

ORIGINALDecision No. 59205

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations
and practices of SAN JOSE
TRANSPORTATION, INC., a California
corporation.

Case No. 6260

Victor Suglio, for respondent.
Elmer J. Sjostrom, for the Commission staff.

O P I N I O N

This Commission, on April 28, 1959, issued an order instituting an investigation on its own motion into the operations and practices of San Jose Transportation, Inc., a California corporation, which is engaged in the business of transporting property over the public highways for compensation. Said corporation has been issued and now holds permits as a radial highway common carrier, a highway contract carrier, a city carrier and as a petroleum contract carrier. Pursuant to said order a public hearing was held in San Francisco on August 26, 1959 before Examiner James F. Mastoris, at which time evidence was presented and the matter was duly submitted.

Purpose of Investigation

This investigation was instituted for the purpose of determining whether:

1. The 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 San Francisco, Oakland and San Jose, on the other hand, without first having obtained a certificate of public convenience and necessity to so operate, as required by Section 1063 of the Public Utilities Code.
2. The respondent has violated Section 3737 of the Public Utilities Code by failing to comply with certain requirements of Minimum Rate Tariff No. 8.

Staff's Evidence

Evidence was produced by the staff of the Commission indicating that during a representative 3-week period covering the weeks of November 23 to 29 and December 14 to 20 in 1958, and January 11 to 17 in 1959, this carrier operated over U. S. Highway 101 between its terminal in Los Angeles, on the one hand, and San Francisco, Oakland and its terminal in San Jose, on the other hand, with a frequency between these points amounting to daily carriage. This transportation, consisting almost entirely of fresh produce, but including a small variety of other commodities, ranged in weight from 109 to 175,000 pounds. During said period the respondent carried this freight every day between Los Angeles and one, and in most instances all, of the three mentioned northern California cities. The following summary sets forth a weekly frequency analysis of the transportation performed during these three selected periods:

No. of Shipments Transported Between Los Angeles and	Number of Days Served Each Week			Total Days Service	Total Shipments
	November 23-29 1958	December 14-20 1958	January 11-17 1959		
San Francisco	4	6	6	16	114
Oakland	5	6	6	17	56
San Jose	7	7	5	19	103

As can be seen from the total number of shipments moving during these periods, this carrier transported more than one shipment a day. Between Los Angeles and San Francisco it averaged about seven hauls a day for the number of days served, while between Los Angeles and Oakland and Los Angeles and San Jose the average number of shipments per day amounted to better than 3 and 5, respectively. Approximately 53 different customers, located in both southern and northern California, were being served by the respondent during these periods.

The staff also presented evidence disclosing that all these shipments moved under the respondent's radial highway common

carrier permit and that the carrier had no contracts with its shippers during the periods in question.

In addition, testimony and documentary evidence was received showing that this carrier, on many shipments, failed to comply with the requirements of Item 60 of Minimum Rate Tariff No. 8 in that it failed to obtain a public weighmaster's certificate when a shipment exceeded 20,000 pounds and the constructive mileage exceeded 50 miles.

Respondent's Evidence

Testifying on behalf of the respondent corporation its president declared that it did, in fact, operate between the cities mentioned on a daily basis, not only during the selected 3-week period but in a similar manner during the entire year of 1958 and early 1959. He explained that the carrier's operations had greatly expanded since it commenced operations in 1955 and since it acquired its radial highway common carrier permit in 1957. Although business was never solicited, it was claimed that during 1958 and the early part of 1959 a steadily increasing number of shippers contacted the respondent requesting that it serve them by carrying their freight, chiefly fresh produce, between Los Angeles and San Francisco, Oakland and San Jose. These requests were made, it is alleged, because the present highway common carriers of fresh produce refused, for one reason or another, to transport these shipments or to make pickups and deliveries on Saturdays and Sundays. Because of the perishable nature of the produce and the fact that these commodities had to be moved seven days a week during the fresh fruit and vegetable season, immediate transportation was required. In order to accommodate these shippers and with the expectation of making the venture a profitable one, the respondent undertook to perform the requested transportation. Satisfied with this service these shippers then

returned and offered most of their routine and regular freight to the carrier for carriage during said fresh fruit and vegetable seasons. In addition many other permitted truckers, especially those operating out of Coachella and Imperial Valleys, tendered their produce at this carrier's Los Angeles terminal for transshipment to northern California.

As the produce season in northern California ordinarily commenced in June and ended in November and as the season in southern California, primarily in said Coachella and Imperial Valleys, usually commenced in November and generally ended in June, the respondent found itself moving between the same points on a daily frequency on a continuous year-round basis, carrying produce half the year south-bound and half the year to the aforementioned northern California cities.

All freight tendered from all shippers during this period was accepted by the respondent. The president testified that he could not recall a single instance when he or his employees ever refused any shipment offered. The only qualification imposed upon its customers was that the carrier generally required less-than-truckload lots to be delivered to its terminals in Los Angeles and San Jose by said customers. Only truckload shipments were picked up by the respondent's trucks at the shippers' or growers' places of business. There was nothing unusual about the character of the equipment used by said respondent; it was similar to that of other carriers. The commodities transported presented no special features other than those previously mentioned.

Said president further testified that during this period he knew something was wrong with the operations as they were then being conducted. He claimed he had received conflicting opinions

from Commission staff representatives as to his firm's legal status. As a result he attempted to purchase a certificate of public convenience and necessity as a highway common carrier from another carrier. However, the asking price by the seller was not acceptable and the sale was not consummated. Negotiations for a lower price continued all during the foregoing operations. No direct application for such a certificate was submitted to this Commission because said president declared that his attorney informed him it would be easier and cheaper to acquire a certificate from one of the many dormant and idle highway common carriers.

This carrier had no written contracts with its shippers although said president declared that it had entered into some 50 oral agreements with its regular customers regarding the transportation to be performed. The precise nature and substance of these agreements was never explained, but the witness pointed out that he made no distinction in the obligations between the radial and contract permits or in the mechanics and procedures of entering into transactions for shipments of produce between the two permits. The entire business was conducted as a single integrated operation, the carrier using the same personnel, equipment and facilities when transporting freight under all of its operating authorities. Moreover, he said he considered that all the freight handled during 1958 and 1959 was carried under the respondent's radial highway common carrier permit, as it was his understanding that a radial carrier permit was specially designed for the type and kind of seasonal hauling performed by his company.

It was conceded that weight certificates had not been procured on the shipments as alleged by the staff. The respondent claimed that under the circumstances such certificates could not always be obtained. In many cases the trucks departed and arrived

at times when the scales were not open. Respondent claimed that frequently it was not practical, under the schedules then operating, to secure these certificates.

Findings

Based upon the foregoing evidence the Commission hereby finds and concludes that:

1. During the periods in question the respondent unequivocally intended to dedicate its property to a public use and did hold out its services to the public generally as a highway common carrier as to that segment of its operations between Los Angeles, on the one hand, and San Jose, Oakland and San Francisco, on the other hand.

2. The respondent has been conducting its operations as a highway common carrier during the periods in question between the aforementioned sets of fixed termini and over a regular route. We further find that this carrier has not been, during said period, engaged in or conducting its operations as a highway contract carrier between the termini or over the route heretofore mentioned.

3. As the respondent has not been issued a certificate of public convenience and necessity to operate as a highway common carrier between these cities, the Commission further finds and concludes that the respondent violated Section 1063 of the Public Utilities Code.

4. In addition we further find and conclude that the respondent violated Section 3737 of said Public Utilities Code by failing to comply with Item 60 of Minimum Rate Tariff No. 8 as to the shipments alleged between Holtville and San Francisco.

Penalty

On July 22, 1959 this carrier voluntarily suspended all of its operating permits for a period of one year in order to reorganize its activities with a view toward restricting the scope of its operations. However, its permits were subsequently revoked on October 20, 1959 because of failure to pay delinquent gross operating fees. Accordingly further action by this Commission is unnecessary.

O R D E R

A public hearing having been held in the above-entitled matter and the Commission being fully informed therein,

IT IS ORDERED:

That San Jose Transportation, Inc., is hereby ordered to cease and desist from operating as a highway common carrier between any points or over any route within this State unless it has first obtained a certificate of public convenience and necessity from this Commission to so operate.

The Secretary of the Commission is directed to cause personal service of this order to be made on the San Jose Transportation, Inc., and this order shall become effective twenty days after completion of such service.

Dated at San Francisco, California, this 27th day of October, 1959.

Ernest A. Ray
President

W. H. [unclear]

[unclear]

Theodore Jenner
Commissioners