

Decision No. 5013S**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission investigation into the operations and practices of ARROW PACIFIC DRAYAGE, INC., a corporation. )  
 ) Case No. 5517  
 )

Frank B. Austin, for the Public Utilities Commission of the State of California.  
Donald Murchison, for Arrow Pacific Drayage, Inc., a corporation, respondent.  
 Turcotte and Goldsmith by Frank Turcotte, for Harry Seward, dba Auto Purchasing Agency, interested party.

O P I N I O N

The Commission instituted an investigation on its own motion into the operations and practices of Arrow Pacific Drayage, Inc., a corporation, respondent herein, for the purpose of determining whether it has operated or is operating as a highway common carrier over regular routes or between fixed termini anywhere within the State of California, particularly including but not being confined to points situated between the City of Los Angeles, on the one hand, and Goleta and points intermediate thereto on U. S. Highway 101, on the other hand.

Respondent, by virtue of Decision No. 40433 on Application No. 28513, and Decision No. 39312 on Application No. 26933, is now authorized to transport, as a highway common carrier, automobile accessories, parts, materials, supplies, and tools, among other things (see Appendix "A" in Decision No. 39312), between Areas "A" and "B" (situated in Los Angeles and vicinity) as said areas are described in said Decision No. 39312. It is also authorized, by Decision No. 48722 in Application No. 32116, to transport, as a highway common carrier, similar commodities between the said

Areas "A" and "B" (as described in Decision No. 39312), on the one hand, and, on the other hand, Bakersfield via U. S. Highway 99 serving all intermediate points and off-route points within 5 miles of either side of said highway and within 5 miles of Bakersfield, serving also the off-route points of Oildale and Edison. Respondent also holds radial highway common carrier permit No. 19-32029, highway contract carrier permit No. 19-32040, and city carrier permit No. 19-39928.

Public hearings were held in Los Angeles on April 1 and May 14, 15, 19 and 21, 1954 before Examiner Chiesa. Oral and documentary evidence having been adduced, the matter was submitted for decision.

During the first five days of hearing the Commission's attorney called forty witnesses to testify, two staff transportation representatives and thirty-eight shippers whose businesses are located in the Los Angeles commercial and industrial areas. Additional hearings were set for Oxnard, Ventura, and Santa Barbara, where the Commission was prepared to call additional shippers and/or consignee witnesses. The latter hearings went off calendar when, at the last hearing held in Los Angeles on May 21, 1954, Mr. Clarence Gaffers, the president of respondent corporation, took the witness stand and stated that in view of the evidence then in the record and because his company was losing considerable business along the said route and the cost of continuing the proceeding he was stipulating that his company was operating as a highway common carrier between Los Angeles and Goleta and the intermediate points of Oxnard, Ventura, and Santa Barbara, over and along U. S. Highway 101 without having obtained a certificate of public convenience and necessity, or having possessed or acquired a prior right so to operate as required by law. The stipulation was accepted by the

Commission's attorney and the examiner permitted it to become part of the record upon the understanding that it had been voluntarily made and that there was no understanding whatever concerning any decision or order that the Commission might make in this proceeding.

Respondent's president testified that after Decision No. 48717<sup>1/</sup> on Case No. 5256 was issued on June 16, 1953, respondent, then named Auto Parts Delivery, Inc., discontinued its operations between Santa Barbara and Paso Robles and also attempted to comply with the order in said decision by entering into written contracts with shippers and discontinuing some of its other services. He stated that as to his present operations it was not his intention to violate any provisions of the Public Utilities Code, and that he believed that he was performing such services either as a contract carrier or as a radial highway common carrier.

In view of said stipulation it is not deemed necessary to summarize the evidence; however, the record clearly shows, and we find, that respondent did not possess any authority to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between Los Angeles and Goleta and intermediate points along U. S. Highway 101; that he regularly and daily performed such transportation service along said route for one or more of the said shippers; that with the possible exception of two of the thirty-eight shippers who testified respondent held no written contract to perform transportation services, nor did it have

<sup>1/</sup> Said decision ordered respondent, then named Auto Parts Delivery, Inc., a corporation, to cease and desist highway common carrier operations between Los Angeles and Paso Robles and intermediate points along U. S. Highway 101, and between Los Angeles and Bakersfield along U. S. Highway 99. By Decision No. 48722 highway common carrier operations were authorized between Los Angeles and Bakersfield as heretofore set forth.

a mutually binding and enforceable oral contract therefor; that said transportation services were not radial highway carrier operations; that nearly all shipments were less-carload, weighing up to several hundred pounds each and consisting of general commodities; that said shipments were transported by respondent as a common carrier for compensation over public highways in this state between fixed termini or over a regular route, to wit, between Los Angeles and Goleta and the intermediate points of Oxnard, Ventura, and Santa Barbara, on U. S. Highway 101.

The Commission having considered the evidence of record and having made its findings of fact and conclusions of law as hereinabove set forth, makes its order as follows:

O R D E R

A public hearing having been held in the above-entitled proceeding, evidence having been received and considered, the Commission being fully advised in the premises and good cause appearing,

IT IS ORDERED that Arrow Pacific Drayage, Inc., a California corporation, 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 fixed termini or over a regular route, to wit, between Los Angeles and Goleta and points intermediate thereto, along U. S. Highway 101, unless and until said Arrow Pacific Drayage, Inc., shall have obtained from the Public Utilities Commission a certificate of public convenience and necessity therefor.

The Secretary of this Commission is directed to cause a certified copy of this decision to be served upon said respondent Arrow Pacific Drayage, Inc.

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

Dated at San Francisco, California, this 7th day of June, 1954.

Ed E. Mitchell  
President  
Justice J. Craemer  
~~Francis J. ...~~ KP  
Gene Higgins

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Commissioners

Case No. 5517

I concur and dissent. I concur with the majority of the Commission in the cease and desist order.

I dissent from the majority in that the order does not go far enough in this case. I am of the opinion that the permits in question likewise should be suspended.

  
COMMISSIONER