

Decision No. 87977 OCT 12 1977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of )  
GERALD E. HAMILTON for authority to )  
control SECURITY TRANSPORTATION CO., )  
a corporation. )

Application No. 57088  
(Filed February 17, 1977)

Randall M. Faccinto, Attorney at Law, for  
Security Transportation Co., applicant.  
Michael S. Rubin, Attorney at Law, for  
Nery Hartschen and Clarence Chestnut,  
protestants.

OPINION ON REHEARING

By Decision No. 87202 dated April 12, 1977, Gerald E. Hamilton was authorized to control Security Transportation Co. (Security). On April 22, 1977 Nery E. Hartschen and Clarence Chestnut filed a petition for rehearing alleging that Security had terminated service in violation of Section 451 of the California Public Utilities Code. On June 1, 1977 the Commission by Decision No. 87428 granted rehearing.

A public hearing was held before Administrative Law Judge Daly on August 2, 1977, and the matter was submitted.

Security is a highway common carrier authorized to transport petroleum and petroleum products between all points and places in the state and general commodities, with certain exceptions, between points within an area extending from Sacramento on the north, to Hollister on the south. Security is also authorized to provide service as a permitted carrier.

Protestants are employees of Security who were temporarily laid off as of April 18, 1977.

The record indicates that prior to April 12, 1977 ninety percent of Security's carrier operations were performed for its parent company, California Cannery and Growers. By an agreement executed January 28, 1977, California Cannery and Growers agreed to sell all of the outstanding shares of common stock of Security, for a cash consideration of \$85,000, to Gerald E. Hamilton, a real estate broker doing business in Hollister, who had no prior experience in the transportation business, but allegedly intended to continue to employ the services of James Young, who was then managing the operations of Security.

According to the protestants, it was common knowledge among the employees of Security that the parent company intended to sell its interest in Security and that as early as January 1977 the officers of Security initiated and followed a program designed to discontinue operations, which included the refusal of traffic tendered and the laying off of drivers. Nery E. Hartschen testified that James Young resigned his position on or about February 28, 1977, because he was not given assurance that his services would be retained. She further testified that David Hamilton, who is the son of Gerald Hamilton, took over the management of Security during the week of April 11, 1977, and after assuring her and Clarence Chestnut that their services would be continued, returned on April 15, 1977, and informed both of them that they were to be laid off indefinitely.

Both protestants testified that the terminal was then closed and all operations have since been discontinued. The business representative of Teamsters Local 70 testified that the union has had numerous meetings with David Hamilton relating to grievances filed by Security employees.

David Hamilton, who is 22 years of age and is now vice president of Security, testified that although the company is ready

and willing to provide service, Security is not now conducting operations as a for-hire carrier. He testified that because of financial reasons operations were necessarily reduced and were recently discontinued completely because the lease on the company's terminal at First and Magnolia Streets in Oakland was canceled effective July 31, 1977. According to the witness, the company's trucks are presently in storage in San Jose, and he is actively looking for terminal space in Hollister, but the change of terminal locations is dependent upon the pending approval of Teamsters Local 70. He further testified that upon the establishment of a new terminal former employees of Security will be rehired as their services are required.

Protestants are presently engaged in employment disputes that will have to be resolved by the proper forum. The only issue this Commission can consider is that of abandonment.

It is understandable that when California Cannery and Growers commenced a proprietary operation, Security lost the major portion of its traffic and a program of retrenchment was necessary. A complete discontinuance of service is also understandable when Security lost its lease. Apparently Security's officers are now engaged in relocating in Hollister and a reasonable time will be required to do so.

After consideration the Commission finds that:

1. Security is presently authorized to provide service between various points within the state both as a certificated and a permitted carrier.

2. Recently Security's parent company, California Cannery and Growers commenced a proprietary operation and entered into an agreement to sell all of the outstanding stock in Security to Gerald E. Hamilton.

3. With the loss of the parent company's traffic, Security commenced a program of retrenchment that resulted in laying off drivers and office personnel including the protestants herein, Nery E. Hartschen and Clarence Chestnut.

4. Because of the cancellation of its terminal lease in Oakland, Security discontinued service and stored its operative equipment.

5. Security's officers are presently looking for suitable terminal space in Hollister, but pursuant to the provisions of a union agreement, approval by Teamsters Local 70 is required and is pending.

6. The record fails to demonstrate an unequivocal intent on the part of Security's officers to abandon operations.

7. A reasonable period should be provided for the relocation of Security's terminal from Oakland to Hollister.

8. Security is placed on notice that unless service is recommenced within six months after the effective date hereof, its operating authority will be revoked.

O R D E R

IT IS ORDERED that:

1. Decision No. 87202 dated April 12, 1977 is affirmed.
2. Security Transportation Co. shall recommence service within six months from the effective date hereof.

3. Security Transportation Co. shall file monthly reports with the Commission indicating the steps taken and the progress made toward the recommencement of service.

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

Dated at San Francisco, California, this 12<sup>th</sup> day of OCTOBER, 1977.

Robert Belmont  
President  
William Aguilar Jr.  
Verizon L. Sturgeon  
Richard D. Swallow  
Clair L. Smith  
Commissioners