

Decision No. 69394

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
RICHMOND CRANE, RIGGING & DRAYAGE)
CO., INC. (formerly BEAR TRUCKING,)
INC.) to remove restrictions in)
permits.)

Application No. 47264
(Filed January 19, 1965)

Bertram S. Silver, for applicant.

Elmer J. Sjostrom, for the Commission staff.

O P I N I O N

This application was filed to remove the following restriction from the applicant's radial highway common carrier permit and highway contract carrier permit:

"(11) Permittee shall not engage in the transportation of property over the public highways under this permit when such transportation is covered by the highway common carrier operative authority of West Transportation, Inc., a corporation."

The permits were amended by adding the restriction on July 28, 1964. The limitation was imposed due to a ruling of the Commission in a recent proceeding that where an alter ego situation appeared to exist between a permitted and a certificated carrier, a restriction should be imposed upon the permitted carrier. (Sunset Transfer Service, 62 Cal. P.U.C. 760, 762, Decision No. 67337, dated June 3, 1964, in Application No. 44128.) Upon the filing of this application the Commission staff requested that a hearing be scheduled to establish a record of the facts.

A public hearing was held at San Francisco on March 5, 1965 before Examiner Fraser and the matter was submitted. The Commission staff assisted in developing the record.

West Transportation, Inc. (West) was owned by three shareholders who also acquired the management and ownership of applicant, primarily for the purpose of doing heavy hauling, which (it is claimed) is not generally consonant with the type of business ordinarily conducted by a certificated carrier. During the past several years applicant has engaged primarily in heavy hauling, whereas West has engaged in freight hauling characteristic of a certificated carrier of general commodities in California.

When the restriction was imposed, the stockholders decided to separate the two companies. Applicant is now owned by Richard H. Murphy, who purchased the interest formerly held by the other two stockholders. The latter are now the majority shareholders and owners of West; however, Mr. Murphy retains a 31.9 percent interest in West. The net worth of applicant is in excess of \$50,000; the net worth of West is in excess of \$600,000. Applicant's maintenance work is done by West at cost plus 5 percent, and fuel is purchased from West to obtain the benefit of lower charges resulting from volume purchase and storage. The offices of applicant and West are both located on premises owned by West.

The three sole shareholders of West are also the three sole shareholders of West Equipment Company, a corporation. Mr. Murphy owns a one-third interest in West Equipment Company and is an officer. West Equipment Company leases transportation equipment to the public and to West.

West has considered removing all heavy hauling from its certificate but has decided not to do so. West does heavy hauling in interstate commerce, and if heavy hauling is removed from its intrastate certificate, its interstate rights will automatically cease; West does not wish to lose this interstate business.

The law prohibits a certificated highway common carrier from operating as a permitted carrier for transportation covered by the certificate. (Pub. Util. Code § 3542; People v. Geijsbeek, 153 Cal. App.2d 300, 308-309.) That prohibition may not be circumvented by the device of separate corporate entities owned and controlled by the same persons. (Sunset Transfer Service, 62 Cal.P.U.C. 760,762, Decision No. 67337, dated June 3, 1964, in Application No. 44128.) We find that at the time applicant's permit was restricted by the Commission in July of 1964: (1) applicant and West were owned and controlled by the same three persons, (2) applicant and West were each the alter ego of the other, and (3) said restriction was necessary to prevent circumvention, by means of that alter ego relationship, of the legal prohibition against West's operating as a permitted carrier for transportation covered by West's certificate.

We are not persuaded that the owners of these two companies have segregated their interests sufficiently to constitute applicant an independent legal entity for the purpose of this proceeding. Whatever the reason, Mr. Murphy (the sole owner of applicant) continues to be a major stockholder of West. The evidence does not reveal the amount of stock owned by each of the other two shareholders; for all that appears, Mr. Murphy may well hold the balance of power in the West organization, even though he is not now an officer. He is an officer, as well as a major stockholder, of West Equipment Company, a West affiliate. And the several cooperative activities of applicant and West indicate a continuing friendly relationship in their transportation operations. We find that applicant and West have failed to effect an adequate divestiture and that an alter ego relationship continues to exist between them.

The restriction in applicant's permit should not be eliminated.

ORDER

IT IS ORDERED that the application is denied.

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

Dated at San Francisco, California, this 13th day of July, 1965.

Frederick B. Hallock
President

George E. Hoover

Auzator

William L. Bennett
Commissioners

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