

Decision No. 56495

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of JAMES R. HUGHES for the renewal)
of License as a Motor Transporta-)
tion Broker.)

Application No. 39692

James R. Hughes, in behalf of himself.
Arthur Lyon, for the Commission staff.

O P I N I O N

On December 31, 1957, James R. Hughes filed an application for renewal of his motor transportation broker's license for 1958. A public hearing was held on this application in Redding on January 29, 1958, before Examiner William L. Cole, at which time the matter was submitted.

Facts

Based upon the evidence adduced at that hearing, the Commission hereby finds that the following facts exist:

1. Applicant was first licensed as a motor transportation broker in 1956 by Commission Decision No. 54076. The Commission renewed this license for the year 1957 by Decisions Nos. 54338 and 54455.
2. In arranging for transportation applicant normally receives a phone call from the prospective shipper requesting the transportation. Applicant then contacts a carrier and arranges to have him pick up the shipment. The carrier prepares a freight bill but normally does not fill in the spaces thereon for showing the amount of the rate and the amount of the total transportation charge. The carrier gives this freight bill to applicant together with all copies,

except any copies that the carrier might have left with the consignee. Applicant fills in the rate and charges on the freight bill and sends the original to the shipper and a copy to the carrier. If it is available applicant keeps a copy of the freight bill himself. Applicant also sends to the shipper at the same time, an invoice prepared by applicant on his own letterhead, Dick Hughes Transportation Brokerage, for the total amount of the freight charges. The shipper sends all of the freight charges directly to the applicant rather than to the carrier.

3. Applicant does not maintain a trustee account for the monies collected by him, rather he commingles such monies with his own funds. After receiving the charges from the shipper, applicant deducts his 5 per cent commission and forwards the balance to the carrier. However, in some instances such monies have not been forwarded immediately to the respective carriers. At the time of the hearing there were seven carriers relative to which applicant had not forwarded freight charges collected by him. These freight charges amounted to approximately \$2,000. Freight charges collected by applicant in some instances have not been forwarded to the carrier entitled thereto for more than four months after such collection.

4. In many instances applicant has quoted freight charges to various shippers who contacted him to arrange for transportation.

5. As contrasted to the normal situation, in certain instances the carriers would insert the rate and the transportation charges in the freight bills they prepared and sent to applicant. With respect to certain of these freight bills applicant would alter such rates and charges when he felt proper minimum rates were not being complied with or when such rates differed from the rates he quoted to the shippers.

6. Applicant maintains cargo and third party liability insurance on all transportation arranged by him.

7. The shippers for whom applicant arranges transportation hold applicant, and not the individual carriers, responsible for such transportation. Applicant considers himself responsible to the shippers for all transportation arranged for by him.

8. The license issued to applicant in 1957 authorized him to arrange transportation on behalf of certain specified carriers. During 1957 applicant arranged transportation for carriers other than those named in his license.

9. Applicant has on file with the Commission a bond required by the provisions of Section 4838 of the Public Utilities Code, which is continuous in form.

Conclusions

It is well settled that a motor transportation broker is one who acts as an intermediary between the public and motor carriers of property operating over the public highways of the State, for compensation.¹ It is likewise well settled by prior Commission decisions that a person whose methods of operation are such that he is in fact acting as a carrier, cannot also be acting as a broker with respect to the same transportation.² Prior Commission decisions have also indicated that in ascertaining whether a person is acting as a broker or as a carrier, all of the circumstances involved must be considered as a whole.³ With respect to the applicant in this

1 Section 4081 Public Utilities Code. Application of Peterson, Decision No. 29084, Application No. 20465, 40 CRC 71.

2 Application of Schempp, Decision 40843, Application 28710, 47 CRC 510. Application of Peterson, Decision 29084, Application No. 20465, 40 CRC 71. Application of Williams, Decision 28958, Application 20555, 40 CRC 47.

3 In re Zeder, Dec. 29953 Case 4186, 40 CRC 579.

matter, the Commission finds, for the reasons set forth below, that it is not necessary to ascertain whether applicant's operations, as they have been conducted in the past, make him a carrier or a broker. In this regard it should be noted that during the hearing in this matter, applicant stated he would alter his operation in any manner required by the Commission so that he could still operate as a motor transportation broker.

The Commission views as extremely serious applicant's failure, in some instances, to forward the freight charges collected by him to the applicable carriers within a short period of time. In view of this, any motor transportation broker's license issued to applicant for the year 1958 shall contain the restriction that applicant is prohibited from collecting any freight charges directly from shippers relative to the transportation for which he arranges. It necessarily follows from this that applicant must likewise be prohibited from issuing invoices covering such charges. These prohibitions will alter applicant's methods of operations so that most questions regarding his status as a carrier are eliminated. In order to remove all questions, applicant will be ordered to inform all shippers who contact him, that he is acting solely as a motor transportation broker and not as a carrier. In view of this it is the Commission's conclusion that it would not be adverse to the public interest to renew applicant's motor transportation broker's license for 1958 subject to the aforementioned restrictions.

Applicant will also be ordered to transmit to the respective carriers within 20 days after the effective date of this decision, all monies collected by him which are due such carriers. Applicant shall be required to report to the Commission when he has complied with this order.

Applicant is hereby admonished that he is authorized to arrange transportation only on behalf of those carriers listed in this decision or any amendments thereto. Applicant's mere obtaining of letters of authority from different carriers does not authorize him to arrange transportation for such carriers.

The application contains a list of the names of 23 motor carriers for whom applicant desires to act as a broker. Applicant was previously authorized to arrange transportation for 10 of these carriers. One of these 10 carriers, John Tolen, has transferred his permit to a third party. Of the remaining 13 carriers, the Commission has not received signed letters of authority from 4 carriers, to wit, Art Pezold, R & G Lumber Company, Buck Graham, and Anderson Trucking. An analysis of the remaining list of carriers indicates that 3 carriers, to wit, Ted Dittus, Higgins Transportation, and Milton Ayer, do not have active permits at the present time. Therefore, the names of the above-mentioned carriers will be withheld from the list of carriers which applicant may serve. All of the remaining carriers have effective permits as of this date.

O R D E R

Public hearing having been held in the above-entitled matter and the Commission being fully informed therein, now therefore,

IT IS ORDERED:

1. That a license is hereby granted to James R. Hughes to act as a motor transportation broker as defined in Section 4083 of the Public Utilities Code, subject to the following conditions:

- a. That licensee shall keep his license certificate as a motor transportation broker posted at his authorized place of business so that it is readily available to public inspection at all times.

- b. That licensee shall do business as a motor transportation broker only at 598 Ridge Road, Redding, California, and for motor carriers hereinafter named or for whom he may hereafter, from time to time, be permitted to do business by any subsequent order or orders of the Commission.
- c. That licensee shall not issue any invoice to the shippers for whom he arranges transportation covering the entire freight charges for such transportation.
- d. That licensee shall not collect freight charges from shippers relative to any transportation which he has arranged.
- e. Applicant shall inform all shippers who contact him relative to arranging for transportation, that he is acting solely as a motor transportation broker and not as a carrier.

2. That the license shall authorize applicant to sell, offer for sale, negotiate for, furnish or provide transportation for property over the public highways of this State to be furnished only by the carriers whose names and addresses are as follows:

<u>Name</u>	<u>Address</u>
Phil Edminster Lumber Transportation	3416 Bachelli Lane Redding, California
George Bous Lumber Transportation	1416 Sacramento Street Redding, California
Emmett Aiken	3200 Veda Street, Redding, California
W. K. Chaffee	2503 Leland Street Redding, California
Kinney Trucking Service	Highway 44 Redding, California
Calvin O. Rice	1225 Willis Street Redding, California
Donald Rochlitz	P. O. Box 1748 Redding, California
John Hartmann	Route 1, Box 2148 Redding, California
B & L Transportation	134 E. Lennox Yreka, California

Darrell Rice	5481 White Oak Drive Redding, California
Reno Trucking	4579 Harrison Avenue Redding, California
J. M. McCann	134 Flower Street Willits, California
L. O. Starrett	1800 Stromberg Arcata, California
Redding Veneer & Box Co.	P. O. Box 561 Redding, California
Mel J. Silva, dba Mel's Trucking Service	9104 Greenview Drive Hayward, California

3. Applicant shall remit to the carriers entitled thereto within twenty days after the effective date of this order, all freight charges collected by him. Applicant shall file a written report with the Commission ten days after he has completely complied with this requirement.

4. That the Secretary of the Commission issue and deliver to James R. Hughes a license certificate as such motor transportation broker in the form heretofore approved by the Commission for such license certificate and subject to the conditions hereinabove specified.

The effective date of this order shall be ten days after the date hereof.

Dated at San Francisco, California, this 9th day of APRIL, 1958.

[Signature]
President
[Signature]
[Signature]
[Signature]
Commissioners