

Decision No. 17755

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application)
of NATIONAL WAREHOUSE COMPANY, a)
co-partnership, for a certificate)
of public convenience and neces-)
sity to operate motor freight serv-)
ice between points Santa Barbara,)
Bakersfield and south.)

ORIGINAL
APPLICATION NO. 11959.

In the Matter of the Application)
of R. J. THOMPSON, an individual,)
for a certificate of public conve-)
nience and necessity to operate)
motor freight service between)
points Santa Barbara, Bakersfield)
and south.)

APPLICATION NO. 11970.

In the Matter of the Application)
of FAY W. HARDIN for a certificate)
of public convenience and necessity)
to operate motor freight truck serv-)
ice in the counties of Los Angeles,)
Orange, Ventura, San Bernardino,)
Riverside and San Diego and Santa)
Barbara.)

APPLICATION NO. 12270.

Warren E. Libby and H. N. Blair, for National Warehouse Company and R. J. Thompson, applicants respectively in Applications No. 11959 and No. 11970, and protestants as to Application No. 12270.

Frank M. Smith, for Fay W. Hardin, Applicant in Application No. 12270 and protestant as to Applications No. 11959 and No. 11970.

H. J. Bischoff, for Motor Service Express, W & S Truck Line, Coast Truck Line, Julian Truck Line, Oppenheimer Truck Line, Ray Transfer Company, Warner's Hot Springs Freight Line and Triangle Transfer & Storage Company of San Diego, Protestants.

Herbert W. Kidd and W. O. Schell, for Motor Transit Company, Protestant.

L. C. Zimmerman, for Southern Pacific Railway, Protestant.

BY THE COMMISSION:

O P I N I O N

In each of the above entitled applications the applicant seeks a certificate of public convenience and necessity to operate motor freight service for the transportation of pianos and other musical instruments between Los Angeles and various points in Southern California. The applications of the National Warehouse Company and Thompson are identical as to routes, termini, rates, rules and regulations. The application of Hardin differs from the others in that it does not seek to follow each of the sixty-one routes listed by the other applicants, but does pick certain termini as far from Los Angeles as Santa Barbara on the west, Banning and El Centro on the east, San Diego on the south and San Fernando on the north. Applicant Hardin also fixes a rate per hour for the use of his vehicles, instead of the minima and distance charges fixed by the other applicants.

Public hearings herein were conducted by Examiner Williams at Los Angeles, at which time the matters were by stipulation of all parties consolidated for the receiving of testimony and for decision. Each of the parties was given opportunity to file memoranda of points and authorities. These have all been filed and the matter is now ready for decision.

In support of the applications of the National Warehouse Company and R. J. Thompson, a number of piano dealers and distributors were called to the witness stand. These witnesses were Carl H. Mayer, wholesale representative of three

piano factories on the Pacific Coast; C. B. Booth, wholesale representative of four factories; Robert Sommers of Birkel Music Company; Leonard C. Fox of Wiley B. Allen Company; A. G. Farquharson, secretary of the Music Trades Association of Southern California, composed of 60 dealers; W. M. Hathaway, of the Southern California Music Company; A. R. Woodyard, of the Fitzgerald Music Company; Jasper J. Douthit of Barker Bros., and M. J. Malsby of Richardson's, Inc.

The testimony of these witnesses was uniformly to the effect that the services of applicants National Warehouse Company and Thompson were required by the music houses for the transportation of pianos not only within the city of Los Angeles, but to points at some distance therefrom. It was also their uniform testimony that in the delivery of pianos, special equipment and skilled employees are necessary to insure satisfactory installation of the instrument in the home or building where it is to be used. The movers are sometimes required to deliver pianos in buildings where they must be taken through windows by means of hoists, a service which only skilled men can perform. But the chief advantage of the special movers, according to these witnesses, is that they can receive uncrated or unboxed instruments and transport them promptly and efficiently, while other carriers either require instruments to be properly crated or boxed or else charge a rate so high that the shippers cannot afford to use their services. One witness for a protestant operator testified that the rate for unboxed pianos was five times the first class rate. It was further the testimony of applicants' witnesses that buyers demand immediate delivery and that it is a business necessity of each music house

that prompt delivery be furnished, no matter to what point. It was also the testimony of these witnesses that there is no constant and regular movement of pianos from Los Angeles to any one point in Southern California. Many of the houses have branch establishments at other places and make their deliveries from those branches. For the most part the volume of business moving to points outside the city of Los Angeles is not one-twentieth of the entire business of the musical instrument trade.

It was the testimony of applicant Thompson and of Chester A. Nelson, one of the owners of the National Warehouse Company, that these applicants provide equipment and hold themselves ready at all times to furnish service for the transportation of any article offered to them by the music houses, and that the music houses are furnished with their schedule of rates and are fully informed as to the approximate cost of any delivery outside the city of Los Angeles. The piano-moving business of the National Warehouse Company has been in existence for 17 years. The business of applicant Thompson has been in existence for 15 years. During all this time each has enjoyed the exclusive patronage of several piano houses. In fact, Thompson maintains headquarters with one of the largest dealers and keeps his equipment near their establishment. Neither of these applicants nor any of their witnesses could point out any regular movement between fixed termini or over a regular route.

In support of the application of Fay W. Hardin, C. B. Dow of the Fitzgerald Music Company, M. F. Martin of the Martin Music Company, E. E. Kirkpatrick of the International Music Company, G. E. Cox of the Starr Piano Company and G. C. Nason of the Platt

Music Company were called to the witness stand. Their testimony was essentially the same as that given by witnesses in behalf of the other two applicants herein.

The volume of testimony produced at the hearings may be reduced in analysis to that relating to the manner of employment, by the various music companies, of the carriers involved in this proceeding. Each applicant, while offering to perform service for the general public, has certain patrons who have been given preference. Each applicant has established a long-continued and successful private relationship with one or more of the music houses, and these music houses may command the services of such applicant at any time. The rates charged by applicants are approximately the same. It is also found from analysis of the testimony that the music houses regard particular applicants as responsible to them for prompt service, and there is no showing that these music houses have at any time sought to obtain proposals on piano-moving from two or more carriers. It also develops from the testimony that there are a number of other carriers besides applicants who are engaged in the piano-moving business in Los Angeles, and that excess shipments are sometimes placed with these other carriers; but a clear conclusion from the record is that the relationship between applicants and their patrons has always been of a private nature, and that applicants in the past have not deprived their special patrons of preferred service and do not expect to do so now, even if certificated as common carriers.

It further appears from an analysis of the testimony that no music house knows in advance of sales where its ship-

ments are to be directed; that the services of applicants have been used to all points where an instrument could be delivered; and that there is no fixed or regular movement and never has been. Further, it is shown by the testimony that 85 per cent of all movements conducted by applicants or by the trucks of the music houses are within the county of Los Angeles, and that not over 5 per cent of the entire volume of business moving between Los Angeles and other points is destined to points at a greater distance than 50 miles.

In our opinion the record herein clearly shows the established business of private carriers operating "on call" and not offering any service between fixed termini or over regular routes. True, in the applications the applicants submit their operations to be certificated and impliedly seek to become common carriers; but the applications of the National Warehouse Company and Thompson were filed before the Commission rendered its decision in the application of Ben Moore (Decision No. 15818 on Application No. 11303), and also before the United States Supreme Court rendered its decision in the Frost and Frost case.

In view of the decisions alluded to above, and the facts adduced from the testimony in the present proceeding, we cannot find that applicants have shown public necessity for the establishment of their services. The music houses require the private services of these carriers and decline to use the services of the already established common carriers, protestants herein, who assert themselves to be ready, willing and able to perform common carrier service on the commodities included in the instant applications.

There is one exception to be noted with respect to these movements. Applicant National Warehouse Company, according to the testimony of Mr. Nelson and Mr. Woodyard, has been transporting consignments of pianos from Los Angeles harbor to the music companies' warehouses every week, and has also been transporting pianos from the harbor to applicant's warehouse for witness Mayer. These movements are at least weekly and are conducted between fixed termini and over regular routes. Mr. Nelson testified that the National Warehouse Company has performed similar service for other consignees in Los Angeles. It was also the testimony of another witness that Eastern factories regard the National Warehouse as such a fixture that shipments are made by water direct to it without notice. We believe this operation to be clearly within the jurisdiction of this Commission. Objection of protestants that this service has been performed illegally may be technically correct, but it has continued for more than ten years without protest on their part and there seems to be no question as to its efficiency or present necessity. A certificate authorizing the operation of this service by applicant National Warehouse Company is justified by the record.

O R D E R

National Warehouse Company, a co-partnership, R. J. Thompson and Fay W. Hardin each having applied to the Railroad Commission for a certificate of public convenience and necessity to operate motor freight service for the transportation of pianos and other musical instruments between Los Angeles

and various points in Southern California, public hearings having been held, the matter having been duly submitted and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by the National Warehouse Company, a co-partnership composed of Robert W. Lacey, Harold E. Hempe and C. A. Nelson, of motor freight service for the transportation of pianos and other musical instruments from Los Angeles harbor to Los Angeles, and for no other service, over and along the following route:

Via Harbor Truck Boulevard; and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and the same is hereby granted to said applicant National Warehouse Company, subject to the following conditions:

- I. Applicant shall file, within a period of not to exceed ten (10) days from date hereof, its written acceptance of the certificate herein granted.
- II. Applicant shall file, in duplicate, within a period of not to exceed twenty (20) days from date hereof, tariff of rates and time schedules, such tariff of rates and time schedules to be identical with those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed sixty (60) days from date hereof.
- III. The rights and privileges hereby granted may not be sold, leased, transferred nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been secured.

IV. No vehicle may be operated by applicant under the authority hereby granted unless such vehicle is owned by applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that as to all other parts of said application of National Warehouse Company, said application be and the same is hereby dismissed for lack of jurisdiction.

IT IS HEREBY FURTHER ORDERED that the applications herein of R. J. Thompson and Fay W. Hardin be and the same hereby are dismissed for lack of jurisdiction.

For all purposes except as hereinbefore stated, the effective date of this order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 13th
day of December, 1926.

H. B. ...
C. J. ...
...
Leon ...
...
COMMISSIONERS.