

ORIGINAL

Decision No. 48735

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission investigation into the)	
operations and practices of J.J.)	Case No. 5459
LEONARDINI, doing business as O.K.)	
TRUCKING CO.)	

John Power and E. E. Tanner, for the Commission's staff.
Edward M. Berol, for respondent.

O P I N I O N

By order dated March 30, 1953, the Commission instituted an investigation into the operations and practices of J. J. Leonardini, hereinafter called respondent, to determine whether he has operated or is operating as a highway common carrier over regular routes or between fixed termini anywhere within the State of California without first 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 1063 of the Public Utilities Code.

A public hearing was held at San Francisco on May 20, 1953 at which time the matter was submitted.

Respondent owns and operates auto trucks in the transportation of property for compensation over public highways in California. He now holds and since November 1935 has held a permit to operate as a radial highway common carrier. Respondent also possesses, pursuant to Decision No. 44528, dated July 11, 1950, certificated authority to transport fresh fruits and vegetables and empty containers therefor, in shipments of not less than 10,000 pounds or shipments which will carry charges applicable to shipments of 10,000 pounds, between San Francisco, Richmond, El Cerrito,

Albany, Berkeley, Oakland, Alameda, San Leandro and Hayward, on the one hand, and such points and places in Central and Southern California, on the other hand, as are set forth below:

1. U. S. Highway 99 between Fresno and the Mexican Border.
2. U. S. Highway 101 and 101-A between Santa Maria and the Mexican Border.
3. U. S. Highway 60 between Los Angeles and Blythe with the right to serve off-highway points within 20 miles of above-named highways.

Exhibit 1, prepared as a result of an examination of respondent's records, shows that during the period December 15, 1952 to December 23, 1952, inclusive, respondent transported 108 shipments of fresh fruits and vegetables between points within his certificated area as delineated in Decision No. 44528.

Sixteen of these shipments weighed 10,000 pounds or more. Two shipments weighed less than 10,000 pounds but carried charges applicable to shipments of 10,000 pounds. Each of the remaining 90 shipments weighed less than 10,000 pounds. Respondent assessed charges for such shipments, not on a basis of 10,000-pounds but on the true weights thereof and at the applicable minimum rates prescribed by Highway Carriers' Tariff No. 8.

It was stipulated by counsel that representatives of four produce merchants located at Oakland and San Francisco, if called, would testify that respondent transports shipments for each of them in weights of over 10,000 pounds per shipment between points involved here; that respondent also handled some shipments for each of them in weights under 10,000 pounds between points involved here; that such shipments originate at Los Angeles with destination at Oakland or San Francisco or both; that both types of shipments have been handled in substantially the same manner and very satisfactorily; that such shipments must reach market by 4 a.m.; that they have been unable to obtain such service satisfactorily elsewhere.

Respondent testified that he has been engaged in the trucking business for 25 years and operates over 100 pieces of equipment primarily in the transportation of fresh fruits and vegetables. The witness stated that he has conducted operations under the certificate of public convenience and necessity granted him by Decision No. 44528 since September 1950. He further stated that he has been requested to transport shipments of less than 10,000 pounds by the shippers for whom he carries shipments weighing 10,000 pounds or more. According to respondent's testimony, he had instructed his representative at the Los Angeles terminal not to accept too many shipments under 10,000 pounds and only from his steady customers for whom he hauls large lots. The witness also said that he transported shipments of less than 10,000 pounds between Los Angeles and San Francisco at the minimum rates provided by Highway Carriers' Tariff No. 8 under the authority of his radial permit.

This record demonstrates, and we so find, that respondent regularly moved fresh fruit and vegetable shipments of less than 10,000 pounds each without assessing a charge applicable to a shipment of 10,000 pounds, between points encompassed within his certificated authority as granted and conditioned by Decision No. 44528. In so doing, respondent utilized his radial permit to supplement and extend such certificated authority.

We have heretofore held that it is unlawful so to do. (See Commission Investigation Peninsula Delivery Service, et al., 48 P.U.C. 527, 530.) Therefore, respondent will be ordered to cease and desist from engaging in such practice.

O R D E R

A public hearing having been held and based upon the evidence therein adduced,

IT IS ORDERED:

(1) That J. J. Leonardini is directed and required to cease and desist from conducting directly or indirectly or by any subterfuge or device, any operation as a highway common carrier as defined by Section 213 of the Public Utilities Code with respect to the transportation of shipments of fresh fruits and fresh vegetables of all kinds, between San Francisco, Richmond, El Cerrito, Albany, Berkeley, Oakland, Alameda, San Leandro and Hayward, on the one hand, and such points and places in Central and Southern California, on the other hand, as are set forth below:

1. U. S. Highway 99 between Fresno and the Mexican Border.
2. U. S. Highway 101 and 101-A between Santa Maria and the Mexican Border.
3. U. S. Highway 60 between Los Angeles and Blythe with the right to serve off-highway points within 20 miles of above named highways.

other than pursuant to the terms of and subject to the restrictions contained in Decision No. 44528, dated July 11, 1950.

(2) That the Secretary is directed to cause a certified copy of this decision to be personally served upon respondent.

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

Dated at San Francisco, California, this 23rd day of June, 1953.

R. J. [Signature]
 President
Justice [Signature]
[Signature]
[Signature]
 Commissioners

Commissioner HAROLD P. HUIS, being necessarily absent, did not participate in the disposition of this proceeding.