

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.

Eorus 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.

ORDER AMENDING DECISION ON REHEARING
AND DENYING REHEARING OR RECONSIDERATION

The Commission has considered the petition of protestants for rehearing or reconsideration of Decision No. 74155.

It appears that certain corrections should be made therein. For the sake of clarity, the opinion in Decision No. 74155 is amended to read as follows:

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^{1/} 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 certifi-

1/ 58 Cal. P.U.C. 407.

cate 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 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.

Among the issues considered by the Commission to be material in applications to extend highway common carrier operations are the following: Applicant's past operations, experience and responsibility as a highway common carrier, and in this instance, as a certificated carrier in interstate commerce; adequacy of financial resources, facilities, equipment and personnel to render the proposed extension of service and willingness to offer such extended service to the public; public need for the extended service and impact, if any, of a grant of a certificate of such extension upon existing carriers.

After consideration the Commission finds that:

1. Applicant's past operations as a highway common carrier and as a certificated highway carrier in interstate commerce evidence adequate experience and responsibility to conduct the proposed extension of service.

2. Applicant has adequate financial resources, facilities, equipment and personnel to render the proposed extension of service.

3. Applicant is willing to offer service to the public as a highway common carrier in the sought territory, in which he has previously served as a permitted carrier.

4. There is some evidence of public need for the proposed service.

5. 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.

6. 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.

7. 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. Applicant's interstate rights go beyond the San Francisco commercial zone.

8. It is unreasonable that applicant should lose a valuable interstate right or his intrastate highway common carrier right to transport liquor and related commodities by giving up his

certificates to transport such commodities and to confine himself to a highway contract carrier's operation.

9. Unless applicant gives up such valuable rights he cannot serve his principal account, whose business has extended beyond the range of applicant's intrastate certificate without imposing additional charges upon said shipper which would not be required if the certificate were to be granted, unless he interlines with another common carrier; that interlining would cause undue delays in deliveries.

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

IT IS ORDERED that:

1. Appendix A of Decision No. 62518, dated September 5, 1961, in Application No. 42980, is hereby amended by incorporating therein Original Page 3 attached hereto and by reference made a part hereof.

2. Within one hundred twenty days after the effective date of the order in Decision No. 74155, which was June 10, 1968, applicant shall establish the service herein authorized and on not less than ten days' notice to the Commission and to the public shall amend his tariffs presently on file with this Commission to reflect the authority herein granted.

3. The petition of protestants for rehearing or reconsideration of Decision No. 74155 as amended herein is denied.

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

Dated at San Francisco, California, this 16th day of JULY, 1968.

William L. Berritt
President
Richard P. Morassey
Commissioners

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

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.