

Decision No. 38180

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
J. Nelson Kagarise, an individual,  
d.b.a. Public Freight Service to sell  
and A. R. Reader and Phil F. Reader,  
co-partners d.b.a. Reader Truck Lines  
Express to purchase an operative right  
to engage in the business of an express  
corporation and freight forwarder with-  
in southern California.

**ORIGINAL**

Application No. 26597

ARTHUR H. GLANZ, for applicant Reader Truck Lines

HUGE GORDON, for Pacific Freight Lines, Pacific  
Freight Lines Express, and Valley Express

H. P. MERRY, for Southern California Freight Lines  
and Southern California Freight Forwarders

BY THE COMMISSION:

O P I N I O N

J. Nelson Kagarise, an individual doing business as Public Freight Service, seeks authority to sell, and A. R. Reader and Phil F. Reader, co-partners, doing business as Reader Truck Lines, seek authority to purchase any and all operative rights which the seller may hold for the transportation of freight, merchandise, or other property, as an "express corporation" as that term is defined in Section 2(k) of the Public Utilities Act, and as a "freight forwarder," as that term is defined in Section 2(ka) of said Act.

This application was heard, together with Applications Nos. 26727 and 26741, before Examiner Chiesa at Los Angeles on July 12, 1945. The matters having been duly submitted, it was agreed that separate decisions be rendered.

The seller claims said operative rights exist by reason of his operation as an "express corporation" and "freight forwarder" on

and "prior to August 1, 1933."<sup>(1)</sup>

Both applicants testified and offered documentary evidence. The evidence of record would justify our authorization of the proposed sale but for the position taken by Reader Truck Lines, one of the parties to the agreement of sale.

Pacific Freight Lines Express, a competitor in the area, and its affiliated companies, Pacific Freight Lines and Valley Express, questioned existence of the "express corporation" right herein proposed to be transferred, its position being that Kagarise is not operating as an "express corporation" and that such operative right was never acquired by him either by operation of the so-called "grandfather" clause or by issuance to him of a certificate of public convenience and necessity, in accordance with the provisions of Section 50(f) of the Public Utilities Act.

The validity or extent of the "express" right claimed by J. Nelson Kagarise, doing business as Public Freight Service, has not heretofore been considered by this Commission, nor has the "freight forwarder" right of this applicant been adjudicated.<sup>(2)</sup>

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(1) The evidence shows that Kagarise was then using the firm name of Keystone Express Company and that the name was changed to Public Freight Service in 1940.

(2) In Case No. 4366, being an investigation on the Commission's own motion into the operations, rates, charges, contracts, and practices of J. Nelson Kagarise, doing business as Puente Truck & Transfer Company and Keystone Express Company, the Commission found that J. Nelson Kagarise was operating as a freight forwarder unlawfully (Decision No. 33109 - 42 C.R.C. at 689). However, in the order denying rehearing in the same case (Decision No. 33482) the Commission said: "In respect, however, to the contention made in the supplemental petition that the finding that J. Nelson Kagarise unlawfully began operations as a freight forwarder subsequent to August 1, 1933, may be construed to deprive him of any such rights which he may have by virtue of operations conducted by him as Keystone Express Corporation\* on and prior to that date under tariffs on file with the Commission, perhaps it should again be stated that no issue as to the operative rights which respondent Kagarise may hold by reason of any operations conducted in the name of Keystone Express Corporation\* was determined in that decision, nor did the order direct him to cease and desist from any such operation."

(\*Obviously a typographical error. Should read Keystone Express Company.). Emphasis added.

A. R. Reader, one of the co-partners and purchaser, testified that unless this Commission first determined that J. Nelson Kagarise is possessed of the "express corporation" right to the extent indicated by the latter's tariff, <sup>(3)</sup> he, Reader, would not consummate the transaction. The attorneys for Reader and for Pacific Freight Lines Express were of the opinion that before sale is authorized this Commission should in this proceeding, first determine what rights exist and define the nature and scope thereof.

As stated, J. Nelson Kagarise, appearing in his own behalf, testified in support of the proposed sale. It was apparent that he did not expect the challenge to arise and consequently did not come prepared to meet it.

The evidence of record does not justify findings determinative of applicant Kagarise's rights and we shall not undertake the task in this proceeding. Ordinarily, in matters involving sale and transfer, the authorization is granted on the basis of whatever rights the transferor may possess, the existence and extent of such rights not usually being in issue. The question is not at issue on the pleadings in this proceeding and, therefore, determination of said rights will be left for future consideration when the question may be properly raised.

In view of the position taken by applicant Reader Truck Lines, the application will be dismissed.

#### ORDER

A public hearing having been held in the above-entitled

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(3) The extent of the operations as presently conducted is set forth in the tariffs of applicant J. Nelson Kagarise, on file with this Commission and designated Public Freight Service Local Express Tariffs Nos. 1-B and 2, C.R.C. Nos. 6 & 7. Generally, the territory involved may be described as that within the Los Angeles Metropolitan area and points in Los Angeles, San Bernardino, Riverside, and Orange Counties.

proceeding, the matter having been duly submitted, the Commission being fully informed, and good cause appearing,

IT IS ORDERED that the above-entitled application be and it is hereby dismissed without prejudice.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 28<sup>th</sup> day of August, 1945.

Edward C. Anderson  
Justus F. Casper  
Richard H. Chase  
Isaac H. Duvell  
Commissioners