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Decision No. 50182

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission investigation into the operations and practices of WEST COAST FAST FREIGHT, INC.) Case No. 5451

Arthur H. Glanz and Theodore W. Russell for respondent.

Douglas Brookman for California Motor Express, Ltd., Savage Transportation Company; Consolidated Freightways and Willig Freight Lines;
Robert W. Walker, Joe Araiza, Wallace L. Ware for The Atchison, Topeka and Santa Fe Railway Company and Santa Fe Transportation Co.;
Marvin Handler for Machado Trucking Company;
M. D. Savage for Savage Transportation Company, interested parties.
John K. Power for the Commission's staff.

O P I N I O N

On March 17, 1953, the Commission instituted an investigation on its own motion to determine whether respondent, West Coast Fast Freight, Inc., had operated or was operating as a highway common carrier over regular routes or between points within the state, more specifically between San Francisco, Oakland and points in the vicinity thereof, on the one hand, and Los Angeles and points in the vicinity thereof, on the other hand, without having possessed or acquired a prior right so to operate as required by Section 1063 of the Public Utilities Code.

On June 9, 1953, Case No. 5451 was consolidated with Application No. 33606 for the purpose of hearing. Public hearings were held before Examiner Daly at San Francisco and Los Angeles. The matter was submitted following oral argument on October 1, 1953.(1)

(1) Hearings were held on December 9, 10, 1952, March 9, 10, 1953, June 9, 10, 11, 1953, at San Francisco and March 11, 12, 1953, August 11, 12, 13, 1953, and October 1, 1953, at Los Angeles. The submission date was actually delayed to December 8, 1953, for the purpose of receiving Exhibit 71, which was a late-filed exhibit by the Commission staff.

During the investigation it was disclosed that respondent transported both interstate and intrastate traffic on regular, daily schedules between the Los Angeles and Bay areas. The intrastate portion of its operations is performed under contract and radial permits. Respondent admittedly violated the provisions of Section 3542 of the Public Utilities Code by transporting the same commodities between the same points both as a highway contract and common carrier and the evidence of movements amply supports such admission. The further question, therefore, to be resolved is whether said operations may have been otherwise lawfully conducted.

The Commission's staff introduced two exhibits summarizing the total number of intrastate shipments transported by respondent (exclusive of those transported within the boundaries of an unincorporated city) during selected periods in 1952. Exhibit 30 covered the period January 2nd to January 15th inclusive. Exhibit 31 covered the periods March 9th to March 15th inclusive and March 23rd to March 29th inclusive. Each exhibit covers twelve working days. Exhibit 30 indicates 640 shipments were transported for 414 persons, while Exhibit 31 indicates 929 shipments were transported for 469 persons.

All of the consignors and consignees of the shipments described in Exhibits 30 and 31 were named and respondent was of the opinion that they were served under its contract permit. Notwithstanding, it was unable specifically to name the parties with whom it had contracts. In addition respondent was subsequently unable to furnish the Commission's staff with such information in connection with the staff's preparation of late-filed Exhibit No. 71.

A check of Exhibits 30 and 31 shows the points most

frequently served to be as follows:

EXHIBIT 30

From	TO	Number of Shipments	Number of Days of Service	Number of Persons Served
SF	LA	102	12	51
Oakland	LA	40	11	28
LA	SF	160	12	146
LA	Oakland	100	12	85
LA	Berkeley	15	9	10

EXHIBIT 31

SF	LA	101	11	79
Oakland	LA	142	10	40
LA	SF	178	12	167
LA	Oakland	187	12	82
LA	Berkeley	24	12	12

The major portion of respondent's permitted operations are allegedly conducted under contracts totaling between 300 and 500. Of this number 40 or 50 are written agreements and the balance oral. Oral agreements are entered into on behalf of respondent by its salesmen, drivers and dispatchers. No complete records are kept of these agreements. Their terms, if any, are indefinite and uncertain. When a shipment is tendered, no attempt is made to determine whether a contract exists with either the consignor or consignee. This laxity is the apparent result of respondent's belief that the acceptance of any shipment offered constitutes an oral agreement within the meaning of contract carriage. Accordingly no shipment is refused unless too bulky or too cheaply rated.

Exhibit 34 consists of a copy of an interoffice communication dated April 12, 1952. It is addressed to respondent's San Francisco dispatchers and pickup drivers. It bears the signature of respondent's assistant to the president and reads as follows: "We will accept freight destined to the following points only in Southern California out of the Bay area." The exhibit then enumerates sixty-three points.

It continues with, "We will accept and deliver freight in lots of 10,000 pounds or more destined to the following points in Southern California." Seventeen points are named. The exhibit ends with, "Please do not accept to other points in Southern California.".

CONCLUSION AND FINDINGS

Respondent's intent to operate between the Los Angeles and Bay areas as a common carrier for the transportation of freight moving in intrastate commerce is clearly evident.

Said intent is made clear when consideration is given to the following:

(1) The substantial amount of traffic being transported for a very large number of shippers.

(2) Respondent's initial admission that it was operating between the same points both as a highway contract and a common carrier.

(3) The position first taken by respondent when it claimed generally that a portion of the shipments described in Exhibits 30 and 31 were transported under its contract permit and the balance under its radial permit.

(4) Respondent's subsequent change of position in stating that all shipments in Exhibits 30 and 31 were transported under its contract permit, after being pressed to identify the operating authority under which each shipment was transported.

(5) The fact that although respondent is allegedly serving 40 or 50 customers under written agreements, the greater portion of its operations by far is admittedly performed under so-called oral agreements, said oral agreements being merely the oral understanding respecting a given individual shipment tendered, that the transportation would be performed by respondent and that its charge would be paid for by the shipper.

(6) Respondent's instructions to its personnel to accept all shipments tendered within specified weight brackets for transportation to designated points.

(7) Respondent's actual practice of accepting all shipments tendered unless too bulky or too cheaply rated to prove attractive.

(8) The fact that the respondent employs the identical type of operation in serving the same customers on their shipments moving in interstate commerce and in intrastate commerce, the former admittedly being common carriage performed under Interstate Commerce Commission authority.

The belief that a contract carrier can predicate and justify its status as such upon the theory that the transportation or acceptance for transportation of each shipment offered constitutes an oral agreement is untenable. As to the preponderance of its operations respondent's possession of a contract permit is nothing more than a subterfuge under which common carrier operations are actually performed.

The remaining question is whether respondent could have conducted an otherwise lawful common carrier service under its radial permit. Between the Los Angeles and Bay areas operations have admittedly consisted of two daily schedules in either direction and additional schedules as traffic conditions warrant.

By excluding Sundays we find that Exhibits 30 and 31 each cover 12 days on which service was rendered. The frequency check as hereinabove set forth indicates that shipments were transported practically daily for a number of persons between Los Angeles, on the one hand, and San Francisco, Oakland and Berkeley, on the other hand. To such extent respondent was operating between fixed termini and could not have done so as a radial common carrier.

(Nolan vs. Public Utilities Commission 1953, 41 A.C. 400).

Based upon the evidence of record the Commission finds that West Coast Fast Freight has operated between Los Angeles, on the one hand and San Francisco, Oakland and Berkeley, on the other hand, as a highway common carrier as defined in Section 213 of the Public Utilities Code without having possessed or acquired a prior right to so operate as required by Section 1063 of said Code.

O R D E R

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

IT IS ORDERED:

(1) That West Coast Fast Freight, Inc., be and it hereby is, directed and required, unless and until said West Coast Fast Freight, 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, on the one hand, and San Francisco, Oakland and Berkeley, on the other hand.

(2) That the Secretary is directed to cause a certified copy of this decision to be served upon West Coast Fast Freight, Inc.,

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in accordance with the law.

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

Dated at San Francisco, California, this 15th day of June 1954.

Peter E. Mitchell
PRESIDENT

Kenneth Potter

Verne Scoggins

COMMISSIONERS

Commissioner Justus F. Craemer, being necessarily absent, did not participate in the disposition of this proceeding.