

ORIGINAL

Decision No. 67839

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of GARRETT FREIGHTLINES, INC., a corporation, UNITED STATES EXPRESS, a corporation, and WALTER J. HEMPY, as Assignee for the benefit of creditors of United States Express for authority of Garrett Freightlines, Inc. to purchase the operative rights of United States Express.

Application No. 45552

BLANKENSHIP MOTORS, INC., BOULEVARD TRANSPORTATION COMPANY, CALIFORNIA CARTAGE COMPANY, CALIFORNIA MOTOR TRANSPORT CO. and CALIFORNIA MOTOR EXPRESS, LTD., CONSTRUCTORS TRANSPORT COMPANY, DELTA LINES, INC., DI SALVO TRUCKING COMPANY, FORTIER TRANSPORTATION COMPANY, GARDEN CITY TRANSPORTATION COMPANY, MERCHANTS EXPRESS OF CALIFORNIA, OREGON-NEVADA-CALIFORNIA FAST FREIGHT and SOUTHERN CALIFORNIA FREIGHT LINES, PACIFIC INTERMOUNTAIN EXPRESS, PACIFIC MOTOR TRUCKING COMPANY, SHIPPERS EXPRESS, STERLING TRANSIT CO., INC. VALLEY EXPRESS CO. and VALLEY MOTOR LINES, INC., WILLIG FREIGHT LINES.

Case No. 7540

Complainants,

vs.

UNITED STATES EXPRESS,

Defendant.

Berol Loughran & Geernaert by Bruce R. Geernaert, for United States Express and John O. England Trustee in Bankruptcy of the assets of United States Express, Applicant and Defendant; Maurice H. Greene, for Garrett Freightlines, Inc., Applicant and Defendant. Russell & Schureman by R. Y. Schureman, for Western Truck Lines, Ltd., Protestant and Intervenor. Graham James & Rolph by Boris H. Lakusta & E. Myron Bull, Jr., for Boulevard Transportation Co., California Cartage Co., California Motor Transport Co., California Motor Express, Ltd., Constructors Transport Co., Di Salvo Trucking

Co., Fortier Transportation Co., Merchants Express of California, Oregon-Nevada-California Fast Freight and Southern California Freight Lines, Pacific Motor Trucking Co., Shippers Express, Sterling Transit Co., Inc. Valley Express Co. and Valley Motor Lines, Inc., Willig Freight Lines, Complainants in Case 7540 and Protestants in Application 45552.

C. W. Johnson, for Consolidated Freightways;
Robert Minardi, for Garden City Transportation Co., Ltd., interested parties.

O P I N I O N

These cases, which were consolidated for hearing, involve a request from United States Express to sell its general commodity certificate to Garrett Freightlines, Inc. The procedural background is as follows: On November 30, 1962, United States Express ceased operations and made an assignment for the benefit of its creditors to Walter J. Hempy, the Secretary of the Board of Trade of San Francisco. On that date, United States Express filed Application 44987 seeking authority for the suspension of its operations. Said application was granted by Decision No. 64743 of January 8, 1963. On January 11, 1963, the Board of Trade circulated an advertisement for bids to be submitted by interested parties for the purchase of the United States Express operating rights. These rights cover the major commercial points in the State of California, extending generally from San Francisco and Sacramento on the north to San Diego on the south, and including the right to serve all intermediate points and points within 20 miles of the major highways of the state, including Highways 40, 50, 101, and 99.

On January 23, 1963, complainants filed their complaint in Case No. 7540 against United States Express, alleging that there had been an unauthorized discontinuance of common carrier service,

constituting a violation of the carrier's public utility obligation, and also that sale of the operating rights by bids at an auction would violate the spirit of Section 820 of the Public Utilities Code, which prohibits the capitalization of operating authorities at a sum in excess of original cost. The complaint, as clarified by the amended complaint filed on September 6, 1963, also alleged that the operating rights of United States Express should be revoked by the Commission because public convenience and necessity no longer required the operation, under Section 1070 of the Public Utilities Code. The complaint requested that a temporary restraining order be issued forbidding the proposed sale and that the operating authorities of the defendant be revoked after a hearing and a determination of the facts. The Commission issued Decision No. 64269 on January 29, 1963, which denied the complainants' prayer for a temporary restraining order. A motion to dismiss the complaint and an answer were filed on February 15, 1963, by defendant, to which a reply was filed on March 10, 1963. An answer and motion to dismiss the amended complaint was filed on September 18, 1963.

On June 24, 1963, Application No. 45552 was filed, which seeks authority to transfer the operating rights of United States Express to Garrett Freightlines, Inc. Complainants in Case No. 7540, now acting as protestants, filed a petition to intervene in the Application matter on July 11, 1963. The Commission issued Decision No. 65743, on July 23, 1963, in Application No. 45552, which granted temporary authority to Garrett Freightlines, Inc., "to lease from United States Express on a temporary basis, until final determination of this application by the Commission, the operating authority covered by Decision No. 60768, in Application No. 42111, and to continue the operations formerly conducted by United States Express."

Garden City Transportation Co. filed a written protest (to Application No. 45552) on November 1, 1963, in which it alleged that it was the legal owner of the operating authority United States Express was seeking to transfer. Garden City later filed (on April 21, 1964) a petition in which it withdrew its earlier protest and joined the applicant in petitioning that the application be granted.

Public hearings were held before Examiner Fraser in San Francisco on September 4, 5, and 6, 1963, and on January 22, 23, and 24, 1964. The matters were submitted May 20, 1964 on receipt of closing briefs. On the first day of hearing John O. England, trustee in bankruptcy of the assets of United States Express, was substituted for Walter J. Hempy as assignee for the benefit of creditors. It was established that United States Express was adjudged a bankrupt on April 16, 1963, and that Mr. John O. England was appointed trustee on May 8, 1963, during the first meeting of creditors.

The president of United States Express testified as follows: That a month long strike in 1959 caused a severe loss of revenue and business which was never recovered; that in June of 1962 there were two truck accidents which resulted in the cancellation of the defendant's insurance; that shippers were notified of the cancellation and many customers started to use other carriers and never returned to United States Express after the insurance was reinstated; on November 1, 1962, the net loss for the first ten months of the year was \$141,455.49 and the owners of their operating equipment threatened to repossess it; because of this factor there was an assignment of the San Francisco Board of Trade on November 30, 1962; operations ceased on the date of assignment at the request of the Board of Trade.

The facts are not in dispute although the complainants-protestants alleged that United States Express was forced out of business due to increasing competition in the trucking business, and further that since all of the prior customers of United States Express were then apparently being served satisfactorily by other carriers there is no need to revive the service and the certificate should therefore be revoked and cancelled. Protestants-complainants maintain it is adverse to the public interest to revive and transfer the certificate due to the detrimental effect of another large carrier being authorized to operate in an area where it is not needed. It was admitted that Garrett Freightlines, Inc., is a large capable interstate carrier with ample available equipment and facilities to serve the needs of present and prospective customers. Protestants-complainants raised the issue of public convenience and necessity during the proceeding. Evidence bearing on this issue was excluded on the basis that the Commission had already ruled that public convenience and necessity are not issues in a proceeding involving a transfer of a highway common carrier certificate, (Henry Stovall (Henry's Freight Lines), February 1962, 59 Cal. P.U.C. 373,376). Complaints were filed by the complainants herein in other certificate transfer proceedings (Reilley, Case No. 7663; Nolan, Case No. 7667; Wells Cargo, Inc., Case No. 7671; Todd Freight Lines, Inc., Case No. 7695; and Sierra Distributing Co., Case No. 7697) wherein it was prayed that the sales be restrained and forbidden, or that the certificates be revoked and cancelled. Preliminary orders were issued in all of these proceedings (Decision No. 66248, dated November 5, 1963, in Case No. 7663; Decision No. 66249, dated November 5, 1963, in Case No. 7667; Decision No. 66250, dated

November 5, 1963 as amended by Decision No. 66303, dated November 12, 1963, in Case No. 7671; Decision No. 66009, dated September 17, 1963, in Case No. 7695; Decision No. 66251, dated November 5, 1963, in Case No. 7697) dismissing the complaints in all respects except as to whether or not there was an unauthorized discontinuance of public utility operation, and whether or not, for that reason, the certificates should be revoked.

After consideration, the Commission finds that:

1. United States Express discontinued operations on November 30, 1962, and assigned its assets and operations to the San Francisco Board of Trade.
2. The cessation of operations was due to a combination of factors, including competition, but principally to the demands of creditors who threatened to reposses the equipment being used by United States Express.
3. The United States Express certificate was suspended pursuant to Commission Decision No. 64743, dated January 8, 1963, until July 22, 1963, when Commission Decision No. 65743 terminated the suspension and authorized a temporary lease of the operating authority.
4. Garrett Freightlines, Inc., an applicant herein, is now operating under the certificate held by United States Express through a temporary lease authorized by this Commission on July 23, 1963.
5. United States Express was adjudged a bankrupt on April 16, 1963, and John O. England was appointed trustee by the Bankruptcy Court.
6. There was no unauthorized discontinuance of service justifying the revocation of the certificate in question.

7. The transfer of operating rights to Garrett Freightlines, Inc., will not be adverse to the public interest.

Based upon the foregoing findings, the Commission concludes that:

1. The applicants have not violated Section 820 of the Public Utilities Code.

2. Public convenience and necessity are not in issue in a proceeding involving the transfer of a highway common carrier certificate.

3. Complainants are entitled to be heard and to present evidence only on the issues of whether there has been an unauthorized discontinuance of public utility operations, and whether, for that reason, the certificate should be revoked.

4. The complaint should be dismissed.

5. The application should be granted.

O R D E R

IT IS ORDERED that:

1. The complaint in Case No. 7540, as amended, is hereby dismissed.

2. On or before December 1, 1964, United States Express may sell and transfer, and Garrett Freightlines, Inc., may purchase and acquire, the operative rights and property referred to in the application.

3. Within thirty days after the consummation of the transfer herein authorized, Garrett Freightlines, Inc., shall notify the Commission, in writing, of that fact and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect said transfer.

4. Garrett Freightlines, Inc., shall amend or reissue the tariffs on file with the Commission, naming rates, rules and regulations governing the common carrier operations herein to show that it has adopted or established, as its own, said rates, rules and regulations. The tariff filings shall be made effective not earlier than thirty days after the effective date of this order on not less than thirty days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the consummation of the transfer herein authorized. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80-A.

5. On or before the end of the third month after the consummation of the transfer as herein authorized, Garrett Freightlines, Inc., shall cause to be filed with the Commission, in such form as it may prescribe, an annual report, or reports, covering the period commencing with the first day of the current year to and including the effective date of the transfer.

6. Effective concurrently with the consummation of the transfer authorized by paragraph 2 hereof, the temporary authority granted by Decision No. 65743, dated July 23, 1963 shall terminate.

The effective date shall be twenty days after the date hereof.

Dated at San Francisco, California, this 15th day of SEPTEMBER, 1964.

Frederick B. Halaloff
President
George G. Grover
Commissioner George G. Grover, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.