

ORIGINAL

Decision No. 67193

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

California Motor Transport Co.,
Delta Lines, Inc., Fortier Trans-
portation Company, Merchants
Express of California, Pacific
Motor Trucking Company and Willig
Freight Lines,
Complainants,

vs.

Case No. 7667

Frank L. Nolan, Jr., an individual,
and Mary F. Bartholomew, an indi-
vidual, doing business as Frank
Nolan Drayage Co., a copartnership,
and Motor Transport Terminals, Inc.,
a corporation.
Defendants.

Graham James & Rolph, by Boris Lakusta and
E. Myron Bull, Jr., for complainants.
Berol, Loughran and Geernaert, by Marshall G.
Berol, for defendants.

O P I N I O N

By this complaint filed July 18, 1963, complainants request the revocation of a certain highway common carrier certificate. Said certificate was granted by Decision No. 51026, dated January 25, 1955, in Application No. 35417, and authorizes operations in the San Francisco-East Bay Cartage Zone.

On May 8, 1963, defendant Nolan filed Application No. 45415 requesting authority to sell the certificate to Motor Transport Terminals, Inc. The transfer was authorized by ex parte Decision No. 65634, dated July 2, 1963, wherein the Commission denied complainants' petition to intervene 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 found that the protest was 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 certificate should be revoked.

On December 23, 1963, defendants filed their answer.

A public hearing was held before Examiner Daly on March 31, 1964, at San Francisco, and the matter was submitted.

The complaint alleges, and it is a matter of Commission record, that the operating authority of defendants was suspended by Decision No. 58810, dated July 28, 1959, for failure to pay fees; that by Decision No. 60133, dated May 17, 1960, the suspension was further continued, despite the fact that defendants had paid the fees, because their participation in Western Classification No. 77 had been canceled; that upon compliance the operating authority was reinstated by Decision No. 60638, dated August 30, 1960; that the certificate was again suspended on June 12, 1962, by Decision No. 63807 for failure to have tariffs on file and was reinstated upon compliance by Decision No. 64144, dated June 26, 1962. It is further alleged by complainants that defendants discontinued all operations on or about April 8, 1963, without prior authorization from the Commission.

Prior to the date of hearing in the matter a subpoena duces tecum was served upon defendant Nolan directing him to bring

to the hearing all freight bills issued by defendants for the period November 1962 through April 1963, inclusive.

According to defendant Nolan the partnership consisted of himself and his sister, who had given her husband power of attorney to act in her behalf. Defendant Nolan testified that at one time they employed 11 drivers; he concerned himself solely with the operation of the trucks and his brother-in-law had complete control of the office and business affairs; operations ceased in February 1963, when representatives of the Teamsters Union ordered the drivers off of the trucks because defendants were \$5,000 in arrears on Pension and Welfare Fund payments; during the next month and a half he succeeded in raising only \$2,700 of the amount due; it was then that he decided to sell the certificate in the hope that he could raise enough money to pay the union and thereby commence operations pursuant to his city permit; he was unaware that Commission authority to discontinue service was required; and during the periods when the certificate was under suspension, operations in the City of San Francisco were conducted pursuant to his city permit.

Defendant Nolan testified that he had been served with a subpoena duces tecum, but was unable to produce the documents specified because he does not know their whereabouts; his brother-in-law handled all of the business records and since moving from the leased office space, he has not been able to locate his sister, his brother-in-law, or the records.

After consideration, the Commission finds that:

1. Defendants discontinued operations in February of 1963, and said discontinuance was the result of the drivers being ordered off the trucks by the Teamsters Union.
2. For the following month and a half defendant tried in vain to raise the \$5,000 due the Pension and Welfare Fund, and during

said period he had no intention of abandoning the operation.

3. When he determined that he could not raise the necessary funds, he then commenced negotiating for the sale of the certificate.

4. He did not have the benefit of counsel and was unaware that the Commission's authority to discontinue service was required.

5. During the suspensions of the certificate city operations were conducted pursuant to defendants' city permit.

6. Defendant Nolan was served with a subpoena duces tecum and was unable to produce the documents requested because he has no knowledge as to their whereabouts.

7. There was no unauthorized discontinuance of service justifying the revocation of the certificate in question.

Based upon the foregoing findings the Commission concludes that the complaint should be dismissed in its entirety.

O R D E R

IT IS ORDERED that Case No. 7667, as amended, is hereby dismissed.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 12th day of May, 1954.

William A. Bennett
President

John E. Bittell

Everett H. Rogers

George T. Crower

Commissioners

Commissioner Frederick B. Holoboff, being necessarily absent, did not participate in the disposition of this proceeding.