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# PROCEEDINGS — Eighteenth Annual Meeting

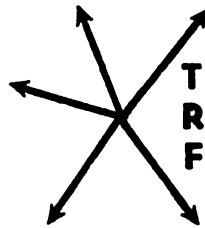
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**TRANSPORTATION RESEARCH FORUM**

# Ex Parte No. MC-103, "Procedures In Motor Carrier Application Proceedings Where For-Hire Carriage Is Substituted For Proprietary Operations" A Shipper's View

by Lyman A. McLane\*

**THREE EXAMPLES** are illustrative of the problems of the shipper and his method of handling them which will set the stage for discussion of the Herman Bros. petition which is referenced above.

In 1973 a shipper was approached by an irregular route common carrier with an offer to haul some seven million pounds of refrigerated cake over a three month period. His rate was comparable to, and in some cases lower, than the private carrier. The seasonal nature of the product created problems in use of 10 drivers and 5 trucks during the balance of the year. Therefore, that terminal was very much interested in getting out of the private trucking business. When the offer was made, the "season" was very close, so an emergency temporary authority was filed on July 30th and, after much pressure on the Commission, an ETA was granted September 15th<sup>1</sup>. In the meantime, there were objections from seven regular route carriers who really couldn't handle the freight and didn't want to, but their objections had to be knocked down one by one. It is important to note that in this particular case, there was no request for special rates or new territorial authority. The only request was to add two words in the carriers commodity description list to include "bakery goods." Yet, a year later when permanent authority had not been granted, it was necessary to extend the temporary authority to cover the next year's "season." It was not until the second year that permanent authority was granted.<sup>2</sup>

In a second case, a very large fleet owner converted to contract carriage. The process was long and drawn out, costing about \$75,000 in fees; eventually, outbound authority was granted to 48 states. Return trips, however, had to be negotiated on a point to point basis resulting in the constant presentation of petitions to the Commission and end-

less paper work. Some flexibility was experienced in the area of hiring owner-operators and trip leasing to common carriers which had not been possible under private carriage.

When a third shipper decided to build a twenty million dollar plant in Alabama, trucks were ordered for a private carriage operation at the time the building foundations were laid and by the time the product was ready for shipment, the trucks were delivered, licensed and started on their routes. The process was repeated when a similar plant was started a short time later in Texas. The trucking operations for both plants were started without permits, certificates, ICC involvement, long hassles with carriers who thought they were interested, or any of the endless frustrations common in a start-up or change of regulated transportation. Back-hauls were not a problem for part of the operation because the product was sent to market on racks which were exchanged at the destination wholesale points, and routes were arranged to reduce as much as possible, empty rack return mileage.

For a separate center of 12 eighteen-wheelers that do not carry racks, exempt commodity and inbound products back-hauls are arranged to eliminate deadhead mileage. In three years there has never been a customer complaint because of damage and soiled or contaminated merchandise. Total operating costs, including refrigerated equipment, are running between 50¢ and 53¢ a mile, depending upon fuel costs and break-downs, and when back-haul revenue is added the center shows a profit.

In the third situation, it is going to be very difficult for any type of regulated carriage to break into the private carriage that has been established. However, if "intercorporate transportation" were permitted, a tightening of the back-haul situation would occur, but this would not be a flagrant diversion from common carriers.

The Herman Bros., Inc., petition for the institution of rule making proceed-

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ings presents yet another idea and an excellent one. They are praying for the removal of commission red tape in order to tailor their services to meet the needs of customers, thereby "stemming further diversion of freight to the unregulated sector and (this) should aid regulated motor carriers in their efforts to gain this lost traffic."<sup>3</sup>

The National Industrial Traffic League members supported the Herman Bros. proposal in their Annual Meeting in Seattle in November 1976, with this comment by the chairman, "the petition is counteraction to all the legislation that has been proposed to offer free entry by motor carriers in effect all over the country. I think this is a step to try to keep it under control. It was a new innovation." The support was formalized in a filing with the Commission by League Counsel on November 20, 1976 and confirmed by supplemental action December 7, 1976. Everyone acknowledged the frustrations with typical delays of 18 months to 2 years as experienced by one of the foregoing shippers who made a real effort to get out of private carriage and finally persevered.

While the Herman Bros. formal petition is limited to bulk commodities, it is mentioned that perhaps the Commission would want to broaden the issue to include other commodities.<sup>4</sup> That was specifically asked by the National Industrial Traffic League in their formal presentation to the Commission. NITL said "the League believes that the benefits to be achieved from the Herman Bros. proposal, should not be limited to shippers and carriers of bulk commodities but should be expanded to include general commodities. The problems cited in support of the Petition are not limited to the transportation of bulk commodities, but are inherent in private carriage of all commodities. Further, the substantial benefits to be gained from such an expedited procedure should be available to shippers and carriers of all commodities. . . . The League respectfully requests that the Commission act favorably on the Herman Bros. Petition and institute a rulemaking proceeding to consider the proposal."<sup>5</sup>

In the Herman Bros. petition, emphasis is placed on the effort to regain traffic lost by the regulated carriers because of the inroads made by private carriage. In the case of the two multi-million dollar plants mentioned above, the regulated carriers were never given an opportunity to bid on the new business, because regulated carriers are not available to perform the extensive service required. It would be necessary to start up a new company to serve the needs

and maintain the control over shipments of critical perishable products. Shipments had to be handled into unmanned warehouses which require that the delivering carrier be an employee of the company, a salesman if you will, because for-hire carriers will not readily accept the responsibility for security of warehouses without a company representative on hand to receipt for shipments. Contract carriers can perhaps come closest to meeting the individual special needs inherent in this type of dealing with customers. Private carriage was entered into with total cost in mind.

Regulated carriers have often put up a huge cry that private carriage is making great inroads into the contract and common carriers' business. The fact is however, that "private carriage is as old as mankind and like mankind, as diversified and complex." The key to the situation is service. "It is extremely difficult to put a monetary value on service and yet service plays a vital role in distribution."<sup>6</sup> Perhaps this is why 85% of all trucks on the roads today are private.

It is often the case, however, as it is for the three new industries mentioned above, that tremendous quantities of in-bound raw materials, are required, 95% of which is hauled by common or contract carriers. There are literally thousands of trucks operated by manufacturers that do not carry a pound of in-bound or raw materials, all of which must be hauled by some form of regulated carrier.

The NIT League supports and seeks to broaden the Herman Bros. petition because most shippers would gladly get out of private carriage immediately if they could get their product to market in a reasonable time, in good condition and at a cost that would make it possible for them to compete in the market place. But there are dangers in giving up private carriage.

Those that have been in the transportation business for two or three decades have seen many carriers, common and contract, come and go, merge, and curtail their activities. What security does the shipper have if he puts all his eggs in the one basket of a totally unrelated corporation?

On the other hand, as is pointed out in the Herman Bros. petition, "contrary to conventional wisdom, petitioner has proven its ability to provide an equivalent or improved service to private carriers and at rates which achieve significant savings over the costs of private carriage." This is true in many cases, and, equally important, "petitioner, as do other for-hire carriers, views the

areas now served by private carriage as a last potential market that can and should be tapped."<sup>7</sup> There is no question that the petition will stimulate competition between private and for-hire carriage, and that the competition will be beneficial.

The Herman Bros. case spotlights the main problems that confront the shipper. They submit "the procedure proposed herein would award an 18 month certificate or permit to a motor carrier to allow it to replace proprietary trucking. The authority would be renewable upon the demonstration of satisfactory performance and could be converted to permanent operating rights.<sup>8</sup> But here again there are dangers. What are the shipper and his customer to do at the end of the eighteen months if the carrier does not perform according to expectations? The trucks are gone. The service of other for-hire carriers has probably deteriorated. Does the shipper buy more trucks and start over? Could I recommend to my officials an arrangement like that and expect to come out ahead?

A very interesting article appeared in "Refrigerated Transporter" in March 1977 entitled "Let's Look at Tomorrow." In the article, President Bob Shaw of Willis Shaw Frozen Express calls specific attention to the continuing shortage of refrigerated equipment and qualified company drivers. He goes on to say, "There was a time when many refrigerated carriers did not analyze their return on investment. This was because they operated on a sort of cash analysis only, or they utilized owner/operators to such an extent that they never really understood or knew what it cost to own and operate a truck." Many private operators have fallen into this trap too. One wonders whether this same truth applies to bulk haulers included in the Herman Bros. petition.

The petitioner goes to great lengths to insure that the contract operation will exactly supplant the private carriage and proposes that the authority granted "be restricted to traffic originating or destined to the facilities of the shipper whose private carriage op-

eration had been supplanted."<sup>9</sup> The difficulty with this limitation is that it does not leave room for expansion and growth. In fact, if petitioner's operations "have gone significantly beyond replacement of the shippers private carriage operation, the Commission could revoke or decline to renew the limited-term certificate or permit."<sup>10</sup> I know one operation where 10 tractor-trailer units were added a few months after the initial operation got underway.

It may be, therefore, that small shippers would benefit from Herman Bros.' proposal, but it seems evident that large shippers with large private fleets might be better advised to apply for a permit to establish a carrier subsidiary or "in-house" carrier in order to receive the maximum benefits. As a matter of fact, the one large shipper noted at the outset who did establish an in-house common carrier is increasingly relying on owner-operators for a good many reasons, and taking advantage of trip leasing capability. He has been pushed almost to the point of again starting up a private carrier operation for one division to obtain the flexibility needed for proper service to their customers. Thus, we see one shipper who has gotten out of private carriage may get back in.

In conclusion it appears that a shipper who has exceedingly tight controls over cost, an extensive driver training and DOT compliance program, and an excellent record on safety, would be reluctant to enter into an agreement such as Herman Bros. proposes, without further assurance than that stated in the Petition that the agreement could be permanent.

#### FOOTNOTES

- 1 (MC-117119-Sub 480 TA)
- 2 (MC-117119-Sub No. 498)
- 3 Herman Brothers, Inc., Petition at page 4.
- 4 Petition, at page 26.
- 5 NITL reply 12/7/76 at page 4.
- 6 Financial Aspects of Private Truck Fleets—Operating Cost Analysis, W. J. Morgan—"Transportation Journal" of AST&T at page 48—Summer 1970.
- 7 Petition at page 11.
- 8 Petition at page 2.
- 9 Petition at page 23.
- 10 Petition at page 24.