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ORIGINAL

Decision No. 23084

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application)
of CLIFFORD CARL PETERSEN for a) Application No. 20465.
License as a Motor Transportation)
Broker.)

Clifford Carl Petersen, Applicant, in pro per.

Fred N. Bigelow, Manager Pacific Southwest
Railroad Association, Protestant.

A. L. Whittle and Morton Smith, for Southern
Pacific Co., Pacific Motor Transport Co.,
Pacific Motor Trucking Co., and Railway
Express Agency, Inc., Interested Parties.

Edward Stern, for Railway Express Agency, Inc.,
Interested Party.

J. L. Amos, Jr., for Western Pacific Railway Co.,
and Tidewater Southern Railway Co.,
Interested Parties.

E. T. Lucey and H. C. Vincent, for The Atchison,
Topeka & Santa Fe Railway Co., Interested
Party.

BY THE COMMISSION:

O P I N I O N

In this matter the applicant, Clifford Carl Petersen, an individual doing business under the name and style of Port Trucking Company, has applied for a license as a Motor Transportation Broker under the Motor Transportation Broker Act (Statutes 1935, Chapter 705). A public hearing was had before Examiner Austin at Stockton on April 29th, 1936, when evidence was offered, the matter was submitted, and it is now ready for decision.

Since March, 1936, applicant has conducted a "freight forwarding" business in Stockton, maintaining his headquarters at 1250 North Wilson Way. During the preceding year, he was associated with Frank E. Bethel in a similar enterprise carried on under the same name, with offices in Stockton, at the same location, and also in San Francisco, Oakland and Los Angeles. Before embarking in this business, in 1935, applicant was employed by some of the major oil companies.

In connection with the freight forwarding business, applicant also operates as a Radial Highway Common Carrier, under a permit issued by this Commission.

The office of Port Trucking Company is situated upon a parking lot, located at the above address, where applicant also conducts a gasoline service station. This lot is a rendezvous for truck operators engaged in carrying the freight which he secures.

Applicant solicits traffic from the shippers, provides and executes shipping receipts, and arranges with the carriers for transportation. Without exception, applicant solicits business solely on behalf of the Port Trucking Company, never for any of the individual truck carriers. Shipments, when tendered, are accompanied by delivery orders directed to Port Trucking Company signed by the shipper, written on their stationery, and following no stereotyped form. Upon receiving the order, applicant prepares in quadruplicate upon a printed form bearing the name of Port Trucking Company, a shipping receipt termed a "Dispatch Order", which shows on its face the names and addresses of the shipper and the consignee, respectively, a description of the shipment, a statement of the number of packages, weight, rate, charges, whether charges are prepaid or collect, a description of the truck

transporting the shipment showing its make, license number, Board of Equalization permit number, Railroad Commission permit number, name and address of the owner, and provides a space for the signature of the driver. This dispatch order is handed the driver to whom the shipment has been assigned, who thereupon signs all of the copies, delivers the original to the shipper upon receiving the shipment, secures the signature of the shipper upon another copy which the driver retains, and upon delivery of the goods secures from the consignee his signature upon a third copy, which is returned to applicant. The fourth copy is retained by applicant for his files.

Applicant alone negotiates for and agrees with the shippers as to rates, which vary somewhat among the shippers, there being no uniform rate charged for identical transportation services. Generally speaking, they are in competition with those of other carriers. All charges are billed by applicant, in the name of Port Trucking Company, to the shippers, and collected by him, credit being sometimes extended where it appears proper to do so. Cargo insurance is provided by applicant at his expense upon the freight transported. The carriers themselves never deal with the shippers in respect to rates or the payment of charges, nor do they carry cargo insurance.

Applicant proposes to deal only with the carriers holding permits issued by the Commission, from whom he has secured written authority to represent them. Accompanying the application are three letters of authority, upon the form prescribed by the Commission, signed by motor carriers authorizing applicant to act for them as a motor transportation broker. One of these has since been withdrawn. At the hearing, applicant presented nine

letters of authority from other carriers. Of these, all have been granted permits as Radial Highway Common Carriers, and two of them also hold permits as Highway Contract Carriers.

It is applicant's custom to inspect the carriers' trucks to determine whether they are in safe condition to operate over the highways. And he stated that although most of them purchased at his service station, gas, oil and other supplies, including tires, they were under no obligation to do so. Applicant exercises full control over the distribution of traffic among the carriers, it being his practice, wherever possible, to send them out in rotation. In this respect his duties do not differ from those of the ordinary dispatcher.

For his services applicant charges the carrier 10 percent of their gross receipts, plus 2 percent for cargo insurance, the latter item representing advances made by applicant for this purpose. Settlements are made with the carriers from time to time, applicant occasionally advancing them funds for gasoline, oil and traveling expenses. These settlements, however, are wholly independent of the collection of freight charges from the shippers.

The character of tonnage hauled consists largely of produce and fruit originating at Stockton or within a radius of twenty-five miles, and of hardware moving from Oakland to Stockton. Approximately 40 percent comprises produce and fruit moving from Stockton to Oakland; about 25 percent consists of hardware from Oakland to Stockton; and the balance covers fruit and produce moving to other points, such as Bakersfield, Los Angeles, Fresno, Sacramento and Marysville. During the summer shipments moved daily from Stockton to Oakland and in the reverse direction; from July to September trucks operated to Bakersfield and to Marysville about four times a week, to Vallejo about three times a week, to Santa

Rosa about twice a week, and to Fresno and Sacramento daily, to Los Angeles about eight or nine trips were made throughout the season handling on an average 50 tons, and occasionally trips were made to Monterey. Although applicant was unable to state the total tonnage handled, it appears from his testimony that the volume in conducting this operation has been substantial. For two shippers alone there was handled approximately 1,000 tons a month and the hardware moving from Oakland averaged around 100 tons a month. During the season shipments moved in sufficient volume and frequency to require the services of from eighteen to twenty trucks each week.

It was admitted by the applicant that he had filed with the Interstate Commerce Commission an application under the "grandfather" clause of the Motor Carrier Act, 1935, for a certificate of public convenience and necessity to operate as a common carrier of general commodities. By stipulation of the parties, a copy of this application, as filed with this Commission on February 21, 1936, was received in evidence subsequent to the hearing. In this application, the applicant herein, describing himself as a truckman and broker, doing business under the name of Port Trucking Company, alleged that he is engaged in transporting seasonal crops and grain, hardware, plumbing supplies, and wines, mostly within a radius of 250 miles from Stockton. Apparently this application was filed to protect whatever rights applicant may have acquired for the transportation of property in interstate commerce moving from the piers in Oakland to Stockton and also from Stockton and the territory immediately adjacent.

Applicant freely conceded that in the conduct of this business, the shippers will look solely to him to secure the transportation of their goods, and they will hold him, and not

the carriers, responsible for safe and efficient transportation and delivery. In fact, a witness called by applicant himself, the Assistant Manager of Weyl-Zuckerman & Company, was quite emphatic in this respect. This company, during the season, is accustomed to make, through applicant, daily shipments of potatoes to Fresno, Sacramento and San Francisco Bay cities, and occasionally to Los Angeles. In his judgment, this service, because of its flexibility and the readiness with which demands for equipment can be met, is superior to that of the certificated carriers who, he stated, were unable to provide sufficient equipment to handle this business.

The applicant has confined his service largely to truck loads, it being his purpose to avoid, wherever possible, the handling of smaller shipments. He is willing, so he stated, to solicit from any shipper, and he will undertake to arrange the transportation of any truckload shipments offered.

The business conducted by applicant, and which he proposes to continue in substantially the same manner, if granted a license, differs in no substantial respect from operations of the character condemned many times by this Commission in the "freight forwarder" cases decided in the course of the past three years. Here, it appears that applicant himself solicits business from the shippers in his own name, he alone deals with the shippers, collects the charges, provides the cargo insurance, and directs the actual transportation. The carriers come in contact with the shippers only when they call to load their trucks. Shipments move by motor truck over the highways between definite termini, i.e., between Stockton and Bakersfield, Fresno, Oakland, Sacramento and Marysville, respectively, in large volume and at regular intervals, the service being conducted daily as to all these points throughout the season.

Traffic will be accepted by applicant from the public indiscriminately for transportation between these points. For this service compensation is exacted by applicant from the shippers, part of which he pays to the carriers and the balance of which he retains. That a service such as this is that of a Highway Common Carrier has been well established by our decisions:

M.F.T. Co. v. Move Forwarding Co., 37 C.R.C. 857
(Certiorari denied, S.F. 14801).

Regulated Carriers, Inc. v. May, Decision
No. 26949.

Regulated Carriers, Inc. v. Ramsey, Decision
No. 27087.

Regulated Carriers, Inc. v. Corlett, Decision
No. 27443.

Under the provisions of Section 2 of the Motor Transportation Broker Act, a broker is defined as:

"A person who, acting either individually or as an officer, commission agent or employee of a corporation, or as a member of a copartnership, or as a commission agent or employee of another person or persons, sells or offers for sale, or negotiates for or holds himself out as one who sells, furnishes or provides, transportation over the public highways of this State, when such transportation is furnished, or offered or proposed to be furnished, by a motor carrier as defined in this act." (Emphasis supplied).

This section defines a motor carrier as:

"Any person * * * transporting or offering or proposing to transport property for compensation over the public highways of the State of California, or any portion thereof."

Under an exception found in this section, within whose terms applicant does not fall, the officers, agents or employees of any carrier operating for compensation over the highways under the jurisdiction of this Commission, need not apply for a license.

Clearly, the act contemplates the issuance of a license only to one who sells or offers to sell or who negotiates for or holds himself out as one who sells, furnishes or provides transportation as therein defined. That such is its purpose is apparent from Section 1, which declares that public welfare requires the regulation and control of those persons who, whether acting individually or as officers, commission agents or employees of another person, or company, hold themselves out "to act as intermediaries between the public and those motor carriers of property operating over the public highways of the State, for compensation; * * *".

From these provisions it seems clear the legislature intended that a license should be issued only to one who acts as a broker or agent for the purpose of selling, negotiating for or providing transportation to be furnished by a motor carrier over the public highways. Obviously, the broker must occupy the status of an agent either for the shipper or the carrier. To what extent he is prohibited by the terms of Section 12, Highway Carriers' Act (Statutes 1935, Chapter 223) from accepting from a carrier any commission where he may be acting as an agent for the shipper, need not be determined here. It is equally plain that the broker must be distinct from the carrier performing the transportation service. One who is himself a carrier cannot act as a broker in respect to the sale of or negotiation for transportation over his own lines.

Since it is established by the record that applicant is engaged in conducting the service of a Highway Common Carrier - a service which, he testified, would be continued in the same manner were a license issued - it is clear that he is not entitled to receive a license as a Motor Transportation Broker. Moreover, the continued operation by applicant of an uncertificated transportation service

conducted in violation of the terms of Section 50-3/4, Public Utilities Act, will not be condoned by this Commission. Applicant will be expected immediately to discontinue his present operations as a Highway Common Carrier, and not to resume them unless he shall have secured from the Commission a certificate of public convenience and necessity. Should he fail to heed this admonition, prompt steps will be taken to compel obedience to the law.

O R D E R

A public hearing having been had in the above entitled matter, evidence having been offered, the matter having been submitted, and the Commission being now fully advised in the premises,

IT IS HEREBY ORDERED that the application of Clifford Carl Petersen, doing business under the name and style of Port Trucking Company, for a license as a Motor Transportation Broker be and the same is hereby denied.

For all other purposes the effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this 31st day of August,

1936.

M. B. Davis
Leon Carberry
Robert [unclear]
Frank [unclear]
Commissioners