

ORIGINALDecision No. 50104

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
 into the operations and practices)
 of Edgar W. Holyoke (C. H. McCARTY)
 TRUCKING COMPANY).)

Case No. 5464

Halsey Rixford and Frank Austin, for Field
 Division, Public Utilities Commission.
Vincent Matthew Smith and Edgar W. Holyoke,
 for respondent.
Turcotte and Goldsmith, by Frank W. Turcotte,
 for Thompson Truck Lines, intervener.
Gordon, Knapp and Gill, by Joseph C. Gill,
 and Turcotte and Goldsmith, by Frank W.
Turcotte, for Pacific Freight Lines and
 Pacific Freight Lines Express, interveners.

O P I N I O N

This proceeding was instituted upon the Commission's own motion to determine (1) whether Edgar W. Holyoke, without authorization from this Commission, has discontinued any or all of his operations as a highway common carrier; (2) whether Edgar W. Holyoke, without authorization by the Commission, has abandoned wholly or in part his rights to operate as a highway common carrier; (3) whether Edgar W. Holyoke's highway common carrier operating rights shall be suspended, cancelled, or revoked.

Public hearings were held before Examiner Rogers at the following times and places: El Centro on October 20, 1953; Los Angeles on October 22, 1953; and Los Angeles on January 18, 1954. At the conclusion of the latter hearing the matter was submitted. On February 4, 1954, and prior to decision by the Commission, Edgar W. Holyoke filed a Petition to Set Aside Submission. He alleged therein "that at the time of the last hearing, January 18, 1954, he was not aware of the requirement that the assent of the

creditors be presented along with the evidence of operation of the McCarty Trucking Company..." and attached "copies of the agreements with all the creditors who have lawfully enforceable claims totalling \$8,777.35". The composition agreement wording as attached to the petition, recites an execution date of January 28, 1954, and states that the signatories will accept 10 cents on the dollar in exchange for a full release if the sums agreed to be paid by Edgar W. Holyoke are paid within 90 days from the date of the agreement. On February 23, 1954, the Commission made its Order Setting Aside Submission and Reopening Proceedings for Further Evidence. This order limited the further hearing to the presentation by respondent of further evidence in conformance with his petition filed on February 4, 1954. A further hearing was held in Los Angeles before Examiner Rogers on April 29, 1954, evidence relative to the composition with creditors was presented, and the matter was submitted. It is ready for decision.

The history of respondent's authority as a highway common carrier is set out below:

Decision No. 23537, dated March 23, 1931, on Application No. 16942 (36CRC73).

"The Railroad Commission of the State of California hereby declares that public convenience and necessity require the operation by C. H. McCarty and Ernest Smith, copartners, of an auto truck service for the transportation, in truckload lots only, of alfalfa meal, cement, corn, cotton, hay, milo maize, lath, lumber, piling, telephone poles treated with creosote and paint and untreated, shingles, shakes and wheat between Winterhaven, Bard, Colorado Siding, Holtville, Calexico, El Centro, Brawley, Imperial, Calipatria, Coachella, Indio, Blythe and Thermal only, on the one hand, and El Monte, Redlands, Riverside, Pomona, Ontario, Chino, Pasadena, San Gabriel, Hynes, Clearwater, Downey, Garden Grove, Santa Ana, Anaheim, Fullerton, Cypress, Norwalk, Long Beach, Los Angeles, Los Angeles Harbor, Wilmington and San Pedro only, on the other hand, over and along regular routes

via the following communities: Long Beach, Norwalk, Cypress, Fullerton, Anaheim, Santa Ana, Garden Grove, Downey, Clearwater, Hynes, San Gabriel, Pasadena, Chino, Ontario, Pomona, Riverside, Redlands and El Monte, provided that no local service may be given between any of the above named points."

By Decision No. 28587, dated February 24, 1936, on amended and supplementary Application No. 16942, C. H. McCarty became the sole owner of the above-described certificate.

By Decision No. 37284, dated August 18, 1944, on Application No. 26019, the above-described rights were transferred to D. Garibaldi, Jr., J. Garibaldi, V. Garibaldi, and Bud G. Hood.

By Decision No. 40231, dated May 6, 1947, on Application No. 28238, the foregoing rights were transferred to Edgar W. Holyoke, the respondent herein. The decision recites that the consideration was \$125,000.00, \$40,000.00 payable on or before January 2, 1947, with the balance of \$85,000.00 payable at the rate of \$2,000.00 per month beginning February 2, 1947, including interest on the unpaid balance at the rate of 5 per cent per annum. Equipment valued at \$117,258.25 was included in the transaction with no additional consideration.

An Assistant Transportation Representative of the Commission testified as follows:

In 1952, he was assigned to investigate the respondent's operations under his certificated rights. On July 30, 1952, he interviewed respondent in the Commission's Los Angeles office. He asked respondent if he had abandoned his rights. Respondent stated that he never intended to abandon his rights. ⁽¹⁾ On March 18, 1953, the witness telephoned respondent. Respondent stated he had not operated under his certificated rights for over three years, has

(1) See letter of August 5, 1952, Exhibit No. 3.

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owned no equipment for the same period, does not intend to resume his operations, that he attempted to transfer his rights on several occasions but had been turned down by the Commission, and that for that reason he believed he had not abandoned his rights. (2)

The Commission's records show that on January 6, 1950, respondent owned one pickup truck, 8 tractors, and 8 trailers, on December 15, 1950, he leased one truck and one trailer, and on August 28, 1952, he leased 2 tractors and 3 trailers, (3) that he has at no time secured or requested permission from this Commission to suspend his operations as a highway common carrier.

Edward Tanner, Commission representative, stated that respondent's insurance (General Order No. 100) lapsed on May 10, 1953. (4) The Commission's records show that respondent now carries the required public liability and property damage insurance. Respondent's quarterly reports of gross operating revenue show no operating revenue for the period from January 1, 1951 to March 31, 1953. (5) Thereafter (to October 22, 1953) no quarterly report was filed by respondent.

On October 20, 1953, respondent Edgar W. Holyoke testified: In 1947 respondent had his certificate plus radial highway common carrier, highway contract carrier, and city carrier permits. Operations were conducted under the certificate until December, 1949. During this period he hauled the goods authorized by his certificate. Around February, 1950, the bank repossessed all respondent's trucking equipment. During 1950 respondent carried two shipments of lumber pursuant to his certificate, using sub-haulers. Thereafter respondent acted as a broker for another transportation company and carried nothing pursuant to his certificate. Since 1951, respondent has owned no trucking equipment. Since the

(2) See letter of March 19, 1953, Exhibit No. 4.
(3) Exhibit No. 5.
(4) Exhibit No. 6.
(5) Exhibit No. 7.

fall of 1951 he has had no Board of Equalization permit. During 1950 and 1952, applicant had arrangements for leasing equipment (Exhibit No. 5). He never abandoned his effort to pursue his rights. Referring to the Commission representative's allegation that respondent stated he did not intend to resume operations, he averred he told the representative that he did not intend to resume operations if a proposed sale of his rights (the request for authority to transfer was denied by the Commission, Decision No. 47119, dated May 5, 1952, on Application No. 33071) was permitted. Respondent has kept his tariff up to date (Exhibit No. 1).

On January 18, 1954, respondent testified that he has been carrying property pursuant to his certificate since October 22, 1953; that he is carrying limited commodities and it is hard to get started. He has carried three loads of alfalfa meal and wheat between the Imperial Valley and Wilmington. These loads were carried by subhaulers and he intends to operate through subhaulers in the future if the investigation herein is dismissed. Respondent's total indebtedness reduced to judgments can be settled for about \$8,000.00. The balance of the claims are on open book accounts, the last entry being about 1949 in each instance.

A friend of respondent with personal assets which he estimated at one-quarter million dollars, stated that he will loan respondent around \$8,000.00 to \$9,000.00 to enable him to pay his indebtedness and resume business.

On April 29, 1954, the respondent attempted to present further evidence pursuant to the order of this Commission reopening the matter. He offered in evidence what he alleged were signed statements from all of his judgment creditors agreeing to accept 10 cents on the dollar on their claims in exchange for a full release

thereof. These agreements were conditioned to terminate in 90 days from execution of the agreements if the agreed sums were not paid in that time. They were executed, according to a stipulation of all parties, between January 21 and January 26, 1954. Counsel for the interveners objected to the receipt in evidence of the agreements on the ground that they each show on the face that the time for performance has lapsed. The examiner sustained the objection. Respondent then testified that the creditors would extend the time of performance as he had suggested the 90-day period for performance and he and the creditors believed this matter would be terminated within that period. Counsel for the interveners moved to strike this statement on the ground that it was a conclusion of the respondent. The examiner granted the motion, and the parties rested.

Upon the records and files of this Commission concerning respondent, of which we take judicial notice, and upon the record herein, we find the following facts to be true:

(1) That in 1947 respondent acquired the certificate of public convenience and necessity represented by Decision No. 23537, which permits transportation in truckload lots only, together with seven tractors and seven semi-trailers, subject to an encumbrance of approximately \$85,000.00.

(2) That respondent operated said rights and equipment between the date of their acquisition by him and approximately January 1, 1950, at which time the owner of the encumbrance repossessed the equipment.

(3) That during 1950 respondent carried two shipments pursuant to his certificate, using subhaulers.

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(4) That during 1951, 1952, and until October 22, 1953, respondent carried no property pursuant to his certificate.

(5) That since October 22, 1953, respondent has carried some property pursuant to his certificate, using subhaulers.

(6) That respondent has never requested of or received from this Commission authority to suspend his operations as a highway common carrier.

(7) That respondent's tariff has been on file with this Commission at all times since he acquired authority from this Commission to operate as a highway common carrier.

(8) That respondent's insurance (General Order No. 100) lapsed on May 10, 1953, but has been renewed and is now in effect.

Upon the foregoing findings of fact we find that respondent abandoned service pursuant to his certificate on or about January 1, 1951; that such abandonment was without authorization from this Commission; that respondent's certificate should be cancelled and revoked.

O R D E R

Public hearings having been held, evidence presented, the matter having been submitted, and the Commission having made the findings and conclusions set forth in this foregoing opinion, based upon said findings and conclusions,

IT IS HEREBY ORDERED that the certificate of public convenience and necessity issued by Decision No. 23537, dated March 23, 1931, on Application No. 16942 (McCarty and Smith), and acquired by Edgar W. Holyoke by mesne conveyances by Decision No. 28587 dated February 24, 1936 on Application No. 16942

(McCarty et al to McCarty), Decision No. 37284, dated August 18, 1944 on Application No. 26019 (McCarty to Garibaldi and Hood) and Decision No. 40231, dated May 6, 1947 on Application No. 28238 (Garibaldi and Hood to Holyoke) be and the same hereby is revoked and that Edgar W. Holyoke, doing business as McCarty Trucking Company, shall, on not less than five days' notice to the Commission and to the public cancel all rates, rules and regulations governing the operations here involved.

The secretary is directed to cause a certified copy of this order to be served upon respondent Edgar W. Holyoke.

Dated at San Francisco, California, this 1st day of June, 1954.

John E. Mitchell
President

Justice J. Caswell

Kenneth Potter

Verne Deaggin

Commissioners