

[Signature]  
 President

[Signature]  
 Justice F. Cassese

[Signature]  
 Harold D. Hula

[Signature]  
 [Name]

Commissioners