

Decision No. 25274.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

UNITED PARCEL SERVICE OF LOS ANGELES, INC.,  
a corporation,  
Complainant,

vs.

20th CENTURY DELIVERY SERVICE, INC., a  
corporation, LOUIS M. GOODMAN, doing  
business under the firm name and style  
of "Goodman Delivery Service," PHIL  
JACOBSON, BENJAMIN FULLMAN, JOSEPH E.  
NOYES, GEORGE B. GIBSON, HARRY HUSTED,  
GEORGE SLOAN, LUTHER MARSHALL, A. HAM-  
ILTON et al.,  
Defendants.

Case No. 3299.

Douglas Brookman and Fred C. Athearn, for  
complainant.

Phil Jacobson, for defendants 20th Century  
Delivery Service, Inc., Phil Jacobson,  
Benjamin Fullman, Joseph E. Noyes, George  
B. Gibson, Harry Husted, George Sloan,  
Luther Marshall and A. Hamilton.

H.A.I. Wolch, for defendant Louis M. Goodman.

CARR, Commissioner:

O P I N I O N

Complainant, a certificated carrier,<sup>1</sup> performing a parcel  
delivery service in the southern part of the State, charges the de-  
fendants jointly and severally with unlawful common carrier opera-  
tions on the highways over the general territory and routes serv-  
ed by the complainant.<sup>2</sup>

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<sup>1</sup> See re Casey to sell and United Parcel Service of Los Angeles to buy, 24 C.R.C. 938; re United Parcel Service of Los Angeles, 27 C.R.C. 874; re United Parcel Service of Los Angeles, 29 C.R.C. 859; re United Parcel Service of Los Angeles, 32 C.R.C. 82.

<sup>2</sup> Tariffs of the complainant on file indicate service out from Los Angeles as far north as Santa Barbara and as far south as San Diego.

Defendant Louis M. Goodman answered separately, denying unlawful operations. The other named defendants likewise denied unlawful operations.

Public hearings were had in Los Angeles on September 27, 28 and 29 and the case was submitted.

In the latter part of January, 1931, 20th Century Delivery Service, Inc., was incorporated under the laws of the State of California by Louis M. Goodman, Benjamin Fullman and Joseph H.

2, Cont'd. Exhibit 8, a circular issued by 20th Century Delivery Service, Inc., specified service to substantially the same points as those served by the complainant. This circular, which is an offer of service, reads as follows:

(3) DELIVERIES DAILY IN LOS ANGELES

Alhambra (2)	Colton	Guasti
#Altadena (2)	Compton (2)	Harbor City (2)
Alta Loma	Corona	# Hawthorne (2)
Anaheim (2)	Coronado	# Hermosa Beach (2)
#Annandale (2)	Costa Mesa	Highland
Arcadia (2)	Covina (2)	Hollydale
Arlington	Cucamonga	# Hollywood (2)
Artesia	Cudahy City (2)	# Hollywood Country Club
Atwood	#Culver City (2)	Home Gardens
Azusa (2)	Davidson City (2)	Hondo
Balboa	Del Mar	Huntington Beach
Baldwin Park (2)	Dominguez (2)	# Huntington Park (2)
Bandiná	Downey	# Hyde Park (2)
Bassett	Duarte (2)	Hynes
Bell (2)	#Eagle Rock (2)	# Inglewood (2)
Bellflower	#East Long Beach (2)	Irvine
#Belvedere Gardens(2)	El Modena	La Canada
#Beverly Hills (2)	El Monte (2)	La Crescenta
Bloomington	#El Segundo (2)	La Habra (2)
Brea	#El Sereno (2)	La Jolla
#Brentwood Heights	Encinitas	La Mesa
#Brentwood Park	Encino	Laguna Beach
Buena Park	Etiwanda	# Lamanda Park (2)
Burbank (2)	Fillmore	Lankershim (2)
Camarillo	Flintridge (2)	# Latin Station (2)
Calabasas	#Florence (2)	Laurel Canyon
Capistrano Beach	Fontana	La Verne (2)
Cardiff	#Frederick Station (2)	#Lawndale (2)
Carlsbad	Fullerton (2)	Lemon Grove
Carpenteria	Gardena (2)	# Lennox (2)
#Charter Oak (2)	Garden Grove	Loma Linda
Chatsworth	Garvey (2)	Lomita (2)
Chino (2)	Girard	# Long Beach (2)
Chula Vista	#Glendale (2)	Los Alamitos
Claremont (2)	Glendora (2)	# L.A. Country Club (2)
Clearwater	#Graham Station (2)	Los Cerritos (2)

Noyes. In the latter part of April application was made to the State Corporation Commission for permission to issue securities, mostly in payment for the three separate businesses of the incorporators, which were proposed to be transferred to the corporation. A permit was issued on May 19, 1931. The permit thus issued was temporarily suspended on January 16, 1932, was reinstated on March

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Los Nietos	Placentia	#Southgate
Lynwood	#Playa Del Rey	#So. Pasadena (2)
#Magnolia Park	Point Loma	Spadra
Malibu Beach	Pomona (2)	Strawberry Park (2)
Manhattan Beach (2)	Puente (2)	#Studio City
#Mar Vista	Redlands	#Sunland
#Maywood (2)	#Redondo (2)	Sunset Beach
Mission Beach	Reseda	#Tujunga
Moneta (2)	Rialto	Temple (2)
Monrovia (2)	Rivera	#Terminal Island
Montebello (2)	Riverside	Torrance (2)
Montecito	Roscoe	Topanga Beach
Monterey Park (2)	Rosemead	Tustin
Montrose	San Bernardino	#Universal City (2)
Naples	San Clemente	Upland (2)
National City	San Diego	#Van Nuys (2)
Newport	San Dimas (2)	#Venice (2)
#No. Hollywood (2)	#San Fernando	Ventura
#No. Long Beach (2)	San Gabriel (2)	Ventura Highway
Norwalk	San Juan Capistrano	Verdugo Woodlands
#Oak Knoll (2)	#San Marino (2)	Verdugo City
Ocean Beach	#San Pedro (2)	Vernon (2)
#Ocean Park (2)	Santa Ana (2)	#Walnut
Oceanside	Santa Barbara	Walnut Acres
Olive	Santa Fe Springs	#Walnut Park (2)
Oneonta (2)	#Santa Monica (2)	Walteria (2)
Ontario (2)	Santa Paula	#Watson (2)
Orange (2)	San Ysidro	Watts (2)
#Owensmouth	Saticoy	#Westgate (2)
Oxnard	Savannah	#West Los Angeles
Pacific Beach	#Sawtelle (2)	Westminster
#Pacific Palisades	Seal Beach	#Westwood (2)
#Pacoima	#Sherman (2)	Whittier (2)
Palisades Del Rey	Sierra Madre (2)	#Willowbrook
#Palms (2)	Sierra Vista (2)	Wilmar (2)
#Palos Verdes	Signal Hill (2)	#Wilmington (2)
#Pasadena (2)	Smeltzer	Wineville
Pico	Solano Beach	Yorba Linda
		#Zelzah

Figure (2) after name indicates 2 deliveries daily.

Rate: 10¢ per package plus  $\frac{1}{2}$ ¢ per pound to all points with the figure (#) before the name. All other points 9¢ per package plus 1¢ per pound. C.O.D. collections 10¢. These rates cover free insurance up to \$100.00 on any one package.

25th, and was again suspended on June 15th.

The application to the State Corporation Commission represented that the applicant "was organized for the purpose of engaging in the business of transporting property for hire".<sup>3</sup> The businesses consolidated through this incorporation were (1) "Advance Delivery Company," owned by Benjamin Fullman, (2) "Cannon Ball Messenger & Delivery Company," owned by Joseph H. Noyes, and (3) "20th Century Delivery & Express Service," owned by Louis M. Goodman.

During the process of securing a permit for the issuance of securities, these three properties apparently were put together and operated as one, Fullman, Goodman and Noyes participating actively in the management then as well as after a permit was secured and transfers to the corporation made. These three were directors of the corporation, Noyes was the Secretary-Treasurer, and the other two were Vice-Presidents. Phil Jacobson became its President.

In the fall of 1931 Goodman became dissatisfied with the arrangement and by an agreement of date September 30th the withdrawal of the property and business formerly owned by him was effected. Thereafter he has operated independently under the fictitious name of Goodman Delivery Service, performing a parcel delivery service, mainly within the City of Los Angeles. Parcels destined for points outside of the City were turned over to certificated or authorized carriers or handled by parcels post. On September 16, 1932, Goodman filed a tariff as an express company, advising the Commission that he had no contract with any common carrier but proposed to pay the full tariff rates of common carriers whose service was utilized.

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<sup>3</sup> On May 6, 1931, Mr. Phil Jacobson, attorney for the applicant and its President, wrote to the Corporation Department that "this company was formed for the purpose of engaging in the parcel delivery business and proposes to restrict their operations to service within the limits of incorporated towns, which operation is not subject to the jurisdiction of the State Railroad Commission."

The business of the corporation, both before and after the withdrawal of Goodman, consisted of two parts: the one, a regular parcel delivery service which, prior to the consolidation of businesses, was apparently limited to Los Angeles and Glendale, Long Beach, Pasadena, San Pedro and Wilmington, but which following the consolidation was gradually extended to cover practically identical territory and routes served by the complainant; and the other, a special delivery or messenger service generally termed by witnesses "The Cannon Ball Service" and being a continuation of the service formerly conducted by Noyes. This latter service consisted of filling special orders. Various owners of trucks, motorcycles and Austin cars would place their names on a blackboard at the place of business, the first arrival being first on the list. When orders for special deliveries came in they were turned over to these operators in rotation, the operator getting 65 per cent. of the price paid for the job.

Of the defendants George B. Gibson, Harry Eusted, George Sloan, Luther Marshall and A. Hamilton, being truckmen owning their own trucks, some if not all made their headquarters at the office of the Cannon Ball Messenger and Delivery Company, owned by Joseph H. Noyes and later operated by defendant 20th Century Delivery Service, Inc. They subsequently took "contracts" for out-of-town hauls of parcels for the 20th Century corporation but between trips they would wait about the Cannon Ball offices, picking up such special jobs as might fall to them under the rotation system used in distributing business.

20th Century Delivery Service, Inc. maintained a local office and headquarters at Pasadena and also at Long Beach, at first with one delivery truck and later two trucks at each place. Parcels destined for Pasadena for a time were transported from Los

Angeles by Pasadena Express and Freight Service, a certificated carrier. This service proving unsatisfactory, about the middle of November, 1931 the transportation was turned over to the defendant, George B. Gibson, who made two trips daily from the depot of the 20th Century Company to Pasadena, for which he was paid \$50.00 a month. The rest of the time Gibson would work for the Cannon Ball Service. On May 16, 1932 Gibson's route was extended, for which added services he was paid an additional \$75.00 per month. The local agent at Pasadena distributed the parcels thus delivered, not only to Pasadena but in surrounding territory such as South Pasadena, Altadena, Flintridge, La Canada and San Marino. The service had various customers in Pasadena, some of whom had parcels to be delivered not only within the city limits but within the surrounding fringe of territory, and these were delivered by the local trucks, together with the parcels coming from Los Angeles. Regular delivery trips were made, usually twice daily, but as to some of the surrounding territory, at times only once daily.

Parcels destined for Long Beach were sent by a certificated line and were there picked up by the local agent in charge and distributed. Frequently the Long Beach hamper contained parcels destined for San Pedro and Wilmington which were distributed by the Long Beach agent. Regular delivery trips were made from the Long Beach headquarters covering Long Beach and at times San Pedro and Wilmington. Later an agency was established at San Pedro and parcels destined for San Pedro and Wilmington shipped by a certificated carrier and picked up by one of the trucks attached to the Long Beach office and distributed to the consignees. Sometimes when shipments for San Pedro and Wilmington were light they

were included in the Long Beach hamper and sent to the Long Beach headquarters, and were distributed directly from there to consignees at the latter points. Usually a truck used in this local service would go to the Los Angeles headquarters for servicing on Monday morning and would go back with a load of parcels to be delivered in the beach section.

About December, 1931, delivery of parcels from the depot of the 20th Century corporation in Los Angeles to Long Beach and San Pedro was turned over to defendant A. Hamilton, who made two trips a day and received a compensation of \$75.00 a month. Later, and about August, 1932, Hamilton's operations were somewhat extended and he received increased compensation.

Prior to the middle of May, 1932, the 20th Century company had been accustomed to turn over its out-of-town parcels which did not go to Pasadena, the Long Beach territory, the San Bernardino-Riverside section, or San Diego or Santa Barbara, to the complainant company for delivery, the tariff rates of the complainant company being paid therefor. About the middle of May, however, the United Parcel Service flatly refused to accept any further consignments from the 20th Century Delivery Service, Inc., or other local parcel delivery services.<sup>4</sup>

4. Following this refusal, various informal complaints were made to the Commission by parcel delivery companies affected. The United Parcel Service insisting upon its position, these complaining companies were told that they should file a formal complaint. No such complaint was filed until August 20, 1932, when C. B. De Camp, Tip Top Delivery and 20th Century Delivery Service, Inc. filed their complaint against the United Parcel Service of Los Angeles, complaining of its refusal to accept parcels tendered and also charging tariff violations. On September 6th this complaint was returned to the complainants for amendment. The amendments have not been made. Because of this complaint and the situation disclosed by this record as to refusal of shipments by the United Parcels Service, as well as the receipt of various informal complaints involving the form of rates, service and practices of this company, the Commission has instituted a general investigation into the rates, service and practices of the complainant herein, in the belief that such a general proceeding with the broad issues presented thereby, offers the most expeditious and satisfactory means of getting at the facts and by effective order correcting any abuses if such there be. This proceeding is on the calendar for hearing on November 1, 1932.

Thereupon the 20th Century company employed several of the individual truck owners, most, if not all, of whom were accustomed to work on a commission basis for the Cannon Ball Service, to make out-of-town deliveries over various routes.

Thus the defendant, Luther Marshall, was employed for a route out the Foothill Boulevard to Azusa, and thence to Ontario and Uplands, returning via the Valley Boulevard or Bonita Avenue, making two trips a day, one trip however not covering the entire territory. He made deliveries to the consignees of parcels. For this he was paid \$200 a month. Sometimes when Marshall was overloaded, Gibson would help out on deliveries along his route. The defendant, George Sloan, was employed to handle a route running through Whittier to Orange County points. He made two trips a day. Deliveries were made by him to the consignees in various points covered by his route. His compensation was \$200 a month. The defendant, Harry Husted, was employed at \$200 a month to deliver at Ventura, Oxnard, Santa Paula and other points on that general route.

Francis Taylor, not a defendant, had a route covering Southgate, Bell, Bellflower, Lynwood, Cudahy City, Huntington Beach, Hynes, Newport, Sunset Beach, Westminster, and other communities along that general route. He was paid \$175 a month. Deliveries were made by him to the local consignees.

J. Crutsinger, not a defendant, was employed at \$125 a month for a route covering Compton and vicinity.



Edward DeLong, not a defendant, had a route to Glendale, making two deliveries a day and receiving \$200 a month.

The Santa Monica-Venice-Ocean Park section was handled by the Security Van and Storage Company, Inc., a certificated carrier, under a rather peculiar arrangement, by which this concern leased a truck from the 20th Century company and used that in handling this beach section.

San Diego and vicinity were covered somewhat differently. Parcels destined there were placed in hampers, and through the services of a forwarding company were transmitted from Los Angeles to San Diego over lines of a rail carrier and were there received and distributed in San Diego and adjacent communities by R. S. Stowell, doing business under the name of Western Parcel Service of San Diego. Stowell is not a certificated carrier.

Redlands, San Bernardino, Colton and Riverside business was handled by Rex Transfer Company and Southern California Freight Lines (Motor Service Express), certificated carriers.

J. L. Postwick, doing business under the name of Easty Parcel Service, handled deliveries in Santa Barbara and vicinity in a manner similar to that in which the San Diego business was handled.

It was claimed that the various drivers referred to were operating under contracts, some dating back to 1931 and several dating from May, 1932. It is not at all clear that any written contracts were made prior to the week of the hearings. Certain purported contracts which were actually typed and signed on the day before the hearings commenced or during their continuance were submitted as bona fide contracts bearing dates as to some in 1931 and as to others in May, 1932. At best these were crude and flimsy.

subterfuges. They were not taken seriously by the drivers themselves. The most that can be said of them is that they fixed the wages of the drivers and loosely designated routes to be served for the agreed-upon compensation. For all practical purposes these drivers were not independent contractors but were employees of the corporations.

The conclusions flowing from the record as developed are clear and free from doubt. As to the San Diego, Santa Barbara, Riverside-San Bernardino and Santa Monica business the 20th Century company is operating as an express corporation without having filed its tariffs with the Commission.

As to the remaining operations, the 20th Century company is clearly operating as a transportation company without certification and in violation of the Auto Stage and Truck Transportation Act. The other named defendants, except Goodman, are clearly participating in unlawful operations, or aiding and abetting them, and they should be appropriately dealt with in the order. Goodman, while he may have operated unlawfully for a time, is now, as the record has developed, lawfully operating as an express corporation.

It is appropriate to point out that an order of this Commission finding an operation to be unlawful and directing that it be discontinued is in its effect not unlike an injunction issued by a court. A violation of such order constitutes a contempt of the Commission. The California Constitution and the Public Utilities Act vest the Commission with power and authority to punish for contempt in the same manner and to the same extent as courts of record. In the event a party is adjudged guilty of contempt, a fine may be imposed in the amount of \$500, or he may be imprisoned for five (5) days, or both. C.C.P. Sec. 1218; Motor Freight Terminal Co. vs. Bray, 37 C.R.C. 224; re Ball and Hayes, 37 C.R.C. 407;

Wermuth v. Stamper, 36 C.R.C. 458; Pioneer Express Company v. Keller, 33 C.R.C. 571.

It should also be noted that under Section 8 of the Auto Truck Act (Statutes 1917, Chapter 213), a person who violates an order of the Commission is guilty of a misdemeanor and is punishable by a fine not exceeding \$1000, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. Likewise a shipper or other person who aids or abets in the violation of an order of the Commission is guilty of a misdemeanor and is punishable in the same manner.

The following form of findings and order is recommended:

FINDINGS AND ORDER

Public hearings having been had in the above entitled case and the case having been submitted for decision,

The Railroad Commission of the State of California, after giving full and careful consideration to the record before it, concludes and finds as follows, to-wit:

1. As to the parcel delivery service of the defendant, 20th Century Delivery Service, Inc. between Los Angeles and vicinity and San Bernardino, Riverside, Redlands, Colton and adjacent communities, and between Los Angeles and vicinity and San Diego and points in the vicinity thereof, and between Los Angeles and vicinity and Santa Barbara and points in the vicinity thereof, and between Los Angeles and vicinity and the Santa Monica section, said defendant is operating as an express corporation as defined in Section 2(k) of the Public Utilities Act without having first filed its tariffs with the Railroad Commission of the State of California.

2. As to the remainder of the parcel delivery service of the 20th Century Delivery Service, Inc, as proposed and offered

to the public (see Exhibit No. 8 hereinbefore set forth) said corporation is operating as a common carrier of property for compensation over the public highways of the State between fixed termini and over regular routes, not exclusively within the limits of an incorporated city, without a certificate of public convenience and necessity therefor and in violation of the Auto Stage and Truck Transportation Act.

3. The defendants, Benjamin Fullman, Joseph H. Noyes and Phil Jacobson, as officers of the corporation, are participating in and aiding and abetting the unlawful operations specified in Findings Nos. 1 and 2, and the defendants George B. Gibson, Harry Eusted, George Sloan, Luther Marshall and A. Hamilton, as agents and employees of the said corporation, are participating in and aiding and abetting the unlawful operations specified in Finding No. 2.

4. Defendant, Louis M. Goodman, having filed a tariff as an express corporation, is not at present operating unlawfully.

Based upon the findings herein and in the opinion preceding,  
IT IS HEREBY ORDERED:

1. That the defendant, 20th Century Delivery Service, Inc., and the defendants Phil Jacobson, Benjamin Fullman and Joseph E. Noyes as officers thereof, cease and desist from accepting parcels for delivery between points specified in Exhibit 8, hereinbefore referred to and set out, and not within a single incorporated city, where a portion of the service is performed by a certificated transportation company or other lawfully operating common carrier, except, unless and until,

(a) Said corporation has filed with the Railroad Commission of the State of California tariffs as an express corporation

covering such service, and

- (b) No part of the service is performed by any truck line operating between incorporated cities or otherwise than exclusively within an incorporated city unless the operator has a certificate of public convenience and necessity therefor.

2. That 20th Century Delivery Service, Inc., a corporation, Phil Jacobson, Benjamin Fullman, and Joseph H. Noyes, as officers of said corporation, and George B. Gibson, Harry Husted, George Sloan, Luther Marshall, and A. Hamilton, as employees and agents of said corporation, immediately cease and desist the unauthorized common carrier trucking operations referred to in Finding No. 2 above, and immediately cease and desist from soliciting or accepting for delivery and from transporting and delivering parcels, directly or indirectly or by any scheme or device, by auto truck between fixed termini or over regular routes, for compensation, as a common carrier (where the transportation is not exclusively within the limits of an incorporated city or town), unless and until a certificate of public convenience and necessity authorizing such operation shall have been obtained.

3. That a certified copy of this opinion, findings and order be personally served upon each of the defendants named in the preceding paragraph, and also upon Francis Taylor, J. Crutsinger, Edward DeLong, R. S. Stowell, and J. L. Bostwick, employees or parties to contracts or agreements with 20th Century Delivery Service, Inc.

4. That the complaint as to Louis M. Goodman be dismissed.

This order shall become effective twenty (20)

days after the date of personal service above mentioned.

The foregoing opinion, findings and order are hereby approved and ordered filed as the opinion, findings and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24<sup>th</sup> day of October, 1932.

Clifford  
Leon Whitely  
M. H. Lee  
M. B. Higgins  
Fred G. Blackwell  
Commissioners