

ORIGINAL

Decision No. 78599

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
motion into the operations and prac-)
tices of Joseph N. Le Bow, doing busi-)
ness as Desert Empire Express.)

Case No. 9116

Murchison & Davis, by Donald Murchison, Attorney
at Law, for respondent.
Elmer Sjostrom, Attorney at Law, and E. E. Cahoon,
for the Commission staff.

INTERIM OPINION

By its order dated September 15, 1970, the Commission instituted an investigation into the operations and practices of Joseph N. Le Bow, doing business as Desert Empire Express.

Public hearing was held before Examiner Porter on December 9, 1970.

The issue presented is whether Joseph N. Le Bow, doing business as Desert Empire Express, is operating as a highway common carrier in California without proper authority.

The points involved are between Los Angeles, on the one hand, and San Diego, Escondido and Santa Barbara, on the other hand, and Culver City and Vernon, on the one hand, and San Diego, on the other hand.

The Commission records show that respondent has a radial highway common carrier permit, a highway contract carrier permit and a highway common carrier certificate.

The staff presented evidence of carrier's operations covering a five-day period in February 1970, two five-day periods

in March 1970 and a five-day period in April 1970. This evidence reveals that the carrier transported shipments with daily or regular frequency between Los Angeles, on the one hand, and San Diego, Escondido and Santa Barbara, on the other hand, and Culver City and Vernon, on the one hand, and San Diego, on the other hand. These routes are not within the carrier's certificated authority. This evidence was not disputed by the carrier.

The carrier presented evidence that he provided refrigeration service for selected shippers and that he considered this carriage within his contract permit; while the agreements with shippers are oral he considers them binding upon himself and the shipper. No shippers testified; nor has there been any litigation involving the carrier or shipper regarding the validity of these alleged oral contracts.

Discussion

While the Commission staff contends that there is sufficient evidence to find that the carriage in question is beyond the scope of respondent's certificated authority and also is not contract carriage, and the Commission so finds, it would not be in the public interest at this time to order the carrier to cease and desist. Rather we will require in the ensuing interim order that the carrier review its current operations in order that he may take appropriate action to assure that all his operations are in conformity with statutory requirements and Commission regulations.

INTERIM ORDER

IT IS ORDERED that respondent shall review his operations and shall, within a period of one hundred twenty days after the

effective date of this order, either file a report setting forth the action taken to curtail his operations to conform with existing authority or make appropriate filing to seek additional authority for his operations. A cease and desist order shall issue if respondent fails to so act.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Joseph N. Le Bow. The effective date of this order shall be twenty days after the completion of such service.

Dated at Los Angeles, California, this 27th day of APRIL, 1971.

Chairman
William S. ...

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Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.