

ORIGINAL

Decision No. 68320

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Complainants,

vs.

TODD FREIGHT LINES, INC., AND JACK
A. ULRICH, Trustee,

Defendants.

Case No. 7695

In the Matter of the Application of
TODD FREIGHT LINES, INC. by JACK A.
ULRICH, Trustee, to sell and transfer
a certificate of public convenience
and necessity to COAST DRAYAGE, a
corporation, and for COAST DRAYAGE to
operate under a lease.

Application No. 46661

Graham James & Rolph, by Boris H. Lakusta and
E. Myron Bull, Jr., for complainants in
Case No. 7695 and protestants in
Application No. 46661.

Handler, Baker & Greene, by Daniel W. Baker,
for Coast Drayage, interested party in
Case No. 7695 and applicant in Application
No. 46661.

Rolla L. Garretson, for Jack A. Ulrich, Trustee
in Bankruptcy, and Todd Freight Lines, Inc.,
applicants in Application No. 46661 and
defendants in Case No. 7695.

O P I N I O N

On August 28, 1963, complainants filed their complaint
in Case No. 7695 which alleged that Todd Freight Lines, Inc.,
hereinafter called Todd, was advertising a bankruptcy sale on

September 18, 1963, wherein its operating rights would be sold to the highest bidder. The complaint further alleged that there was an unauthorized discontinuance of highway common carrier service by Todd and that Todd's continued failure to operate for a substantial period constituted a breach of Todd's certificated authority and a violation of Sections 702, 761 and 1064 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 Todd be revoked after a hearing and a determination of the facts. The Commission issued a preliminary order on September 17, 1963 (Decision No. 66009), which dismissed the complaint in all respects except as to the issues of whether or not there was an unauthorized discontinuance of public utility operation, and whether or not, for that reason, the certificate should be revoked. The defendant filed an Answer to the complaint on September 27, 1963, and a public hearing was held before Examiner Fraser in San Francisco, on January 29, 1964.

The vice president of the defendant corporation testified as follows: He and his father obtained a certificate as a partnership in 1960 (Decisions Nos. 59702 and 60029 in Application No. 41496) to serve Turlock, Manteca, Modesto and certain other points; the certificate was extended by Decision No. 63220, dated February 2, 1962, in Application No. 43030, to include all of Merced, Madera and Stanislaus Counties; the certificates were transferred from the partnership to the present corporation by Decision No. 64489, dated November 7, 1962, in Application No. 44831. The corporation had 32 pieces of operating equipment in January of 1963, consisting of tractors, trailers and bobtails; in February of 1963, the creditors of Todd started to repossess individual items of

equipment and by May 15, 1963 it had all been repossessed. Todd filed a voluntary Petition in Bankruptcy on May 20, 1963 and Jack A. Ulrich of Modesto was appointed trustee of the assets of Todd on June 12, 1963.

The Trustee in Bankruptcy testified as follows: When he took over the assets of Todd there was no equipment left and the trucking operation had ceased; he employed a transportation and rate expert who filed a petition for a temporary suspension of operating authorities with this Commission on July 2, 1963, which was granted by Decision No. 66377, dated November 26, 1963 and is still in effect; an identical petition was also filed with the Interstate Commerce Commission at about the same time. The rate expert appraised the certificate at \$20,000 and an unsuccessful effort was made to sell the certificate at this price. Some money was received by the trustee from accounts receivable and has been disbursed for necessary expenses. The sole asset now remaining is the Todd certificate. There are approximately \$13,776 in priority and tax liens due to wage claimants and the Federal and State

governments from the bankrupt, along with \$63,412.95 in unsecured claims and \$11,000 in secured claims; the total sum owed to creditors on January 29, 1964 was approximately \$85,000. The trustee testified that the business has not been operated since May 20, 1963, the date the petition in bankruptcy was filed.

The freight bills and other available documents showing the transportation performed by Todd from January through May of 1963 were turned over to the complainants by agreement of the parties and the matter was continued to a date to be set.

Defendants filed a Petition to Dismiss the complaint on May 20, 1964 on the basis that the complaint had no merit and was not diligently prosecuted. Complainants filed a reply and an

amendment to the complaint on May 27, 1964. The latter pleading alleged that Todd was operating unlawfully as a certificated highway common carrier into and out of San Francisco and Oakland, which are out of its certificated area and where it is only authorized to serve as a permitted carrier. The defendants filed a reply on June 22, 1964 in which they alleged that Todd's operations out of San Francisco and Oakland were under the authority of its permits and completely irrelevant to the issues alleged in the complaint.

On May 22, 1964, Application No. 46661 was filed, which sought authority to transfer the operating rights of Todd to Coast Drayage, a corporation, for the sum of \$3,000 and to authorize Coast Drayage (hereinafter called Coast) to temporarily lease and operate under the rights to be transferred for the sum of \$300, until the sale had been authorized by this Commission and the Interstate Commerce Commission. The complaint and application were consolidated and a further hearing was held before Examiner Fraser on September 22, 1964, in San Francisco, with both matters being submitted on that date.

The president of Coast was the only witness to testify during the second hearing. The ability of Coast to operate under the certificate to be transferred was not questioned. The complainants (protestants to the application) allege that Todd was forced out of business by competition and too rapid expansion; that the Todd certificate has been dormant since May 15, 1963; and that since all of the former customers of Todd were now apparently being served satisfactorily by other carriers, there is no need to revive the service and the certificate should therefore be revoked and canceled. Complainants-protestants maintain that the Todd certificate has not been used for over a year and to revive it now will

have the same effect as if a new certificate had been granted. Complainants-prottestants claim it is adverse to the public interest to revive and transfer the certificate due to the detrimental effect of another carrier being authorized to operate in an area where it is not needed. Protestants raised the issue of public convenience and necessity during the proceedings. Evidence bearing on this issue was excluded on the basis that the Commission had already ruled that public convenience and necessity is not an issue 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). The protestants were also precluded from presenting evidence of Todd's unlawful operations as a permitted carrier on the basis that the preliminary order (Decision No. 66009 in Case No. 7695) issued by the Commission on September 16, 1963 limited the issues to be considered in the complaint as to whether there was an unauthorized discontinuance of public utility operation, and whether or not, for that reason, the certificate should be revoked. ✓

After consideration, the Commission finds that:

1. Todd discontinued operations on or about May 15, 1963, and filed a voluntary Petition in Bankruptcy on May 20, 1963.
2. Jack A. Ulrich was appointed trustee on June 12, 1963.
3. The trustee has never operated the business and the sole asset remaining is the Todd certificate.
4. Creditors' claims total more than \$85,000.
5. The purchase price to be paid by Coast for the certificate is \$3,000.
6. Todd was forced into bankruptcy by a combination of factors, including competition, too rapid expansion, the demands of

creditors and finally by having its operating equipment repossessed.

7. The Todd certificate was suspended by Decision No. 66377, dated November 26, 1963, which is still in effect.

8. Coast is a capable, expanding carrier with ample available equipment and facilities to serve the needs of present and prospective customers.

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

10. The transfer of operating rights from Todd to Coast will not be adverse to the public interest.

Based upon the foregoing findings, the Commission concludes that:

1. The applicants have not violated the Public Utilities Code.
2. The complaint should be dismissed in its entirety.
3. The application should be granted.
4. The suspension of the Todd certificate should be vacated.
5. Coast should be authorized to operate under the Todd certificate as a lessee until the final determination on the application to transfer is made by the Interstate Commerce Commission.
6. Public convenience and necessity is not in issue in a proceeding involving the transfer of a highway common carrier certificate.
7. Evidence of the transferor's operations as a permitted carrier is not admissible in a proceeding to transfer a highway common carrier certificate, where the issues are limited to public utility operations by a previous Commission order.

The authorization herein granted shall not be construed as a finding of the value of the rights and properties herein authorized to be transferred.

O R D E R

IT IS ORDERED that:

1. The complaint in Case No. 7695 is dismissed.
2. Coast Drayage, a corporation, and an applicant herein, is authorized to lease and to operate under the certificates presently held by Todd Freight Lines, Inc., until final determination by the Interstate Commerce Commission of the application to transfer the Todd certificate.
3. On or before July 1, 1965, Todd Freight Lines, Inc., may sell and transfer, and Coast Drayage, may purchase and acquire the operative rights and property referred to in the application.
4. Within thirty days after the consummation of the transfer herein authorized, Coast Drayage 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.
5. Coast Drayage 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.

6. On or before the end of the third month after the consummation of the transfer as herein authorized, Coast Drayage 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.

7. Effective concurrently with the consummation of the lease or transfer authorized herein, whichever takes place earlier, Decision No. 66377, dated November 26, 1963, in Application No. 45573, is vacated and set aside.

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

gdt Dated at San Francisco, California, this day of DECEMBER, 1964.

Fredrick B. Holbrook
President

George L. Hoover

William W. Bennett

Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Everett C. McKeage, being necessarily absent, did not participate in the disposition of this proceeding.