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ORIGINAL

Decision No. 75685

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of Gerald T. Sarjeant and Edward
C. Sarjeant, doing business as
NIKKOLA EXPRESS, for a Certificate
of Public Convenience and Necessity
to operate as a highway common
carrier for the transportation of
property.

Application No. 48186
(Filed January 14, 1966;
Amended May 3, 1968)

John P. Crawford, for Nikkolá Express, Inc.,
applicant.
Russell & Schureman, by Carl H. Fritze, for
Lads Furniture Freight, Inc; John V. Drishell,
for Drishell Trucking, Inc., protestants.
R. C. Fels, for Furniture Manufacturers Association
of California, interested party.

O P I N I O N

Nikkola Express, Inc. (applicant), a California corporation, has applied for authority to operate as a highway common carrier for the transportation of new, blanket-wrapped furniture between all points and places located in the Los Angeles Basin Territory as described in Item No. 270 of Minimum Rate Tariff No. 2.

Duly noticed public hearings were held before Examiner Power in Los Angeles on June 18 and 19, 1968.

Applicant presently operates as a highway contract carrier and as a radial highway common carrier under Permit Nos. 19-50938 and 19-50939, respectively. These permits are limited to the transportation of new furniture and appliances. The permitted territory is statewide.

A financial statement and a balance sheet as of April 30, 1968 were introduced by applicant. These show that applicant has total assets of \$43,468.53 and had a net profit of \$7,057.57 during

the period January 1 - April 30, 1968. Applicant owns one tractor and six trailers; it leases six additional tractors and three trucks.

Applicant proposes to apply the same scale of rates as those contained in Minimum Rate Tariff No. 11-A and other applicable minimum rate tariffs of the Commission.

Applicant alleges that the proposed service will result in economies of operation benefiting the shipping public and in all around better service to the shippers. In particular, applicant seeks to provide daily service to the shippers it has been serving less frequently under its permit operations. Applicant's witness testified that some of its service is conducted almost on a regular schedule and that service to certain locations is provided three to four times a week.

Three shippers testified in support of the application. Two shippers testified that they have found applicant to provide excellent service, and that if applicant could serve points which it does not now serve they would utilize its services even more. They also stated that Lads Furniture Freight, Inc. (protestant), had failed to provide satisfactory service in the past. They also indicated a preference for applicant's service because its terminal facilities are closer than protestant's.

The third shipper, a furniture manufacturer, testified that he has received satisfactory service from applicant for over four years. He further stated that his business has experienced considerable growth resulting in greater need for transportation services.

Protestant opposes the application on the ground that public convenience and necessity do not require the proposed service.^{1/} The vice-president of protestant testified that business

^{1/} Drishell Trucking, Inc. also protested the application herein, but it did not actively participate or present any evidence in opposition to applicant's request.

has been declining, and that protestant has lost money on its operations in the Los Angeles Basin during the last two years. Gross earnings were stated to have been \$1.2 million in 1965; \$1.4 million in 1966, and \$1.6 million in 1967.

He did admit, however, that the revenue situation has improved since a tariff increase went into effect. He admitted that applicant's proposed operations would not cause protestant any more loss of business than it already has as a permitted carrier if applicant's operations remain about the same. It was also conceded that protestant holds authority to transport more commodities than merely blanket-wrapped furniture.

Protestant did not call any witnesses other than its vice-president and did not produce any other evidence from the area in question to prove its contention that applicant's proposed service is not needed and that protestant is providing adequate service. In view of the fact that protestant is a large carrier with over 40 tractors or trucks and almost 90 trailers or vans, and that it did not introduce any detailed data concerning its financial condition its assertions are entitled to little weight.

There is no evidence that institution of the service by applicant will impair the ability of protestant to continue rendering service under its certificate. The evidence reflecting on the applicant's financial condition and experience shows it to be well qualified to provide the service, and no evidence to the contrary was offered.

Upon consideration of the evidence the Commission finds that:

1. Applicant possesses the experience, equipment, personnel, and financial resources to institute and maintain the transportation service hereinafter authorized.

2. The shippers who testified that they utilize applicant's transportation service do not now have and have not had adequate transportation service available from protestant to satisfy their requirements in an efficient and speedy manner.

3. The shippers of the commodity described in the testimony will be afforded more efficient service if applicant is granted authority to transport said commodity in the area requested.

4. Granting the application will not adversely affect protestant or result in any substantial impairment of its existing service.

5. The protestant has failed to establish that the service it offers has adequately met the transportation needs of the Los Angeles Basin for new, blanket-wrapped furniture.

6. Public convenience and necessity require that applicant be authorized to transport new, blanket-wrapped furniture in the Los Angeles Basin as more particularly set forth in the ensuing order.

The Commission concludes that the application should be granted.

Applicant is hereby placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Nikkola Express, Inc., a corporation, authorizing it to operate as a highway common carrier as defined in Section 213 of the Public Utilities Code, between the points particularly set forth in Appendix A attached hereto and made a part hereof.

2. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations. Failure so to do may result in a cancellation of the operating authority granted by this decision.

- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. Applicant is placed on notice that, if it accepts the certificate of public convenience and necessity herein granted, it will be required, among other things, to comply with and observe the safety rules of the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-E.
- (b) Within one hundred twenty days after the effective date hereof, applicant shall establish the service herein authorized and file tariffs, in triplicate, in the Commission's office.
- (c) The tariff filings shall be made effective not earlier than thirty days after the effective date of this order on not less than thirty days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the establishment of the service herein authorized.
- (d) The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filings of tariffs set forth in the Commission's General Order No. 80-A.

- (e) Applicant shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.
- (f) Applicant shall comply with the requirements of the Commission's General Order No. 34 series for the transportation of collect on delivery shipments. If the applicant does not elect to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

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

Dated at San Francisco, California, this 26th day of MAY, 1969.

William J. ...
President

David P. Monsey

Commissioners

Nikkola Express, Inc., by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to operate as a highway common carrier as defined in Section 213 of the Public Utilities Code for the transportation of uncrated new furniture, blanket-wrapped, between all points and places within the Los Angeles Basin Territory described below:

LOS ANGELES BASIN TERRITORY includes that area embraced by the following boundary: Beginning at the point the Ventura County-Los Angeles County boundary line intersects the Pacific Ocean; thence northeasterly along said county line to the point it intersects State Highway No. 118, approximately two miles west of Chatsworth; easterly along State Highway No. 118 to Sepulveda Boulevard; northerly along Sepulveda Boulevard to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the City of San Fernando; westerly and northerly along said corporate boundary to McClay Avenue; northeasterly along McClay Avenue and its prolongation to the Angeles National Forest Boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest boundary to the county road known as Mill Creek Road; westerly along Mill Creek Road to the county road 3.8 miles north of Yucaipa; southerly along said county road to and including the unincorporated community of Yucaipa; westerly along Redlands Boulevard to U.S. Highway No. 99; northwesterly along U.S. Highway No. 99 to the corporate boundary of the City of Redlands, westerly and northerly along said corporate boundary to Brookside Avenue; westerly along Brookside Avenue to Barton Avenue; westerly along Barton Avenue and its prolongation to Palm Avenue; westerly along Palm Avenue to La Cadena Drive; southwestwesterly along La Cadena Drive to Iowa Avenue; southerly along Iowa Avenue to U.S. Highway No. 60; southwestwesterly along U.S. Highways Nos. 60 and 395 to the county road approximately one mile north of Perris; easterly along said county road via Nuevo and Lakeview to the corporate boundary of the City of San Jacinto; easterly, southerly and westerly along said corporate boundary to San Jacinto Avenue; southerly along San Jacinto Avenue to State Highway No. 74; westerly along State Highway No. 74 to the corporate boundary of the City of Hemet; southerly, westerly and northerly along said corporate boundary to the right of way of The Atchison, Topeka & Santa Fe Railway Company; southwestwesterly along said right of way to Washington Avenue; southerly along Washington Avenue, through and including the unincorporated community of Winchester to

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LOS ANGELES BASIN TERRITORY, cont.:

Benton Road; westerly along Benton Road to the county road intersecting U.S. Highway No. 395, 2.1 miles north of the unincorporated community of Temecula; southerly along said county road to U.S. Highway No. 395; southeasterly along U.S. Highway No. 395 to the Riverside County-San Diego County boundary line; westerly along said boundary line to the Orange County-San Diego County boundary line; southerly along said boundary line to the Pacific Ocean; northwesterly along the shore line of the Pacific Ocean to point of beginning.

End of Appendix A

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