

ORIGINAL

Decision No. 47928

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MERCHANTS EXPRESS CORPORATION,
a corporation,
Complainant,

vs.

ROBERTSON DRAYAGE CO., INC., a
corporation, First John Doe and
Second John Doe Corporation,

Defendants.

Case No. 5366

Douglas Brookman, for Merchants Express Corporation, Applicant.
Frederick W. Mielke, for Delta Lines, Inc., Intervenor in support of Complainant.
Bertram S. Silver and Edward M. Berol, for Highway Transport, Inc., Defendant.

O P I N I O N

Merchants Express Corporation, in a complaint filed April 8, 1952, alleged:

1. That it is a highway common carrier, as defined in Section 213 of the Public Utilities Code, engaged in the transportation of property between San Francisco and Stockton and various other points in California.
2. That defendant, Robertson Drayage Co., Inc., pursuant to the provisions of Decision No. 44585, dated July 25, 1950, in Application No. 31544, acquired the freight forwarder rights of Charles L. Dickman.
3. That such operative rights, resulting from operations conducted on and continuously since May 1, 1933 and evidenced by tariffs lawfully on file and in effect as of said date were confined to and limited to the transportation of property as a freight forwarder from San Francisco to Stockton.

4. That defendant, subsequent to the acquisition of such operative rights, filed amendments to such tariffs naming rates between Stockton on the one hand and El Cerrito, Oakland, Richmond and San Francisco on the other hand, which amendments unlawfully purported to extend and enlarge such operative rights.
5. That defendant possesses no right or authority to operate as a freight forwarder except from San Francisco to Stockton in accordance with Charles Dickman's freight forwarder operative rights and tariffs on file and in effect on May 1, 1933.
6. That defendant is engaged in the transportation of property between Stockton, on the one hand, and El Cerrito, Oakland, Richmond and San Francisco on the other hand in violation of said freight forwarder operative rights and without authority.

Complainant asks the issuance of an order directing defendant to cancel all tariff filings which purport to extend and enlarge the freight forwarder operative rights acquired from Dickman and to cease and desist from any and all transportation being rendered in violation of such rights.

The defendant, by its answer controverted the material allegations of the complaint and upon the issue joined, public hearings were held at San Francisco on July 21, July 22 and October 10, 1952 before Examiner Silverhart.

By Decision No. 47311, dated June 24, 1952, in Application No. 33137 Robertson Drayage Co., Inc., was authorized to transfer its freight forwarding rights to Highway Transport, Inc. Counsel for defendant Robertson Drayage Co., Inc., stated that such transfer had been consummated and upon stipulation by counsel for the respective parties, Highway Transport, Inc., was substituted as defendant in place of Robertson Drayage Co., Inc.

Counsel for defendant further stipulated that it was presently rendering a freight forwarder service in both directions between San Francisco and Stockton.

The sole question here presented for resolution is: "Does the defendant possess any authority to operate as a freight forwarder other than that from San Francisco to Stockton?"

Each tariff, and the supplements thereto, issued by Charles L. Dickman beginning with CRC 1, filed February 24, 1933, to and including Supplement 2 to CRC No. 7, filed June 25, 1946, named rates only "From San Francisco to Stockton." A one-page supplement to CRC No. 7 filed on November 28, 1947, involved increased charges only and was labeled "Supplement No. 3 - - - naming Class and Commodity Rates - - - Governing The Transportation of Freight Between Points in California" but set forth no specific points. Thereafter and up to November 23, 1949, Dickman filed revised pages to CRC No. 7 and again continued to name rates only "From San Francisco to Stockton."

Robertson Drayage Co., Inc., after its acquisition of the Dickman operative rights pursuant to Decision No. 44585, filed a notice on August 2, 1950, adopting Dickman's Tariff, and on August 18, 1950, and March 16, 1951, filed revised pages to such tariffs in which rates were named only "From San Francisco to Stockton." By revisions filed October 19, 1951, Robertson Drayage Co., Inc., for the first time named rates "Between Stockton and El Cerrito, Oakland, Richmond and San Francisco." Subsequent to the transfer by Robertson Drayage Co., Inc., to Highway Transport, Inc., pursuant to Decision No. 47311, the latter filed a notice adopting the former's tariff (Cal. P.U.C. No. 7 Series of Charles L. Dickman).

Charles L. Dickman was called as a witness upon behalf of the defendant. While the witness stated he had operated as a freight forwarder from Stockton to San Francisco for several years prior to the date after which a certificate of public convenience and necessity to conduct such a service was required by the Public Utilities Act, Statutes 1933, Chapter 784 (Now Section 1010 of the Public Utilities Code) this testimony, unsupported by documentary evidence, was so vague, indefinite and uncertain as to be probatively unreliable. Cross examination disclosed that the witness appeared as a protestant in Applications numbers 30286 and 30287, on January 18, 1950, and testified therein that he operated in only one direction, viz: San Francisco to Stockton. By way of explanation Dickman now says that such testimony referred only to business he solicited and not to business from Stockton to San Francisco, which he did not solicit, did not want, was unprofitable and handled only as a matter of accommodation.

This record demonstrates, and we so find, that Charles L. Dickman at no time possessed a certificate of public convenience and necessity or any other right which authorized him to conduct a freight forwarder service other than from San Francisco to Stockton.

The Commission in Decision No. 44585 (a transfer proceeding) did not attempt to, nor did it, define or delineate the freight forwarder operative rights, if any, held by Charles L. Dickman. It merely permitted the transfer to Robertson Drayage Co., Inc. of such operative rights as Dickman may have possessed pursuant to the provisions of the Public Utilities Act, Statutes 1933, Chapter 784. So, too, Decision No. 47311 at most authorized Robertson Drayage Co., Inc. to turn over its freight forwarding rights, without making any depiction thereof, to Highway Transport, Inc.

It is a general rule that a transferee can acquire no greater right than that possessed by the transferor. The Commission having found that Charles L. Dickman possessed no freight forwarder rights from Stockton to San Francisco it follows that the question hereinabove set forth must be answered in the negative.

An order will be made herein directing the defendant to cease and desist from rendering any service as a freight forwarder except from San Francisco to Stockton and to cancel all tariffs not consonant herewith.

ORDER

Public hearings having been held and based upon the evidence therein adduced,

IT IS ORDERED:

(1) That Highway Transport, Inc., is directed to cease and desist from operating as a freight forwarder, as defined in Section 220 of the Public Utilities Code, except from San Francisco to Stockton, unless and until the said Highway Transport, Inc., shall have obtained from this Commission a certificate of public convenience and necessity.

(2) That Highway Transport, Inc., is directed to cancel such of its tariffs, as are inconsistent with the provisions of paragraph (1) hereof.

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

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

Dated at San Francisco, California, this 18th day of November, California.

[Signature]
PRESIDENT
[Signature]
[Signature]

COMMISSIONERS