

ORIGINAL

Decision No. 56043

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)	
own motion into the operations and)	Case No. 5955
practices of JOHN WORLEY, doing)	
business as CROCKER TRANSFER CO.)	

Hector Anninos, for the Commission staff. ✓Turcotte and Goldsmith by Jack O. Goldsmith, for respondent.R. C. Fels, for American Furniture Transport, Inc.;
Lloyd B. Turner, doing business as Blue Truck Lines; Sam C. Sciortino, for Lads Furniture Freight, Inc.; interveners.O P I N I O N

This proceeding is an investigation instituted on the Commission's own motion into the operations and practices of John D. Worley, doing business as Crocker Transfer Co., hereinafter called respondent, to determine: (1) whether respondent has operated, or is operating, as a highway common carrier between fixed termini or over regular routes between Los Angeles on the one hand, and Fresno, Delano, Dinuba, Porterville, Bakersfield and Visalia, on the other hand, without prior authority in violation of Section 1063 of the Public Utilities Code; (2) whether respondent should be ordered to cease and desist operating as a highway common carrier between any or all of said points until he obtains the requisite operating authority from this Commission; (3) whether any or all of the operating authority of respondent should be cancelled, revoked or suspended.

Public hearings were held in Los Angeles on October 18 and November 7, 1957, before Examiner Kent C. Rogers and the matter was submitted. It was stipulated by the parties that in January,

February and March, 1957, the respondent had a radial highway common carrier's permit and a highway contract carrier's permit issued by this Commission and that he had no highway common carrier certificate. The Commission's records reflect that respondent, on October 2, 1957, filed Application No. 39449 wherein he requests authority to purchase the new household goods carrier rights of Fabiano Intra-Cal Lines, Inc., operating between Los Angeles and San Luis Obispo via U. S. Highways 101 and 101 Alternate. As of November 13, 1957, the application had not been granted.

At the hearing herein the respondent presented no direct evidence. The evidence presented by the Commission staff shows the following facts which we find to be true:

Respondent has been engaged in the business of transporting blanket-wrapped new furniture, with occasional shipments of mattresses, pursuant to a radial highway common carrier permit, for approximately one year prior to March 21, 1957, and on that date had five large van type rigs. During this period his said business has increased rapidly and he is contemplating forming a corporation and thereafter applying for a certificate of public convenience and necessity as a highway common carrier. He has no contracts for the transportation and has not used his highway contract carrier permit. No shipment tendered of the type of merchandise he carries and destined for any point between Los Angeles and San Luis Obispo, on or near U. S. Highway 101, or between Los Angeles and Chowchilla, on or near U. S. Highway 99, or points in between, is refused.

Respondent's office and dock are located at 7220 Maie Avenue, Los Angeles. Furniture manufacturers deliver shipments of uncrated new furniture to his dock daily. After he has accumulated

a truckload of furniture to any particular destination or territory it is loaded and departs for the destination. There may be several shipments in a truckload and trucks move out daily and follow the most direct route to destination. There are approximately 175 furniture manufacturers in the Los Angeles area and respondent serves an estimated 70 percent thereof four to five times per month each. In most instances the consignee pays the shipping charges and engages the carrier's services.

The staff investigated all of respondent's shipments for the period from July 1, 1956, to March 21, 1957. The months of January, February and March, 1957, were taken as representative of the volume of respondent's business, but were not his heaviest periods. During these three months respondent carried shipments to a total of 60 to 65 towns along the coast and in the San Joaquin Valley. The weeks of January 14 through 19, February 18 through 23, and March 4 through 9, 1957 were used for study purposes by the staff. During the week in January, 21 towns were served in the San Joaquin Valley, during the week in February, 19 towns therein were served, and during the week in March, 22 towns therein were served. In the majority of instances each community was served not to exceed one time per week. During the week of January 14 through 19, Sanger and Reedley were each served on two occasions, and in the week of March 4 through 9, Sanger, Reedley, Lemoore, Tulare and Clovis were each served on two separate days. Below is a summary of the number of times Fresno, Delano, Dinuba, Porterville, Bakersfield and Visalia were served by respondent from Los Angeles during the check periods:^{1/}

^{1/} Exhibit No. 1.

<u>City</u>	<u>January 14 - 19</u>	<u>February 18 - 23</u>	<u>March 4 - 9</u>
Fresno	2	3	3
Delano	1	3	2
Dinuba	2	2	2
Porterville	3	3	1
Bakersfield	3	3	2
Visalia	3	2	2

During the three one-week periods tabulated above, respondent carried 349 shipments to the six named communities. These 349 shipments represented approximately 60 percent of all shipments carried by respondent during said periods. The consignees or recipients in each of the said towns represent 80 percent or more of the retail furniture dealers therein, exclusive of the Sears & Roebuck and McMahon stores. Two to three times per week is the normal frequency of service by blanket-wrapped furniture carriers from Los Angeles to the larger towns served by respondent.

Conclusion

From the above evidence it is clear that respondent is rendering service as a common carrier pursuant to a radial highway common carrier permit issued by this Commission. Inasmuch as respondent is rendering service as a common carrier, the only question to be determined here is whether or not the frequency with which respondent serves the named towns is such that service thereto should be classified as highway common carriage.

The only factual difference between a highway common carrier and a radial highway common carrier is that the former provides service "between fixed termini or over a regular route" (Section 213, Public Utilities Code) and the latter is not between fixed termini or over a regular route (Section 3516, Public Utilities Code).

Section 215 of the Public Utilities Code, insofar as pertinent, provides:

"Between fixed termini...means the termini...between... which any highway common carrier usually or ordinarily operates any auto trucks or other self-propelled vehicle,...even though there may be departures from such termini..., whether such departures be periodic or irregular."

The record herein shows and we hereby find that the frequency with which respondent served the six named towns was the same frequency with which certificated carriers serve those towns and is the frequency which the type of transportation performed by respondent demands. We find that the service performed by respondent between Los Angeles on the one hand, and Fresno, Delano, Dinuba, Porterville, Bakersfield, and Visalia on the other hand, constitutes service between fixed termini as used in Sections 213 and 215 of the Public Utilities Code and that respondent's services between such points constitute highway common carriage. Inasmuch as respondent does not have authority to conduct operations as a highway common carrier, he will be ordered to cease and desist from conducting such operations. Respondent's permits will be suspended for a period of ten consecutive days commencing with the second Monday following the effective date of the order herein. ✓

O R D E R

IT IS ORDERED that John D. Worley, doing business as Crocker Transfer Co., be, and he hereby is, directed and required, unless and until he 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 trucks as a highway common carrier as defined in Section 213 of the Public Utilities Code, for compensation over the public highways of California, between Los Angeles on the one hand, and on the other hand, Fresno, Delano, Dinuba, Porterville, Bakersfield or Visalia.

IT IS FURTHER ORDERED that respondent's radial highway common carrier permit and his highway contract carrier permit issued by this Commission are suspended for a period of ten days beginning at 12:01 a.m. on the second Monday following the effective date of the order herein.

The Secretary of the Commission is directed to cause personal service of this decision and order to be made on the respondent. The effective date of this order shall be twenty days after the date of said personal service on respondent.

Dated at San Francisco, California, this 7th day of January, 1958.

[Signature]
President

[Signature]

[Signature]

[Signature]

[Signature]
Commissioners