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## Salt Lake - Kanab Freight Lines, Inc. v. Public Service Commission of Utah et al : Defendants' Brief

Utah Supreme Court

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IN THE SUPREME COURT  
OF THE  
STATE OF UTAH

FILED

SALT LAKE-KANAB FREIGHT  
LINES, INC.,  
a corporation,

Plaintiff,

Clerk, Supreme Court, Utah

—vs.—

PUBLIC SERVICE COMMISSION OF  
UTAH, and HAL S. BENNETT,  
DONALD HACKING, and JESSE R.  
BUDGE, Commissioners of the Public  
Service Commission of Utah, and A. B.  
ROBINSON, D/B/A A. B. ROBINSON  
TRUCK LINE,

Defendants.

Case No.  
8941

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DEFENDANTS' BRIEF

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# IN THE SUPREME COURT OF THE STATE OF UTAH

SALT LAKE-KANAB FREIGHT  
LINES, INC.,  
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Plaintiff,

—vs.—

PUBLIC SERVICE COMMISSION OF  
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## DEFENDANTS' BRIEF

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### STATEMENT OF FACTS

This case is before the Supreme Court on a Writ of Review directed to the Defendants for the purpose of reviewing an Order of the Public Service Commission of Utah dated June 20, 1958, which granted to Defendant A. B. Robinson, D/B/A A. B. Robinson Truck Line, contract carrier authority under Permit No. 475 which reissues previous contract carrier authority already held and adds new authority.

The Writ of Review is directed to the new and addi-

tional contract carrier authority granted to transport for the Bill Winkel Distributing Company of Richfield, Utah, beer, candy, grocery items and general commodities from Salt Lake City to Richfield and to the additional contract carrier authority granted to transport oxygen, acetyline cylinders and general auto parts from Salt Lake City to all points between Salt Lake City and Richfield and serving the off-town route of Gunnison, Utah which transportation was for freight of the Richfield Auto Parts Company, of Richfield, Utah.

The uncontradicted evidence was that the A. B. Robinson Truck Line is now operating under contracts where the primary haul is from Monroe to Salt Lake City for Western Creamery Company, which requires a trip to Salt Lake City and return at least once a week (Tr. 26). In addition to this, the Defendant had other transportation for Safeways, Inc. (Tr. 23, 24) from Salt Lake City to Richfield where the amounts were uncertain and unscheduled and from John Christensen's Hardware Company of Richfield, Utah, which was of the same nature and which required a minimum amount of freight space (Tr. 24). The proposed contracts with Richfield Auto Parts Company and with the Bill Winkel Distributing Company could be handled by the Defendant and those contracting parties could be given the services required by them without adding any additional personnel or equipment to that which was already in operation. (Tr. 16). Mr. Robinson's financial ability was unquestioned, his ability to render the services for which he was seeking a permit as a contract carrier was unquestioned and the adequacy of the equipment now owned by him to furnish the service for which the authority was sought was also unquestioned.

C. G. Spencer, owner and manager of the Richfield Auto Parts Company, testified that he was operating his own truck from his places of business in Richfield and Gunnison to Salt Lake City and return to haul all of the items which he sought to have carried by the A. B. Robinson Truck Line (Tr. 43,44). He testified that unless the contract was authorized he would continue this practice and would continue to haul this freight on his own truck (Tr. 49). He stated that he needed the convenience of a private contract carrier to fill in his service in order that he could have week end service available to his business and in order that he could be competitive on a price basis with businesses competing with him in the sales of oxygen, acetylene, and welding supplies and equipment (Tr. 49, 50).

William Winkel, owner and manager of the Bill Winkel Distributing Company, also testified that at the present time he was operating his own truck and was hauling the items of freight originating from Salt Lake City to his place of business in Richfield and that he had done so for the past 28 years (Tr. 60). His only testimony was that in order to get a competitive freight rate and also to have the convenience of delivery of freight to his home at a time he could schedule himself to meet the shipments, it was necessary for him to contract with a private carrier (Tr. 65). He operated the business himself and had the work personally of placing and storing his shipments which were of a fragile and perishable nature in many cases. Mr. Winkel testified positively that in the event he was not able to contract with the A. B. Robinson Truck Line for his freight he would continue to operate his truck as he had for the past 28 years (Tr. 61, 62).

The A. B. Robinson Truck Line under the proposed con-

tracts could consolidate its operation for a more economical and efficient service to all concerned. It would remove from the highway two trucks now being operated, one by the Richfield Auto Parts to Salt Lake City and return and one by the Bill Winkel Distributing Company to Salt Lake City and return and, at the same time, give the A. B. Robinson Truck Line a more economical operation (Tr. 16).

The statement of facts of the Plaintiff herein appears argumentative and seeks to isolate certain items of testimony which present its case in the best possible light, even though in some cases portions of the record are disputed and directly contradicted. The Court, on the other hand, must view the evidence most favorable to the decision of the Commission with the view of determining only whether or not there was some substantial evidence upon which to base the same. Rudy vs. Public Service Commission, et al 256 P 2d 400 and numerous cases therein cited.

## STATEMENT OF POINTS

### POINT I.

THE ACTION OF THE COMMISSION IN FINDING THERE IS A NEED FOR THE GRANT OF AUTHORITY HEREIN WAS SUPPORTED BY SUBSTANTIAL EVIDENCE.

### POINT II.

THE ACTION OF THE COMMISSION WILL PROMOTE THE CONVENIENCE AND FACILITATE THE SHIPPING OF THE PARTIES INVOLVED AND THE GENERAL PUBLIC AND THERE IS NO SHOWING THAT THE ORDER WILL ADVERSELY AFFECT THE PLAINTIFF.

## POINT III.

THE AUTHORITY GRANTED BY THE COMMISSION COMPLIES WITH THAT REQUESTED BY THE APPLICANT AND AS SET FORTH IN THE NOTICE OF HEARING.

## ARGUMENT

## POINT I.

THE ACTION OF THE COMMISSION IN FINDING THERE IS A NEED FOR THE GRANT OF AUTHORITY HEREIN WAS SUPPORTED BY SUBSTANTIAL EVIDENCE.

The uncontradicted evidence adduced at the hearing discloses that the Plaintiff, Salt Lake-Kanab Freight Lines, does not haul the freight shipments which were at issue before the Commission (Tr. 50, 60). Richfield Auto Parts Company and the Bill Winkel Distributing Company both maintained their own trucks of sufficient capacity to make trips between Salt Lake City and Richfield and to haul the items of freight which were in question before the Commission. The Defendant, A. B. Robinson Truck Line, is a licensed contract carrier within the State of Utah and prior to the request for additional authority it was necessary for it to make trips to Salt Lake City and return. These separate trips of the contracting parties and of the licensed carrier produced a wasteful duplication of effort as well as a burden on the highways over which the contracting parties passed. The contracting shippers had, for a period of many years, the services offered to them by the Plaintiff, Salt Lake-Kanab Freight Lines, but it was unsatisfactory from a point of both cost and convenience and they would continue their



own freight shipments unless they were authorized to contract with A. B. Robinson Truck Line under the terms and conditions stated in the proposed contracts before the Commission (Tr. 49, 60).

The Salt Lake-Kanab Freight Lines, on the other hand, made an effort to show that their services could have been adequate if requests had been made and the shipments involved had been placed upon an emergency basis. It appears that the Commission used good judgment in considering the adequacy or inadequacy of those facilities and, if emergency services were desired, it would have to be on a shipment to shipment basis with each situation separately negotiated rather than a situation allowing the shipper to contract for personal service he desired with a contract carrier (Tr. 92, 99).

This Court has held on other occasions that it was not necessary for the Commission to find the facilities of the common carrier entirely inadequate. Section 54-6-8 UCA 1953 merely requires the Commission to take into consideration the existing facilities and to have competent evidence on which to base its decision. *Ashworth Transfer Company vs. Public Service Commission* 1 U 2d 223, 265 P 2d 400.

The facts in this case appear to be closely analogous to those presented in the case of *Cantlay and Tanzola, Inc., et al vs. Public Service Commission* 223 P 2d Page 344, in which the Court used the following language:

“The Commission followed the dictates of good common sense and granted the permit in order to eliminate the wasteful tank trips between Roosevelt and Vernal, thereby reducing traffic on that portion of the highway, besides allowing applicant to conduct its business in a more efficient manner.”

It was also pointed out in the Cantlay and Tanzola, Inc. case that the Plaintiff had overlooked the fact that they were not receiving the freight which was involved in the controversy. We believe that applies equally as well in this case since the freight in question is not being hauled by the Salt Lake-Kanab Freight Lines and further the contracting parties have expressly testified that the freight would not be offered to them if contract carrier authority were not granted to the A. B. Robinson Truck Line; but that they would continue their own private trucking as they had done for a period of time, which in the case of the Bill Winkel Distributing Company was a period of some 28 years.

It appears that the Plaintiff is further arguing that its services could be made adequate by the use of emergency and special service and contends that such a showing is an absolute bar to the Commission granting any additional carrier authority in the area serviced. It clearly appears that in this case the granting of a permit to the applicant for the additional contract carrier authority did not increase the competition and further that it did not and will not decrease the Plaintiff's volume of business since the two shippers involved would have continued to use their own trucks had the authority not been granted and they further testified that they would continue to use Salt Lake-Kanab Freight Lines for shipments as they had in the past years. The only items they would ship upon the A. B. Robinson Truck Line were the items which were being hauled upon their own trucks.

The question of whether or not the existing common carrier should have been given a further opportunity to furnish the required service before allowing a competing carrier to enter the field is a matter of policy which has been held

to be entirely within the province of the Public Service Commission, especially where there is no showing that the revenues of the common carrier will be reduced to the point where it will impair its ability to serve the public. Salt Lake and Utah Railroad Corporation vs. Public Service Commission 106 U 403, 149 P 2d 647.

## POINT II.

THE ACTION OF THE COMMISSION WILL PROMOTE THE CONVENIENCE AND FACILITATE THE SHIPPING OF THE PARTIES INVOLVED AND THE GENERAL PUBLIC AND THERE IS NO SUBSTANTIAL SHOWING THAT THE ORDER WILL ADVERSELY AFFECT THE PLAINTIFF.

The only testimony in the record and the only evidence before the Commission by the Salt Lake-Kanab Freight Lines Company that their operation would be affected was the statement of the general manager to the effect that he was apprehensive that the shippers would increase their volume with the contract carrier and then he went on to assume that if they lost all of the freight from the two shippers, it would have a detrimental effect on his operation (Tr. 84). As has been previously pointed out, there is no evidence in the record to show that the common carrier would receive any freight which is now being hauled by the Defendant, A. B. Robinson Truck Line, and, on the contrary, the express testimony of all the witnesses was that the common carrier, Salt Lake-Kanab Freight Lines, would receive the types of freight it is now receiving from the parties.

The finding of the Commission that the granting of this application would not result in a substantial detriment

to any other carrier is fully supported by substantial evidence. A further discussion on the question of general convenience to the contracting parties and the contracting carrier and general public herein would be repetitious of matters already set forth in Point I above and no point would be served by further restatement of those arguments.

### POINT III.

THE AUTHORITY GRANTED BY THE COMMISSION COMPLIES WITH THAT REQUESTED BY THE APPLICANT AND AS SET FORTH IN THE NOTICE OF HEARING.

The Plaintiff now complains of the deficiency of the notice given of the hearing in this matter before the Public Service Commission. It appears that the Plaintiff was fully informed and advised in accordance with the usual rules and practices of the Commission of the date set for hearing and the matters to be included in that hearing. The Plaintiff was fully advised of the parties and shippers involved and the freight movements involved. Under these circumstances, we are unable to find any defect or deficiency in the notice given to the Plaintiff. It logically follows that the Commission was fully within its jurisdiction to enter the Order now made a part of this record.

### CONCLUSION

In conclusion we urge upon this Court that the action of the Public Service Commission in granting the contract carrier permit to Defendant, A. B. Robinson Truck Lines, is fully supported by substantial evidence which shows the use of the applicant's transportation facilities by the con-

tracting parties would substantially reduce the burden on the highways, eliminate unnecessary wasteful practices in the applicant's business, and would not decrease the Plaintiff's revenues or take away any of its business and further that the Applicant has the financial ability and the proper equipment to perform the services authorized under the contract carrier permits. For these reasons, we urge that the Order of the Public Service Commission be affirmed.

Respectfully submitted,

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and

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