

ORIGINALDecision No. 59118

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own
 motion into the operations and practices
 of BABE TALSKY, doing business as
 RELIABLE DELIVERY SERVICE.

Case No. 6122

Elmer Sjostrom for the Commission.
Donald Murchison for respondent.
Glanz & Russell, by R. Y. Schureman and
Arthur Glanz, for California Cartage Company,
 San Diego Forwarding Company, Southern
 California Freight Lines, Southern Cali-
 fornia Freight Forwarders, Victorville-
 Barstow Truck Line, and San Diego Forward-
 ing Company; Robert W. Walker and
 Matthew H. Witteman, by Matthew H.
Witteman, for The Atchison, Topeka and
 Santa Fe Railway Company and Santa Fe
 Transportation Company, interested
 parties.

O P I N I O N

The order instituting investigation herein was issued on June 4, 1958. Therein it is stated that "It appearing that Babe Talsky, doing business as Reliable Delivery Service, hereinafter referred to as respondent, ... may have operated or may be operating as a highway common carrier between San Bernardino, on the one hand, and Banning, Palm Springs, Hemet, Perris, Lancaster, Victorville, Barstow, Big Bear Lake, Indio and San Jacinto, on the other hand, and Los Angeles, on the one hand, and Lancaster, Palmdale, Apple Valley, Victorville, Palm Springs, National City, Lake Arrowhead, Barstow, Cathedral City, Indio, Escondido, La Mesa, El Cajon and Chula Vista, on the other hand, without first having

obtained a certificate of public convenience and necessity as required by Section 1063 of the Public Utilities Code", an investigation is instituted into Babe Talsky's operations to determine:

(1) Whether respondent has operated or is operating as a highway common carrier between fixed termini or over regular routes between any or all of the aforesaid points 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;

(2) Whether respondent should be ordered to cease and desist from operating as a highway common carrier between any or all of the aforesaid points until respondent shall have obtained authority from this Commission so to do;

(3) Whether any or all of the operating authority of respondent should be cancelled, revoked or suspended;

(4) Whether any other order or orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction.

Public hearings on the matter were held before Examiner Kent C. Rogers in Los Angeles, Palm Springs and Big Bear on September 16 and November 17, 1958, and on March 25 and June 25, 1959. On July 10, 1959, the matter was orally argued and submitted.

Respondent holds the following permits issued by the Commission: statewide radial highway common carrier, issued on April 21, 1944, statewide highway contract carrier issued on January 28, 1936, and city carrier, issued on June 13, 1950. He also holds a certificate of public convenience and necessity to render service as

a highway common carrier granted by Decision No. 53751, dated September 11, 1956, on Application No. 35712.¹ This authority purports to be for limited commodities but is rather broad. The certificated area provides for service (a) between points in an area which is bounded, roughly, by Santa Maria, San Fernando, San Bernardino and Redlands and includes all points west of Redlands and San Bernardino to the Pacific Ocean, and (b) between Los Angeles (sic) on the one hand, and Oceanside and San Diego on the other hand. The certificate denies the right to render service to, from or between intermediate points.

Any transportation for compensation by respondent between points specified in the order of investigation herein is outside his certificated authority. It is respondent's contention that all shipments hereinafter referred to were transported pursuant to his highway contract carrier permit.

The evidence presented by the staff shows the following:

On March 4, 1958, respondent gave an assistant transportation representative of the Commission all his freight bills for the

¹ By Decision No. 58742, dated July 14, 1959, in Application No. 39770, this authority was transferred to Reliable Delivery Service, Inc., a California corporation, with a proviso that "The authority herein granted will become effective when Reliable Delivery Service, Inc., has filed with the Commission a stipulation in which it agrees that the operating rights to be acquired by it under such authority shall be subject to the terms and conditions of the decision to be issued in Case No. 6122." This stipulation was filed on August 14, 1959. Radial highway common carrier permit No. 19-18246 and highway contract carrier permit No. 19-324 issued to respondent were transferred to Reliable Delivery Service, Inc., in July 1959.

period November and December, 1957, and January, 1958. At the time these bills were picked up, respondent, his office manager Anderson, and the Commission representative were in respondent's office. Respondent stated that he considered himself a highway common carrier, a radial highway common carrier, a highway contract carrier, and a city carrier; that he commenced operations in 1929; that he would haul anything for anybody to the points he served; and that he accepts new accounts. The Commission representative asked how respondent determined by what authority a shipment was carried and Anderson said that he stamped each shipment received pursuant to permitted authority to show whether it was a radial shipment or a contract shipment. Radial shipments were stamped "R" and contract shipments were stamped "C" on the freight bill. The representative asked Anderson how he determined whether a shipment was a contract shipment or a radial shipment. Anderson said that respondent had written contracts with a number of shippers, and at the end of each day a member of the organization familiar with the contracts, commodities and points served in the contracts stamped the freight bills. The representative stated that he asked respondent for his written contracts and 38 of them were produced. The representative made a list of the contracts (Exhibit No. 1 herein). These contracts are dated. Each of them was executed in July or August, 1957, and gives a general description of the commodities, the points between which service is to be rendered, the minimum tonnage and the charges.

In examining the freight bills the representative noticed that some shipments were identified as radial shipments when respondent had a contract with the shipper or consignee, and

Anderson said that these shipments were to points not covered by the contract so they were carried as radial shipments, and that all freight bills marked "R" were radial shipments and all marked "C" were contract shipments. Respondent and Anderson said they accepted all shipments to any point to which they were providing service, and that if they saw any volume of business being developed they would attempt to secure a contract from the shipper. Anderson further stated that they had not had time to secure a number of contracts they felt possibly were contract shipments.

The representative asked Anderson for a list of points served. Anderson gave him Exhibit No. 2. This document allegedly is respondent's only advertising, and lists the points he holds himself out to serve. Many points thereon are marked with an asterisk which, according to the exhibit, denotes that respondent serves there as a contract carrier. Respondent's office manager said that the asterisk actually identified points respondent serves as a radial carrier, but shippers did not know what a radial carrier was so respondent used the contract designation. It might be noted here that Big Bear and Arrowhead, two points hereinafter referred to, are not listed on the exhibit.

From the freight bills given him on March 4, 1958, the witness prepared Exhibit No. 3, a summary of highway carrier operations. This shows, for the periods March 12 through 18, 1957, and January 21 through 27, 1958, all shipments between San Bernardino, on the one hand, and Banning, Palm Springs, Hemet, Perris, Lancaster, Victorville, Barstow, Big Bear Lake, Indio and San Jacinto, on the other hand, and between Los Angeles, on the one hand, and Lancaster, Palmdale, Apple Valley, Victorville, Palm Springs, National City, Lake

Arrowhead, Barstow, Cathedral City, Indio, Escondido, La Mesa, El Cajon and Chula Vista, on the other hand. None of these combinations of points is within respondent's certificated operations.

Exhibit No. 3 may be summarized as follows:

Point of Origin	Point of Destination	No. of ship-ments 10 das.	No. das. ship-ments carried	No. ship-ments per written contract	No. ship-ments no written contract	No. parties employing respondent	
						Contract	No contract
San Bernardino	Banning	26	10	0	26	0	6
	Palm Spgs.	83	10	15	68	4	13
	Hemet	50	10	7	43	2	8
	Perris	12	10	0	12	0	3
	Lancaster	22	9	6	16	3	3
	Victorville	41	9	10	31	5	13
	Barstow	32	10	8	24	4	9
	Big Bear Lk.	24	10	4	20	2	4
	Indio	23	9	3	20	2	7
	San Jacinto	14	9	1	13	1	4
	Los Angeles	Lancaster	96	10	33	63	6
Palmdale		46	10	12	34	4	24
Apple Val.		36	10	13	23	3	7
Victorville		49	10	33	16	4	13
Palm Spgs.		107	10	65	42	3	24
National City		19	10	0	19	0	13
Lake Arrowhead		12	8	0	12	0	4
Barstow		36	10	22	14	5	10
Cathedral City		13	9	0	13	0	4
Indio		28	10	12	16	2	12
Escondido		16	9	0	16	0	16
La Mesa		9	7	0	9	0	8
El Cajon		20	9	0	20	0	6
Chula Vista		19	8	0	19	0	13

The weights of the shipments varied from two pounds to two tons approximately, and all commodities capable of carriage in regular non-refrigerated trucks were carried.

The representative further testified that in preparing the foregoing report he checked all records for November and December, 1957, and January, 1958; that the two periods used were fair

examples of the respondent's business during the three months; and that on March 12, 1958, he again asked the respondent if he had been given all the respondent's contracts and was informed that he had. The witness said he asked Anderson if he had any oral contracts and Anderson said that he did not; that respondent and Anderson said that they took on new accounts as radial shipments and that if any volume of business developed they attempted to secure a contract. Both respondent and Anderson said they would not refuse any shipments into or from points which they serve, and Anderson said that almost without exception on less-than-truckload shipments the consignor was the one who engaged the respondent's services.

Respondent's office manager testified on behalf of the respondent. He disputed or denied some of the statements attributed to him by the representative. He stated that the respondent has refused shipments insofar as contract operations are concerned; that relative to permitted operations, if a movement was more than three times per week it was considered a contract movement, and if it was three times or less it was a radial operation; that on March 4, 1958, he had a conversation with the Commission representative in which he told the representative that respondent had numerous oral agreements or contracts, but he felt he could not indicate that movement pursuant to an oral agreement was pursuant to contract, as respondent did not know whether or not the Commission recognized oral contracts; that the representative said that the Commission recognized oral contracts; that some shipments marked radial were actually oral contract shipments. Respondent's attorney asked respondent's office manager, "Now during what period of time did you go out, or members of your staff, to obtain contracts? When did you first commence the

"obtaining of these contracts?" The office manager stated, "Well, when in ... oh, when the business started to increase, started to give more service, we decided we had better get some contracts."

Exhibit No. 4, introduced by respondent, contains the original written contracts on hand when the representative checked on March 4, 1958. These contracts are reflected in Exhibit No. 3 herein.

It is claimed by the respondent that certain oral agreements were in effect on March 4, 1958, and that these were later reduced to writing. Exhibit No. 5 is a group of documents purporting to be oral agreements reduced to writing prior to March 4, 1958, which were not shown to the staff at that time, and Exhibit No. 6 purports to be oral agreements in effect on March 4, 1958, but, subsequent to that date, reduced to writing. From the evidence herein we find that none of the purported agreements reflected in Exhibits Nos. 5 and 6, with possibly one exception in Exhibit No. 5, were in existence, either orally or in writing, on March 4, 1958.

The only conclusion we can draw from this record is that the activities of the respondent are those of a highway common carrier. He receives compensation for his services. He is holding himself out to serve any shipper or consignee desiring to avail himself of respondent's services between the points involved in the order of investigation herein. His services, therefore, constitute common carriage. His services between the points involved are on a daily basis and between fixed termini. He is, therefore, rendering highway common carrier service.

From the foregoing we find that Babe Talsky, doing business as Reliable Delivery Service, has operated as a highway common carrier as defined in Section 213 of the Public Utilities Code, between San Bernardino, on the one hand, and Banning, Palm Springs, Hemet, Perris, Lancaster, Victorville, Barstow, Big Bear Lake, Indio and San Jacinto, on the other hand, and between Los Angeles, on the one hand, and Lancaster, Palmdale, Apple Valley, Victorville, Palm Springs, National City, Lake Arrowhead, Barstow, Cathedral City, Indio, Escondido, La Mesa, El Cajon and Chula Vista, on the other hand, without first having obtained a certificate of public convenience and necessity from this Commission as required by Section 1063 of said Code.

Upon evidence of record and the findings herein, the Commission makes the following order:

O R D E R

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

IT IS ORDERED:

1. That Babe Talsky, doing business as Reliable Delivery Service, and Reliable Delivery Service, Inc., a corporation, be, and they hereby are, 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 highways in the State of California between the following termini: between San Bernardino, on the one hand, and Banning, Palm Springs, Hemet, Perris, Lancaster,

Victorville, Barstow, Big Bear Lake, Indio, San Jacinto, on the other hand; and between Los Angeles, on the one hand, and Lancaster, Palmdale, Apple Valley, Victorville, Palm Springs, National City, Lake Arrowhead, Barstow, Cathedral City, Indio, Escondido, La Mesa, El Cajon, Chula Vista, on the other hand, unless and until he shall have first obtained from this Commission a certificate of public convenience and necessity authorizing such operation, as required by Section 1063 of said Code.

2. That radial highway common carrier permit No. 19-18246 and highway contract carrier permit No. 19-324, issued to Babe Talsky, doing business as Reliable Delivery Service, and transferred to Reliable Delivery Service, Inc., 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 this Commission is directed to cause personal service of this decision to be made upon Babe Talsky and upon Reliable Delivery Service, Inc.

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 6th day of October, 1959.

[Signature] President
[Signature]
[Signature]
[Signature]
Commissioners

Everett C. McKeage
Commissioners Matthew J. Dooley being
necessarily absent, did not participate
in the disposition of this proceeding.