

Decision No. 22253

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Investigation, on the )  
Commission's own motion, into the operations, )  
rates, charges, contracts, and practices of )  
ALFRED D. ZEDER, MARVIN A. RHODES, BARNEY B. )  
LEVY, and A. D. WOOLLEY, respondents, for )  
the purpose of determining whether said )  
respondents are violating any of the pro- )  
visions of Chapters 705 or 223, Statutes of )  
1935, or of the Public Utilities Act. )

Case No. 4186.

Hugh Fullerton of Pillsbury, Madison & Sutro,  
for respondents, A. D. Zeder, Marvin A.  
Rhodes and A. D. Woolley.

Ansel Williams, for Southern Pacific Company  
and Pacific Southwest Railroad Associa-  
tion, interested parties.

B. A. White, for Pacific Southwest Railroad  
Association, interested party.

BY THE COMMISSION:

O P I N I O N

In this proceeding the Commission instituted upon its own motion an investigation into the operations, rates, charges, contracts and practices of respondents Alfred D. Zeder, Marvin A. Rhodes, Barney B. Levy and A. D. Woolley to determine whether they were operating in violation of the Motor Transportation Broker Act (Statutes 1935, Chapter 705), the Highway Carriers' Act (Statutes 1935, Chapter 223), and the Public Utilities Act. More specifically the proceeding was instituted to determine whether in the course of their activities respondents were or any of them was:

(1) Operating unlawfully under the Motor Transportation Broker Act, in that they were or any of them was:

- (a) Selling or offering for sale transportation furnished by any highway carrier conducting his operations without proper authority or in violation of the rules, regulations and general orders of the Commission;
- (b) Selling, offering for sale, or negotiating for sale, transportation furnished by any carrier or carriers other than those for whom respondents, respectively, were licensed to sell;
- (c) Selling transportation at any location other than that named in their respective licenses;
- (d) Failing to display the license certificate at the locations where respondents, respectively, were authorized to sell transportation.

(2) Operating unlawfully as carriers, in that they were or any of them was:

- (a) Unlawfully engaged in transporting property for compensation as a business;
- (b) Operating as highway common carriers, respectively, without first having secured from the Commission certificates or a certificate of public convenience and necessity.

Respondents were directed to appear and show cause why a cease and desist order should not be issued restraining them from engaging in the unlawful transportation of property, for compensation, as a business, in violation of the Highway Carriers' Act and the Public Utilities Act, and from operating in violation of the Motor

Transportation Broker Act. Respondents Levy and Woolley were directed to show cause why their permits as highway carriers should not be revoked, and respondents Zeder and Rhodes were required to show cause why their license as Motor Transportation Brokers should not be revoked.

At the hearing the scope of the investigation was enlarged without objection so as to embrace an inquiry into the operations and practices of respondent brokers and the course of their dealings with the carriers whom they undertook to represent.

On behalf of respondents Rhodes and Woolley a motion to dismiss was submitted, predicated upon the following grounds:

- (a) That the license of respondent Rhodes as a Motor Transportation Broker expired December 31, 1936, and has not been renewed nor has application been made for its renewal;
- (b) That during the period involved in this investigation respondent Woolley held permits as a radial highway common carrier and as a highway contract carrier;
- (c) That the record contains no testimony referring to the operations of respondents Rhodes and Woolley in respect to any of the matters set out in the order instituting this investigation.

This motion will be disposed of during the course of our discussion of the merits.

A public hearing was had before Examiner Austin at San Francisco on December 2, and 11, 1936, and January 4, 1937, when the matter was submitted, briefs filed, and it is now ready for decision.

We shall first direct our attention to the operations of respondents as motor transportation brokers.

The Commission's records show that motor transportation brokers' licenses were issued to respondents Zeder and Rhodes authorizing them to engage in business under the name and style of Mission Transport Company with their locations at 885 Howard Street, San Francisco, and 1537 East Seventh Street, Los Angeles. Originally, respondent Levy joined as co-applicant with Zeder, his brother-in-law, and also executed his bond as one of the principals, but he appears never to have participated in the brokerage business. Instead, in the course of his operations as a contract carrier, he authorized Zeder to represent him as broker with the understanding he would be favored in the distribution of business. The matter was dealt with very informally; although Levy described himself in the application as being engaged in business as the Mission Transport Company, he disclaimed this status at the hearing. Respondent Woolley, the holder of radial and contract carrier permits, was in charge of the office at 1505 South First Street, San Jose, which appeared to be merely a place for dispatching trucks, no transportation having been solicited or sold there. The brokers' licenses issued to both Zeder and Rhodes expired December 31, 1936, and no application has been filed to renew them, both apparently having retired from the business. Although the question of the revocation or suspension of their licenses appears to have become moot, a discussion of the testimony relating to their operations will be useful, since it will have an important bearing on any renewal applications they may file and it may shed some light upon the current practices of many motor transportation brokers, thus paving the way for a wider investigation having as its objective the establishment of such rules and regulations as may appear desirable and necessary.

This brings us to a consideration of the issues, which we shall discuss in the order mentioned.

- (1) The sale of transportation for carriers conducting operations without authority from the Commission, or for whom the broker has not been licensed to act.

Although all the carriers whom he used, so respondent Zeder testified, held permits from the Commission, frequent inquiries being made of both the operators and the Commission to determine their status, nevertheless the matter appears to have been quite loosely handled. In fact, it was conceded that some of these carriers held no permits. Notwithstanding this, Zeder represented to the shippers he was acting only for carriers operating under permits issued by the Commission. This clearly is contrary to the provisions of Section 10 of the Motor Transportation Broker Act, and is sufficient ground for the suspension or revocation of his license. (1)

Similarly, this respondent admitted he had represented permitted carriers for whom he held no license to act. This also is forbidden by Section 6, Motor Transportation Broker Act, which requires the license to set forth the names of the motor carriers for whom the agent is licensed to sell, and it constitutes an additional ground, under Section 10, for the suspension or revocation of his license.

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(1) Section 10, Motor Transportation Broker Act, authorizes the suspension or revocation of a license where a broker has been engaged in selling or negotiating for the sale of transportation by any carrier whose operations are "conducted in a manner contrary to the public interest, or without proper authority, or in violation of the provisions of this act or the general orders, rules and regulations of the Railroad Commission pertaining thereto."

- (2) Sale of transportation at locations not named in the license, and failure to display license certificate at locations where brokers are licensed to sell transportation.

Since respondents Zeder and Rhodes were authorized, respectively, to engage in the brokerage business at San Francisco and Los Angeles under the name and style of Mission Transport Company, transportation could be lawfully sold at either of these locations. At San Jose headquarters for dispatching trucks were maintained at a gasoline station, in charge of respondent Woolley. However, the record does not establish that transportation over any motor carrier was sold or offered for sale at this place. It does not appear that respondents failed to display their license at their San Francisco and Los Angeles offices; at San Jose, no license was required to be displayed. In these respects, therefore, their operations were not shown to have been conducted unlawfully.

- (3) General practices of respondents and their dealings with motor carriers.

The activities of the respondents in this connection which, as we have stated, were by consent embraced within the scope of this inquiry, fall within the terms of Section 10, Motor Transportation Broker Act, authorizing the Commission to suspend or revoke a license whenever it appears that the licensee is not a fit and proper person to hold it. The adjustment of commissions does not, as respondent contends, rest wholly upon contract between the broker and the carrier. It was one of the purposes of this act to prevent the abuses, centering around the payment of compensation to the carriers, which have developed during recent years.

This investigation was directed primarily to an inquiry into the practices followed by respondents relating to deception of the carriers regarding insurance deductions, the exaction of excessive commissions, the retention of secret profits and other acts contrary to the interests of the carriers whom they assumed to represent.

Directing our attention first to respondent Zeder's<sup>(2)</sup> methods regarding insurance, it appears to have been his custom to deduct and retain  $3\frac{1}{2}$  per cent of the gross transportation charges paid him by the shippers, ostensibly to reimburse him, as a broker, for the premium he had paid on cargo insurance issued in his name and covering shipments while they were being transported by the carriers. This premium, however, actually cost respondent but  $2\frac{1}{4}$  per cent of the gross transportation charges, and the difference of  $1\frac{1}{4}$  per cent was retained, so he testified, to cover bookkeeping and the cost of collection from the shippers.<sup>(3)</sup> The carriers, however, were not informed of this and apparently believed that the insurance cost respondent the full  $3\frac{1}{2}$  per cent he had withheld.

Respondent also deducted and retained a commission of 10 per cent of the gross transportation receipts to cover his services. Though this appears to conform to the general custom observed by motor transportation brokers, respondent made no study to determine the cost of solicitation with a view to arriving at an equitable commission. Posted conspicuously in respondent's office, where it

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(2) Hereinafter in this opinion unless otherwise stated we shall refer to Zeder as "respondent". Woolley held no broker license, Levy has not in recent months participated in the operations to any degree, and Rhodes acted in the capacity of an employee only.

(3) Respondent testified he had made no study to determine the cost of collection and bookkeeping. (Tr. 21)

could readily be observed by the carriers, was a notice to the effect that the usual commission would be 10 per cent of the gross receipts. In actual practice, however, respondent frequently exacted from the carriers commissions substantially exceeding this percentage. He admitted they some times ran as high as 50 per cent, and occasionally an arbitrary commission was fixed depending upon the amount he felt the carrier should receive for the load. In other instances commissions were collected amounting to from 25 per cent to 57 per cent.<sup>(4)</sup> When it is recalled that the carriers must pay all costs for operating and maintaining the truck, these exactions appear to have been grossly excessive. Some times, so respondent stated, the carriers, when entering into commission agreements with him, were advised of the compensation the shipper had actually undertaken to pay him, but he was unable to state how often this had occurred. From the testimony of the carriers it appears that except in rare instances, respondent failed to reveal the amounts actually received from the shippers. In fact, he usually concealed this information, it being his practice to omit these figures from the copy of the way-

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(4) For example, upon one shipment respondent received from the shipper \$11.88 and paid the carriers \$8.64 (Tr. 85), upon another he received \$66.92 and paid the carrier \$38.04 (Tr. 86), and upon a third shipment he received \$71.69 and paid the carrier \$28.45 (Tr. 87). In each instance respondent deducted from the amounts so paid the carrier a 10 per cent commission plus  $3\frac{1}{2}$  per cent for cargo insurance. Upon one shipment, where respondent received \$8.41, the carrier was paid \$6.92 from which was deducted 10 per cent commission and  $3\frac{1}{2}$  per cent insurance and, in addition, the carrier was compelled to pay the cost of transporting the shipment over a connecting line to final destination. In other instances the carriers were charged commissions of 53 per cent (Tr. 23) and 57 per cent (Tr. 24). Other similar instances were disclosed by the record.



bill furnished the carrier,<sup>(5)</sup> although a space was provided thereon for this purpose.

The carriers, so the record shows, were completely misled by respondent's representations as to the amounts collected from the shippers. From their testimony it is apparent they believed they were receiving the gross transportation charges actually received by respondent, and that nothing but the stipulated commissions had been withheld from them.<sup>(6)</sup>

As to one item, the evidence disclosed that respondent's books failed to reflect the transaction correctly. On a shipment hauled by Charles R. Rider, a carrier, for Dan P. Maher Paint Company from San Francisco to Stockton, weighing in the aggregate some 20 tons, Rider was paid \$12.50 net by respondent who represented to him at the time that respondent had actually received from the shipper only \$10.28 gross for this movement. On this occasion respondent permitted Rider to inspect the entries appearing in his own account, which disclosed these amounts. In point of fact, respondent.

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(5) Witness Reinisch, a carrier, testified he did not know the rate paid respondent by the shippers, nor was this supplied on the copy of the waybill furnished him (Tr. 92, 93). Both witnesses Migge and Rider testified they did not know what respondent collected (Tr. 125, 135), the latter also stating that when he inquired from the shippers they declined to furnish the information. In this connection he testified: Q. (Miss Moran) "Were you able to find out (what respondent received from the shippers)?" A. "Under no conditions. They would say, 'You are hauling through the Mission Transport, ask them; we settle with them.' That would be about the routine of answer I would get." (Tr. 136). This channel of information was therefore closed to them.

(6) Witness Migge stated he assumed that the prices quoted him by respondent were the same as those paid by the shipper. Believing that the privilege was not open to him, he had never examined Zeder's books (Tr. 119). Witness Rider also testified he believed Zeder was paying him the amount collected from the shippers, less 10 per cent commission and 3½ per cent insurance (Tr. 159, 160). Witness Levy testified substantially to the same effect (Tr. 106, 107).

discovering he had erroneously assessed too low a rate upon this shipment, ultimately collected from the shipper a total transportation charge of \$60.42 which, though shown in the shipper's account, never appeared in that of the carrier, and was never submitted to his inspection.

The significance to be accorded this testimony must be measured by the nature and extent of respondent's obligations to the carriers. If he were a motor transportation broker, as he claims, and not a carrier, and if, as such a broker, he were acting as an agent for the shippers alone, then it would seem clear he rested under no duty to reveal to the carriers the amounts paid him by the shippers; he was then free to bargain with the carriers for transportation at a rate less than that which he actually received. But a contrary rule would prevail were he to occupy the status of an agent for the carriers. Then the obligation to exercise good faith, incidental to this relationship, would require him to disclose to his principals, the carriers, the revenues he had in fact received, and to credit them with the full amount, deducting only his proper commissions.

If respondent is to be considered a highway common carrier rather than a motor transportation broker, he would occupy no such fiduciary relationship to the carriers, who must be regarded rather in the light of employed drivers. He would then be free to retain all transportation charges paid him by the shippers, his obligation to the drivers extending no further than the payment of the agreed compensation. But throughout this proceeding, and during the period of his activities here under review, respondent has professed to be a broker, and a broker only. We are therefore justified, in determining the degree of his culpability, to use the yardstick applicable, under the statute, to the class in which he has claimed membership.

If his operations have been such as to impress upon him the status of a highway common carrier, it is a position he has not voluntarily assumed. Such a determination, on the part of the Commission, would relieve him of none of the odium attributable to his failure to exercise good faith in his dealings with his principals.

That the carriers regarded respondent as their agent clearly appears from their testimony.<sup>(7)</sup> In this connection respondent stated that in his judgment he represented both the shippers and the carriers, though he admitted that he received compensation only from the latter.

Although a mere middleman may represent both parties to a transaction, where their interests are not conflicting, such does not appear to have been the status of respondent. His duties did not terminate when he had merely brought together the shippers and the carriers. On the contrary, he undertook to represent the latter in the performance of certain functions, including the solicitation of business, the negotiation of the terms of the transportation contract, and the collection of transportation charges.<sup>(8)</sup>

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(7) Witness Reinisch stated he regarded Zeder as his agent in procuring transportation (Tr. 90). His somewhat cloudy conception of respondent's obligation is well exemplified by his testimony on direct examination, where, in response to questions by counsel for the Commission regarding respondent's failure to disclose information, he stated: Q. (Miss Moran) "I see. In other words you permit your agent to collect any sum of money for your account, and then pay you whatever they tell you is the going rate; is that a correct summary of your testimony?" A. "That is right." (Tr. 92). Witness Levy also considered respondent his agent, stating (Tr. 102): "He is the only one I had any contact with, so, naturally, I would have to regard him as the agent. I never had any contact with the shippers whatsoever." Witness Migge regarded respondent as his broker (Tr. 117), while witness Rider testified positively he looked upon Zeder as his agent for the solicitation of business (Tr. 125).

(8) The form of contract, commonly used by respondent, which both he and the shippers executed, provided that "shipper agrees to pay to the Mission Transport Company for account of carrier the transportation charges herein agreed upon unless the same shall be designated as collect." (Emphasis supplied) (Tr. 19).

duties which called for the exercise on his part of skill, judgment, and discretion. Necessarily, the interests of the carriers clashed, in respect to these matters, with those of the shippers. He therefore became the agent for the carriers and, as such, under well recognized principles, was charged with the exercise of good faith in the course of his dealings with his principals. Respondent's concealment of the amount of the revenues actually received, and his retention of secret profits, has impressed upon his activities the stamp of constructive fraud.

Other delinquencies on respondent's part were adverted to, such as misstatement of the ultimate destination of some shipments, thereby requiring the carriers at their own expense to haul goods a substantial additional distance. Also, respondent induced one of the carriers, Charles R. Rider, to change his residence to San Francisco upon the representation respondent would provide sufficient short haul business to keep him busy, a promise he never kept. Respondent undertook to show that whenever a carrier was himself unable to perform a pick-up, this would be done for him, at his expense, by another carrier, but from the testimony of the carriers it is the consensus that this was not the general practice.

As stated at the outset, no order may now be entered suspending or revoking the broker's license of any of the respondents. However, in the interest of adequate regulation of motor transportation brokers generally, and with a view to preventing the exaction of exorbitant charges and the retention of secret profits, we have believed it desirable to describe rather fully the practices of respondents, and particularly those of respondent Zeder. Should they ever again apply for licenses, their past activities will, of course, be taken into consideration. Moreover, this may serve as a

background for a more extensive investigation, should it become necessary. The practices of these respondents are not unlike those of the "freight forwarders", so-called, against whom many cease and desist orders have been issued.

Thus we are brought to a consideration of the question whether or not respondents have been engaged in operating as highway common carriers without authority.

(4) Character of respondents' operations as highway common carriers.

The record establishes that respondent Zeder is engaged exclusively in conducting the Mission Transport Company service, with offices at San Francisco and Los Angeles. Respondent Rhodes appears in no other role than that of a mere employee, nor does respondent Levy share in the business.<sup>(9)</sup> As in the preceding division of this opinion, we shall hereafter refer to respondent Zeder as the respondent.

At the outset it must be borne in mind that since respondent does not own any of the equipment used in this transportation service, preferring rather to deal with independent truck owners, it is essential to determine whether he exercises such a degree of control over the operations of the carrier, and has so welded them together, that respondent himself must be viewed as a common carrier. We shall briefly discuss the evidence with a view to determining whether such a result has been accomplished.

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(9) Both respondent Zeder (Tr. 5, 4) and Levy (Tr. 100, 109) testified that Levy, who preceded Zeder in the business, suggested to the latter that he engage in this business under Levy's Board of Equalization permit. Levy, who originally joined as a co-applicant in Zeder's application for a broker's license, stamping himself an employer, immediately assumed the status of an employee (Tr. 110, 111, 115).

By respondent's own admission, he chose the carriers with whom he dealt, he selected trucks adapted to the character of the shipments to be moved, he instructed the drivers where to pick up and deliver shipments, and he provided for assistance to the drivers in case of breakdowns. Without exception, respondent himself collected all freight charges from the shippers. In fact, the latter declined to discuss with the carriers the charges they had paid, stating this was a matter which must be handled exclusively through the Mission Transport Company.

Representatives of two large shippers, California Packing Corporation and Libby McNeill & Libby, testified that whenever they had traffic to be moved, respondent alone arranged all details including the rates and the billing. While a bona fide broker may perform such functions, nevertheless it is a circumstance to be weighed with others in determining whether he is in reality a common carrier masquerading as a broker. The truckers themselves were not permitted to contact the shippers, other than to pick up the goods, a service differing in no respect from that ordinarily performed by a hired driver.(10)

For all damages occurring to shipments while in the custody of the carriers, respondent was held responsible in the eyes of the shippers. If any loss or damage occurred, the shippers demanded compensation from respondent, not from the carriers.(11) Respondent

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(10) Witness Keith of California Packing Corporation testified that after he had placed the business with a broker the latter never telephoned back advising the name of the carrier selected, his company not being particularly interested in receiving this information (Tr. 37).

(11) Witness Keith of California Packing Corporation testified that he would hold Mission Transport Company and not the individual carrier responsible for all loss occurring in transit (Tr. 31, 34, 49). Such also was the testimony of Mr. Beach of Libby, McNeill & Libby (Tr. 57), this company looking to the Mission Transport Company rather than its insurance company (Tr. 65, 66). No inquiry was made regarding the responsibility of the drivers themselves (Tr. 58).

himself, rather than the insurance company which carried the cargo insurance, was viewed as the responsible party.

Occasionally respondent has made advances to the carriers for gasoline and oil, although the record does not indicate this to be a common practice. The carriers were under no obligation to purchase gasoline, oil or supplies from him.

A comparison of the methods followed by respondent with those pursued by the certificated carriers, with whom certain of the shippers dealt, discloses no substantial variations between the two modes of service. On shipments handled through brokers, including respondent, for the California Packing Corporation, the billing was handled by the traffic department in the main office, and means for identifying the driver were provided. In other respects the paper work and the physical handling of the shipments were substantially identical. There is even less difference in the method pursued by Libby, McNeill & Libby, which would serve to distinguish those handled through brokers from those transported by certificated carriers. Here there was only a minor difference in the manner of billing, designed primarily to identify the driver.

It has been the constant practice of respondent to solicit business for transportation, Witness Beach of Libby, McNeill & Libby testified their account had originally been sought by respondent. Although respondent testified that new accounts had been solicited but occasionally, a form of circular letter issued by the Mission Transport Company, introduced in evidence, indicates respondent's purpose to secure business from the public generally. (12)

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(12) This letter (Exhibit 3) offers service throughout the State via licensed, insured and dependable motor carriers, states that substantial tonnage is handled efficiently for large shippers and also: "All business is transacted through our offices, thereby eliminating the necessity of shippers dealing with drivers. Our representative will call on you, if you so desire, that he may assist you in ironing out any problems you may have." (Tr. 193).

Although such widespread solicitation does not in itself stamp respondent as a common carrier, a broker undoubtedly having the right to solicit business for the carriers he represents, nevertheless it is a circumstance to be considered along with others in determining his true status.

The rates offered to the public have for the most part been uniform. Between San Francisco and Los Angeles 25 cents per 100 pounds, or \$5.00 per ton, has been the going rate. In this connection respondent's testimony is corroborated by that of the carriers. Coupled with this is the fact that upon tonnage moving in sufficient volume to require one or more trucks for a single shipment, respondent has been accustomed to quote a rate for the whole quantity rather than for a single pick up. Here several truckloads were treated as though they comprised but a single unified shipment, a circumstance tending to show that respondent viewed himself, rather than the individual truckers, as the actual carrier.

Respondent conceded that during the year preceding the hearing, he had arranged for the transportation of property for compensation by motor vehicles over the public highways. During an average month he procured transportation, so he stated, from San Francisco and the Bay area, including Oakland, Berkeley, Alameda, Emeryville and San Leandro, on the one hand, to Los Angeles and the communities forming part of its municipal area, including Compton, Wilmington and Whittier, on the other hand, for traffic aggregating approximately 1,500,000 pounds, or 750 tons; and from San Jose, Santa Clara, Sunnyvale, Campbell and Los Gatos, on the one hand, to Los Angeles and the communities within its municipal area, including Compton, Wilmington and Whittier, on the other hand, the shipments



amounted to 500,000 pounds, or 250 tons. In the opposite direction, from Los Angeles and its municipal area, including Compton, Wilmington, Whittier, San Bernardino and Redlands, to San Francisco and the Bay area, including Oakland, Alameda, Berkeley, Emeryville, San Leandro, San Jose, Santa Clara, Sunnyvale, Campbell and Los Gatos, the shipments during this period averaged 750,000 pounds, or 375 tons. Thus, there is handled on an average between San Francisco and Los Angeles, and the surrounding and adjacent communities mentioned, a total of 1375 tons per month. Assuming that the service will be conducted for twenty-five days each month, a reasonable expectation, there has been transported by this agency approximately 40 tons per day southbound and 15 tons northbound, or a total of 55 tons in both directions. For this service approximately 100 trucks and operators have been used and a total of some 86 shippers served.

In connection with this stipulation may be considered the testimony of a representative of California Packing Corporation that approximately 200 tons per month were handled by respondent, mostly from East Bay points, and also some from Sacramento and San Jose, to Los Angeles, Pasadena, Santa Ana, Long Beach and Santa Monica. Libby, McNeill & Libby, it was shown, shipped approximately 50 tons a month between the East Bay points and Burbank and Chino. A similar showing was made by the carriers, Mr. Levy testifying that most of his hauling for respondent was performed between San Francisco, San Jose and Los Angeles, with occasional trips from Sacramento. Mr. Rider testified he frequently hauled for respondent between San Francisco, San Jose, Santa Clara, Fruitvale, Emeryville, Alameda and Sacramento, on the one hand, and Los Angeles, Wilmington, Chino, Burbank and adjacent territory, on the other hand.

While some of these circumstances, standing alone, might well be consistent with respondent's claim that he is operating solely as a broker, nevertheless, considered as a whole, they justify and compel the conclusion that in the conduct of this service respondent himself was the carrier. The general holding out to the public, the solicitation of business, the direct contact with the shipper, the failure, or rather respondent's refusal, to provide for such contacts between the shipper and the carriers, the responsibility for damages which he voluntarily assumed, and the disregard of the individual status of the carrier in determining the rates, - these, and many other circumstances to which we have adverted, all indicating that respondent himself conducted the business not as an agent but rather as a principal, clearly establish that he alone, and not the operators with whom he dealt, was the carrier. He has so welded together the operations of the various operators that they have become completely unified. It is well established that operations of this character must be deemed those of a common carrier.

The evidence is equally convincing that the service has been conducted regularly and frequently over regular routes and between fixed termini. Though the carriers were free to select the routes they would follow, respondent determined the terminals they must serve. The bulk of this tonnage moved between the San Francisco Bay area, on the one hand, and Los Angeles and the metropolitan area, on the other hand. Approximately 86 shippers were served, and respondent was willing to extend his facilities to others, in fact has solicited their patronage. Under similar circumstances operators of this type have been held to be highway common carriers, and where their operations have been conducted without a certificate, they have been required to cease and desist.

Such was the conclusion of the Commission in a proceeding involving an application by a motor transportation broker for a license, where the facts developed were substantially similar to those shown here. In re Petersen, Decision No. 29084, 40 C.R.C. 71, 75. And in the earlier decisions relating to the operations of the so-called "freight forwarders", the same ruling was made. Typical of them is the Commission's decision in M.F.T. Co. v. Moyer Forwarding Co., 37 C.R.C. 857 (certiorari denied S. F. 14801).

Accordingly, a cease and desist order will issue.

Upon full consideration of the evidence, the Railroad Commission of the State of California hereby finds as a fact that the respondent Alfred D. Zeder, doing business as Mission Transport Company has transported property for compensation over the public highways between fixed termini, to-wit: between San Francisco, Oakland, Berkeley, Alameda, Emeryville, San Leandro, San Jose, Santa Clara, Sunnyvale, Campbell, Los Gatos, and Sacramento, respectively, on the one hand, and Los Angeles, Compton, Wilmington, San Pedro, Long Beach, Santa Monica, Santa Ana, Burbank, Chino, Pasadena, Whittier, San Bernardino, Riverside and Redlands, respectively, on the other hand, as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act of the State of California, without first having secured from this Commission a certificate of public convenience and necessity authorizing such operations.

O R D E R

A public hearing having been had in the above entitled proceeding, evidence having been received, the matter having been duly submitted, and the Commission being now fully advised:

IT IS HEREBY ORDERED that the respondent Alfred D. Zeder, doing business as Mission Transport Company, be and he is hereby required and directed to cease and desist, directly or indirectly, or by any subterfuge or device, from conducting any and all operations for the transportation of property for compensation as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act of the State of California, by any motor vehicle or motor vehicles over the public highways between San Francisco, Oakland, Berkeley, Alameda, Emeryville, San Leandro, San Jose, Santa Clara, Sunnyvale, Campbell, Los Gatos, and Sacramento, respectively, on the one hand, and Los Angeles, Compton, Wilmington, San Pedro, Long Beach, Santa Monica, Santa Ana, Burbank, Chino, Pasadena, Whittier, San Bernardino, Riverside and Redlands, respectively, on the other hand, and between any of said points, over any route or routes between said termini, and any of them, unless he shall have first secured from the Railroad Commission a proper certificate of public convenience and necessity therefor.

IT IS HEREBY FURTHER ORDERED that this proceeding be and it is hereby dismissed, and that the Order Instituting Investigation herein be and it is hereby discharged as to respondents Marvin A. Rhodes, Barney B. Levy and A. D. Woolley, and each of them.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission shall cause a certified copy of this decision to be personally served upon respondent Alfred D. Zeder, and cause service thereof to be made upon the other respondents herein.

IT IS HEREBY FURTHER ORDERED that this order shall become effective as to each respondent twenty (20) days from and after service thereof upon such respondent.

Dated at San Francisco, California, this 16<sup>th</sup> day of July, 1937.

[Signature]  
James R. Quinn  
Ray B. Wabers  
Wm. L. Riley  
Commissioners.