

ORIGINAL

Decision No. 56015

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
motion into the operations and practices)
of EDWARD L. STRATTON, doing business as)
STRATTON TRUCK LINES.)

Case No. 5883

Turcotte & Goldsmith by Jack O. Goldsmith for
Edward L. Stratton, respondent.
Glanz & Russell by Arthur Glanz for Desert Express and
Victorville-Barstow Truck Line; James H. Williams
for Southern California Freight Lines and Southern
California Freight Forwarders; Harold E. Smith for
Smith Way Freight System; Walter G. Mitchell for
Auto Fast Freight, and E. L. H. Bissinger for
Pacific Motor Trucking Company; interested parties.
William C. Sricca for the Commission staff.

O P I N I O N

The Commission instituted an investigation on its own motion into the operations and practices of Edward L. Stratton, doing business as Stratton Truck Lines, hereinafter referred to as respondent, for the purposes of determining whether respondent has operated, or is operating, as a highway common carrier between the cities of Los Angeles and San Bernardino, on the one hand, and the cities of Barstow, Lancaster, Ontario, Palmdale, Palm Springs, Riverside, San Bernardino, Victorville, Apple Valley, Banning, Beaumont, Pomona, Twenty-Nine Palms, Yucaipa, Oro Grande and intermediate points, on the other hand, without first having obtained a certificate of public convenience and necessity, or being possessed of or having acquired rights to so operate, as required by Section 1063 of the Public Utilities Code.

Public hearings were held in Los Angeles before Examiner Mark V. Chiesa. Oral and documentary evidence having been adduced, and the matter having been submitted for decision, the Commission makes its findings and conclusions as follows:

Respondent, Edward L. Stratton, at all times hereinafter mentioned was, and now is, the holder of Radial Highway Common Carrier Permit No. 36-2946 issued to him by this Commission on December 18, 1950, and of a Highway Contract Carrier Permit No. 36-3290 issued to him by this Commission on November 22, 1954, as amended on August 2, 1955 and December 12, 1955. Respondent has never applied for a certificate of public convenience and necessity to operate as a highway common carrier as required by Section 1063 of the Public Utilities Code nor has such a certificate been granted to him by this Commission.

Respondent's principal place of business is in San Bernardino and he also maintains a terminal in Los Angeles where the major portion of his business originates. He commenced operations in San Bernardino in 1950 as a radial highway common carrier and for several years the volume of his business was small. After the establishment of a terminal in Los Angeles, sometime in 1955, respondent's business began to improve materially as is shown by the following tabulation of the transportation equipment employed in the business:

	<u>Trucks</u>	<u>Tractors</u>	<u>Full Trailers</u>	<u>Semi Trailers</u>	<u>Converter Gear</u>	<u>Total</u>
Dec. 1954 (Exh. No. 18)	7	1	2	1	-	6
Dec. 1955 (Exh. No. 17)	7	2	1	2	-	12
Feb. 1957 (Exh. No. 1)	14	4	-	11	2	31

In November of 1955 the Commission's staff commenced an investigation for the purpose of determining the character of respondent's operations. At this time respondent held permits as a radial highway common carrier and highway contract carrier. As will be seen by the tabulations hereinafter set forth respondent was daily transporting shipments for various shippers between Los Angeles, on the one hand, and Pomona, Ontario, Beaumont, Banning and Palm Springs on the other hand; and between San Bernardino on the one hand, and Lancaster and Victorville on the other hand.

The record shows that prior to January 22, 1957, the date of the formal order instituting investigation, respondent had entered into two written contracts for the transportation of property. Respondent, however, on several occasions represented or claimed that he had so-called "oral contracts" with numerous shippers for whom he was transporting property as follows:

<u>Date of Representation</u>	<u>No. of Oral Contracts Claimed</u>	<u>No. of Contracts Discontinued Since Previous Representation</u>	<u>No. of New Contracts</u>
Nov. 15, 1955 (Exh. No. 2)	54		
Mar. 22, 1956 (Exh. No. 3)	76	7	30
Aug. 2, 1956 (Exhs. Nos. 4, 6, 7 and 8)	118	11	53

There is no evidence indicating that respondent's method of operation, after he was granted a highway contract carrier's permit

November 22, 1954, varied in any material respect from the transportation service he was performing when holding only a radial highway common carrier's permit.

Evidence is lacking that either the respondent or any of the persons or firms for whom he transported commodities considered that they were contractually committed to terms that would require either party to continue the relationship of carrier and shipper . . . beyond the time of delivery of any particular shipment. The so-called "oral contracts" amounted to nothing more or less than a nebulous understanding that shipper would continue to give a part or all of his trucking business to respondent so long as the service was satisfactory. It was an indefinite oral arrangement. There is no evidence to show that either the shippers or respondent ever considered holding the other party responsible in any of the many instances when the relationship was discontinued. Respondent secured only one written contract prior to January of 1957. Thereafter, between January and July of 1957, he obtained some 68 additional written contracts which contracts were soon thereafter terminated by him without giving the required 30 day written notice to the shippers. It does not appear that any of the shipper parties to said contracts took any action to enforce compliance with terms of said contracts.

Exhibit No. 14 herein clearly shows and we find that respondent, during the three 5-day periods shown therein, May 22-26, June 19-23 and July 10-14, 1956, regularly transported daily shipments for various shippers between the termini as shown.

<u>Points of Service</u>		<u>Total Number of Shipments 15 Days (Exh. No. 14)*</u>	<u>Average Number of Daily Shipments**</u>	<u>Total Number of Different Shippers Engaging Respondent 15 Days (Exh. No. 14)</u>
<u>Origin</u>	<u>Destination</u>			
L.A.#	Pomona	52	3.47	12
"	Ontario	61	4.07	24
"	San Bernardino	169	11.27	56
"	Palmdale	112	7.47	41
"	Lancaster	394	26.27	85
"	Victorville	77	5.13	19
"	Apple Valley	25	1.67	10
"	Oro Grande	13	0.87	4
"	Barstow	61	4.07	20
"	Riverside	101	6.73	34
"	Yucaipa	34	2.27	9
"	Beaumont	25	1.67	8
"	Banning	36	2.40	9
"	Palm Springs	80	5.30	24
"	29 Palms	21	1.40	10
S.B.#	Lancaster	52	3.47	10
"	Victorville	51	3.40	17

Los Angeles - San Bernardino

* The periods considered were May 22-26, June 19-23 and July 10-14, 1956

** One or more shipments were transported every day except as follows:

Between L.A. & Pomona	- no shipment	July 11
" " Apple Valley	- " "	June 20, 22, 23
" " Oro Grande	- " "	May 22, 23, 26; June 23; July 11.
" " Yucaipa	- " "	June 23
" " Beaumont	- " "	June 20
" " Banning	- " "	July 13
" S.B. 29 Palms	- " "	June 20
" " Victorville	- " "	May 26

It is significant that during the said three 5-day periods in 1956 there were a total of 228 shippers who engaged respondent's services and of said number respondent claimed one written contract, 88 oral contracts, 3 shippers served in the capacity of radial highway

common carriers, and the remaining 136 shippers respondent did not classify (Exhibit No. 16).

Respondent's operations were again investigated for a one-week period as of April 15-20, 1957 (Exhibit No. 15). The exhibit shows, briefly, that respondent's operations had not changed in any material respect. The points served and routes used, kind of lading transported, and frequency of service were substantially the same. During said week 136 shippers engaged respondent's services and of said number respondent claimed 53 written contracts,^{1/} 16 oral contracts, and 67 served in the capacity of radial highway common carriers. Of the claimed oral and written contracts some were old, some new, and some had been eliminated. It is evident throughout the record that respondent's relationship with his shippers was always in a state of flux. The manner in which the business was conducted clearly shows that respondent was in business to serve the public generally between the points and places and along the routes encompassed by his operation.

The record shows throughout and we find that respondent was conducting an unrestricted transportation service as a highway common carrier for any and all persons who wished to hire him to transport their merchandise between the points and places and along the routes of respondent's operation. We further find that Edward L. Stratton, doing business as Stratton Truck Lines, has operated as a highway common carrier, as defined in Section 213 of the Public Utilities Code without first having obtained a certificate of public convenience and necessity from this Commission as required by Section 1061 of said code.

^{1/} Said written contracts were part of those obtained after January 1, 1957, heretofore referred to in this opinion.

The Commission makes its order as follows:

O R D E R

A public hearing having been held, the Commission being fully advised in the premises, having found facts as set forth in the opinion hereinabove, and good cause appearing,

IT IS ORDERED:

(1) That Edward L. Stratton, doing business as Stratton Truck Lines, be and he hereby is ordered to cease and desist from operating any auto truck as a highway common carrier, as defined in Section 213 of the Public Utilities Code, over any of the public highways of the State of California and particularly between the following termini:

Between Los Angeles, on the one hand, and Pomona, Ontario, San Bernardino, Palmdale, Lancaster, Victorville, Apple Valley, Oro Grande, Barstow, Riverside, Yucaipa, Beaumont, Banning, Palm Springs, Twenty-Nine Palms, on the other hand; and, between San Bernardino, on the one hand, and Lancaster and Victorville, on the other hand, unless or until he shall first have obtained from this Commission a certificate of public convenience and necessity authorizing such operation as required by Section 1061 of said code.

(2) That the Radial Highway Common Carrier Permit No. 36-2946 and Highway Contract Carrier Permit No. 36-3290 issued to Edward L. Stratton, doing business as Stratton Truck Lines be, and they hereby are, suspended for a period of twenty days beginning at 12:01 a.m. on the second Monday following the effective date of this order. ✓

The Secretary of the Commission is directed to cause personal service of this decision and order to be made upon Edward L. Stratton.

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

CERTIFIED AS A TRUE COPY:

Secretary,
Public Utilities Commission
of the State of California