

ORIGINAL

Decision No. 70630

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

Bert Silver, for applicant.

E. H. Griffiths, in propria persona,
Interested party.

David R. Larrouy, for the Commission
staff.

O P I N I O N

This is a matter on rehearing wherein Richmond Crane, Rigging & Drayage Co., Inc. seeks the removal of an alter ego restriction from its radial highway common carrier permit and highway contract carrier permit.

A public hearing was held on February 16, 1966, before Examiner Daly at San Francisco, and the matter was submitted.

On July 28, 1964, applicant's permits were restricted as follows:

"(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."

On January 19, 1965, applicant filed the instant application requesting removal of the restriction, alleging that any possible alter ego relationship between applicant and West Transportation, Inc. (West) had been eliminated. Thereupon a

public hearing was held and on July 13, 1965, the Commission issued Decision No. 69394, wherein it found as follows:

"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."

The record on rehearing indicates that at the time of the original hearing, Mr. Richard H. Murphy, the sole owner of applicant herein, was the owner of 112 shares of West with Mr. Joseph L. Pardini owning 121 shares and Mr. Joseph L. Silva owning 118 shares of said company.

Since the first hearing Mr. Joseph Silva has passed away and his stock is in the process of being retired. The effect thereof will leave Mr. Murphy with a stock interest of 48 percent in West with Mr. Pardini having the controlling interest. The present situation finds Mr. Murphy a minority stockholder in West without managerial interest or control.

Applicant is primarily engaged in specialized operations as a heavy hauler, whereas West is engaged in the more conventional transportation of general commodities as a certificated carrier. Applicant owns and operates its own

equipment, whereas West leases its equipment from West Equipment Company, an affiliate company. During the original hearing Mr. Murphy was an officer of West Equipment Company, but has since resigned his office. The officers and directors of applicant are separate and distinct from West. Each company keeps and maintains separate books, payroll accounts, records and data.

Based upon the evidence received on rehearing we find that applicant and West have now effected an adequate divestiture and that possibility of control of Richmond by West is too remote to warrant retaining the restriction.

The restriction in applicant's permits should be eliminated.

O R D E R

IT IS ORDERED that the Secretary of the Commission is directed to amend Radial Highway Common Carrier Permit No. 19-43038 and Highway Contract Carrier Permit No. 19-43039 by issuing to Richmond Crane, Rigging & Drayage Co., Inc. amended permits under the same numbers and deleting therefrom the alter ego restriction heretofore referred to.

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

Dated at San Francisco, California, this 26th day of APRIL, 1966.

We dissent.

Frederick B. Holloff
George E. Gover

[Signature]

President

[Signature]

Secretary

[Signature]

Commissioners