

Decision No. 35699

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
RENA NICKELL, administratrix of the)
estate of A. W. Nickell, deceased,)
seller, and W. RAY JAMES, an indi-)
vidual, buyer, for an order author-)
izing the former to sell and convey)
and the latter to purchase and)
acquire the operative rights herein)
mentioned.)

Application No. 24924

ORIGINAL

JOHN M. DESCH, for applicant.

BY THE COMMISSION:

O P I N I O N

This is an application of Rena Nickell, as administra-
trix of the estate of A. W. Nickell, to transfer to W. Ray James a
prescriptive right covering the transportation of household goods
and furniture between San Jose, San Francisco, Oakland and other
East Bay cities, and Los Angeles, via the coast route, including
intermediate points. Such prescriptive right was confirmed by
the Commission in its Decision No. 26993, in Case No. 3478, issued
April 30, 1934.

A public hearing was held by Examiner Gannon at San
Francisco on June 15, 1942.

Following the death of her husband in 1936, Mrs. Nickell
was first authorized by the Commission to lease the operative right
and in April 1938, by Decision No. 30793, Application No. 21880,
she was permitted to transfer the right to American Van Lines, Inc.
However, this was a conditional sale only, the title to the right

remaining in Mrs. Nickell, as executrix, until the purchaser had made all installment payments. The American Van Lines, Inc. continued in active operation until sometime in January, 1942, when it defaulted in its payments to Mrs. Nickell, and then ceased operations. Mrs. Nickell thereupon executed a bill of sale transferring the right unconditionally to W. Ray James, subject to the approval of the Commission.

Although no service has actually been rendered since American Van Lines, Inc. ceased their operations, it appears from the testimony that there is a need for a continuance of the service theretofore given. W. Ray James has been associated with the James Transfer and Storage Company, of San Jose, for many years. His request for authority to acquire the operative right here involved and to re-establish the service was supported by several organizations, business firms and individuals.

The Commission certainly would refuse to permit the sale of this operative right were it not for the unusual circumstances here presented. Inasmuch as Mrs. Nickell had been authorized by the Commission to transfer the right to American Van Lines, Inc. under a conditional sale agreement, the unauthorized discontinuance of service by that concern, without her consent and followed by her prompt action to protect her interests, cannot fairly be said to have constituted an abandonment of the operative right. In view of these circumstances, therefore, we believe it to be in the public interest that the requested transfer be approved.

O R D E R

Application having been made as above entitled, a public hearing having been held, and the Commission being now of the opinion, and hereby finding, that public convenience and necessity so require:

IT IS ORDERED:

(a) That Rena Nickell is authorized to sell and transfer the highway common carrier operative rights described in the foregoing opinion to W. Ray James and W. Ray James is authorized to acquire the operative rights above referred to and to conduct a highway common carrier service commensurate therewith.

(b) That W. Ray James shall file in his own name, in triplicate, within sixty (60) days from the effective date of this order and on not less than one (1) day's notice, a tariff in compliance with General Order No. 80 naming rates, rules and regulations identical with those contained in the tariffs of American Van Lines, Inc., but not lower in volume and effect than the rates, rules and regulations established as a minimum by the Commission.

(c) That W. Ray James comply with Part IV of General Order No. 93-A by filing, in triplicate, time schedules satisfactory to the Commission, within sixty (60) days from the effective date hereof, and on not less than one (1) day's notice to the Commission and the public.

(d) That the authority herein granted is subject to the provisions of Section 52-b of the Public Utilities Act and any amount paid for the operating right in excess of the amount expended by the grantor in obtaining the

operating right shall not be charged to capital account.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 18th day of August, 1942.

Justus F. Caseman
Ray K. Riley
M. B. K. K.
Francis R. Favenner
Richard H. H.
COMMISSIONERS