

ORIGINAL

Decision No. 47658

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission investigation into the)
operations and practices of)
JOSEPE L. BONITA, doing business)
as Avon Express.)

Case No. 5323

Theodore Russell, for respondent.
George Strouse and J. B. Robinson, for Southern California
Freight Lines and Southern California Freight Forwarders,
interested parties.
John Power, for Field Division, Public Utilities Commission
of the State of California.

O P I N I O N

The purpose of this proceeding, which is an investigation
instituted upon the Commission's own motion, is to determine:

(1) Whether Joseph L. Bonita, doing business as Avon
Express, has operated or is operating as a highway common
carrier, as defined in Section 213 of the Public Utilities
Code of the State of California, over regular routes or
between fixed termini, as stated in the order instituting
investigation, anywhere within the State of California,
without having obtained a certificate of public convenience
and necessity or having possessed or acquired a prior right
so to operate, as required by Section 1063 of the Public
Utilities Code of the State of California;

(2) Whether respondent should be ordered to cease and
desist from operating as a highway common carrier until he
shall obtain authority so to do; and

(3) Whether the permitted rights, or any of them, held
by respondent should be canceled, revoked or rescinded.

Public hearings were held before Examiner Rowe at Riverside
on April 2, 1952 and at Los Angeles on April 3, 1952 and on May 1,
1952 and oral and documentary evidence was adduced. The case was

submitted on briefs which have been received and considered. The matter is now ready for decision.

The only operating authority held by respondent, granted by this Commission, is under Radial Highway Common Carrier Permit No. 33-1109 and Highway Contract Carrier Permit No. 33-1110. From the evidence of record and a stipulation of counsel the Commission finds that respondent does not have any authority to operate as a highway common carrier, as defined in the Public Utilities Code.

Evidence was presented by a member of the Commission's field division staff concerning the result of an inspection of respondent's records and of interviews with him. The operations of Avon Express during the period of August 6, 1951 to August 11, 1951 were set forth in an exhibit prepared by the Commission staff. During that period a total of 568 shipments was carried by respondent, to approximately 50 points lying generally south of the San Bernardino mountains east of and including Los Angeles, west of and including such points as Coachella, Cathedral City, Indio, Hemet, and Elsinore and north of and including Fullerton. Also, one shipment was carried between San Bernardino and Barstow; 437 of these shipments originated in Los Angeles, 53 shipments had Los Angeles for their destination; 48 shipments originated in San Bernardino, 41 in Riverside and six in Redlands. The most frequently served destination points were Riverside 96 times, San Bernardino 70 times, Redlands 39 times and Pomona 44 times.

The 568 shipments carried by respondent during this period ranged in weight from one pound to 16,150 pounds. Sixty persons engaged respondent during that period to carry prepaid shipments; 172 of the shipments were sent with instructions that the carrier was to collect the freight charges from the consignee. A total of 141 persons and firms engaged the services of respondent. The

total served by the carrier after eliminating duplication, including those who prepaid, those who paid collect and those who engaged the services, aggregated 245 during the period. A total of 11 public witnesses appeared and testified that they used respondent's service.

The evidence clearly indicated and respondent conceded at the hearing that he was not acting as a highway contract carrier and that he had no binding contracts with any shippers for the carriage of their freight other than the contract of carriage entered into by any common carrier for each shipment and evidenced by the usual shipping documents.

Respondent testified in his own behalf. He stated that he operated six trucks of stake or open body design. These trucks are designated by factory specification as one and one-half ton carrying capacity. However, they were loaded with as much as six tons of freight. He has, he said, operated since September, 1945 and maintains only one terminal, located on his property at Pedley, an unincorporated community near Riverside. This terminal he designated as his distributing point. To illustrate the method of operation respondent stated that a shipment from Los Angeles to Pomona or El Monte would go "through the Riverside warehouse and be distributed the next day." The warehouse to which he referred is that at Pedley, a suburb of Riverside.

He stated further that five of his trucks start out in the morning from Pedley, moving the freight outbound from that point. Three of these trucks go to Los Angeles, picking up freight on the way, one via the northern route, one following the Valley Boulevard route and one going via Corona and Santa Ana Canyon and on to Los Angeles making deliveries along the way. They arrive some time before noon, deliver their freight, and spend the rest of the day making pickups in Los Angeles. After completing the Los Angeles pickups, the three trucks return to Pedley gathering some additional

freight on the way. The trucks are unloaded at the dock at Pedley by two additional employees. The following day three trucks return to Los Angeles and two other trucks go into the "kite area" beyond San Bernardino and Riverside, also making deliveries and pick ups.

The bulk of the freight movement of respondent has originated in Los Angeles and moves over the Pedley docks and then is distributed to the points served, most regularly San Bernardino, Riverside, Pomona and Redlands. The return movement, according to respondent consists of motor parts and similar freight sent back to Los Angeles for reconditioning.

In addition to the terminal docks maintained in Pedley, respondent maintained a telephone listing in his name in Los Angeles. This telephone was operated by an individual under the name of "Confidential Telephone Service", whose business is that of furnishing telephone service for others. Employees of the phone answering service receive the calls made to respondent and take orders for freight to be carried by him from Los Angeles to approximately 64 localities in the area lying east and somewhat to the north and south of Los Angeles. These towns were listed on a mileage card furnished by respondent to this telephone service for that purpose. *(Subs)* These telephone operators do not quote rates but give the requests for pick ups to respondent's drivers who regularly call for them. Mileage and rate cards have been distributed to shippers by respondent.

In his testimony at the Los Angeles hearing respondent admitted that between Los Angeles and his Pedley terminal he operated daily along Santa Ana Canyon Road which is State Highway 18 and U. S. Highway 91, along U. S. Highways 60, 70 and 99, and between Fontana and Monrovia along U. S. Highway 66. Petitioner

testified that within the area above-described he had never refused to handle any freight offered to him within the capacity of his equipment.

The principal attempt at defense is the claim that respondent's radial highway common carrier permit authorizes all the operation found to be carried on by him. He contends that since radial highway common carriers as a class, like highway common carriers, have been given statutory recognition each must be allowed "a proper sphere of operation within which an economically sound trucking business can be performed," despite the provisions of Section 1063 of the Public Utilities Code. This argument ignores the prohibitory language of such section which without reference to any permits he may hold, forbids any highway common carrier from commencing operations without a certificate of public convenience and necessity. Respondent's admission that he serves the public within the area of his offer, which includes all points herein found to be regularly served by him, is consistent with the finding that he is a highway common carrier of freight between said points, and over the routes described herein. The fact that his operation, to some of the points served, has not been performed with such regularity as to characterize that service as a highway common carrier operation, does not prevent his being restrained from serving other points where transportation is conducted with such regularity that the operations become those of a highway common carrier.

From a careful consideration of the record in this matter the Commission finds, that between the termini of Los Angeles and Redlands, Los Angeles and San Bernardino, Los Angeles and Riverside and Los Angeles and Pomona, respondent Bonita renders a highway common carrier service, and that as to said four

pairs of termini Joseph L. Bonita has unequivocally dedicated his service to a substantial portion of the public generally between fixed termini and that he is to that extent, operating as a highway common carrier between said termini, without having obtained a certificate of public convenience and necessity or having possessed or acquired a prior right so to operate, as required by Section 1063 of the Public Utilities Code of the State of California.

In carrying on said highway common carrier operations between said pairs of termini the Commission further finds that said Joseph L. Bonita is and has been acting as a highway common carrier of freight over the regular routes as follows:

- (1) Over and along Santa Ana Canyon Road also known as State Highway 18 and U. S. Highway 91 between Los Angeles and Pedley, between Los Angeles and Riverside and between Los Angeles and San Bernardino.
- (2) Over and along Valley Boulevard and along U. S. Highway 60 between Los Angeles and Riverside, and
- (3) Over and along U. S. Highway 66 between Monrovia and Fontana.

An order will issue directing Joseph L. Bonita, doing business as Avon Express, or otherwise, to cease and desist from such operations between the above-named termini until he has obtained and accepted a certificate of public convenience and necessity authorizing such operations.

ORDER

Public hearings having been had in the above-entitled proceeding, evidence having been received and duly considered, the

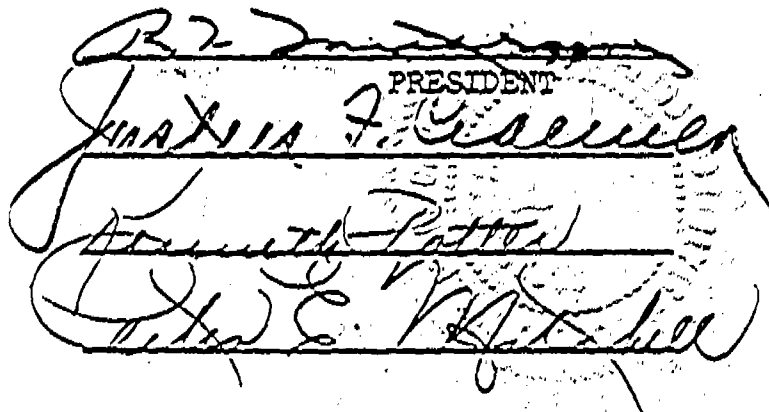
matter being under submission and briefs being on file and the Commission basing its order upon the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED that Joseph L. Bonita, doing business as Avon Express, or otherwise, be and he is hereby directed and required, unless and until said Joseph L. Bonita 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 Los Angeles and Redlands, San Bernardino, Pomona and Riverside, respectively.

The Secretary of the Commission is directed to cause a certified copy of this decision to be served personally upon the respondent, Joseph L. Bonita.

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

Dated at San Francisco, California, this 2nd day of September, 1952.



COMMISSIONERS