

ORIGINAL

Decision No. 67086

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA MOTOR TRANSPORT CO.,
CONSTRUCTORS TRANSPORT COMPANY,
DELTA LINES, INC., DI SALVO TRUCKING
COMPANY, FORTIER TRANSPORTATION
COMPANY, MERCHANTS EXPRESS OF
CALIFORNIA, SOUTHERN CALIFORNIA
FREIGHT LINES, PACIFIC MOTOR TRUCKING
COMPANY, SHIPPERS EXPRESS, STERLING
TRANSIT CO., INC., VALLEY EXPRESS CO.
AND VALLEY MOTOR LINES, INC., AND
WILLIG FREIGHT LINES,

Case No. 7663

Complainants,

vs.

HARRISON FREDERICK, Trustee in
Bankruptcy, REILLEY TRUCK LINE,
a corporation, and AMERICAN TRANSFER
CO., a corporation,

Defendants.

Graham James & Rolph, by Boris H. Lakusta, for
California Motor Transport Co., Constructors
Transport Company, Delta Lines, Inc., Di Salvo
Trucking Company, Fortier Transportation Company,
Merchants Express of California, Southern
California Freight Lines, Pacific Motor Trucking
Company, Shippers Express, Sterling Transit Co.,
Inc., Valley Express Co. and Valley Motor Lines,
Inc., and Willig Freight Lines, complainants.

Marvin Handler, for American Transfer Co., and
Rolla L. Garretson, Jr., for Harrison Frederick,
Trustee in Bankruptcy of Reilley Truck Line,
defendants.

O P I N I O N

On July 16, 1963, complainants filed their complaint
requesting the revocation of certain highway common carrier operating
authority. Said authority was granted to Reilley Truck Line
(hereinafter referred to as Reilley) by Decisions Nos. 60572 and 60876

and authorizes the transportation of general commodities, with certain exceptions, in an area bounded by San Francisco, Sacramento and Fresno. On September 18, 1962, Reilley was adjudicated a bankrupt and Harrison Frederick (hereinafter referred to as Frederick) was appointed trustee in bankruptcy. On May 7, 1963, Reilley by Frederick filed Application No. 45407 requesting authority to transfer the operating authority to American Transfer Company. The authorization to transfer was granted ex parte on July 2, 1963, by Decision No. 65633. The Commission in said decision refused to entertain a protest by complainants herein which was predicated upon the ground that the affected area was adequately served and that authorization of the transfer would result in a diversion of traffic from complainants. The Commission held that the protest was merely an attempt to again raise the issue of public convenience and necessity and was therefore a collateral attack upon a prior Commission decision. On November 5, 1963, the Commission issued a preliminary order in the instant proceeding dismissing the complaint in all respects except as to the following issues:

- (a) Whether or not there has been an unauthorized discontinuance of public utility operation, and
- (b) Whether or not, for such reason, the Reilley certificate, authorized to be transferred to defendant American Transfer Co. by Decision No. 65633 in Application No. 45407, should be revoked.

On December 23, 1963, defendants filed their answer.

A public hearing was held before Examiner Daly on February 27, 1964, at San Francisco. No evidence was introduced on the aforementioned issues. The matter was therefore submitted upon the pleadings.

Complainants allege that on or about September 18, 1962, defendants Frederick and Reilley discontinued all trucking operations, and based upon information and belief alleged that said discontinuance of operations was effected without prior authority from the Commission.

Defendants admit that on or about September 18, 1962 Reilley was adjudged bankrupt and that the Bankruptcy Court ordered that the bankruptcy procedures be followed as of the date of adjudication in accordance with the Bankruptcy Act. Defendants further admit that thereupon the trustee commenced liquidation of the bankrupt corporation, which resulted in the discontinuance of the operation by Reilley.

The Commission records indicate that on October 7, 1962, the Commission suspended the operating authority of Reilley for failure to have on file requisite evidence of liability insurance. On January 8, 1963, the Commission continued its order of suspension until further order. On July 2, 1963, the Commission by Decision No. 65633 authorized the temporary lease and sale of the Reilley rights to American Transfer Co. and at the same time ordered that the suspension of said rights be vacated and set aside.

After consideration, the Commission finds that:

1. Reilley discontinued all certificated operations on September 18, 1962.
2. Said discontinuance of service without prior authorization of the Commission was the result of an involuntary bankruptcy proceeding.

3. Lawful operations pursuant to said authority were discontinued until October 7, 1962, a period of two and one half weeks, at which time this Commission suspended the Reilley certificate.

4. The Reilley certificate remained suspended pursuant to Commission order until July 2, 1963, when the Commission vacated the suspension and authorized the temporary lease and transfer to American Transfer Co.

After consideration, the Commission concludes that the discontinuance of service as the result of involuntary bankruptcy does not per se justify the revocation of defendant's certificate. The complaint will be dismissed in its entirety.

ORDER

IT IS ORDERED that Case No. 7663 is hereby dismissed.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this

14th day of APRIL, 1964.

William L. Beards
President

W. H. ...

Walter ...

George T. Hoover

Frederic B. Holbrook
Commissioners