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Decision No. 75059

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations and
practices of AUTO FAST FREIGHT, INC. }

Case No. 8783
(Filed April 9, 1968)

Murchison, Stebbins & Davis by Donald Murchison,
for respondent.
S. M. Boikan, Counsel, and E. H. Hjelt, for the
Commission staff.

O P I N I O N

By its order dated April 9, 1968, the Commission instituted an investigation into the operations and practices of Auto Fast Freight, Inc. for the purpose of determining whether respondent has operated or is operating as a highway common carrier between fixed termini or over a regular route between Los Angeles and Barstow without first having obtained a certificate of public convenience and necessity pursuant to Section 1063 of the Public Utilities Code authorizing such operations.

A public hearing was held before Examiner O'Leary at San Bernardino on September 4 and 5, 1968. The matter was submitted on the latter date.

Respondent presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 33-1675, Highway Contract Carrier Permit No. 33-1676 and a certificate of public convenience and necessity authorizing operations as a highway common carrier pursuant to Decision No. 71674 as amended by Decision No. 71703. The certificate of public convenience and necessity does not authorize operations between Los Angeles and Barstow. Respondent maintains terminals in Los Angeles and San Bernardino. It employs one bookkeeper, two clerks,

twenty-four drivers and one mechanic. It operates four tractors, nineteen bobtail van trucks, two pickup trucks and ten trailers. Its gross revenue for the four quarters ending June 30, 1968 was \$506,492.

On April 19, 20 and May 4, 1967 a representative of the Commission's Compliance and Enforcement Branch visited respondent's place of business and made a study of respondent's operations to the upper desert region points of Victorville and Barstow. Based on the study the staff contends that respondent is performing operations as a highway common carrier between Los Angeles and Barstow without first having obtained a certificate of public convenience and necessity authorizing such operations. Exhibit 4 is a tabulation of the number of shipments transported and the number of accounts served between Los Angeles and Barstow for the following one week periods: Period I February 20, 1967 to February 24, 1967, Period II March 13, 1967 to March 17, 1967 and Period III April 3, 1967 to April 7, 1967. The exhibit discloses that during the three periods respondent operated between Los Angeles and Barstow on 14 of the 15 days and transported a total of 68 shipments for 31 accounts. The representative testified that the 31 accounts shown on Exhibit 4 are the parties who paid the freight charges for the 68 shipments. Exhibit 3 is a list of the contracts which the president of the respondent claimed to be in effect at the time the representative made his study. The representative further testified that the information as to who paid the freight was obtained from an interview with respondent's president. The representative also testified that the 31 accounts were not included on the list of contracts contained in Exhibit 3.

Exhibits 5, 6 and 7 contain the underlying freight bills from which Exhibit 4 was compiled. The president of respondent testified as to which party engaged respondent's services on all but three of the

shipments covered by the documents contained in Exhibits 5, 6 and 7. There were a total of 20 parties who engaged the carrier's services. He further testified that respondent had written contracts with three of the parties and oral contracts with the remaining 17 parties. Four of the 17 oral contracts were subsequently reduced to writing after the staff investigation. Eight of the parties with whom respondent had an oral contract would not agree to a reduction of the oral contract to writing and respondent is no longer serving said accounts. Three of the parties with whom respondent had an oral contract are still being served pursuant to the oral contracts. The record in this proceeding does not indicate whether or not the other two accounts served pursuant to an oral contract are presently being served or not. Only one of the accounts with whom contracts are claimed appears in Exhibit 3. Respondent's president explained that two of the written contracts were entered into in 1963 when the business was being operated as a partnership and he failed to furnish the staff representative with them because he could not locate them at the time of the investigation. There was no explanation offered as to why he did not furnish the staff representative with the names of the accounts with whom respondent had oral contracts.

The president of respondent also testified that his company does not advertise for or solicit business to Barstow. He further testified that when a shipper first contacts respondent for service to Barstow they are advised they can only be served pursuant to a written or oral contract. If the shipper will not enter into a contract respondent refuses to provide the service requested.

The Supreme Court has held in various decisions that the common law test of common carriage is applicable in California, and that the determination of a carrier's status involves the question of whether the carrier intended to unequivocally dedicate his property to the public use.^{1/}

Based on the evidence adduced, the Commission finds that it has not been shown that Auto Fast Freight, Inc. is operating or has operated as a highway common carrier between Los Angeles and Barstow and concludes that the investigation should be dismissed.

1/ Samuelson v. Public Utilities Commission, 35 C. 2d 722
Souza v. Public Utilities Commission, 37 C. 2d 539
Alves v. Public Utilities Commission, 41 C. 2d 344
Nolan v. Public Utilities Commission, 41 C. 2d 392
Talsky v. Public Utilities Commission, 56 C. 2d 151

O R D E R

IT IS ORDERED that Case No. 8783 is hereby dismissed.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondent.

The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 10th day of DECEMBER, 1968.

William Symons, Jr.
President

August

Fred P. Morasse
Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.