

**ORIGINAL**

Decision No. 4741S

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission Investigation into the)  
operations and practices of OVER-)  
LAND FREIGHT TRANSFER COMPANY, a )  
corporation. )

Case No. 5258

Marvin Handler, for Overland Freight Transfer Company,  
respondent.  
Edward S. Waldie, for Inter-Urban Express Corporation,  
intervenor.  
Harold J. McCarthy, for the Field Division, Public  
Utilities Commission.

O P I N I O N

In this proceeding an investigation was instituted by the Commission upon its own motion concerning the operations of Overland Freight Transfer Company, a corporation, the respondent herein. This was undertaken for the purpose of determining whether respondent had been operating as a highway common carrier, without proper authority, between San Francisco, on the one hand, and Oakland, and Oakland Pickup and Delivery Zone, on the other hand. The matter was submitted following a public hearing held before Examiner Austin at San Francisco.

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- (1) The Oakland Pickup and Delivery Zone includes the City of Emeryville and portions of the Cities of Albany, Alameda, Berkeley, Oakland and Piedmont. It extends from the northern boundary of Albany to the southern boundary of Oakland.
- (2) Hearings were held in this matter on March 21 and August 21, 1951. The matter also was consolidated with other proceedings (Cases Nos. 5253 and 5254; and Applications Nos. 31797, 32048, 32112 and 32139) solely for the purpose of receiving the testimony of Professor William A. Spurr. Hearings in the consolidated proceedings were held May 2 and June 11, 1951, at San Francisco. On August 21, 1951, the instant proceeding was submitted on concurrent opening and closing briefs. Thereafter, briefs were waived by the interested parties, and the matter submitted on the record.

In support of its position, the Field Division called three staff members, its principal showing being made through an assistant rate transportation expert. Respondent produced its general manager, who described its operations. No evidence was offered by Inter-Urban Express Corporation, which had intervened on behalf of the Field Division.

Respondent is no newcomer in the field of transportation. Since 1867 it has been engaged in the local drayage business in San Francisco, using horsedrawn vehicles for many years and motorized equipment since 1914. It was incorporated in 1883. It holds radial, contract and city carrier permits. <sup>(3)</sup> Admittedly, it possesses no certificate as a highway common carrier. <sup>(4)</sup>

The general nature of respondent's business was described. It performs a local drayage service in San Francisco, which comprises a large share of its activities. It distributes pool-car shipments arriving by rail at San Francisco and Oakland, this service being provided by truck between San Francisco and East Bay points, among others. It handles freight moving between steamship piers and terminals. It distributes freight stored in two warehouses situated in San Francisco. The operators of both warehouses, viz., Gibraltar Warehouse Co. and Turner-Whittell Warehouse, are closely affiliated with respondent, the three concerns being owned and controlled by the same interests. Since August 31, 1950, it has performed no service for any freight forwarder utilizing the rail lines.

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(3) Respondent holds radial carrier permit No. 38-537, issued November 23, 1935; contract carrier permit No. 38-902, issued March 2, 1936; and city carrier permit No. 38-5927, issued May 23, 1950. An earlier city carrier permit, No. 38-538, was issued November 13, 1935.

(4) It was conceded that respondent holds no certificate of public convenience and necessity, as a highway common carrier, nor had it ever undertaken to file with the Commission any tariff as such a carrier. However, a staff member testified that "grandfather" rights had been claimed by respondent's general manager.

Under the issues raised in this proceeding, the local drayage operations afforded under respondent's city carrier permit are not involved. Professedly, the transportation service which respondent performs is conducted primarily under its radial carrier permit; it operates only to a limited extent under its contract carrier permit.

The record indicates generally the nature of the facilities used to provide the service. Respondent's office and headquarters are situated at 201 California Street, San Francisco. A terminal is located at 1190 - 4th Street, San Francisco, where rail pool cars are unloaded and the freight transferred to trucks for distribution. A similar terminal is located at 46th Avenue and East 14th Street, in Oakland, at the Melrose station of Southern Pacific Company. Here, freight reaching Oakland in pool cars is unloaded and dispatched. Garages are situated at 654-655 Bryant Street, San Francisco. Some 155 units of equipment are used in the over-all operations. For the second quarter of 1950, gross operating revenue aggregating \$119,000 was reported.

The general characteristics of respondent's operations were described. These operations cover San Francisco, East Bay points and other territory not involved here. Between the affected points, service is afforded daily except Saturdays and Sundays. No regular schedule is observed, the service being provided on call. Aside from the San Francisco Bay Bridge crossing,

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(5) There has been no movement or interchange of freight between the two terminals in San Francisco and Oakland, it was stated.

(6) This equipment comprises 21 tractors, 82 trucks, 49 semi-trailers and three miscellaneous power vehicles.

which is used regularly, the routes traveled throughout the East Bay area vary as occasion may require. With minor exceptions, freight is not picked up and brought to either terminal, at San Francisco or Oakland, for reloading and distribution.

Ordinarily, after the truck has been initially loaded, shipments move through to destination upon the same equipment. Freight is loaded at a single point, where it has been accumulated. The shipments vary both in size and weight<sup>(7)</sup>. In its intrastate operations, respondent observes the minimum rates appearing in Highway Carriers' Tariff No. 2. It issues no memorandum or schedule of rates applicable<sup>(8)</sup> to any particular points.

Prior to the initiation of this proceeding, an investigation of respondent's operations was undertaken by the Field Division. A staff member called at respondent's office, where he examined the records and discussed with the company's general manager the nature of its operations. This involved an inspection of shipping documents covering the traffic transported during the space of one week, viz., July 23 to 29, 1950, which was selected as typifying this carrier's operations. In so doing, the billing covering some thousands of shipments, handled during this interval, was reviewed. The information thus obtained formed the basis for an exhibit, introduced by the Field Division, specifying the intrastate shipments which had moved, assertedly, during the critical period, between the points involved.

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(7) The study prepared by the Field Division, referred to hereafter, indicates that the shipments considered ranged in weight from 10 to 152,300 pounds. Respondent's general manager testified that generally, the shipments carried to East Bay territory were under 5,000 pounds in weight.

(8) Where the shipper is afforded the exclusive use of a vehicle, which often occurs, the charges are assessed upon an hourly basis.

The shipments embraced within this study were limited to certain types. The transportation rate expert conducting the investigation was instructed by his superior to include only shipments which had been transported by respondent, through its trucking facilities, between points situated in the San Francisco Commercial Zone, as established by the Interstate Commerce Commission. <sup>(9)</sup> Those handled within the confines of a single city, such as San Francisco or Oakland, were excluded. The truck movement might originate at respondent's terminal, or at a dock, pier or warehouse. Where shipments originally had reached San Francisco or Oakland, by rail or steamer, from an interstate or foreign point of origin, any truck movement subsequently provided by respondent, in the distribution of such shipments, would be excluded if it had been performed under a common control, management or arrangement for continuous carriage or shipment to the point of ultimate delivery.

Specifically, the shipments listed in the study submitted, as the result of this investigation, fell within

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(9) In a proceeding instituted for that purpose, the Interstate Commerce Commission established commercial zones at all municipalities within the United State, other than those where previously such zones had been individually established. (Re Commercial Zones and Terminal Areas, Ex Parte MC 37, (Div. 5; 1946) 46 MCC 665, 698.) The commercial zone at San Francisco, created by this decision, comprehended the points involved in the present proceeding.

the following categories, viz.: (a) shipments, distributed by respondent, that had reached San Francisco or Oakland by rail pool-car from an interstate point of origin, (b) shipments, distributed by respondent, that had reached San Francisco or Oakland by steamship from an interstate or foreign point of origin, including only those moving from pier to terminal, but not between steamship piers nor steamers themselves, (c) shipments moving from the two warehouses with which respondent is affiliated, and (d) some shipments not falling within any of these groups.

A summary of the shipments, allegedly transported by respondent during the critical period between the points involved, was received as an exhibit. Purportedly, this includes all shipments of the types mentioned above. A total of 136 such shipments is disclosed, which assertedly were transported for 55 shippers. Of these shipments, 13 moved between points not involved, and, consequently must be disregarded, thus leaving for consideration, as the measure of respondent's operations during this period, a total of 123 shipments.

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(10) "The term 'pool car' is used to describe a carload or quantity shipment that contains property forwarded by one or more shippers consigned to a carrier or to the shipper's representative in care of the carrier for distribution to two or more sub-consignees." Re S.F. City Carrier, 39 CRC 682, 683.

(11) The study included no shipments which had been handled by respondent for any freight forwarder.

The distribution of these shipments, as well as other characteristics attributable to them, is indicated by the following tabulation:

<u>From</u>	<u>To</u>	<u>No. of Shipments</u>	<u>No. of Days Served</u>	<u>(12) No. of Persons Served</u>
San Francisco	Oakland	101	5	42
San Francisco	Berkeley	9	4	6
San Francisco	Emeryville	4	2	4
Oakland	San Francisco	9	4	4
TOTAL		123		56
Allowing for duplications . . . . .				48

We shall consider the various classes of shipments mentioned in this exhibit.

The summary reveals 27 pool car shipments handled by respondent within the affected territory during the period selected. As stated, this traffic previously had moved by rail from interstate points to San Francisco or Oakland. Upon these shipments respondent collected from the respective consignees the transportation charges for the truck distribution service which it performed; no prepaid shipment of this nature was included. (13)

Each freight car was accompanied by a manifest indicating the distribution to be made of the shipments which it contained. (14)  
Upon the shipping documents underlying this exhibit, which were

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(12) The term "persons served" indicates the party to the shipment, whether consignor or consignee or both, to whom the carrier has held out his services. With respect to prepaid shipments, this usually would include only the consignor. As to collect shipments, this ordinarily would comprise both the consignor (who engaged the carrier) and the consignee. (Pac. S.W. Rd. Assn. v. Stapel, 49 Cal. P.D.C. 407, 418, 420.)

(13) In the distribution of rail pool car freight, a single freight car will contribute from 20 to 30 truck shipments. Each truck shipment is billed separately. The records covering each pool car are kept together.

(14) Each truck shipment moving from a rail pool car was covered by a separate shipping document describing the shipment, specifying the charges, identifying the parties, and indicating the rail pool car shipment of which it originally had formed a part.

examined by the Field Division representative, no notations appeared, so he testified, revealing existence of a contractual arrangement between respondent and any other carrier, providing for the exercise of common control and management over the transportation of such shipments.

This exhibit specifies nine shipments originating at or destined to a steamship pier or terminal, within the territory <sup>(15)</sup> involved. Because of the practical certainty that they might be interstate or foreign in character, certain types were excluded, such as shipments moving between two steamers, and those moving between two piers where the name of the steamer at destination was indicated by the shipping documents. Shipments moving from a steamship pier to a terminal or warehouse were included, where the shipping records disclosed no movement beyond the terminal. Admittedly, shipments within this group had been unloaded from vessels sailing from interstate or foreign points. How long the freight had remained at the pier was not shown.

A considerable share of the shipments listed in this exhibit were received from the Gibraltar and the Turner-Whittell <sup>(16)</sup> warehouses. In the aggregate these numbered 69 shipments. <sup>(17)</sup> Most of them were transported from San Francisco to Oakland. All except two moved prepaid; upon these, the charges were collected from the consignees. As to all but one, the warehousemen

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(15) Only transbay shipments were included. Of these, two also originated at warehouses with which respondent is affiliated.

(16) Of these, 37 shipments originated at Gibraltar Warehouse and 32 at Turner-Whittell Warehouse. Included among those received from the latter warehouse were two shipments which also had moved to or from steamship piers or terminals.

(17) Of the 69 shipments specified, 64 moved from San Francisco to Oakland, two, from San Francisco to Emeryville, two, from San Francisco to Berkeley, and one, from Oakland to San Francisco.



(18)  
were billed as consignors. The exhibit specifies other persons (some 14 in number) whose relationship to the shipments, whether as storers or brokers, was not shown; however, they apparently were not considered as shippers.

There remain certain shipments which do not fall within any of the classes mentioned above. A total of 20 such shipments is listed in the exhibit, which moved between San Francisco, Oakland and Berkeley - mostly from San Francisco. Ten consignors tendered these shipments for delivery to 17 consignees. In most instances the charges were prepaid. Of this group, 10 shippers appear to have engaged the carrier's services.

The nature of respondent's operations was described by its general manager. In large part, this encompasses the performance of general drayage service within San Francisco. It also operates between San Francisco and East Bay communities, and between those cities themselves. (19) It engages in pool-car distribution and in the transfer of steamship traffic. No car loading or unloading service is performed independently of these operations. The transportation of both interstate and intrastate traffic is involved. The essential facts, as to which there was no controversy, are recited above.

Generally, it was said, under its radial permit respondent offers to serve shippers situated within an area including San

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(18) In a single instance, apparently a returned shipment, the warehouseman was shown as the consignee. This moved from Oakland to San Francisco.

(19) Respondent also serves other points not involved in this proceeding. In general, its operations extend northward from San Francisco to Sacramento, and southward to Fresno and Monterey.

Francisco and East Bay points. In providing this service, it follows no predetermined plan regarding the points to be served or the method in which the service would be conducted.

Certain shipments embraced within the study submitted by the Field Division are interstate in character, it was said. Included in this category are all pool-car distribution, steamer transfer and ex-rail shipments. In the aggregate, it was said, such shipments are substantial in volume; the witness, however, was unable to estimate what proportion they would comprise of respondent's local drayage, or of its intercity operations.

As a rule, it was said, the ultimate destinations of the component shipments contained within a pool-car are known to respondent when it obtains possession of them at San Francisco or Oakland. Usually, these destinations are determined when the rail carload shipment originates at an interstate point. This is indicated by the distribution sheet or manifest covering the pool car, which is prepared at the point of origin, and reaches respondent by mail before the car arrives. Also, the packages composing the carload shipment, when received by respondent, ordinarily are marked for final destination, thus indicating the names and addresses of the ultimate consignees. Occasionally, it was said, such a consignee may redistribute his individual shipment upon arrival of the car at San Francisco or Oakland, but this is the exception rather than the rule. When this occurs, respondent remarks the merchandise and distributes it accordingly.

Typical manifests or distribution sheets covering certain carload shipments were submitted. Of the three manifests produced, two covered shipments moving by rail and

one, by steamer. All originated at interstate points. The two rail shipments were consigned to respondent at San Francisco, and the steamer billing named the original consignor as consignee, in care of respondent. All three specified the names and addresses of the ultimate consignees (within the area involved), and designated the freight which they were to receive, respectively. Each reached respondent by mail before the arrival of the composite shipment which it covered. These manifests, the witness said, indicate the manner in which information of this character normally is brought to respondent's attention; they are representative of the methods followed in the distribution of pool-car, ex-rail and ex-steamship shipments.

The circumstances under which respondent might be called upon to supply a service for the transfer of freight from a steamer to another pier or terminal, were explained. For reasons of carrier convenience, a steamer docking at San Francisco may find it impracticable to proceed across the bay and there unload a shipment consigned, for example, to an East Bay pier or terminal. So this freight would be discharged at San Francisco, and respondent then would be engaged by the water carrier to transport the traffic to the pier or terminal designated in the latter's bill of lading as the ultimate point of destination. For this service, respondent would be compensated by the steamer line. Such shipments may move across San Francisco Bay in either direction.

Admittedly, respondent engages in operations which are intrastate in character. The bulk of this traffic originates at the Gibraltar and the Turner-Whittell warehouses, in San Francisco, and moves outbound. Many of respondent's customers, it was stated, regularly store their goods in these warehouses. Respondent acts as a drayman for both concerns, handling a large share, but not all,

of their business. The volume of this traffic is substantial, it appears; however, it cannot be segregated from interstate movements from the warehouses. To accommodate this movement, from two to three truckloads daily are transported from San Francisco to East Bay points. As stated, respondent is affiliated with the operators of both warehouses.

An exhibit was offered specifying the shippers, mentioned in the Field Division's study, whose shipments admittedly were intrastate in character. After eliminating movements between points not involved in this proceeding, the list designated 14 such shippers. Of these, it was pointed out that one--viz., Western Pacific Railroad Company--was not a regular shipper, as to traffic of this nature, and should therefore be disregarded. <sup>(20)</sup> There remain but 13 of the shippers named in this study for whom respondent assertedly had transported intrastate tonnage. Only interstate traffic was handled for the others, it was said.

The intrastate shippers listed by respondent coincide largely with those named in the Field Division study, comprising those who had engaged respondent for the transportation of shipments other than in the course of pool-car distribution or steamship <sup>(21)</sup> transfer. However, respondent also included in its exhibit shipments

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(20) The Field Division study disclosed one shipment which allegedly was made by Western Pacific. This, it was said, was a damaged interstate shipment which it had returned; consequently, this should not be considered as an intrastate movement. Respondent, it appears, provides a pickup and delivery service for Western Pacific within the City of San Francisco.

(21) The exhibit offered by respondent listed two shippers whose shipments moved either to or from a steamship pier or a terminal, and therefore were not included among those considered above. It also omitted a shipper considered above, probably because his shipment moved ex-rail and therefore was deemed to be interstate.

moving from the Gibraltar and the Turner-Whittell warehouses in San Francisco. Collectively, these shippers offered for transportation a substantial share of the traffic mentioned in the Field Division's (22) study.

Respondent, the witness testified, has not engaged in the solicitation of business between particular points. Its regular patrons have been informed that respondent could fulfill their requirements, whatever they might be. Generally, it appears, they are customers of long standing. Local drayage business has been sought, but not traffic moving between San Francisco and other points in the state. Advertisements have been published in trade journals, referring to pool car operations in San Francisco and Oakland. Respondent's business also is listed in the classified section of the telephone directory.

Since 1935, it was stated, respondent's operations have been reviewed several times by representatives of the Commission's staff. On these occasions, staff members voiced no complaints regarding the nature of such operations nor in any way questioned their legality. At times, errors in the application of rates have been pointed out, accompanied by requests that appropriate undercharges be collected. Respondent, it was said, never was advised by any Commission representative that a certificate was required in order to sanction its operations.

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(22) In the aggregate, the shippers specified in respondent's exhibit offered to the latter for transportation a total of 90 shipments. Of these, 37 were tendered by Gibraltar Warehouse Company, and 32 by Turner-Whittell Warehouse, or a total of 69. (No reference was made to those who had stored the merchandise in these warehouses, or who had dealt with it as brokers.) The remaining 21 shipments were offered by 11 shippers. All of this traffic moved between the points indicated above.

In determining the status of respondent's operations we shall consider separately the three classes of traffic involved, viz.: pool-car, steamship transfer and intrastate shipments. Each in turn will be discussed.

(a) Pool-Car Distribution

We shall deal first with pool-car distribution. This traffic moved by rail in carload shipments from interstate points to San Francisco or Oakland. Each carload shipment was consigned to respondent and was covered by a manifest or distribution sheet prepared by the consignor at the rail point of origin which indicated the names and addresses of the ultimate consignees. This manifest reached respondent by mail before the arrival of the freight car. Respondent distributed the freight, by motor vehicle, to the ultimate consignees named in the manifest. The record indicates that all of the pool-car shipments in the Field Division's survey, transported between points involved herein, were handled in this manner. These points were situated within the San Francisco Commercial Zone mentioned above.

Certain types of motor carrier operations, performed locally within a Commercial Zone, have been exempted from regulation under Part II of the Interstate Commerce Act. Section 203 (b) (8) provides in part:

"\* \* \* \* nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the national transportation policy declared in this Act, shall the provisions of this part, except the provisions of Section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment, apply to: (8) The transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, \* \* \* \*". (49 USCA Section 303 (b) (8))

As provided by this section, the transportation of freight by motor vehicle within a Commercial Zone remains subject to regulation by the Interstate Commerce Commission only when it is performed "under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, \* \* \*". We shall consider whether the traffic in question moves under such an arrangement.

In the administration of these statutory provisions, the Interstate Commerce Commission has held that the "common control, management, or arrangement" for continuous carriage, mentioned above, contemplates an arrangement between the carriers participating in the through transportation. <sup>(23)</sup> In the absence of such an arrangement between the participating carriers, the local distribution of interstate traffic within a municipality or a Commercial Zone is exempt from regulations by that Commission, except under the provisions of Section 204. <sup>(24)</sup> The evidence shows an absence of such arrangement respecting the shipments in question.

It is clear that in the distribution of pool-car shipments, respondent acted as a shipper's agent. In unloading carload shipments of freight it performed a function usually undertaken by the consignee; ordinarily a railroad is not obligated to provide this service. <sup>(25)</sup> So far as this proceeding is concerned, this traffic is distributed within a Commercial Zone.

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(23) Re Bigley Brothers, Inc., MC 49296 (Div. 5; 1938) 4 MCC 711; Re Kowalsky, MC 95898 (Div. 5; 1940) 27 MCC 209; Re Pacific Motor Trucking Company, MC 78786 (Div. 5; 1942) 34 MCC 249; and Re Service Transportation Company, MC C-265 (Div. 2; 1945) 44 MCC 419.

(24) Re Bigley Brothers, Inc., supra; Re Kowalsky, supra; and Re Pacific Motor Trucking Company, supra.

(25) Re E. D. Fee Transfer, I & SM-2626 (Div. 3; 1947) 46 MCC 705; Re Howard Terminal, FF-8 (Div. 4; 1946) 260 ICC 773.

This Commission has held that where a motor carrier is engaged in the distribution of pool-car shipments reaching San Francisco by rail and distributed locally within that city, it is subject to the minimum rates prescribed by the Commission for city carriers performing similar local transportation. Admittedly, the traffic was interstate in character. However, since the operation fell within the scope of the exemption prescribed by Section 203 (b) (8), the state, it was held, was free to prescribe the rates in question. As the Commission pointed out:

"It is too well settled to require citation of authority that where the federal government has not acted with respect to interstate commerce the state may do so if the matter is of local concern not requiring national uniformity. Here it is evident from the facts that respondent's local delivery in San Francisco is not contractually a part of the line-haul transportation, but is arranged by the shipper independently thereof. Thus, the local delivery is a matter of domestic concern subject to regulation by this state in the public interest. To require respondent to charge at least as much for local delivery as minimum rates prescribed for city draymen performing similar transportation would not burden interstate commerce. Respondent's charge is added to the line-haul rate and in no way affects it. There is no discrimination against interstate commerce, nor are tariff barriers erected against it. A minimum parity of rates is prescribed, applicable to all carriers performing a comparable service. Moreover, such state regulation is in nowise inconsistent with federal regulation as it harmonizes exactly with the control exercised over motor carriers by the Interstate Commerce Commission pursuant to the Motor Carrier Act, 1935. Hence, it is concluded that the state through this Commission has the legal right to require respondent to adhere to the minimum rates established for city carriers when making local deliveries in connection with pool distribution." (26)

Petitions to review this decision were denied both by the State Supreme Court and by the United States Supreme Court. (27)

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(26) Re Inv. Consolidated Freightways, Inc., (Dec. 33268, in Cs. 4494) 42 CRC 721, 723).

(27) A petition for a writ of review was denied October 14, 1940, by the California State Supreme Court (Consolidated Freightways, Inc. vs. R. R. Comm., SF 16482). Thereafter, the U. S. Supreme Court denied a petition for certiorari (Consolidated Freightways, Inc. vs. R. R. Comm. of Calif., 313 US 561; 85 L. Ed. 1521).



Respondent's operations between the points involved, as we have pointed out, though interstate in character, clearly are exempt from regulation under the Interstate Commerce Act. In our judgment they are subject to regulation by this Commission. In this respect we can perceive no distinction between the control of minimum rates, exercised in the Consolidated Freightways case, and regulation of respondent's operations involved here. Accordingly, we hold that in respect to its pool-car distribution service performed within the San Francisco Commercial Zone, respondent's operations are subject to regulation under the Public Utilities Code. (28)

(b) Steamship Transfer Operations

We turn now to the steamship transfer operations conducted by respondent. Here the water carrier, to suit its convenience, discharges shipments at the San Francisco Pier which are destined to Oakland and thereupon engages respondent to transport this freight across the bay by motor vehicle. This traffic also might move in the opposite direction. Respondent delivers these shipments to the consignees shown in the steamer bills of lading. For this service respondent is compensated by the water carrier.

In so doing, respondent admittedly is engaged in the transportation of interstate traffic. This transportation service is provided between points situated within the San Francisco Commercial Zone. The circumstances surrounding the performance of this service indicate that it is supplied within the terminal area of the water carrier.

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(28) Upon all of the pool-car shipments covered by the Field Division's survey, respondent's transportation charges were paid by the ultimate consignees to whom such shipments were delivered. This circumstance also shows that there was no common control, management or arrangement between respondent and the connecting rail line for a continuous carriage or shipment. All of the pool-car shipments embraced within the Field Division's survey, and considered herein, moved by rail; none was transported by any water carrier.

Motor vehicle operations of this character have been partially exempted from regulation by the Interstate Commerce Commission. Section 202 (c), Part II, provides in part (49 USCA Section 302 (c) (2)):

"(c) Notwithstanding any provision of this section or of section 203, the provisions of this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation and equipment, shall not apply -

"(2) to transportation by motor vehicle by any person (whether as agent or under a contractual arrangement) for a common carrier by railroad subject to part I, an express company subject to part I, a motor carrier subject to this part, a water carrier subject to part III, or a freight forwarder subject to part IV, in the performance within terminal areas of transfer, collection, or delivery services; but such transportation shall be considered to be performed by such carrier, express company, or freight forwarder as part of, and shall be regulated in the same manner as, the transportation by railroad, express, motor vehicle, or water, or the freight forwarder transportation or service, to which such services are incidental."

The steamship transfer service, as indicated above, is performed under a contractual arrangement between respondent and the water carrier. It contemplates the performance, within a terminal area, of a service for the transfer of freight transported by the water carrier.

The provisions of the Interstate Commerce Act, referred to above, manifest an intention that a service of this type shall be exempt from regulation under Part II. That view finds support in the rulings of the Interstate Commerce Commission. Since

(29) Re Wool Transportation by Motor Vehicle in and about Boston, Mass., (Div. 3; 1940) 26 MCC 297; Re Anderson, MC 95741 (Div. 5; 1941) 31 MCC 429; Re Palisano, MC 13530 (Div. 5; 1941, 1942) 30 MCC 591; 41 MCC 229. Re Jackson-Strickland Transp. Co., MC 59680 (Div. 5; 1946) 46 MCC 837.

certification is not required by the Interstate Commerce Commission to enable a motor carrier to engage in these operations, it can be argued that to this extent Congress has left the field unoccupied, and that the state therefore is free to require certification for service of this character. We do not deem it necessary to pass upon that question here.

(c) Intrastate Shipments

This leaves for consideration the shipments, described above, which admittedly were intrastate in character. There can be no question that these would be subject to regulation under state authority.

In view of the conclusions reached, we shall consider all of the various types of shipments transported by respondent, in determining the legality of its operations. As stated above, during the critical period a total of 123 shipments were transported for 48 shippers, shown to have been served. All but a minor fraction of these moved between San Francisco and Oakland. This traffic, it is true, is small in comparison with the large volume of interstate traffic handled by respondent, as to the status of which no question was raised. The period of one week, which was selected to test the nature of respondent's operations, seems rather short. However, in view of the painstaking review of the shipping records which was made, it is sufficient to fairly typify and portray the characteristics of these operations. No contention to the contrary has been urged.

Upon careful review of the record, we find as a fact that respondent regularly has been engaged in the transportation of property, as a highway common carrier (as defined by Section 213 of the Public Utilities Code) between certain points, viz., San Francisco and Oakland, Berkeley and Emeryville, without first having obtained

from this Commission an appropriate certificate of public convenience and necessity. These operations, accordingly, should be discontinued. Since they have been conducted in the utmost good faith, it would be inappropriate to impose any penalty, such as the suspension of respondent's permits. Moreover, an application for a certificate is now pending which, if granted, would remedy the situation.

O R D E R

An investigation as above entitled having been instituted, a public hearing having been held, the matter having been duly submitted and the Commission being now fully advised,

IT IS ORDERED:

(1) That Overland Freight Transfer Company, a corporation, (respondent herein) be and it is hereby directed and required, unless and until said Overland Freight Transfer Company shall have obtained from this Commission a certificate of public convenience and necessity therefor, 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 San Francisco and Oakland, Berkeley and Emeryville, respectively.

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

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

Dated at South Pasadena California, this 30th day of June, 1952.

[Signature]  
President

[Signature]

[Signature]

[Signature]

Commissioners

Justus F. Craemer  
Commissioner....., being necessarily absent, did not participate in the disposition of this proceeding.