

**ORIGINAL**

Decision No. 48007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)  
W. J. HEMPY, as assignee of )  
AMERICAN STEVEDORE COMPANY, a cor- )  
poration, for permission to sell )  
and MANUEL SENNA, doing business as )  
SENN TRUCKING CO., for permission )  
to purchase certain common carrier )  
rights of the AMERICAN STEVEDORE )  
COMPANY. )

Application No. 33613

E. Conrad Connella and C. P. Montgomery, for  
Manuel Senna, applicant.

Edward M. Berol and Bertram S. Silver, for W. J. Hemy,  
as assignee for benefit of creditors of American  
Stevedore Company, and American Stevedore Company,  
applicants.

William Meinhold, for Northwestern Pacific Railroad Co.,  
protestant.

Marvin Handler, for Don H. Hawkey, protestant.

O P I N I O N

By application filed herein on July 28, 1952, and sub-  
sequently amended, an order is sought authorizing Manuel Senna to  
purchase and W. J. Hemy, as assignee of American Stevedore Company,  
and American Stevedore Company to sell its right to operate as a  
highway common carrier of lumber and forest products between points  
in northern and central California, granted pursuant to the  
provisions of Decision No. 43424 dated October 18, 1949 in  
Application No. 29965.

Public hearings were held at San Francisco before Examiner  
Silverhart. Northwestern Pacific Railroad Company and Don H. Hawkey  
protested granting the application.

The president of American Stevedore Company testified  
that its principal activity was the transportation of lumber and  
forest products from the producing to the consuming areas. The

witness stated that in the fall of 1951 his company lost a large part of its load factor, as a result of which its operations ceased to be profitable. It was decided, he said, in order not to dissipate the company's remaining assets, to make an assignment for the benefit of its creditors. According to the witness, American Stevedore Company engaged in or held itself out as being in the transportation business until March 10, 1952, at which time it executed an assignment of all its property to W. J. Hempy, for the benefit of creditors generally, and thereafter ceased operations.

An assistant to the assignee testified that subsequent to the assignment an inventory was made and disposal of assets undertaken. The witness stated that the assignee conducted negotiations for the sale of the operative right here involved until July 8, 1952, when a letter contract was entered into with Manuel Senna. Such letter was formalized by a written agreement, executed August 25, 1952, which provided for the sale to Senna of such operative right for the sum of \$4,250, one-half of which was deposited on such date, the balance remaining, to be paid if, and after the Commission shall have approved such agreement. His testimony disclosed that except for certain accounts receivable not as yet collected, the assignee has otherwise wound up the affairs of American Stevedore Company and had not at any time conducted its transportation business.

Manuel Senna, who holds radial highway common carrier, highway contract carrier and city carrier permits issued by this Commission, testified that he has been engaged in the trucking business since 1938, specializing in the transportation of lumber, machinery, construction equipment, pipe and steel, and possesses the open type equipment required therefor. The record shows that

on February 20, 1952, Senna entered into an agreement with American Stevedore Company for the purchase of its interstate authority to transport machinery, equipment and building supplies from the San Francisco Bay area to points in California north of a line drawn through Santa Maria and Bakersfield; that he is conducting such service pursuant to temporary authority issued by the Interstate Commerce Commission pending disposition of the application now pending before it for permanent approval of such agreement; that he is a common carrier of lumber from Jackson and Josephine Counties in Oregon to points in California north of a line intersecting Bakersfield and Santa Barbara, pursuant to a certificate of public convenience and necessity granted by the Interstate Commerce Commission.

A balance sheet as of September 30, 1952 (Exhibit 3 herein) shows, among other things, that Senna has total assets of \$147,877.20, of which \$18,616.35 represents current assets and \$95,934.48 carrier operating property.

The protestants did not testify nor present any witnesses in their behalf. Counsel for Don H. Hawkey urged the denial of the application upon the following grounds:

1. That the suspension of service by American Stevedore Company in March 1952 upon the execution of the assignment, and no operations thereafter by it or on its behalf, worked an abandonment of the authority granted by Decision No. 43424.

2. That since such suspension other carriers have entered the field and now to permit the transfer of such operative right would result in such carriers suffering financial impairment.

Nonstatutory, common-law assignments for the benefit of creditors generally, are valid in this state (Brainard v.

Fitzgerald, et al., 3 C 2d 157, First National Bank of Stockton v. Pomona Tile Manufacturing Co. et al., 82 CA 2d 592). The time elapsing between March 10, 1952, and July 28, 1952, during which the assignee made an inventory of the assets, disposed of the equipment, concluded negotiations for the sale of the operative right and filed the instant application, cannot be said to be a suspension of service for such an unreasonable period as would warrant this Commission declaring the operative right forfeit.

Upon this record we find that the public interest will not be adversely affected by approval of the transfer of the operative right with which we are here concerned. Having made such finding, disposition of the second ground put forward by counsel becomes academic. However, in passing, it may be noted that the record is barren of any evidence in connection therewith.

The application will be granted. In taking this action we make no finding as to the extent and value of the operative right involved.

Manuel Senna is hereby placed upon notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate-fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the State, which is not in any respect limited to the number of rights which may be given.

O R D E R

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

IT IS ORDERED:

(1) That American Stevedore Company and W. J. Hempy, as assignee of American Stevedore Company, after the effective date hereof and on or before April 1, 1953, may sell and transfer to Manuel Senna, and the latter may acquire and purchase, the certificate of public convenience and necessity granted to American Stevedore Company by Decision No. 43424 in Application No. 29965; such sale and transfer to be made in accordance with the provisions of the purchase agreement on file herein.

(2) That within thirty (30) days after the execution thereof, Manuel Senna shall file with the Commission a true copy of the bill of sale or other instruments of transfer executed pursuant to the authority herein granted.

(3) That within ninety (90) days after the effective date hereof, applicants shall file in triplicate, and concurrently make effective, appropriate tariffs on not less than five (5) days' notice to the Commission and the public.

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

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

[Signature]  
 President  
[Signature]  
[Signature]  
[Signature]  
[Signature]  
 Commissioners