

Decision No. 39541**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 W. RAY JAMES, an individual, for an) Application No. 26520
 order clarifying his operative rights)
 herein mentioned..)

O P I N I O N

In the above entitled application W. Ray James requests the Commission to issue an order clarifying his highway common carrier operative right. The application states that under such right applicant is now providing service, in general, between San Francisco and East Bay points and Los Angeles Metropolitan area and intermediate points via San Jose, Gilroy, San Luis Obispo, Santa Barbara and Santa Paula, for the transportation of new and used household goods, fixtures and equipment. In substance, applicant requests the Commission to confirm his belief that he has a right to serve Los Gatos, Santa Cruz, Monterey, Carmel and all intermediate points, which he now serves, and that he also has a right to serve the entire so-called Los Angeles metropolitan area.

The right involved is a prescriptive right established by A. W. Nickell, predecessor in interest to applicant. (1) An answer to applicant's contentions requires a brief summary of the history of the establishment of the right.

(1) W. Ray James, applicant herein, was authorized by the Commission's Decision No. 35699, Application No. 24924, to acquire from Rena Nickell, administratrix of the estate of A. W. Nickell, deceased, such operative right.

Pursuant to Decision No. 25261, dated October 17, 1932, in Cases Nos. 3226 and 3227, ⁽²⁾ (38C.R.C.156) A. W. Nickell was ordered to cease and desist certain highway common carrier operations for the transportation of new and used household goods, personal effects, etc., between San Francisco, Oakland, Berkeley, San Jose, Los Gatos, Del Mar, Santa Barbara and intermediate points, unless and until he should have obtained a certificate of public convenience and necessity authorizing such service, or otherwise should have established his right to continue such service. However, it was provided that such order would not become effective if tariffs for such service were filed with the Commission and "...allowed to go into effect, or approved and justified if suspended." Thereafter, on January 18, 1933, A. W. Nickell, doing business as Nickell Transfer Co., filed his local freight tariff No. 1, C.R.C. No. 1, effective February 20, 1933. The Commission by its order dated January 23, 1933, in Case No. 3478; suspended this tariff. Subsequent to hearings thereon, the Commission issued its Decision No. 26993 on April 30, 1934. With respect to the operations of A. W. Nickell, this decision states that:

"A. W. Nickell commenced operations in 1909 and began using motor trucks in 1913. A prescriptive right is claimed between San Jose, San Francisco, Oakland and other East Bay cities, Los Angeles and intermediate points via the coast route. The evidence shows that in 1917 and prior thereto trips were made between San Jose, San Francisco, Los Angeles, and a few intermediate points. The prescriptive rights of this carrier are coextensive with its tariff filings, and the tariff should be allowed to become effective in toto."

(2) Cases Nos. 3226 and 3227 were complaints filed by California Interurban Transportation Association vs. Nickell Transfer Company (A. W. Nickell, owner) and approximately twenty other defendants.

It was ordered that the tariff C.R.C. No. 1 of A. W. Nickell be approved and placed in the Commission's files.

It is clear from the language of said Decision No. 26993, that the present operative right of applicant James is coextensive with the tariff of A. W. Nickell, C.R.C. No. 1, bearing the effective date February 20, 1933. The Commission has heretofore stated that the purpose of clarification, as applied to its decisions, is to correct ambiguity, obscurity or uncertainty in the language expressing the intent of the Commission (Re Valley Motor Lines, Decision No. 28300, dated October 28, 1935; re Holmes Express, 44 C.R.C. 549, 651). The orders therein considered were held to be neither ambiguous, obscure nor uncertain as the points of operation were definitely fixed. The only distinction between the questions raised in those cases and the question before us is the manner of the creation of the operative rights. Those rights were created by decisions of the Commission while the right herein considered is a prescriptive operative right which the Commission has said is coextensive with the tariff filings of the respondent.

An examination of the Nickell tariff C.R.C. No. 1 discloses that it showed rates for the transportation of household goods, office or store furniture, fixtures and equipment, personal effects, musical instruments and other personal property as described therein between San Francisco, Oakland, Alameda, Albany, Berkeley, Emeryville, Piedmont and Los Angeles and intermediate points via Alvarado, Centerville, Milcs, South San Francisco, San Bruno, Palo Alto, Sunnyvale, San Jose, Gilroy, Hollister, Salinas, King City, San Luis Obispo, Santa Barbara, Ventura and Santa Paula. Between San Jose and points north thereof service would be provided within .25. miles of either

side of the main highway traveled. Between San Jose and Los Angeles and intermediate points service would be limited to points within five miles of either side of the main highway traveled. An intermediate application rule provides for rates between all points. The route of operation between termini is certain with the possible exception of the route between Ventura and Los Angeles. Here we find but one intermediate point named, that of Santa Paula. The only conclusion we can reach with respect to the route of operation between Ventura and Los Angeles as based upon the tariff would be that the route between these two points is via Santa Paula and no other route. Nowhere in this tariff is there any language or any rates or rules by which it can be reasonably concluded that service would be provided to or from Watsonville, Monterey and Carmel as each of these points is far outside the five mile lateral extension of the route between San Jose and Los Angeles.

Applicant's belief that he is authorized to serve the entire Los Angeles metropolitan area based upon the territorial description in Paragraph (f), Item No. 180-B, Highway Carriers' Tariff No. 4 (Decision No. 32325) has no foundation in fact. There is nothing in local tariff No. 1, C.R.C. No. 1 of A. W. Nickell to show that rates applied to or from any other points in this area than Los Angeles. The territorial descriptions in Decision No. 32325 were for the purpose of establishing rates only, and do not confer any operative rights.

Applicant has requested that he be directed to amend Item No. 30 in his tariff C.R.C. No. 1 to show specifically the territory to be served, thereby removing all doubt as to the right involved. We are satisfied that the tariff should be corrected. However, it is not necessary that an order to that effect should be issued. Applicant should amend his present tariff to show therein the application of rates for service to, from and between the precise points and territory set out in local tariff No. 1, C.R.C. No. 1 of

A. W. Nickell, effective February 20, 1933, as hereinbefore referred to.

In view of the conclusions reached herein, we believe the application should be dismissed. No public hearing is necessary.

O R D E R

Good cause appearing,

IT IS ORDERED that the above entitled application is hereby dismissed.

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

Dated at San Francisco, California, this 27th day of October, 1946.

Harold P. Huls
Justice F. C. ...
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...
A. E. ...
 COMMISSIONERS.