

Decision No. 82570**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Folger Athearn, Jr. dba
ATHEARN & COMPANY,

Complainant,

vs.

Case No. 9650

Alltrans Express California, Inc.,
et al,

Defendants.

PRELIMINARY ORDER

Complainant is a freight transportation consultant. He has filed a complaint against nineteen carriers regulated by this Commission. Generally speaking, the burden of his complaint is overcharges alleged against these carriers relating to various acts of transportation for various shippers.

Service of the complaint by the Commission was made on the defendants pursuant to the Commission's Rules of Practice and Procedure. Letters from defendants pointing out defects in the complaint as it relates to the individual defendants have been received.

By a pleading entitled "REPLY TO DEFENDANTS' ANSWERS AND REQUESTS FOR DISMISSAL", dated February 13, 1974, complainant requests dismissal of its complaint insofar as it relates to defendants Peters Truck Lines and Smiser Freight Service. This request will be granted.

The Secretary shall cause formal service of the complaint to be made on the remaining defendants. Answers to the complaint shall be filed within ten days of the date of service.

The Commission takes note of the joinder of many unrelated defendants into one complaint concerning allegations of overcharges for unrelated shippers and unrelated commodities. Based on the pleadings it would appear that the only common factor in this matter is the employment of complainant as traffic consultant to the shippers concerned.

The Commission takes note of Public Utilities Code §1703, which states:

"All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of causes of action or grievances or misjoinder or nonjoinder of parties. In any review by the courts of orders or decisions of the commission the same rule shall apply with regard to the joinder of causes and parties as herein provided. The commission shall not be required to dismiss any complaint because of the absence of direct damage to the complainant."

We are also aware of the administrative burden caused by the joinder of the diverse contentions of complainant against equally diverse defendants. This course of action has already delayed processing the complaint, and without doubt will further lengthen the time it would otherwise have taken to reach a decision on the issues herein.

The assigned examiner in this matter may find it helpful in sorting out the issues to hold separate hearings for each defendant. He may also be of the opinion that it would be an unfair burden on individual defendants to require them to be in attendance at each day of hearing despite the fact that neither that individual defendant nor issues related to his case would be raised. The assigned examiner is specifically authorized to make such scheduling as he deems will best serve the clarity of the record and fairness to the parties.

IT IS ORDERED that:

1. Peters Truck Lines and Smiser Freight Service are hereby dismissed as defendants in this proceeding.

2. The remaining defendants shall answer the complaint within ten days of service of the complaint.

The Secretary is directed to serve a copy of this order on complainant and all defendants named in the original complaint, and is further directed to contemporaneously serve a copy of the complaint on all defendants not dismissed by this order.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 12th
day of MARCH, 1974.

Vernon L. Sturgeon
President
William J. Moran, Jr.
[Signature]
[Signature]
Commissioners

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.