

ORIGINAL

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Decision No. 92968 . APR 21 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own
motion into the operations, rates,
charges and practices of SOUTHWEST
TRAILS, a California corporation;
LARRY MENDEZ, an individual doing
business as B-Mendez Trucking; Maurice
A. Reeves, an individual doing business
as REEVES TRUCKING; LEONARD DALE WILSON,
an individual doing business as CALVAC;
CHARLES ROBERT NORRIS, an individual
doing business as CHUCK NORRIS TRUCKING;
LUTHER WAFFORD, an individual doing
business as WAFFORD TRUCKING; JIMMIE D.
OTT, an individual doing business as
JIM OTT TRUCKING; NEIL BOYCE SHORT, an
individual; C. O. COOK, INC., a Cali-
fornia corporation; JAMES JUNIOR MATHIS,
JAMES FORREST MATHIS, JAMEY LYNN MATHIS,
and GREGORY JUNIOR MATHIS, the members
of and constituting a partnership doing
business as ICHI BAN TRUCKING; GEORGE
RAY ESTES and SOLAN LEE ESTES, the
members of and constituting a partner-
ship; CAROL L. BEAGLEY and JOSEPH R.
BEAGLEY, the members of and constituting
a partnership doing business as SILVER
CLOUD TRUCKING; B & J TRANSPORTATION
INC., a California corporation; TRIPLE
JAY TRANSPORT, INC., a California
corporation; and MOTORENT LEASING, INC.,
a California corporation.

OII No. 74
(Filed July 2, 1980)

ORDER GRANTING PETITION FOR
MODIFICATION OF DECISION NO. 92400

Decision No. 92400 in this proceeding, among other things, found that respondent Southwest Trails (Southwest) violated various sections of the Public Utilities Code by using Motorent Leasing, Inc. (Morent) as an alter ego to evade payment of the full rates and charges due to respondent subhaulers.

Finding 7 of Decision No. 92400 reads as follows:

"7. The respondent subhaulers were unaware of the relationship between Southwest and Motorent."

By its petition filed December 15, 1980, Southwest seeks modification of Decision No. 92400 by deleting Finding 7. In support of this action Southwest states that there was a stipulation of facts, issues, and recommended fines which was entered into and signed by the president of Southwest and its attorney, and the attorney for the Commission staff and the Transportation Division staff representative. Nowhere in the stipulation of facts and issues or in the recommendations contained in the stipulation does it appear that the respondent subhaulers were unaware of the relationship between Southwest and Motorent. The finding of fact is one of the state of mind of the respondent subhaulers, and Southwest contends there is no way that the Commission could establish such a finding, since the respondent subhaulers were not present at the hearing and did not participate in the stipulation.

In its response filed December 18, 1980, the Commission staff states that it has reviewed the petition as filed by Southwest for modification of Decision No. 92400 and is in agreement that the requested modification should be granted. The staff states that no evidence supports Finding 7 as it appears in that decision; on the contrary, language in the preamble to and in paragraph 13 of the stipulation upon which Decision No. 92400

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is founded was specifically added in order to preclude any effect of the stipulation-recommended disposition in OII No. 74 on subsequent subhauler-filed civil actions. The staff recommends that, inasmuch as Finding 7 contravenes the intention of and understanding between the parties to the stipulation, said finding should be deleted.

In the circumstances, the Commission finds that Finding 7 of Decision No. 92400 is not supported by the record in OII No. 74 and concludes that said finding should be deleted.

IT IS ORDERED that:

1. Decision No. 92400 issued in OII No. 74 is amended by deleting Finding 7 thereof.

2. In all other respects Decision No. 92400, as amended, shall remain in full force and effect.

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

Dated APR 21 1981, at San Francisco, California.

John E. Cuyper President
Michael D. Broun
Tommy M. ...
Victor ...
Prudence C. Green Commissioners