

Decision S2 GS 641

SEP 8 - 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ADAMS DELIVERY SERVICE, INC.,)

Complainant,)

vs.)

LAWLOR MOTOR EXPRESS, INC.)

DI SALVO TRUCKING CO.,)

Defendants.)

Case 11005
(Filed July 8, 1981)

Dunne, Phelps, Mills, Smith & Jackson, by
Marshall G. Berol, Attorney at Law, for
Adams Delivery Service, Inc., complainant.
Silver, Rosen, Fischer & Stecher, by Michael
J. Stecher and Ellis Ross Anderson,
Attorneys at Law, for Lawlor Motor
Express, Inc. and Di Salvo Trucking Co.,
defendants.

Patricia A. Bennett, Attorney at Law, for
the Commission staff.

O P I N I O N

In this complaint, Adams Delivery Service, Inc. (Adams) alleges that defendants Lawlor Motor Express, Inc. (Lawlor) and Di Salvo Trucking Co. (Di Salvo) are affiliated alter ego carriers; that Lawlor and Di Salvo operate statewide as highway common carriers; that Lawlor and Di Salvo publish and maintain separate tariffs applicable to the same commodities; that different rate levels for the same commodities are maintained by Lawlor and Di Salvo in their respective tariffs; and that maintenance of different rate levels by alter ego

carriers, such as Lawlor and Di Salvo, results in unlawful discrimination prohibited by Public Utilities (PU) Code Sections 453(a), 451, and 532.

In their answers to the complaint, Lawlor and Di Salvo admit that the common stock of each is wholly owned by R. W. L. Investments, Inc. (R.W.L.); that Lawlor and Di Salvo have common directors and officers; that Lawlor and Di Salvo maintain separate tariffs which contain different rates on the same commodities; and that each is a public utility as defined in the PU Code, subject to regulation by the Commission. Lawlor and Di Salvo deny other material allegations of the complaint.

Public hearing was held before ALJ Mallory in San Francisco on January 25, 28, and 29, 1982. The matter was submitted upon the receipt of complainant's closing brief on April 6, 1982. Evidence was presented on behalf of complainant, defendants, and the Commission staff.

Background

Cal Top Cooperative, Inc. (Cal Top) is a shippers' association which consolidates small shipments of its members. As is pertinent here, the consolidated shipments are transported in line-haul service from the metropolitan Los Angeles area to the metropolitan San Francisco Bay Area by Di Salvo. Formerly the consolidated shipments were delivered to Adams for subsequent distribution of components to Bay Area receivers. The service formerly performed by Adams was transferred to Lawlor (doing business as Package Delivery Express or PDX).

The rate reduction filing of PDX, under which the distribution service was to be performed, was challenged by Adams. The Commission issued Order Instituting Investigation (OII) 92 to determine whether the rate reduction filing complied with its motor carrier rate reregulation program enunciated in Decision (D.) 90663 (1979) 2 CPUC 2d 249. Concurrently, Adams filed Case (C.) 11005. D.93521 in OII 92 found that PDX's amended tariff filing met the criteria for competitive rate filings ✓

established in D.90663. D.93521 dismissed OII 92 and ordered that the issues raised in C.11005 be decided in that proceeding.

Adams' Contentions in C.11005

Adams alleges in the complaint that:

1. Because Di Salvo and PDX have common ownership, management, personnel, and equipment, they should be considered as a single carrier for regulatory purposes.
2. As single carrier, PDX and Di Salvo may not lawfully publish and maintain different levels of rates for the same services; and Di Salvo and Lawlor should be required to maintain a common level of rates.
3. The maintenance of separate tariffs by Di Salvo and PDX which contain different rate levels for the same services allows opportunities for unlawful discrimination and preference and prejudice.
4. The joint actions of Di Salvo and PDX under which Cal Top distribution services formerly provided by Adams were acquired by PDX resulted in unfair and predatory practices which have detrimentally affected Adams.

Adams seeks the following remedies:

1. Cancellation of PDX's tariff under which it performs local distribution of Cal Top shipments in northern California.
2. Di Salvo and PDX be required to maintain identical rates and rules for like transportation service so that the opportunity for unlawful discrimination or preference and prejudice will be removed.
3. Collection of any undercharges which may have occurred since the institution of PDX's distribution service.

4. Assessment of appropriate penalties against Di Salvo and PDX for violation of Commission rules.

Complainant's Evidence

Randy Marnell, Adams' president, and Edward J. Marnell, an employee of Adams, testified on Adams' behalf.

Adams' president explained the nature of Adams' service, and Edward Marnell testified concerning the history of distribution services performed for Cal Top.

Adams specializes in the transportation of drugs and sundries in northern California, both the local distribution of consolidated shipments originating in southern California and transported from origin to Adams' dock in Hayward by another carrier, and local pickup and delivery (PUD) service. Adams performed inbound distribution service and local PUD service for Cal Top and Cal Top members for many years as a radial highway common (permit) carrier under a rate deviation authorized by this Commission. Adams used 12-or 14-foot step vans to perform the service, which essentially is a package delivery service.

Cal Top's inbound distribution shipments were unloaded at Adams' terminal from the linchaul carrier's equipment and were broken out for delivery by Adams. Shipments receiving local PUD service were handled in the same equipment as Cal Top components. Di Salvo performed the transportation of Cal Top's inbound shipments from Los Angeles to Adams' dock. ✓

On May 10, 1981 PDX began service under its package delivery tariff. PDX performs both inbound distribution service and local PUD service of drugs and sundries for Cal Top and Cal Top members formerly served by Adams. Cal Top consolidated shipments originating in southern California are transported by Di Salvo to PDX's dock in San Leandro. PDX performs inbound distribution of Cal Top shipments and local PUD

service for Cal Top members in a similar manner as Adams. Di Salvo assesses a linehaul charge based on the combined weight of all Cal Top components in the inbound shipment. PDX assesses its package charge for each component delivered.

Adams contends that the pool shipment distribution charges in Di Salvo's tariff, which are higher than PDX's package rates, should be assessed for the PDX's services of delivering Cal Top components, under Adams' theory that Di Salvo and PDX are a single carrier for regulatory purposes.

Evidence of Defendants

Evidence on behalf of defendants was presented by Charles J. Lawlor, president of Di Salvo and Lawlor/PDX; H. George Katterfield, general manager of Cal Top; James A. Jacob, president of Leonis Distributing Company and president of Cal Top; Henry G. Supka, western regional transportation manager of Lederle Laboratories Division of American Cyanamid Company; and William P. Fleischman, an employee of Bergen Brunswick Corporation.

Lawlor explained the differences between the Di Salvo and PDX operations. Di Salvo is a large intrastate carrier of less than truck-load (LTL) freight. It operates 13 terminals throughout the State and serves the public generally. Di Salvo operates conventional bobtail trucks for pickup and delivery service, and its linehaul equipment consists of tractor-semitrailer units. In its freight operations, Di Salvo generally makes deliveries to manufacturers and wholesalers; it infrequently delivers to retail establishments. In contrast, PDX specializes in the handling of parcels and small shipments. It uses step van equipment and uniformed drivers to perform its delivery service. PDX's motor equipment and terminals are specially designed for parcel operations, and it cannot efficiently or effectively handle larger shipments.

Concerning operations for Cal Top, Lawlor testified that Di Salvo has transported linehaul shipments from Bell (Cal Top's consolidation point) to northern California points since 1978. Split delivery shipments are tendered, which may include some components delivered directly to the ultimate receiver, and other components for delivery to Adams or PDX. The components delivered by Di Salvo to Adams or PDX are composite shipments containing many components for ultimate delivery by Adams or PDX to many receivers. All consolidations are made by Cal Top and delivery instructions are furnished to Adams or PDX on how the component parts of the consolidated shipments are to be delivered to ultimate destination.

Lawlor testified that Cal Top is a large shipper, and its business is important to Di Salvo. Lawlor received many complaints concerning Adams' service for Cal Top. Some members of Cal Top quit using Cal Top's service and shipped direct to destination by UPS or other common carriers. Because Lawlor was fearful that further diversion of Cal Top members to other carriers may cause the loss of all of Cal Top's business, Lawlor organized PDX to replace Adams' service. Cal Top members agreed to transfer distribution services to PDX from Adams.

To support defendants' contentions concerning the inadequacy of Adams' service for Cal Top, and the possibility of the loss of Cal Top's business by Di Salvo because of the asserted inadequacy of Adams' operations, defendants presented several witnesses associated with Cal Top or its members.

George Katterfield, general manager of Cal Top, testified that Cal Top is an association of shippers of drugs and sundries organized to consolidate the freight of its members in order to receive lower transportation charges. Cal Top initially was formed to improve service on shipments from the Los Angeles Basin to the San Francisco Bay Area.

Initially, a subsidiary of Adams, Northern California Express (NCX), performed local pickup and consolidation of services within the Los Angeles area, the linehaul service was performed by Viking Freight Service from the Los Angeles area to Adams' dock, and Adams performed the local distribution in northern California. In 1978, Cal Top switched to Di Salvo. Cal Top has used Di Salvo since that time except during a strike period.

Katterfield, at various times, visited Adams' San Leandro terminal with Cal Top members to inspect the facilities. He found the terminal to be in disarray.

Exhibits 19, 20, and 21 introduced by Katterfield are lists of Cal Top members that discontinued use of Adams' services. Exhibit 19 lists six members that switched from Adams to West-Pak in the period August 1978 through May 1979. Exhibit 20 lists 12 members that discontinued use of Adams prior to the establishment of PDX in the period November 1977 through April 1981. Exhibit 21 contains several letters from members to Katterfield concerning their problems with Adams' service.

The testimony of Henry G. Supka of Lederle Laboratories, and William Fleischman of Bergen Brunswig Corporation describes problems those members of Cal Top have had with services provided by Adams.

According to Lawlor, PDX was organized to provide the same services for Cal Top that were performed by Adams in order to retain Cal Top business to Di Salvo. Katterfield confirmed that Cal Top transferred its northern California distribution services from Adams to PDX because Cal Top was dissatisfied with Adams' services.

Testimony of Commission Staff

Evidence was presented on behalf of the Commission staff by John Montanaro, an associate transportation representative employed in the Oakland District Office of the Transportation Division's Compliance and Enforcement Branch, and by Gordon McColl, a senior transportation rate expert in the Compliance and Enforcement Branch.

Montanaro conducted an investigation of PDX on October 26, 27, and 28, 1981 at its terminal in Hayward. The purpose of the investigation was to determine whether PDX was complying with the provisions of its tariffs Cal PUC 2 and 3. Montanaro made an audit of the Cal Top account for two separate week periods; the week of June 15 through 19, 1981, and the week of October 23 through 27, 1981. Montanaro furnished the information he gathered to the Rate Analysis Unit for rating.

McColl rerated the bills furnished by Montanaro. The results of the audit and rerating are set forth in Exhibit 16. That exhibit shows that for the June week period, PDX misapplied its tariff Cal PUC 2, resulting in both undercharges and overcharges. The audit showed PDX correctly applied its tariff Cal PUC to shipments handled during the October week period.

Lawlor testified that PDX agreed with the staff's reratings and had collected all undercharges and refunded all overcharges shown in Exhibit 16.

The Issues

Complainant alleges in its briefs that:

1. Lawlor and Di Salvo are commonly owned and controlled, and are affiliated, alter ego carriers.
2. Lawlor has different tariffs on file which have different rates, rules, and regulations in violation of the law.
3. Lawlor and Di Salvo have tariffs on file with different rates and rules in violation of the law.
4. Lawlor has incorrectly applied its tariff provisions to the transportation it has performed.
5. Lawlor has violated the provisions of General Order (GO) 80-A by operating under a fictitious name not reflected in its tariffs. (An issue in OII 92.)

6. Adams has been seriously and adversely affected by the Lawlor and Di Salvo operation.

Complainant's opening brief states that the Commission should require:

1. The cancellation of PDX's Package Tariff No. 3 (Cal PUC 3);
2. That Lawlor/PDX and Di Salvo maintain and apply the same rates, rules, and regulations as the other in any tariff or tariffs that each has on file with the Commission;
3. That the pool shipment charges be assessed and that those and any other undercharges be ordered to be collected by PDX and/or Di Salvo;
4. That the use of an affiliated carrier be discontinued by Di Salvo for the delivery of the inbound destination traffic;
5. That appropriate penalties be applied against PDX and Di Salvo;
6. That PDX and Di Salvo be required to operate in conformity with the laws of California and the Commission's rules and regulations; and
7. For such other or further order as may be proper in the circumstances.

Harm to Adams From PDX's Actions

It is clear that PDX has replaced Adams for the handling of Cal Top's business in northern California and that such business loss was harmful to Adams. However, the record does not support a conclusion that Lawlor (PDX) or Di Salvo acquired the Cal Top inbound distribution and local PUD account in an unlawful or unethical manner. ✓

The record discloses that Cal Top and its members were dissatisfied with Adams' service. Some members had switched to UPS or other carriers before PDX began operations competitive with Adams. It can reasonably be inferred from the record that, because of poor service by Adams, if the relief requested by Adams is granted, the Cal Top

account would not revert to Adams but would be retained by PDX or would move to another carrier. We find that poor service by Adams, rather than rate levels, is the reason that Cal Top replaced Adams with PDX.

As the proximate cause for Adams' loss of the Cal Top account was its poor service rather than the rates proposed by PDX, we find that any harm to Adams resulting from loss of the Cal Top account did not stem directly from any action of PDX or Di Salvo.

The package rates proposed to be assessed by PDX on drugs and sundries for inbound distribution and local PUD services were reviewed in OII 92. D.93521 in OII 92 found the proposed rates complied with the criteria established in D.90663 (1979) 2 CPUC 2d 249, in which the Commission set forth its reregulation plan under which carrier-made rates supplant Commission-made minimum rates. Where the Commission has already decided against complainant on the same issues, complainant is bound by that decision and cannot relitigate those issues. (Scott Transp. Co. (1957) 56 CPUC 1, 5; Foothill Ditch Co. v Wallace Ranch Water Co. (1938) 25 CA 2d 555; Easy Construction Co. v SCE (1978) 84 CPUC 48.) We will not relitigate issues decided in D.93521 in OII 92.

Affiliation of Di Salvo and PDX

Di Salvo and Lawlor (PDX) admit that they are affiliated highway common carriers in that each corporation is a wholly owned subsidiary of R.W.L., and the directors and officers of the three corporations are the same.

Di Salvo operates under a certificate issued to it under Section 1063 of the PU Code in D.89142 dated July 25, 1978 in Application (A.) 57875. Di Salvo's certificate authorizes the transportation of general commodities (with the usual restrictions) between San Francisco territory, Sacramento, and Petaluma, on the one hand, and Los Angeles Basin territory and San Ysidro, on the other hand. Lawlor was granted a

certificate issued under Section 1063.5 of the PU Code, on January 31, 1980, in A.GC-3095 (T-71559). This certificate superseded the permitted highway carrier authority formerly held by Lawlor and is statewide in scope. Condition 2 of Lawlor's certificate provides:

"(2) To the extent that this certificate duplicates in whole or part, any other certificate authority held by the carrier or granted in the future, such operative rights may not be separated to allow the sale or transfer of one or more such duplicating rights or portion thereof and the retention of another certificated right to perform the same service."

It may be noted that this condition does not proscribe duplicative highway common carrier authorities held by a single carrier; the condition only provides that such authorities may not be separated to create more than one authority in the event of sale or transfer.^{1/}

Complainant cites Delta Lines, Inc. to acquire Alltrans Express California, Inc. (1974) 77 CPUC 240, at 248, in which we state that when duplicate operating authorities are held by the same person, they merge by operation of law and become one. We interpret this language to mean that a single carrier entity may not perform the same services under duplicative highway common carrier authorities. We make this differentiation because we have permitted Delta California Industries, a holding company, to maintain separate highway common carrier operative rights in the names of Delta Lines, Inc. (Delta) and California Motor Transport (CMT). The officers and directors of Delta and CMT are the same.

^{1/} This is a long-standing policy of the Commission. (See Penguin Trucking Co., Inc. (1974) 77 CPUC 274, in which we state that public policy does not favor the splitting or dividing of an operative right by sale or lease.)

Our principal reason in piercing the corporate veil to determine the ownership and control of motor carriers is to prevent discrimination that may result from the actions of affiliated corporations. We long have held that a single carrier entity cannot operate as a highway permit carrier (radial highway common carrier) and as a highway common carrier of the same commodities between the same points.^{2/} (See People v Geijsbeck (1957) 153 CA 2d 300 and Direct Delivery System, Ltd. (1954) 53 CPUC 761.) The discrimination made possible through such affiliation was that the permit carrier could offer preferred shippers a lower rate (often an alternatively applied rail rate) than the rate published and available to all shippers in the common carrier's tariff. (Direct Delivery System (supra). This form of discrimination is not possible when the affiliated entities are both highway common carriers, as common carriers must serve the public at the rates published in their tariffs and available to all shippers.

Adams must bear the burden of proof to show that the actions of Di Salvo and PDX, through their common ownership and affiliation, are unlawful. The mere showing of a common ownership and affiliation does not create a presumption of unlawful operations.

^{2/} Former PU Code Section 3542 provided that no corporation shall engage in transportation of property both as a highway common carrier and as a highway contract carrier between the same points. That section was repealed in 1981.

Different Rate Levels

Complainant and defendants agree that different rate levels are published and maintained by Lawlor (PDX) and Di Salvo for the same commodities. Defendants assert that PDX's rates are different from Di Salvo's because each carrier performs a different service and operates in a different manner. Defendants produced evidence to show that PDX's operations are limited to the handling of packages and small shipments, using van-type equipment; while Di Salvo handles the full range of general commodity traffic from packages to full truckloads, using 3-axle bobtail PUD equipment and tractor-trailer linehaul equipment.

With respect to the Cal Top account, Di Salvo physically could provide the full service from origin to final destination. However, the freight charges probably would greatly exceed those resulting from the manner in which the Cal Top shipments actually move. Under Di Salvo's tariff each component would have to be rated as a separate shipment from origin to destination, or as a part of a split-delivery shipment. The actual method of billing, under which Cal Top is assessed a linehaul rate on the combined weight of the components transported by Di Salvo from the metropolitan Los Angeles area to PDX's dock in San Leandro and a separate delivery charge for each component handled by PDX for delivery to final destination, produces lower total charges. As pointed out by defendants, no discrimination results from this method of rate assessment as any shipper can avail itself of that same service under the carriers' published tariffs. The record indicates that shippers other than Cal Top have made inquiries to PDX for such service.

Adams contends that the higher rates provided in Di Salvo's tariff must be applied to the through movement (Adams refers to pool shipment charges). No reason was made to appear why such rates should be applied. It is axiomatic that common carrier tariffs must be applied so that the lowest rate(s) or combination of rates determined under the applicable common carrier tariffs are assessed.

Staff Review of PDX Billings

The Commission staff review of PDX's billings found several instances of incorrect freight charges during the initial period of PDX's package operations. The under- and overcollections shown in the staff exhibit were corrected by PDX.

The staff did not contend, as does Adams, that the Di Salvo tariffs must be applied for the total movement. In rating the components delivered by PDX in the manner shown in its exhibit, the staff concluded that it was not improper to separately rate the services performed by Di Salvo under its tariffs, and to rate the services performed by PDX under its tariffs.

As PDX has revised its billing to correctly reflect the rates and charges in its tariffs, no directive to PDX or penalty is warranted.

Additional Discussion

As pointed out under the preceding headings, Adams has not borne the burden of proof of showing that the joint operations conducted by Di Salvo and PDX and the rates assessed by those carriers for such operations are unlawful. This proceeding and the related proceedings initiated by Adams concern the loss of the Cal Top account by Adams. The record in this proceeding clearly shows that Adams lost that account because its service was unsatisfactory to Cal Top members and that Adams would not regain that account regardless of the outcome of this proceeding.

Adams implies in its evidence and argument that Di Salvo/PDX operations are unfair or predatory. This has not been shown. It is pertinent to point out here that one of the purposes of the Commission's reregulation program announced in D.90663 (supra) is to stimulate rate competition between motor carriers. It is not unlawful, per se, for common carriers to propose and assess rates below the levels maintained

by competing carriers, if such lower rates are justified by costs and operating conditions. We found in D.93521 in OII 92, that PDX's reduced rates for drugs and sundries were lawful. The services for Cal Top performed jointly by Di Salvo and PDX are substantially the same as those formerly conducted jointly by Di Salvo and Adams. No discrimination was shown to result from the joint Di Salvo/PDX operations for Cal Top or from the rates assessed for that operation. The mere fact that Di Salvo and PDX are affiliated does not create a prima facie showing of unlawful operations.

The actions complained of have not been shown to be unlawful or contrary to Commission rules and orders. Therefore, the complaint should be denied. No relief is warranted.

Findings of Fact

1. Adams formerly performed an inbound distribution service and local PUD service for Cal Top and its members.
2. The inbound distribution service was part of a joint service in which Di Salvo moved consolidated shipments for Cal Top from Bell to Adams' dock in Hayward, and Adams delivered the separate components.
3. Cal Top became dissatisfied with Adams' service and transferred its inbound distribution service and the local PUD service of its members to PDX.
4. PDX was specifically organized by Lawlor to perform Cal Top's inbound distribution service and the local PUD service of Cal Top members.
5. Di Salvo and PDX now perform a service for Cal Top substantially in the same manner as the former service jointly performed by Di Salvo and Adams.
6. Di Salvo and Lawlor (PDX) are affiliated highway common carriers, in that each corporation is wholly owned by R.W.L., and the directors and officers of the three corporations are the same.

7. Adams has not shown that PDX's actions in acquiring the Cal Top account were unfair or predatory.

8. As highway common carriers, Di Salvo and Lawlor (PDX) publish and maintain separate tariffs applicable to the same commodities.

9. Di Salvo's operations differ from PDX's operations in that PDX engages in and is equipped to perform the transportation of packages and shipments of 500 pounds or less, while Di Salvo performs a full range of transportation services. Their tariffs reflect these operating differences.

10. No undue or unlawful discrimination results from the publication and maintenance of different tariffs and rates by Di Salvo and PDX.

11. PDX's Tariffs 2 and 3 were subject to investigation in OII 92, and the package rates and rules in those tariffs were found in D.93521 to be in conformance with the Commission's rules and orders.

12. The staff exhibit in this proceeding showed several instances where PDX had misapplied rates in its Tariff 2. PDX has corrected such billing errors. The errors were not shown to be intentional.

13. No discrimination has been shown to result from the joint Di Salvo/PDX operations for Cal Top and its members or the rates assessed for those operations.

14. It is a long-established rule of tariff application that the lowest rate or combination of rates provided in common carrier tariffs must be applied to a transportation service (Transmix Corp. v Southern Pacific Co. (1960) 187 CA 2d 257.)

Conclusions of Law

1. Complainant is bound by D.93521 in OII 92 and may not relitigate the same issues in this proceeding.

2. The mere showing of common ownership and affiliation of two highway common carriers does not create a presumption of unlawful operations.

3. The actions complained of have not been shown to result in undue or unlawful discrimination, nor have those actions been shown to be in violation of or contrary to Commission rules and orders.

4. No relief should be accorded and the complaint should be denied.

O R D E R

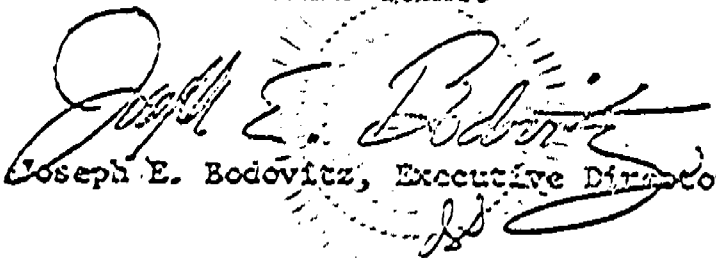
IT IS ORDERED that the complaint in Case 11005 is denied.
This order becomes effective 30 days from today.

Dated September 8, 1982, at San Francisco, California.

I will file a written concurrence.
/s/ RICHARD D. GRAVELLE
Commissioner

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovitz, Executive Director

RICHARD D. GRAVELLE, Commissioner, Concurring:

I concur. I write separately only to emphasize that I am persuaded, on the facts presented, that the reason Adams lost the Cal Top account is that Adams failed to provide service at a satisfactory level of quality, rather than an unfair rate structure maintained by Di Salvo and PDX. The reregulation program offered, and continues to offer, Adams a full opportunity to compete with PDX's rates. Although Adams apparently could not file a "me too" rate reduction because its terminal is not located in San Leandro, Adams could have filed a cost-justified rate reduction to attempt to meet PDX's rates. This it chose not to do, deciding instead to mount a legal attack on PDX's rates. Today we reject that attack. Our decision therefore underscores the premium we place on competition and efficiency in actual operations. Adams still has the opportunity to file a rate reduction to meet PDX's rates and to attempt to regain its lost business on that basis.


RICHARD D. GRAVELLE, Commissioner

San Francisco, California
~~August 13, 1982~~
September 8,

carriers, such as Lawlor and Di Salvo, results in unlawful discrimination prohibited by Public Utilities (PU) Code Sections 453(a), 451, and 532.

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3. That the pool shipment charges be assessed and that those and any other undercharges be ordered to be collected by PDX and/or Di Salvo;
4. That the use of an affiliated carrier be discontinued by Di Salvo for the delivery of the inbound destination traffic;
5. That appropriate penalties be applied against PDX and Di Salvo;
6. That PDX and Di Salvo be required to operate in conformity with the laws of California and the Commission's rules and regulations; and
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Harm to Adams From PDX's Actions

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Complainant cites Delta Lines, Inc. to acquire Alltrans Express California, Inc. (1974) 77 CPUC 240, at 248, in which we state that when duplicate operating authorities are held by the same person, they merge by operation of law and become one. We interpret this language to mean that a single carrier entity may not, *perform the same service under separate authority* hold duplicative highway common carrier ~~operative rights~~. We make this differentiation because we have permitted Delta California Industries, a holding company, to maintain separate highway common carrier operative rights in the names of Delta Lines, Inc. (Delta) and California Motor Transport (CMT). The officers and directors of Delta and CMT are the same.

^{1/} This is a long-standing policy of the Commission. (See Penguin Trucking Co., Inc. (1974) 77 CPUC 274, in which we state that public policy does not favor the splitting or dividing of an operative right by sale or lease.)

Our principal reason in piercing the corporate veil to determine the ownership and control of motor carriers is to prevent discrimination that may result from the actions of affiliated corporations. We long have held that a single carrier entity cannot operate as a highway permit carrier (radial highway common carrier) and as a highway common carrier of the same commodities between the same points.^{2/} (See People v Geijsbeek (1957) 153 CA 2d 300 and Direct Delivery System, Ltd. (1954) 53 CPUC 761.) The discrimination made possible through such affiliation was that the permit carrier could offer preferred shippers a lower rate (often an alternatively applied rail rate) than the rate published and available to all shippers in the common carrier's tariff. (Direct Delivery System (supra). This form of discrimination is not possible when the affiliated entities are both highway common carriers, as common carriers must serve the public at the rates published in their tariffs and available to all shippers.

Adams must bear the burden of proof to show that the actions of Di Salvo and PDX, through their common ownership and affiliation, are unlawful. The mere showing of a common ownership and affiliation does not create a presumption of unlawful operations.

^{2/} Former PU Code Section 3542 provided that no corporation shall engage in transportation of property both as a highway common carrier and as a highway contract carrier between the same points. That section was repealed in 1981.