

Decision No. 51140

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations, rates)	
and practices of VALLEY EXPRESS CO., a)	
California corporation, and VALLEY MOTOR)	Case No. 5560
LINES, INC., a California corporation.)	

Douglas Brookman, attorney, for respondents.
Glanz & Russell, by Arthur H. Glanz, for
 Consolidated Copperstate Lines; Edson Abel,
 for California Farm Bureau; Carl F. Breidenstein,
 for California Packing Corporation, interested
 parties.
Boris H. Lakusta, for the Commission staff.

OPINION AND ORDER

This proceeding is an investigation instituted on the Commission's own motion into the operations, rates, and practices of Valley Express Co., and Valley Motor Lines, Inc., hereinafter referred to as respondents, to determine:

1. Whether said respondents, or either of them, during the period June 4, 1954 to June 18, 1954, have violated or are violating Section 494 of the Public Utilities Code, by charging, demanding, collecting or receiving a different compensation for express or highway common carrier service, as the case may be, than the applicable rates and charges specified in the respective schedules of rates and charges filed with the Commission and in effect at the time;
2. Whether any or all of the operating authority of said respondents, or either of them, should be canceled, revoked, or suspended;
3. Whether said respondents, or either of them, should be ordered to collect from shippers any or all undercharges for services performed by them, or either of them;

4. Whether said respondents, or either of them, should be ordered to cease and desist from charging, demanding, collecting, or receiving a different compensation than the applicable rates and charges specified in their respective schedules or rates and charges filed and in effect at the time;

5. Whether said respondents, or either of them, should be ordered to modify or change their respective forms of accounts, records, or memoranda, or to adopt new forms of accounts, records, or memoranda, as contemplated by Sections 792, 794 and 1062(c) of the Public Utilities Code.

Public hearings were held at San Francisco on November 10, 1954 and January 20, 1955, before Examiner Carl Silverhart.

Valley Express Co., is an express corporation as defined in Section 219 of the Public Utilities Code and for many years had, and continues to have, rates on file with this Commission for the performance of express service under its prescriptive authority. Valley Motor Lines, Inc., is a highway common carrier as defined in Section 213 of the Public Utilities Code, and for many years had, and continues to have, rates on file with this Commission for the performance of highway common carrier service under its certificated authority issued by the Commission. Each respondent possesses intrastate operating authority between Fresno and vicinity on the one hand, and Stockton and/or the Port of Stockton on the other hand, the points here involved. All the shipments with which we are concerned in this proceeding, involved the transportation of raisins and moved in interstate commerce.

Decision No. 50156, in Case No. 5432 (Petition No. 37), dated June 18, 1954 and effective June 23, 1954, contains the following language: "By petition filed June 11, 1954, the Truck Owners Association of California points out that the transportation by motor vehicle of certain agricultural commodities in interstate or foreign

commerce is specifically exempted from rate regulation by the Interstate Commerce Commission under Section 203(b)(6) of the Interstate Commerce Act.^{1/} The transportation thus exempted from federal regulation is subject to the provisions of the Public Utilities Code and to the minimum rates set forth in Tariff No. 2."

A member of the Commission staff stated that rates on file with this Commission, unless there is an express limitation to the contrary, apply to transportation within California, to the extent the Commission has jurisdiction, whether it be interstate or intrastate. The witness further stated that there is nothing in Valley Motor Lines, Inc., Local and Joint Freight Tariff No. 1-A, Cal. P.U.C. No. 30, and Valley Express Co., Local and Joint Express Tarrif No. 9-B, Cal. P.U.C. No. 9, specifically limiting or indicating an intention to limit the rates therein named for the transportation of raisins to intrastate movements only. He gave it as his opinion that such tariffs applied to the herein-above referred to shipments.

An exhibit prepared as a result of an examination of respondents' freight bills, bills of lading, and other shipping documents was placed in evidence as Exhibit 2 by the Commission staff.

Exhibit 2 shows that from June 4, 1954 to June 18, 1954, respondents served 8 shippers, 14 shipments having been transported by Valley Express Co., and 7 by Valley Motor Lines, Inc. Exhibit 2 also sets forth the charges assessed by respondents for each shipment, the charges the Commission staff considered appropriate as a result of the application of respondents' tariffs, and for each shipment an ensuing undercharge.

^{1/} "The section excludes from rate regulation by the I.C.C. 'motor vehicles used in carrying property consisting of ordinary livestock; fish (including shell fish), or agricultural commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property or passengers, for compensation.'"

The record discloses that in August, 1954, respondents caused balance due bills for the undercharges to be mailed to the shippers named in Exhibit 2. The balance due bills equalled or exceeded the undercharges as shown on Exhibit 2 as to all but 5 shipments. As to such 5 shipments, the variance appears to have been caused by different applications of rules contained in respondents' tariffs.

An executive officer of both respondents testified that prior to June 23, 1954, he had considered the transportation, in interstate commerce, of commodities exempt from rate regulation by the Interstate Commerce Commission, as being free from any rate regulation. He further testified that when respondents' tariffs above-referred to were filed with this Commission they applied only to intrastate hauling and were not intended and did not apply to interstate transportation performed prior to June 23, 1954. The witness stated that since June 23, 1954, the effective date of Decision No. 50156, respondents have not charged rates for interstate transportation of the kind here involved, other than rates they have on file with this Commission.

The record clearly establishes:

1. That on and prior to June 3, 1954, respondents were given oral and written notice by the Commission staff that the transportation of raisins in interstate commerce between the Fresno area and Stockton and the Bay Area was subject to regulation by this Commission.
2. That at such times respondents were directed in connection with such transportation, to observe the rates named in their lawfully published tariffs on file with this Commission.
3. That in connection with such transportation, respondents did not observe such rates during the period from June 4, 1954 to June 18, 1954.

An official of respondents gave it as a reason why respondents did not charge their published rates prior to June 23, 1954, that the Commission had not then issued a formal decision with regard thereto. Such a defense is untenable. The statute controls and no Commission decision was necessary to subject the transportation in question to the Commission's jurisdiction. It is elementary that interstate commerce in a given field may be regulated by State authority where such field has not been occupied by the Federal authority. This rule of law is applicable to the transportation here concerned. The Public Utilities Act comprehends such rule. (Sec 202, Public Utilities Code.).

We find that respondents' failure to charge, for the transportation of raisins in interstate commerce, between Fresno and vicinity on the one hand, and Stockton and/or the Port of Stockton, on the other hand, during the period from June 4, 1954 to June 18, 1954, the rates specified in its schedules on file with the Commission and in effect at the time, constituted a violation of Section 494 of the Public Utilities Code. We find that such violations of said section were wilful and merit disciplinary action by this Commission. The ensuing order will provide therefor.

It should be noted that the record demonstrates that respondents' methods of keeping accounts and records of their respective transportation activities leave something to be desired. Respondents are directed to maintain their records and shipping documents so that an examination thereof will make immediately apparent all the pertinent facts relating to the transportation performed.

O R D E R

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

IT IS ORDERED:

(1) That all operating authority of Valley Motor Lines, Inc., and all operating authority of Valley Express Co., to transport dried fruit from all points and places in Fresno County is hereby suspended for the period April 1 to April 15, 1955, inclusive.

(2) That all rates and charges filed with the Commission by Valley Motor Lines, Inc., and Valley Express Co., for the transportation of dried fruit from all points and places in Fresno County are hereby suspended for the period April 1 to April 15, 1955, inclusive.

(3) That Valley Motor Lines, Inc., and Valley Express Co., shall file suspension supplements to their tariffs on file with the Commission stating that their rates and charges for the transportation of dried fruit from all points and places in Fresno County are under suspension and may not be used for the period April 1 to April 15, 1955, inclusive.

(4) That Valley Motor Lines, Inc., and Valley Express Co., shall post in their terminal and station facilities used for receiving property from the public for transportation in Fresno County a notice to the public stating that their operating authority to transport dried fruit from all points and places in that county has been suspended by the Commission for the period April 1 to April 15, 1955, inclusive.

(5) That, within 60 days after the date hereof, respondents shall file a report setting forth in detail the manner in which they propose to maintain their records and accounts so as to comply with the direction in respect thereto contained in the foregoing opinion.

The Secretary is directed to cause a certified copy of this decision to be personally served upon respondents, and this decision shall become effective upon the twentieth day after the date of such service.

Dated at San Francisco, California, this 23rd day of FEBRUARY, 1955.

[Signature]
President
[Signature]
[Signature]

Commissioners