

**ORIGINAL**

Decision No. 74155

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
DON D'ONOFRIO, an individual, doing  
business as DONOFRIO DRAYAGE-RECORD  
EXPRESS, for a certificate of public  
convenience and necessity to extend  
highway common carrier service.

Application No. 48416

Bertram S. Silver, for applicant.

Boris H. Lakusta, for California Cartage Company,  
California Motor Transport Co., Ltd., Delta  
Lines, Inc., DiSalvo Trucking Company, Garden  
City Transportation Co., Nielsen Freight Lines,  
Oregon-Nevada-California Fast Freight, Inc.  
and Southern California Freight Lines, Pacific  
Intermountain Express Co., Pacific Motor  
Trucking Company, Ringsby-Pacific, Ltd.,  
Shippers Express Co., T.I.M.E. Motor Freight,  
Inc., Walkup's Merchants Express, Willig  
Freight Lines, Associated Freight Lines,  
protestants.

OPINION ON REHEARING

By Decision No. 72647, dated June 27, 1967, Don D'Onofrio,  
an individual, doing business as Donofrio Drayage-Record Express,  
was denied authority to extend his certificated operations for the  
limited purpose of transporting alcoholic beverages to an area  
encompassing Fresno, Stockton, Sacramento, Roseville, Napa, Vallejo,  
Santa Rosa, Pacifica, Monterey, Salinas and all intermediate points.  
By Decision No. 73086, dated September 19, 1967, the Commission  
granted rehearing, which was held before Examiner Daly on March 25,  
1968, at San Francisco.

The record indicates that applicant commenced operating  
as a local drayman in San Francisco in 1939. By Decision No. 62518,  
dated September 5, 1961, in Application No. 42980, applicant was

authorized to transport general commodities within the San Francisco-East Bay Cartage zone and between San Mateo and San Jose and intermediate points via U.S. Highway 101 and 101 By-Pass.

The filing of the application was made at the request of Lewis-Westco & Co., a shipper of alcoholic liquors and related commodities. During the course of the original hearing it was established that applicant has served Lewis-Westco since 1946 and that as of July 1966, the Lewis-Westco account represented 50 percent of applicant's gross income. Prior to September 1965 all of the traffic transported for the Lewis-Westco account moved to points within applicant's certificated area, but subsequent thereto he commenced transporting such traffic to the proposed area pursuant to permitted authority and the volume steadily increased. Practically all of this traffic consists of split delivery shipments with portions thereof destined to points within applicant's certificated area and portions destined to points within the proposed area. By Decision No. 61265, dated December 28, 1960, in Case No. 6186<sup>1/</sup> the Commission held that a carrier cannot combine certificated and permitted authorities for the purpose of providing split delivery rates. The effect of this decision prevents applicant from providing the Lewis-Westco account with the same rate advantage that any of the thousands of carriers operating solely pursuant to permitted authority can provide.

Protestants suggested that applicant could readily solve his problem by requesting the Commission to delete from his certificate the authority to transport alcoholic beverages, thereby paving the way for applicant to serve the Lewis-Westco account entirely as a permitted carrier. According to applicant the

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<sup>1/</sup> 58 Cal. P.U.C. 407.

suggested procedure would prove unsatisfactory because it would result in the loss of his corresponding interstate authority, which was acquired by registration with the Interstate Commerce Commission.

The new evidence introduced during the course of rehearing consisted of testimony by applicant and a letter by Mr. S. M. Coplin on behalf of Lewis-Westco & Co.

Applicant testified that he presently transports alcoholic beverages for other accounts within the limits of his existing certificate and has been assured by these customers that they would use his service to the extended area if the requested authority is granted. According to the letter (Exhibit 10), which is dated July 11, 1967, and is addressed to the Commission, Lewis-Westco & Co. is now using leased equipment to transport its own shipments to the proposed area and has no intention of using the protesting carriers. The letter also requests this Commission to reconsider the matter and grant the extension as requested.

After consideration the Commission finds that:

1. Applicant is presently providing service as a highway common carrier for the transportation of general commodities between various points within the San Francisco Bay area.
2. Between September 1965 and March 1966 applicant was transporting split delivery shipments for Lewis-Westco & Co. but was unable to provide said account with the most favorable rates because portions of said shipments were destined to points within applicant's certificated area and portions to points within the proposed area.
3. Applicant cannot delete the transportation of alcoholic beverages from his existing certificate because it would also

necessitate the deletion of the same authority from his registered interstate certificate and applicant presently serves other accounts pursuant to said authorities.

4. Since the issuance of Decision No. 72647 Lewis-Westco & Co. has relied upon a proprietary operation to transport its shipments.

Conclusion

Although applicant did not establish an impressive case of public convenience and necessity by a parade of public witnesses, the Commission realizes that a small carrier faces an extremely difficult and expensive problem in meeting the organized resistance of the existing certificated carriers who, because of their size and financial ability can economically frustrate and discourage most of the smaller carriers from filing and processing a certificate application.

It appears that a strict interpretation of public convenience and necessity has worked an undue hardship upon applicant, whose proposed limited operations can hardly constitute a threat to the large protestant carriers herein. As has been demonstrated, a denial of this application did not divert the Lewis-Westco & Co. traffic to the existing carriers. The only purpose served has been to deprive applicant of 50 percent of his gross revenue, which is an exceedingly high price for a small carrier to pay.

After reconsideration the Commission finds that public convenience and necessity require the granting of the application.



Don D'Onofrio is authorized to transport distilled spirits, alcoholic beverages, liquor, alcoholic liquors, vinous liquors, spirits and wines between all points and places on the following highways and within twenty miles laterally and radially from all points and places on said highways:

- (a) U.S. Highway 101 between Santa Rosa and Salinas.
- (b) California Highway 1 between San Francisco and Monterey.
- (c) U.S. Highway 80 between San Francisco and Roseville.
- (d) U.S. Highway 50 between San Francisco and Sacramento.
- (e) U.S. Highway 99 between Sacramento and Fresno.
- (f) California Highway 29 between Napa and Vallejo.
- (g) Interstate Highway 680 between Dublin and Vallejo.
- (h) California Highway 24 between Oakland and Walnut Creek.
- (i) State Highway 4 between Pinole and Stockton.
- (j) State Highway 160 between Sacramento and its junction with California Highway 4.

Issued by California Public Utilities Commission.

Decision No. 74155, Application No. 48416.

Decision No. 74155,  
Application No. 48416

PETER E. MITCHELL, COMMISSIONER, DISSENTING:

The requirements for a Certificate of Public Convenience and Necessity to operate as a highway common carrier have been temporarily annulled by this decision. Authorization has been granted the applicant to extend his certificated operations albeit with one shipper and one commodity.

This Commission and the Supreme Court have zealously emphasized that one indispensable characteristic of a highway common carrier is a dedication of service to the public<sup>1/</sup>. The applicant presented only his own testimony and his one shipper-one commodity in support of dedication.

True, the distinction between types of highway carriers has not been completely free from uncertainty. Nonetheless, the instant decision merely serves to obfuscate it even more.

I would adopt the original decision signed by four Commissioners denying the application<sup>2/</sup>.



Peter E. Mitchell, President

San Francisco, California  
May 22, 1968

1/ Cf. Even the latest Supreme Court Decision - Greyhound Lines, Inc. v. Public Utilities Commission SF22561.

2/ Decision No. 72647, Application No. 48416; signed June 27, 1967.