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Decision No. 90158 APR 10 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of LEASEWAY TRANSPORTATION)
CORP., a Delaware corporation, and MAX)
BINSWANGER TRUCKING, a California)
corporation, for authority to control)
BALSER TRUCK CO., a California)
corporation, through purchase of its)
stock, pursuant to Sections 851-854)
of the Public Utilities Code.)

Application No. 58343
(Filed September 8, 1978)

ORDER OF DISMISSAL

The application of Leaseway Transportation Corp. (Leaseway), a Delaware corporation, Max Binswanger Trucking (Binswanger), a California corporation, and Balser Trucking Co. (Balser), a California corporation seeks the Commission's authority for Leaseway and Binswanger to control Balser through the purchase of stock, pursuant to Sections 851-854 of the Public Utilities Code.

Leaseway is a noncarrier holding and management company and Binswanger is one of the 11 Interstate Commerce Commission (ICC) regulated interstate carriers it controls. Binswanger has both ICC and California operating authority. Balser is a highway common carrier as defined by Section 213 of the Public Utilities Code and has both ICC and California operating authority.

Control of Balser would be obtained by Leaseway and Binswanger through the purchase by Binswanger of all the issued and outstanding stock of Balser.

In Decision No. 89702, dated November 28, 1978, in a similar proceeding, Application No. 58424, the Commission, upon the motion of the applicants, dismissed the application for lack of jurisdiction, after finding that "the applicant's assertion of the exclusive and plenary jurisdiction of the Interstate Commerce Commission in this matter is correct..."

The instant application is of the same character as Application No. 58424 in that it involves the acquisition of control of an ICC certificated highway carrier. Leaseway and Binswanger have on file and presently pending an application before the ICC for authority to acquire control of Balser through ownership of stock.

The jurisdiction of the ICC over such applications is set forth at 49 USCA §5(2)(a)(i), which provides in part:

"It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b) or paragraph (3) of this paragraph...for any carrier or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise..."

and at 49 USCA §5(12), which provides in part:

"The authority conferred by this section shall be exclusive and plenary, and any carrier or corporation participating in or resulting from any transaction approved by the Commission thereunder, shall have full power...to carry such transaction into effect and to own and operate any properties and exercise any control or franchises acquired through said transaction without invoking any approval under State authority..."

Accordingly, it is abundantly clear, as we have previously held in Decision No. 89702, that the Commission lacks jurisdiction to entertain such applications. The Commission concludes that the application should be dismissed.


At such time as the ICC issues its order approving the acquisition of control of Balser by Leaseway and Binswanger, the applicants herein shall file a copy of said order with this Commission.


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IT IS ORDERED that Application No. 58343 is hereby dismissed.


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


Dated at San Francisco, California, this 10th day of APRIL, 1979.



President








Commissioners