

Decision No. 29174

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)

CHARLES NEWELL

for a License as a Motor Transportation
Broker.

Application No. 20456

ORIGINAL

Charles Newell, in propria persona;

Fred M. Bigelow, for Pacific Southwest Railroad
Association, Protestant;

E. L. Stern, by Fred M. Bigelow, for Railway Express
Agency, Protestant;

J. L. Amos, Jr. and L. M. Bradshaw, for Sacramento
Northern Railway, Protestant.

BY THE COMMISSION:

O P I N I O N

Charles Newell applied to the Commission for a license as a motor transportation broker, pursuant to Chapter 705, Statutes of 1935, authorizing him to sell transportation for some twelve radial highway common carriers or highway contract carriers. Public hearing was held at Chico before Examiner Elder, at which applicant appeared and described his operation as heretofore conducted and as he proposes to continue it under the license applied for.

Applicant is already the holder of a permit as a radial highway common carrier doing business under the name "Golden Empire

Trucking Service." He proposes to use the same name in operating under the broker's license. His home and office are in Chico, where he engages in the transportation of grain, fresh and dried fruit, scrap iron, and other commodities in truckload quantities from Chico and vicinity to other points, including Sacramento, Petaluma, Pittsburg, Emeryville, Oakland, San Francisco, Fresno, and Redding. He owns five pieces or units of equipment for which Railroad Commission license plates have been issued to him and which he uses in performing a part of this transportation. The balance of applicant's traffic, which cannot be accommodated on his own trucks, is hauled by other permit-holders under arrangements with applicant pursuant to which applicant pays them 89% of the gross revenue from the loads they haul. It is this phase of the business which applicant deems requires a broker's license.

The entire enterprise, however, is carried on as a single, unified operation. There is no distinction between the manner of use of applicant's own trucks and those belonging to the other operators. All are employed in rotation or as may be convenient or appropriate to the particular load at hand. Only one set of records is kept, without regard to whether the traffic is transported on the trucks of applicant or others. All arrangements with the shippers are negotiated and concluded by applicant. Although applicant testified that the other operators might deal directly with the shippers if they chose, this, as a matter of fact, has never been done. All traffic is handled in the name of "Golden Empire Trucking Service." It is accepted under shippers' forms of bills of lading if provided by shippers; otherwise, applicant supplies a simple form of freight receipt on the billhead of Golden Empire Trucking Service. At the time of making this application, applicant also put into use, in connection with the shipments hauled by the other operators, an

additional form of document purporting to contain a recommendation by Golden Empire Trucking Service of an "undersigned" motor carrier, and a transportation agreement between such motor carrier and the shipper. Applicant testified that cargo insurance is carried on all shipments. The policy, which was produced at the hearing, is a typical carrier's indemnity policy insuring applicant against liability as a carrier for loss or damage to shipments.

It is evident that applicant's business is not such as to require authority both as a carrier and as a broker. He is not carrying on two kinds of businesses but only one - that of a carrier. His use of independent truckmen is purely to supplement his own trucks and enable him to handle an increased volume of traffic, without the necessity of himself acquiring additional equipment. He controls the movement of the entire volume of traffic and of all of the trucks in transporting it. His relationship to the shippers is identical, regardless of whose trucks move the traffic. In this respect the substance of the transaction, rather than the form of the documents used, is decisive. He is not acting as "an intermediary between the public and motor carriers of property"; he is himself a carrier of all the traffic, for the transportation of a part of which he subcontracts with other carriers. Such operations would not be within the authority conferred by a motor transportation broker's license.

Application of Williams, Dec. No. 28958, dated
July 2, 1936, on
Application No. 20555;

Application of Millsbaugh, Dec. No. 29083, dated
August 31, 1936, on
Application No. 20464;

Application of Petersen, Dec. No. 29084, dated
August 21, 1936, on
Application No. 20465.

They might properly be carried on under a carrier's permit if all conditions and limitations imposed by statute and order of the

Commission with respect thereto are complied with. In this case it appears that applicant's public liability and property damage insurance policy does not meet requirements in so far as concerns his operations through sub-contractors. There is also testimony tending to show his operation between Chico, on the one hand, and Sacramento, San Francisco, and Oakland, on the other, to be so habitual as to render it one between fixed termini within the meaning of the Public Utilities Act. Such an operation is not authorized by applicant's radial highway common carrier's permit, but requires a certificate of public convenience and necessity as a highway common carrier. (Motor Freight Terminal Co. v. Moye Forwarding Co., 37 C.R.C. 857; writ of review denied, Moye Forwarding Co. v. Railroad Commission, S.F. No. 14801; Regulated Carriers, Inc. v. Universal Forwarders, Ltd., Decision No. 26236, Case No. 3544; writ of review denied, Universal Forwarders v. Railroad Commission, L.A. No. 14457). Attention should be given to terminating this form of operation and correcting the scope of applicant's public liability and property damage protection.

The application for license as Motor Transportation Broker 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.
20456 of Charles Newell be and the same is heroby denied.

Dated at San Francisco, California, this 13th
day of October, 1936.

M B Davis

Leon Archibald

W. J. Cunn

William M. ...

George R. ...

Commissioners.