

ORIGINALDecision No. 48039

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission investigation into the)
 operations and practices of)
FLEETLINES, INC., a corporation.)

Case No. 5268

Glanz & Russell, by Theodore W. Russell, for Fleetlines, Inc., respondent. Gordon, Knapp and Gill, by Hugh Gordon, for Pacific Freight Lines and Pacific Freight Lines Express, The Atchison, Topeka and Santa Fe Railway Company and Santa Fe Transportation Company, John Gordon and E. L. H. Bissinger, for Pacific Electric Railway Company, Pacific Motor Trucking Company and Southern Pacific Company, J. B. Robinson and Laird M. Hail, for Southern California Freight Lines and Southern California Freight Forwarders, interested parties. Hal F. Wiggins, Field Section, Public Utilities Commission.

O P I N I O N

Under date of February 13, 1951, this Commission issued an order of investigation into the operations and practices of Fleetlines, Inc., a corporation, for the purpose of determining (1) whether it has operated as a highway common carrier over regular routes or between fixed termini within the State of California without having obtained a certificate of public convenience and necessity and without having possessed or acquired a prior right so to operate, as required by Section 50-3/4 of the Public Utilities Act (now Section 1063 of the Public Utilities Code of California), (2) whether a cease and desist order should be issued, and (3) whether the radial highway common carrier permit or the city carrier permit, or both of

them, should be cancelled, revoked or suspended.

Public hearings were held before Examiner Syphers in Los Angeles on May 2, June 14, September 27 and December 6, 1951, March 3, 4, 5 and 6, 1952. On the last named date the matter was submitted subject to the filing of briefs by the parties hereto. Briefs now have been filed by the respondent, Fleetlines, Inc., on August 15, 1952, and by the Commission's staff on August 16, 1952. The matter is ready for decision.

At the outset of the proceedings a stipulation was entered into between the respondent and the Commission's staff setting out that Fleetlines, Inc. is a corporation organized and existing under the laws of the State of Nevada, doing an intrastate auto truck transportation business within the State of California and, in connection with such intrastate business, having its principal office in the City of Los Angeles. It conducts these operations under authority of radial highway common carrier permit No. 19-35884, issued November 1, 1948, and city carrier permit No. 19-40490, issued April 25, 1950, which superseded city carrier permit No. 19-35885, issued November 1, 1948. It has no highway contract carrier permit, and indeed at no time has had any authority from this Commission other than the permits above indicated. It has no tariffs or time schedules on file with the Commission.

By Application No. 31630, filed July 25, 1950, and amended June 20, 1951, Fleetlines, Inc. requested a certificate of public convenience and necessity to conduct operations as a highway common carrier, as that term is defined in Section 2-3/4 of the Public Utilities Act (now Section 213 of the Public

Utilities Code of California), in the transportation of general commodities with certain exceptions, between all points and places in designated parts of Los Angeles, San Bernardino, Riverside, and Orange Counties over specified routes. A motion was made by applicant's counsel to consolidate the application proceeding with the instant investigation proceeding on the grounds that both involve common issues and common facts, and that a determination of both proceedings is necessary if applicant is to have a solution to its problems. The motion was resisted on the grounds that there were parties in the application proceeding who are not parties to the instant proceeding. The motion hereby is denied.

A representative of the Permits and Fees Section of the Public Utilities Commission presented Exhibit 1, a copy of respondent's city carrier permit No. 19-40490, previously referred to herein. Exhibit 2 is an application for registration of respondent's permits for the year 1951, and attached thereto is a list of the equipment operated. Exhibit 3 is a statement of gross operating revenue during the period October 1, 1948, to December 31, 1950, which purports to show the taxable revenue taken from the quarterly reports filed with this Commission. This witness testified that the respondent carrier has always paid its fees and taxes promptly, and that it has on file a C.O.D. bond effective as of November 15, 1948.

Five representatives of the Field Section of the Public Utilities Commission presented testimony as to a survey conducted in relation to the operations of the respondent carrier. This survey was commenced in November 1950, with a request for various carrier records which were furnished to the Commission's staff and checked by them.

An interview with the president of respondent carrier, conducted on November 15, 1950, disclosed that Fleetlines, Inc. is a Nevada corporation and is not affiliated with any other carrier. It conducts operations by picking up shipments in the Los Angeles area on its own trucks, bringing these shipments to its dock at 1201 East 5th Street and there transferring to other trucks owned by this same carrier, or in some instances turning the shipments over to other carriers. The interview disclosed that at that time the respondent carrier was operating nine diesel tractors, three gasoline tractors, fifteen semi-trailers having van-type bodies, three semitrailers with stake bodies, eighteen van body trucks, and sixteen stake body trucks. In this interview the president of the respondent carrier stated that it was serving the Los Angeles area and surrounding communities, as set out in maps presented as Exhibit 4. He further pointed out that in this service respondent used all available highways, and contended that it had no established routes. The service provided in the territory is daily except Sundays, and as a general practice all shipments are routed across the terminal dock. In its intrastate operations the

carrier has but one terminal, although it was stated that in its interstate operations it likewise maintains a terminal at Phoenix.

The type of shipping document used by respondent is shown in Exhibit 5, and Exhibit 6 is a summary of the shipments handled by this carrier on the days July 13 and 14, 1950, and September 18 and 19, 1950. This Exhibit 6 is divided into three parts, the first consisting of a summary of the shipments handled, the second a list of the persons served, and the third the frequency of shipments to each person served during the period. This exhibit shows that during the four-day check period the carrier handled a total of 1,073 shipments for 637 different persons. These shipments were hauled between Los Angeles and numerous surrounding points in the area. Exhibit 7 presents a summary of the service performed to these various points. One of the investigators testified that during the course of the interview the president of respondent company had stated that all of these shipments were handled without the assistance of any contracts, either oral or written, and further that they were hauled without following any fixed routes. ✓

The investigation further disclosed that at the terminal of respondent company there are various locations used for segregating the freight as it is routed through. These sections of the terminal are designated by signs showing the names of various towns which are served. There are seven such sections, and Exhibit 8 consists of photographs of five of them, showing the names of various towns on the signs in each section, and a list of the towns in the two remaining sections which, ✓

due to light conditions at the terminal, could not be photographed. In addition, Exhibit 7 shows photographs of trucking equipment used and a general photograph of the terminal itself.

Another investigator testified that in the latter part of February 1952 he conducted a further investigation of the activities of this carrier, and secured copies of the various types of documents which were then in use. Exhibit 11 is a copy of the forms of freight bills and delivery receipts being used at that time, while Exhibit 12 is a copy of the bill of lading. This investigator further testified that, up to September 1951, the respondent carrier had published a list of points which it served. A copy of such publication was received as Exhibit 13, although the testimony pointed out that subsequent to September 1951 this publication was no longer in use. Exhibit 14 is a copy of a new publication which contains a list of cities purportedly served by this carrier after September 1951, while Exhibit 15 is a so-called stylized map of the areas in which service is provided.

The final investigation of this carrier was conducted in June 1951, during the course of which the staff investigators recorded their observations on two forms, Exhibits 17 and 18. The purpose of these forms was to record the description of the shipment, data as to the shipper and consignee and other relevant data, as well as the routing over which the shipment was actually transported. Exhibit 19 is a list of names of the drivers employed by the carrier.

The method of conducting the last mentioned check was to have investigators at the terminal of the carrier, and also to have investigators ride on the trucks as they made their pickups and deliveries. All of the data thus observed was compiled in a 312-page exhibit which was received in evidence as Exhibit 20. This exhibit shows all of the shipments handled on June 11, 13, 14 and 15, 1951. It lists these shipments according to the truck making the pickup or delivery, the time the truck spent at the establishment of the shipper or consignee, the name of the consignor, the points of origin, the name of the consignee, the point of destination, the commodity, weight, charges, and whether or not the shipment was prepaid or collect. The exhibit lists this data in groups according to so-called runs. The procedure followed was to group the shipments according to the driver handling them. It was the opinion of the investigators of the Commission's staff that these drivers were assigned to runs, in that, according to the testimony, each driver usually made a trip into the same territory each day. Exhibit 21 is a supplement to Exhibit 20, containing corrections and additions thereto. Exhibit 22 consists of ninety-nine sets of maps on which have been plotted the routes of the alleged runs made by the drivers of the respondent carrier in the conduct of its hauling business.

Exhibits 16, 16A and 16B were presented by a cartographer of the Public Utilities Commission staff, and consist first of a map (Exhibit 16) of the area here in question, on which has been plotted the alleged runs made by respondent company during the

period of the check. The map was prepared from the previous data collected by the Commission investigators and hereinabove referred to. Exhibit 16A is an overlay of this map showing the principal highways and streets in the area. Exhibit 16B is an enlarged map of the areas served by applicant in the so-called warehouse territory.

A summary of all of these shipments was presented in the form of Exhibit 25 which shows that during the days June 11, 13, 14 and 15, 1951, the respondent handled a total of 809 shipments in intrastate commerce, the origin and destination points of each shipment not being within the same incorporated city. In other words, this summary has eliminated those shipments which were hauled wholly in intracity commerce under the authority of the city carrier's permit held by respondent. The tabulation of these shipments is as follows:

Monday,	June 11, 1951	-	187
Wednesday,	June 13, 1951	-	196
Thursday,	June 14, 1951	-	221
Friday,	June 15, 1951	-	205

The commodities transported were of a wide variety such as to constitute, in effect, general commodities.

Exhibit 26 shows the range of weights of these shipments, and discloses that the largest weight group falls between 101 and 500 pounds, although there were shipments in every other weight group used, to wit, from 0 to 25 pounds, 71; 26 to 50 pounds, 179; 51 to 100 pounds, 225; 101 to 500 pounds, 291; 501 to 1,000 pounds, 29; from 1,001 to 2,000 pounds, 14, and over 2,000 pounds, 4.

As previously mentioned, nearly all of these shipments are moved over applicant's terminal at 1201 East 5th Street, in the City of Los Angeles. This terminal is located on property 150 feet by 100 feet, and consists of a brick building which is 40 feet wide by 150 feet long. It has seven loading doors and three offices. There are various signs at designated areas on the walls, as disclosed by the photographs in Exhibit 8. In addition to these signs, one of the investigators testified that he was given a list of names of additional towns by the dispatcher, and told that, while these names did not appear on the signs, nevertheless the towns or cities were served by respondent carrier. A list of these additional towns and cities is contained in Exhibit 24.

In addition to the foregoing testimony, the Field Section presented a schedule of respondent's equipment, as shown on its application for Public Utilities Commission license plates for the year 1952 (Exhibit 9), and a statement of respondent's intrastate gross operating revenue for the years 1949 to 1951, inclusive.

The evidence presented by respondent consisted of the testimony of its president. He testified that the company is now hauling freight in intrastate commerce in California as a common carrier of commodities generally, pointing out that Exhibit 4 shows the area within which it is providing service. It is the policy of the carrier to haul to any location within that area. It was his testimony that the operation is not performed on regular routes or runs and that a truck only goes to

a point for the purpose of picking up or delivering freight there. The drivers have no instructions as to which streets are to be used, and the freight on the truck at the particular time determines where that truck will go. He explained that the respondent carrier tried to send a driver to the same area each day inasmuch as it was desirable to have a driver familiar with the area in which he was picking up or delivering.

The equipment used for intrastate freight consists of the so-called small trucks of 1½- and 2-ton classes. This equipment likewise is used to haul interstate freight, and frequently intrastate and interstate freight are hauled in the same trucks at the same time. The carrier also maintains larger equipment which is used principally in interstate commerce, although occasionally intrastate shipments are made on this larger equipment. As to the testimony relating to painted names of towns on the walls of the terminal, this witness testified that these designations were not as important as the numbers. He observed that each section of the dock is designated by a number, and that these numbers are used to sort the freight.

A fair analysis of all of the evidence presented herein discloses that there is no dispute as to the principal facts. The Commission's staff presented evidence as to the hauling activities of respondent in intrastate commerce within the State of California, and, specifically, the shipments handled on certain designated days were listed and described. The respondent did not take issue with these facts, and indeed admitted their correctness. Likewise, there is no dispute as to the

✓
✓

fact that this respondent holds radial highway common carrier permit No. 19-35884 and city carrier permit No. 19-40490. It does not hold any other type of authority from this Commission.

As to the hauling it performs, respondent represents itself to be a common carrier. It will provide service in the transportation of commodities generally to any point in the area set out on the maps presented as Exhibit 4. Its advertising, as illustrated by Exhibits 14 and 15, demonstrates a clear holding out, and the testimony of respondent's president, given at the hearing, is unequivocal to the effect that it intends to operate as a common carrier and serve all who tender freight to be hauled. A review of all of this evidence supports respondent's position in this respect, and we hereby find that the intrastate trucking operations of Fleetlines, Inc., as disclosed by this record, are those of a common carrier.

The issue herein squarely is whether the hauling activities of Fleetlines, Inc., being common carriage, constitute the type of common carriage which falls under the definition of a highway common carrier, or do they constitute the type of common carriage which can be performed by a radial highway common carrier. At the outset it would be well to point out that many of the hauls disclosed by this evidence were hauls originating and terminating within the City of Los Angeles. While it is true that some of these hauls may have taken a route which was not wholly within the City of Los Angeles, and hence cannot be classed as city carriage, it is also true that many more of them were handled on routes wholly within the city. These hauls

can properly be handled under the authority of respondent's city carrier permit. The Public Utilities Code, in defining this type of carrier, states:

3911. "'Carrier' means every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, engaged in the transportation of property for compensation or hire as a business over any public highway in any city or county in this State by means of a motor vehicle, except that 'carrier' does not include:

"(a) Any farmer resident of this State who occasionally transports from the place of production to a warehouse, regular market, place of storage, or place of shipment the farm products of neighboring farmers in exchange for like services or for a cash consideration or farm products for compensation.

"(b) Persons or corporations hauling their own property.

"(c) Any farmer operating a motor vehicle used exclusively in the transportation of his livestock and agricultural commodities or in the transportation of supplies to his farm.

"(d) Any nonprofit agricultural cooperative association organized and acting within the scope of its powers under Chapter 4, Division 6 of the Agricultural Code to the extent only that it is engaged in transporting its own property or the property of its members. (Part of former Sec. 1(f).)

3912. "'Occasionally' as used in Section 3911 means occasionally or for a total annual compensation from all sources for providing transportation for hire of not more than six hundred dollars (\$600), and which transportation constitutes the sole transportation of persons or property for hire or compensation. (Part of former Sec. 1(f).)"

Having concluded that respondent's hauling is that of a common carrier, and having eliminated those hauls which may be performed as a city carrier, we must now determine the legal authority required for the remainder of the hauls which, incidentally, constitute the bulk of the hauling performed by respondent. In making such a determination, the first consideration must be the existing statutory provisions. The definition

of a radial highway common carrier is set out to be,

3516. "'Radial highway common carrier' means every highway carrier operating as a common carrier not subject to regulation as such by the commission under Part 1 of Division 1. (Former Sec. 1(h).)"

The definition of a highway common carrier is set out to be,

213. "'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, except passenger stage corporations transporting baggage and express upon passenger vehicles incidental to the transportation of passengers.

"'Highway common carrier' does not include any such corporation or person while operating within lawfully established pickup and delivery limits of a common carrier in the performance for such carrier of transfer, pickup, or delivery services provided for in the lawfully published tariffs of such carrier insofar as such pickup and delivery limits do not include territory in excess of three miles from the corporate limits of any city or three miles from the post office of any unincorporated point. (Former Sec. 2-3/4(a).)"

In the law the basic similarity between these two types of carriers is that they both must meet the common law test of common carriage which "requires unequivocal intention to dedicate property to the public use." (Samuelson v. Public Utilities Commission, 36 Cal. 2d, 722, 733; Souza v. Public Utilities Commission, 37 Cal. 2d, 539, 543).

The basic distinction between these two types of carriers is found in the terms of the statute itself, wherein it is stated that a highway common carrier is one who transports "between fixed termini or over a regular route ..." (Section 213,

Public Utilities Code). These terms are further defined in the Public Utilities Code as follows:

215. "Between fixed termini or over a regular route" means the termini or route between or over which any highway common carrier usually or ordinarily operates any auto truck or other self-propelled vehicle, or any passenger stage corporation usually or ordinarily operates any passenger stage, even though there may be departures from such termini or route, whether such departures be periodic or irregular. (Former Secs. 2-3/4(b), 1st sent.; 2 1/2(d).)"

Therefore, our issue further narrows down to the problem of determining whether or not the intrastate, intercity hauling of Fleetlines, Inc., has been conducted between fixed termini or over a regular route.

The position of respondent in this matter is simply that it does conduct operations as a common carrier, but these operations are not "between fixed termini or over a regular route." While the respondent admitted the frequent hauls to various areas of the territory served, as disclosed by the evidence herein, it contended that these hauls were not over any regular routes. The drivers are not instructed to follow any particular streets or highways, and they go to a particular place or over a particular street only if there is freight to be delivered or picked up in that vicinity. On the other hand, the staff attempted to show that the hauling activities of the respondent constituted a pattern in that they were performed over regular routes, and that due to the very frequency of these hauls it was necessary for applicant to repeatedly traverse the same streets and highways in making its pickups and deliveries. Respondent's brief contends that "neither the size of the operation nor the frequency of service as such can form a basis

"of any proper distinction between them." As to the problem of fixed termini, respondent relies heavily upon the proposition that it has only one terminal and that almost all of the shipments handled pass over that terminal. ✓

In determining the problem of regular routes in the Los Angeles area, it is obvious that many streets are open to the use of truckers, and that in the conduct of its business a trucker may use many different routes in making its pickups and deliveries. It is also clear that any common carrier by motor vehicle, whether a radial highway common carrier or a highway common carrier, must use the public streets and highways in conducting its operations. As a matter of law, use of the public highways is a requirement which must be met before a status as either of the foregoing two types of common carriers can be attained. (Public Utilities Code, Section 213, supra; see also Section 3511.) Therefore, in determining whether or not a trucking operation is conducted over "a regular route", we must give effect to the frequency of the use of the route. In other words, is the route one that can be said to be regular for the carrier performing the hauling, or, to use the statutory language, is it a route over which the carrier "usually or ordinarily operates" ...? In each case this determination must be a question of fact. If it should be found that the hauling is of sufficient frequency to constitute regularity, then that hauling, if the other statutory requirements are met, ⁽¹⁾ must be considered to be highway common carriage.

(1) Public Utilities Code, Sections 213, 3511, 3513 and 3516.

Likewise, in considering the term "between fixed termini", we observe that this is not limited to so-called truck terminals. Modern hauling practices have in many cases eliminated the use of truck terminals in the delivery of freight. For example, a carrier hauling into a particular locality may make all of the deliveries directly from the truck rather than making use of any truck terminal in that connection. We find that the word "termini" in the statute implies a broader meaning than a truck terminal as such. A terminal may be a city, town or locality. It may be the place of business of a shipper or consignee. Indeed, it may be any location where a shipment is picked up or delivered. Any hauling must be from one point to another, so the test of "fixed termini" is not whether they are fixed points geographically, but whether they are "fixed termini" so far as the carrier is concerned. Here again the problem in one sense resolves itself down to the frequency of service. If the hauling of the carrier is of sufficient frequency between particular termini so as to constitute them termini between which the carrier "usually or ordinarily operates", then those termini must be considered as fixed so far as that particular carrier is concerned.

One further observation should be made. The statute (Sections 213 and 215, supra) is in the alternative, stating "... between fixed termini or over a regular route ...". Either condition, standing by itself, is a test of highway common carriage.

In the light of these tests, giving effect to all of the evidence herein, and considering the briefs which have

been filed, we find that the intrastate trucking operations of Fleetlines, Inc., between Los Angeles and the following listed termini, as disclosed by this record, are those of a common carrier conducted "between fixed termini or over a regular route", and, resultantly are trucking operations of a highway common carrier as defined in Section 213 of the Public Utilities Code:

Alhambra	Long Beach
Anaheim	Montebello
Arcadia	Monrovia
Azusa	Ontario
Bell	Pasadena
Beverly Hills	Pomona
Burbank	Redondo Beach
Covina	Riverside
Culver City	San Bernardino
El Monte	San Gabriel
El Segundo	Santa Ana
Fontana	Santa Monica
Fullerton	South Gate
Gardena	Temple City
Glendale	Torrance
Hawthorne	Vernon
Huntington Park	Whittier
Inglewood	

From an examination of the evidence, and in particular Exhibits 7 and 25, it is found that there were hauls between Los Angeles and each of the above listed 35 termini on at least three out of the four days of each check period, the first on July 13 and 14 and September 19 and 20, 1950, and the second on June 11, 13, 14 and 15, 1951. We consider this hauling to be of sufficient frequency to constitute hauling "between fixed termini". Furthermore, the routings of these shipments, as shown by the maps constituting Exhibits 16, 16A and 22, show sufficient use of the same streets and highways to constitute hauling "over a regular route." Inasmuch as the respondent does not have authority to

conduct operations as a highway common carrier, it will be ordered to cease and desist from conducting such operations. As to all other routes and points the record is insufficient upon which to base a finding.

Although the order of investigation directs an inquiry into the further point as to whether the radial highway common carrier permit or the city carrier permit, or both of them, should be cancelled, revoked or suspended, we now find that they should not. The respondent Fleetlines, Inc. gave complete co-operation in the conduct of this investigation, and evidently held an honest difference of opinion as to what hauling could be performed under the permits which it now holds.

O R D E R

IT IS ORDERED that Fleetlines, Inc., a corporation, be, and it hereby is, directed and required, unless and until said Fleetlines, Inc., 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 the following listed termini:

Alhambra	Long Beach
Anaheim	Montebello
Arcadia	Monrovia
Azusa	Ontario
Bell	Pasadena
Beverly Hills	Pomona
Burbank	Redondo Beach
Covina	Riverside
Culver City	San Bernardino
El Monte	San Gabriel
El Segundo	Santa Ana
Fontana	Santa Monica

Fullerton
Gardena
Glendale
Hawthorne
Huntington Park
Inglewood

South Gate
Temple City
Torrance
Vernon
Whittier

The Secretary is directed to cause a certified copy of this decision to be served personally upon an authorized representative of Fleetlines, Inc.

The effective date of this order shall be the date Decision No. 48035 in Application No. 31630 becomes effective. ✓

Dated at San Francisco, California, this 9th day of December, 1952.

R. T. Inman
 PRESIDENT
Justus F. Casner
Harold P. Kula
Herbert P. Pott
John L. Hill
 COMMISSIONERS