

1982

Harry L. Young and Sons, Inc. and Ashworth Transfer, Inc. v. Public Service Commission of Utah et al : Reply Brief of Plaintiffs

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

HARRY L. YOUNG AND SONS, INC., :
and ASHWORTH TRANSFER, INC., :
Plaintiffs, :

vs. :

CASE NO. 18351

PUBLIC SERVICE COMMISSION OF :
UTAH, and STEEL TRANSPORTERS :
OF CALIFORNIA, dba KEEP ON :
TRUCKING, :
Defendants. :

REPLY BRIEF OF PLAINTIFFS

APPEAL FROM ORDERS OF THE
PUBLIC SERVICE COMMISSION OF UTAH

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Clerk, Supreme Court, Utah

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REPLY BRIEF OF PLAINTIFFS

Plaintiffs Harry L. Young and Sons, Inc. (herein "Young") and Ashworth Transfer, Inc. (herein "Ashworth") reply to the Brief of defendant Steel Transporters of California, dba Keep On Trucking (herein "Steel Transporters") served by mail on June 29, 1982.

REPLY POINT I

DEFENDANT IS UNFIT

Defendant's Brief contends that plaintiffs are not sincere in urging the unfitness of defendant in spite of the fact that the defendant owns no motor vehicle equipment.

Defendant's argument that its parent company will supply it with trucks ignores the fact that its parent is a distinct legal entity over which the State of Utah has no juris-

diction. In the recent decision of Leon M. Search v. Union Pacific R.R. Co., Supreme Court of Utah Decision No. 17532 filed June 16, 1982, this Court recognized the distinct legal entities between a parent and a wholly owned subsidiary.

Defendant's self-serving statements contend that its drivers' salaries were paid by defendant. In fact, defendant's own income statement (Ex. 1) shows that they do pay owner operators (R 322-323). Because of its almost exclusive use of owner operators and the lack of ownership of any motor vehicles, the defendant is unfit.

REPLY POINT II

THERE MUST BE AN INADEQUACY IN EXISTING SERVICE BEFORE NEW AUTHORITY CAN BE GRANTED

Defendant's Brief argues that the Commission correctly granted authority in this proceeding and that a finding of inadequacy is not necessary. The cases cited by the defendant do not stand for this proposition.

Defendant cites Lake Shore Motor Coach Lines v. Bennett, 8 Utah 2d 293, 333 P.2d 1061. While it is true that in the Lake Shore proceeding there is a statement that where there is a "potential of business", there is some reasonable basis in the evidence to justify the additional proposed service. The only evidence of potential service in this proceeding is speculative. While the witness from Nucor Steel did indicate that his new facility would require substantial shipments of iron and steel, the witness was unable to identify whether they would move within Utah, or outside the State of Utah, or whether

they would move by rail or by truck. The Administrative Law Judge agreed that the projection of future service was speculative (R 65). The fact is, plaintiff Ashworth has satisfactorily serviced all of the transportation requirements of this new steel mill. In a concurring opinion in the Lake Shore proceeding, Justice Henriod stated:

"Existing carriers that have expended risk capital, and have complied with tariff and other Commission requirements, ordinarily are entitled to protection against competition until a proposed competitor or someone else establishes by substantial evidence a failure to perform the service which the Commission has authorized and ordered them to perform."

The defendant cites Mulcahy v. Public Service Commission, 101 Utah 245, 117 P.2d 298. Again in this proceeding, the Court stated:

" There is evidence in the record to support or justify the finding that public convenience and necessity require some new and additional transportation service."

Next case cited by the defendant is Uintah Freight Lines v. Public Service Commission, 223 P.2d 408, 118 Utah 544. In the Uintah proceeding there was evidence that the protestants had not been available to serve in eastern Utah where the applicant was seeking authority. None of the carriers in the existing area had the equipment necessary to haul the type of commodities which the evidence showed required transportation. Again, there was an obvious inadequacy in existing service.

The only other two cases cited by the defendant are Ashworth Transfer Co. v. Public Service Commission, 2 Utah 23, 268 P.2d 990, and Union Pacific R.R. Co. v. Public Service Com-

mission, 103 Utah 459, 135 P.2d 915. Again, in both of these proceedings there was inadequacy. In the Union Pacific proceeding the applicant proposed a public service which the protestant did not render and did not propose to render. This was store pickup and delivery of freight.

Likewise, the Ashworth proceeding regarded the growth of the gas and petroleum industry in Utah. There were expert witnesses testifying as to a new industry. The inadequacy of existing service was shown by 15 shippers requesting service from the applicant within 60 days prior to the hearing.

CONCLUSION

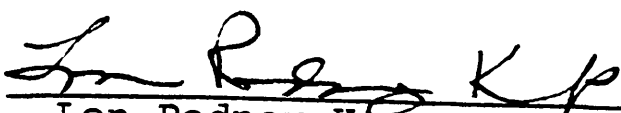
In spite of the argument to the contrary in defendant's Brief, the law in Utah requires a finding of inadequacy in the transportation services of existing motor carriers. There was no such finding in this proceeding. The granting of authority to defendant Steel Transporters of California, dba Keep On Trucking constituted error.

WHEREFORE, it is respectfully requested that this Court set aside the Orders of the Public Service Commission of Utah in this proceeding.

DATED this 2nd day of August, 1982.

Respectfully submitted,

RICHARDS, BIRD & KUMP

By 
Lon Rodney Kump

Attorneys for Plaintiffs
Harry L. Young and Sons, Inc.
and Ashworth Transfer, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of August, 1982, I mailed two (2) true and correct copies of the foregoing Reply Brief, postage prepaid, to Mark K. Boyle, Esquire, 10 West Broadway, Salt Lake City, Utah 84101, and to Arthur A. Allen, Jr., Esquire and David L. Wilkinson, Esquire, Office of the Attorney General, 114 State Capitol Building, Salt Lake City, Utah 84114.

