

Decision No. 28958**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)

ROBERT S. WILLIAMS)

For a License as a Motor Transportation)
Broker.)

Application No. 20555.

Robert S. Williams, in propria persona;

Reginald L. Vaughan, for Coast Line Express, Intercity Transport
Lines, Santa Cruz Motor Express, Clark
Brothers, Protestants, and Valley and Coast
Transit Company, as its interest may appear;A. S. Williams & E. W. Hobbs, for Southern Pacific Company and
Pacific Motor Transport Company, as their
interests may appear.

BY THE COMMISSION:

OPINION

Robert S. Williams applied to the Commission for a license as a Motor Transportation Broker, pursuant to Chapter 705, Statutes of 1935, authorizing him to sell transportation as such a broker for some ten or more holders of permits as radial highway common carriers or highway contract carriers. Letters of authority from each such motor carrier were deposited with the application, or filed subsequently, together with a motor transportation broker's bond in form prescribed by the Commission, and Applicant's Questionnaire containing a description of certain details of applicant's proposed method of operation.

Public hearing was held before Examiner Elder.

The applicant appeared and testified in support of the application, describing his method of operation in the past and as he proposes to conduct it under the license, if issued.

Applicant is the proprietor of a service station in Pajaro, adjoining Watsonville, where truck operators desiring work congregate. Some three years ago shippers of Watsonville developed a practice of telephoning to applicant at his service station when in need of truck transportation, whereupon applicant would so notify a truck operator waiting at the station for such information. The operator would then proceed to perform the transportation, buying gasoline for the trip from applicant. In the course of time, however, the shippers commenced bringing complaints to applicant about the service, and applicant, finding himself thus burdened with the responsibility, decided to convert the practice into a profitable enterprise for himself. He solicited business of additional shippers, procured a policy of insurance indemnifying himself against any liability as a carrier for loss or damage to any of the shipments, and adopted the name "Williams Truck Lines." His transportation business grew to a substantial volume, particularly during the peak agricultural seasons. He received a license from the Board of Equalization pursuant to the Motor Carrier License Tax Act (Chapter 339, Statutes of 1933), and paid the State Board of Equalization 3% of his gross revenue from the transportation of property. His operations are continuing at present as in the past, except that in 1936 he did not obtain a license from the Board of Equalization. He proposes to continue the same operations under the broker's license applied for, but using the services only of the truck operators named in such license.

Applicant insists he is merely a broker and does not undertake to transport any property; that his only function is to quote to shippers rates fixed by the operators with whom he is connected, to negotiate contracts of transportation between shippers and operators, or to place them in touch with each other so that they may effect their own contracts for the transportation. The evidence, however, does not support applicant's contention.

According to applicant's description of the physical conduct of his business, the operators, upon being dispatched to shippers, receive the shipments and bills of lading or receipts prepared or furnished by the operators themselves, with the forms of which applicant is not familiar. Before departure for their destinations, they return with the loadings to applicant's station where applicant fills out an elaborate printed form, termed a "manifest,"¹ for each shipment. The purpose of this document is simply to provide

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BOB WILLIAMS' TRUCK LINES

"No. _____

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Contracting Agent for
 Recommends Truck Type License No.
 Contractor to transport Articles, Merchandise, and Commodities listed below, according to Transportation Contract and Instructions. Cargo insured by BOB WILLIAMS' TRUCK LINES

TRANSPORTATION CONTRACT

No. of Pkgs. :	Commodity	Weight:	Rate :	Freight
:	:	:	:	:
:	:	:	:	:
BOB WILLIAMS' TRUCK LINES				
By				

INSTRUCTIONS

Load atC.O.D. for Merchandise in Amount of \$.....
 Make check payable to Bob Williams Truck Lines. Deliver to
 Delivery Date

I accept above merchandise in good condition except as noted and agree to transport same to destination shown in like condition, at the rate stated in above transportation contract and in accordance with above instructions and authorize BOB WILLIAMS' TRUCK LINES to collect for my account the amount for transportation charges shown herein.

Received in good order Contractor

By
 Consignee Shipper

By By

NOTICE TO SHIPPER: No other statement is rendered. Pay direct as shown in this contract."

applicant with a record of the shipment, ^{and} a consignee's receipt for the delivery of the shipment. It was originally used only in connection with shipments hauled by operators who did not carry their own cargo insurance, as a memorandum of a deduction to be made from such operator's compensation for cargo insurance provided by applicant under his own policy. Now, however, such a manifest is made for every shipment. The shipper never sees the manifest except occasionally when a receipted copy is sent to him as evidence of delivery to the consignee. The terms set out in the document are therefore of no assistance in determining the relationship between the shipper, on the one hand, and applicant and the operators, on the other. After receiving the manifests from applicant, the operators then proceed to destination, deliver the shipments, collecting charges on "collect" shipments, and return with receipted manifests to applicant. After collection the proceeds are divided, 90% to the operator, or 87% if applicant provides cargo insurance, and the balance to applicant.

The description of the operation was completed by the testimony of two shippers and one of the truck operators.

L. C. Matiasovich, a farmer at Watsonville, testified that he procured applicant's service by calling applicant on the telephone and asking for a truck which soon thereafter would call at the place indicated and accept shipments for transportation to Los Angeles. The transportation charges were paid to the applicant by check. The witness did not know any of the truck operators, by name or otherwise, had no dealings with them, and considered the entire transaction as between himself and applicant,

whom he regarded as responsible for the performance of the hauling.

Leask Martinelli, a cider manufacturer of Watsonville, testified that although the hauling is performed on trucks owned by others, he has had no dealings with anyone but applicant, expecting applicant to be responsible for the delivery by the operator and paying applicant for the service. The operator, upon picking up a shipment, signs, as agent for Bob Williams' Truck Lines, a uniform straight bill of lading in which the delivering carrier appears as "Williams Truck." On some occasions, according to the witness, applicant himself appeared with the truck and signed the bill of lading. Such documents were introduced in evidence. The witness also produced a statement on the billhead of "Williams Service Station" for "drayage of cider to Los Angeles," with the instruction, "Make check payable to Bob Williams Truck Line," and signed by R. S. Williams.

A. B. Ferrera, one of the motor carriers for whom applicant seeks authority to sell transportation, testified that when applicant tenders him a shipment he goes to the shipper's business place, receives the shipment upon signing a document presented by the shipper, and, after receiving from applicant the manifest hereinbefore described, proceeds to destination and delivers the shipment. He takes a receipt from the consignee on a copy of the manifest and sometimes collects payment, often by check payable to applicant. The collections are divided as applicant stated. The witness does not recall ever having negotiated with any of applicant's shippers respecting the rate, and never issues any shipping documents on forms of his own.

It is clear from the evidence that the operations which applicant is conducting and proposes to carry on in the

future are not those of a motor transportation broker. Applicant is not acting as an intermediary between the public and motor carriers of property; he is himself a carrier of property. His undertaking with the shippers is that of a carrier, to transport the property to destination. He assumes full responsibility for the performance of that undertaking and the shippers look to him to accomplish it. He carries cargo insurance to protect his liability as a carrier. His business consists purely of the transportation of property for compensation over the public highways by motor vehicle; his status as a carrier is not affected by the fact that he effects such transportation by arrangement with others who own and operate the trucks.

The evidence further shows that nearly all of applicant's traffic moves between Watsonville and Los Angeles and Watsonville and San Francisco, and that his service has been offered to and rendered for the public generally. His operation is thus that of a highway common carrier and is being carried on without the required certificate of public convenience and necessity, in violation of Section 50-3/4 of the Public Utilities Act. (Motor Freight Terminal Co. v. Moye Forwarding Co., 37 C.R.C. 957; writ of review denied, Moye Forwarding Co. v. Railroad Commission, S.F. No. 14301; Regulated Carriers, Inc. v. Universal Forwarders, Ltd., Dec. No. 26236, Case 3544, dated August 14, 1933; writ of review denied, Universal Forwarders v. Railroad Commission, L.A. No. 14457). Applicant should immediately discontinue the operation to avoid incurring the penalties provided for violation of the Public Utilities Act.

The application must be denied.

O R D E R

Public hearing having been held in the above entitled application, the matter having been submitted, and the Commission being fully advised;

IT IS HEREBY ORDERED that said Application No. 20555 of R. S. Williams be and the same is hereby denied.

Dated at San Francisco, California, this 2nd day of

July, 1936.

W B Lewis

M A Lee

Grace R. Pollock

Commissioners.