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**ORIGINAL**Decision No. 90609 JUL 31 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
of MILNE TRUCK LINES, INC., a  
corporation, for Interim Authority  
to lease and operate a portion of  
the operating authority of  
INTERFREIGHT CORPORATION, a  
corporation.

Application No. 58884  
(Filed May 22, 1979)

In the Matter of the Application  
of INTERFREIGHT CORPORATION, a  
corporation, to transfer to, and  
of MILNE TRUCK LINES, INC., a  
corporation, to acquire a portion  
of a Certificate of Public  
Convenience and Necessity to  
operate as a highway common  
carrier.

Application No. 58885  
(Filed May 22, 1979)

INTERIM OPINION

In Application No. 58885 Milne Truck Lines, Inc. (Milne), a corporation, requests authority to purchase a portion of the highway common carrier operating authority of Interfreight Corporation (Interfreight), a corporation, and in Application No. 58884 Milne requests ex parte authority to temporarily lease and operate the same portion of the operating authority pending final disposition of Application No. 58885. The certificate, a portion of which is requested to be lease and transferred, is registered with the Interstate Commerce Commission in Docket No. MC-98890 (Sub No. 3) by order served July 11, 1974 thus authorizing Interfreight to conduct interstate operations commensurate with its intrastate authority. Applicants represent that service has been continually provided for the past three years pursuant to such authorities.

By letter dated May 15, 1979 served May 21, 1979, the Interstate Commerce Commission in MC-FC-14001 granted Milne authority to temporarily lease the interstate operating rights corresponding to the intrastate operating authority herein sought to be acquired.

The intrastate operating authority which Milne seeks to lease and operate is a portion of the authority granted by Decision No. 81660 dated July 31, 1973, as modified by Resolution No. 17674 dated November 12, 1975, and is as follows:

1. Between the San Francisco Territory, on the one hand, and the Los Angeles Basin Territory, on the other hand.
2. Between the San Francisco Territory, on the one hand, and the San Diego Territory, on the other hand.
3. Between all points and places located on State Highway 99 between Sacramento and Bakersfield, inclusive, and all points located within twenty miles laterally of said highway.
4. Between all points and places located on State Highway 99 between Sacramento and Bakersfield, inclusive, and all points located within twenty miles laterally of said highway, on the one hand, and the Los Angeles Basin Territory and the San Diego Territory, on the other hand, via State Highway 99 and Interstate Highway 5 between Bakersfield and the Los Angeles Basin Territory and Interstate Highway 5 and 15 (U.S. Highway 395), between the Los Angeles Basin Territory and the San Diego Territory, with service to all intermediate points located on and along said highways and serving all points within twenty miles laterally of said highways mentioned.

Conversely, Interfreight seeks to retain the intrastate portion of its highway common carrier certificate which authorizes the transportation of general commodities.

1. To, from, and between all points and places located in the Los Angeles Basin Territory.

2. Between the Los Angeles Basin Territory, on the one hand, and the San Diego Territory, on the other hand, via interstate Highways 5 and 15 (U.S. Highway 395), serving all intermediate points and places located within twenty miles laterally of the named highways;

PROVIDED, that pursuant to the authority herein granted, carrier shall not transport any explosives, ammunition and/or component parts thereof, to or from the Naval Ammunition Depot at Fallbrook, California.

Applicants contend that a failure to grant the approval to temporarily lease the requested operating authority may result in the destruction of or injury to those motor carrier properties sought to be acquired or may substantially interfere with their future usefulness in providing adequate and continuous service to the public. They point to the several problems which befell Interfreight which had and continues to have serious effects on Interfreight's ability to continue serving the public. Interfreight's Chief of Operations became seriously ill during the latter part of 1978 causing him to be away from the company for over a month, after which his illness caused him to leave the employ of the company. During the last quarter of 1978 Interfreight's operating ratio was 119.4 percent and for the year 1978 was 105.6 percent. Interfreight contends that it has not had sufficient revenue during 1979 to meet its expenses. Its average monthly gross revenue of \$100,000 has dropped to about \$30,000 a month during 1979, and in order to sustain its operation, it had to sell 12 trailers and four tractors. The owner of the company recently was discovered to have developed a heart irregularity which could only be alleviated by his withdrawing from the active conduct of the business. Accounting irregularities developed as well, which, when the accounting was straightened out, revealed that Interfreight sustained a \$77,000 loss in the last half of 1978. Interfreight contends that approval of its application is necessary to relieve it from the burden of continuing the broad territorial service it must render, and to provide

it with an influx of cash which will enable it to retire its existing debt. Because of the combined financial and health problems affecting Interfreight it is unable to continue providing service under the full scope of its existing certificate. Milne, on the other hand, is well able financially and operationally to continue these operations and to ensure the continuation of service now provided by Interfreight. As Milne is giving service over the leased interstate routes, it desires to service intrastate traffic on those routes as well.

As of March 24, 1979 Milne had a net worth of \$12,164,000. For the nine months ending September 30, 1978 it grossed \$37,333,000 in revenue and had a net profit for that period of \$1,988,000. Milne holds a contract carrier permit and a radial highway common carrier permit issued by this Commission and has extensive interstate operating authority issued by the Interstate Commerce Commission.

Total purchase price for the interstate and intrastate operating authority is \$140,000. Under the lease Milne will pay Interfreight \$2,000 a month for the lease of both interstate and intrastate operating authority, and the purchase price is to be reduced by the amount of the rental payments made.

The applications were served on the California Trucking Association. That association published a notice of the filings in its newspaper, Caltrux, which has wide circulation throughout the trucking industry in the State. Notice of their filing also appeared in the Commission's Daily Calendar of May 24, 1979. Applicants request that they be relieved from the service requirements of Rule 37(a) of the Commission's Rules of Practice and Procedure which provides for service of the applications on all common carriers with which the proposed service is likely to compete. Applicants contend they have no way of accurately ascertaining the identity of all such carriers inasmuch as there is no current listing of them and in view of the myriad Senate Bill 860 filings pursuant to which the Commission will be issuing over 10,000 highway common carrier certificates.

Findings of Fact

1. Milne requests authority to temporarily lease a portion of the highway common carrier certificate issued to Interfreight.

2. Milne currently has authority from the Interstate Commerce Commission to temporarily lease Interfreight's interstate operating authority corresponding to the intrastate authority herein sought to be leased.

3. A split of the operating authority resulting from approval of the herein application will not result in Milne and Interfreight possessing duplicate operating authority.

4. Interfreight has recently suffered recent financial reverses obliging it to sell off 12 trailers and four tractors in order to raise money to keep in business.

5. The owner of Interfreight, who actively participated in the company's operation, is unable because of health reasons to continue such active participation.

6. Interfreight must reduce the size of the territory in which it operates to remain in business.

7. Milne is able financially and operationally to continue the operation proposed to be leased.

8. Adequate notice of the filing of the applications has been given.

Conclusions of Law

1. The proposed temporary lease is not adverse to the public interest.

2. Application No. 58884 should be approved.

3. Decision on Application No. 58885 should be withheld until such time as the Interstate Commerce Commission has finally acted on Interfreight's request for approval to permanently transfer the subject operating authorities.

4. A hearing on Application No. 58884 is not necessary.

5. Applicants should be relieved from the giving of further notice of the filing of the applications.

Milne is placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

INTERIM ORDER

IT IS ORDERED that:

1. Interfreight Corporation (Interfreight) may lease to Milne Truck Lines, Inc. (Milne) and Milne may lease from Interfreight the operating rights referred to in the application. This authorization shall expire if not exercised by October 31, 1979, or within such additional time as may be authorized by the Commission.

2. Within thirty days after the consummation of the lease, Milne shall file with the Commission written acceptance of the certificate and a true copy of the lease agreement.

3. Milne shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations under lease to show that it has adopted or established as its own, the rates and rules. The tariff filings shall be made effective not earlier than five days after the effective date of this order and on not less than five days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the beginning of the term of the lease. The tariff filings made

pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80-Series. Failure to comply with the provisions of General Order No. 80-Series may result in a withdrawal of authority to lease the operating authority.

4. The lease authorized in paragraph 1 commences effective concurrently with the effective date of the tariff filings required by paragraph 3. Authority to lease a certificate of public convenience and necessity, as described herein, is granted to Milne.

5. The certificate of public convenience and necessity granted by Decision No. 81660, as modified by Resolution No. 17674 dated November 12, 1975, is temporarily reissued concurrently with the effective date of the tariff filings required by paragraph 3.

6. Milne shall comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.

7. Milne shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

8. Milne shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If Milne elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the general order.

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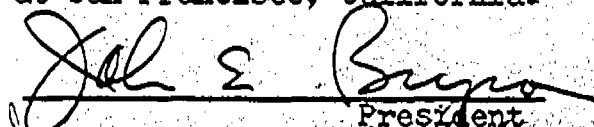
9. The authorization contained herein shall terminate concurrent with the expiration of the authority granted in the decision in the Interstate Commerce Commission proceeding MC-FC-14001.

10. Applicants are relieved from giving additional notice of the filing of the applications.

11. Application No. 58884 is disposed of by this order, and Application No. 58885 is continued on the Commission's Docket for further consideration.

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

Dated JUL 31 1979, at San Francisco, California.

  
President







  
Commissioners