

ORIGINAL

Decision No. 86942

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Leon A. Worneski for restoration of a highway contract carrier permit which was transferred to Bennie B. Harrison.

Application No. 56819
(Filed October 21, 1976)

Leon Worneski, for himself, applicant.
Stanley E. Garrett, for the Commission staff.

O P I N I O N

Leon A. Worneski (Worneski) requests restoration of a highway contract carrier permit which has been transferred from him to Bennie B. Harrison (Harrison). Public hearing in this matter was held before Examiner Arthur M. Mooney in Los Angeles on December 7, 1976, on which date the matter was submitted.

Testimony setting forth his background in the transportation field and his reasons for requesting restoration of the permit in issue was presented by Worneski. An associate transportation representative of the Commission staff assisted in the development of the record and presented Exhibit 1 in evidence which includes true and correct photostatic copies of the application to transfer the permit from Rowley Blaine Armistead (Armistead) to Worneski and the required supporting documents, the permit issued to Worneski, the application to transfer the permit from Worneski to Harrison, and letters dated September 23 and October 14, 1976 from Worneski to the Commission asserting that the transfer application was filed without his knowledge and requesting a hearing. No other parties appeared at the hearing.

Findings

The following undisputed facts are established by the evidence and we find them to be such:

1. Worneski has been in the business of transporting mobile homes over the public highways since 1972. He operates a two and one-half ton Ford tractor which is designed for pulling mobile homes. No additional trailing equipment is used for this transportation. From the time he commenced his business until September 1975, Worneski operated exclusively as a subhauler for Morgan Drive-Away, Inc. (Morgan), a highway permit carrier, from its locations in southern California. Initially all of the transportation he performed for Morgan was interstate under Morgan's interstate authority. After he had been providing this service for two months, Morgan had an intrastate haul for him to Murrieta Hot Springs in Riverside County. Worneski did not have any intrastate authority. Morgan informed him that if he had been providing services for it for a longer period of time it would have purchased an intrastate permit for him but that because of the short time involved, he would have to buy a permit himself. Morgan offered to arrange for the transfer of a highway contract carrier permit to him for \$250. Worneski paid the \$250 to Morgan, and it arranged for the transfer of a highway contract carrier permit from Armistead to him.

2. The application to transfer the highway contract carrier permit to Worneski was filed with the Commission on October 13, 1972 and was signed by Armistead as transferor and Worneski as transferee. The \$150 fee for the transfer was paid to the Commission also on October 13, 1972. The required Statement of Residence and Request for Tariffs by Worneski were filed along with the application. A highway contract carrier permit with certain exceptions and limited to independent contractor subhauling operation was issued to Worneski on October 24, 1972. The permit was retained by Morgan in its files.

3. After he obtained his permit from the Commission, Worneski performed both interstate transportation and intrastate subhauling for Morgan until he ceased operating for it in September 1975. During this time, Morgan filed Worneski's quarterly reports with the Commission and paid his quarterly fees. Since September 1975, Worneski's subhaul operations have all been within a one hundred-mile radius of Los Angeles and have been primarily for Norris Trailer Transport and Star Transport, and he has filed his own quarterly reports with the Commission and has personally paid all applicable fees.

4. On August 26, 1976, an application was filed with the Commission to transfer Worneski's highway contract carrier permit to Harrison. The required \$150 fee accompanied the application. The application was purportedly signed by Worneski as transferor and was signed by Harrison as transferee. The permit was transferred to Harrison, and as a result, Worneski no longer held any intrastate operating authority from the Commission.

5. Upon being informed by the Commission that his permit had been transferred to Harrison and that it had been placed in voluntary suspension in latter 1975, Worneski sent letters to the Commission dated September 23 and October 14, 1976 stating that he had been operating continuously under his permit and had paid all applicable quarterly gross operating fees; that he never knowingly signed any paper suspending, transferring, or selling his permit; and that it was essential that he continue to have his permit to earn his livelihood. He requested that the matter be straightened out.

6. Worneski denies that the transferor signature Leon A. Worneski shown on the transfer application to Harrison referred to in Finding 4 is his signature. From a review of the photostatic copies of other documents in Exhibit 1 on which Worneski's signature appears, it is apparent that they differ from the Worneski signature on the transfer application to Harrison.

7. After his permit had been transferred by the Commission, Worneski contacted Morgan's office on several occasions and was informed by one of its secretaries that Morgan often purchased intrastate permits for drivers who subhailed for it and would retain these permits in its files; that when it did purchase the permit, it would have the driver sign a transfer application for the permit when the driver ceased operating for it, and if the driver were not available to sign the application, someone in Morgan's office would sign it; that Morgan is holding some of these permits in suspense; that since Worneski paid for his own permit, he owned it, and the transfer to Harrison, which was handled by Morgan, was in error; that she called the Commission office in San Francisco and was informed that it would cost \$150 to transfer the permit back to him; that Morgan would not pay the \$150 fee; that if he would pay it, Morgan would arrange to have the permit transferred back to him; and that she did not know who signed the transfer application for his permit.

8. Notice of the hearing in this matter was mailed on November 22, 1976 to the president of Morgan and to Harrison. Neither appeared at the hearing to present evidence nor to dispute any evidence presented by Worneski.

9. Worneski paid for the highway contract permit that was transferred to him from Armistead and was the sole owner thereof. He never assigned or otherwise encumbered the permit.

10. Based on the foregoing findings, it is obvious that the filing of the transfer application in question by Morgan was an error on its part and was never authorized by Worneski.

11. For the reasons stated in Finding 10, the transfer of the highway contract carrier permit in issue from Worneski to Harrison should be rescinded, and the permit should be reissued to Worneski without the payment of any additional filing fee.

12. Although the transfer from Worneski to Harrison will be rescinded, the filing fee for this transfer should not be refunded.

Discussion

Findings have been made above on all issues pertinent to this proceeding. The only matter remaining for our comment is the propriety of the procedure utilized by Morgan in purchasing permitted authority for certain of the owner-operators of power equipment it engages as subhaulers, holding such permits as the owner thereof, and the transferring of such authority whenever it wishes to do so. As stated in Section 3574 of the Public Utilities Code, no operating permit may be sold, leased, assigned, transferred, or otherwise encumbered by the holder thereof without first having secured from the Commission an order authorizing it. The holder of the permit is the party to whom it is issued irrespective of who may have paid for it. From the explanation presented by Worneski, it would appear that the holder has in effect assigned his rights in the permit to Morgan without authority from the Commission. However, before a definitive determination can be made on this, further information is necessary regarding the precise arrangements Morgan has with such subhaulers. We will, therefore, direct our Transportation Division staff to make an investigation of these arrangements. If as a result of this investigation, there is reason to believe that such arrangements are not proper, we will issue an order of investigation for the purposes of formally inquiring into the propriety thereof.

Worneski is placed on notice that he may not operate under the reissued permit until he has complied with the insurance requirements of Sections 3631 and 3632 of the Public Utilities Code and General Order No. 100-H and that he shall comply with all other rules and regulations governing his operations.

Conclusions

1. The transfer to Harrison of the highway contract carrier permit heretofore held by Worneski should be rescinded, and the permit should be reissued to Worneski without the payment of any additional filing fee.

2. The filing fee paid for the transfer referred to in Conclusion 1 should not be refunded.

3. The Transportation Division staff should be directed to make an investigation of the facts and circumstances surrounding the arrangements between Morgan and its subhaulers to determine whether Morgan is or has been purchasing highway carrier permits for any of its subhaulers, in the names of the subhaulers retaining any such permits as the owner thereof, and transferring such permits whenever it wishes. Because applicant's request is not contested and he requires the permit for his livelihood this order will be made effective the date signed.

O R D E R

IT IS ORDERED that:

1. The transfer to Bennie B. Harrison of the highway contract carrier permit (File T-102,514) heretofore issued to Leon A. Worneski shall be rescinded, and the Acting Executive Director shall reissue the permit to Leon A. Worneski without the payment of any transfer fee.

2. The filing fee paid for the transfer of the highway contract carrier permit referred to in Ordering Paragraph 1 shall not be refunded.

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3. The Commission Transportation Division staff shall investigate the facts and circumstances surrounding the arrangements between Morgan Drive-Away, Inc. and its subhaulers to determine whether Morgan Drive-Away, Inc. is now or has been purchasing highway carrier permits for any of its subhaulers in the names of the subhaulers, retaining any such permits as the owner thereof, and transferring such permits whenever it wishes.

The effective date of this order is the date hereof.

Dated at San Diego, California, this 8th day of FEBRUARY, 1977.

I abstain -
William Sycora, Jr.

Robert Balceron
President

Joseph L. Sturgeon

Leonard Ross

Michael H. Havelle
Commissioners