

Decision No. 28245

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
V. FRED JAKOBSEN, an individual, doing
business under the firm name and style
of SPECIAL DELIVERY SERVICE CO., for a
certificate of public convenience and
necessity to operate an inter-city,
auto-truck, pick-up and delivery
service, for the transportation of
property as a common carrier between
San Leandro, Alameda, Oakland, Piedmont,
Emeryville, Berkeley, Albany, El Cerrito,
Richmond and Hayward, California, and
intermediate points, and along the routes
traversed in reaching said points.

REGULATED CARRIERS, INC., a corporation,
Complainant,

vs.

V. FRED JAKOBSEN, V. FRED JAKOBSEN, doing
business as SPECIAL DELIVERY SERVICE CO.,
First Doe, Second Doe, Third Doe, Fourth
Doe, Fifth Doe, First Doe Corporation,
Second Doe Corporation, Third Doe Cor-
poration, Fourth Doe Corporation, Fifth
Doe Corporation,
Defendants.

ORIGINAL

Application No. 19884

Case No. 4042

Sanborn & Roehl and Clair McLeod for applicant and
defendant.

Reginald L. Vaughan for complainant, and for Merchants
Express Corporation, Peoples Express Corporation and
Interurban Express Corporation, protestants.

Douglas Brookman for United Parcel Service, protestant.

WARE, COMMISSIONER:

O P I N I O N

Application No. 19884 was filed with this Commission March
23, 1935. Applicant V. Fred Jakobsen, an individual, doing business
under the firm name and style of Special Delivery Service Co., seeks
herein a certificate of public convenience and necessity to operate

as a common carrier an inter-city, auto-truck, pick-up and delivery service, for the transportation of property between San Leandro, Alameda, Oakland, Piedmont, Emeryville, Berkeley, Albany, El Cerrito, Richmond and Hayward, and intermediate points.

Case No. 4042 was filed before this Commission on August 22, 1935, and embraces three counts, each one alleging that the defendant therein (applicant above named) has been and is unlawfully engaged as a common carrier, for compensation, over the public highways of the State of California between fixed termini and over regular routes; and complainant therein asks for an order of this Commission requiring said defendant to cease and desist such alleged unlawful operations.

The above named application and case were consolidated for hearing, and were heard in Oakland on August 27, 1935. Both matters were submitted upon oral arguments made at the hearing and subject to the filing by the applicant of a substitution to the second page of Exhibit "A", attached to the application and being numbered Page 6. Said substitution was filed with this Commission September 4, 1935, and both application and case are now ready for Opinion and Order.

The testimony of the applicant, corroborated by the testimony of 18 Alameda County merchants, proved categorically these facts:

(1) Applicant has engaged in a pick-up and delivery service of a special character for the transportation of merchandise under private contracts between San Leandro, Alameda, Oakland, Piedmont, Emeryville, Berkeley, Albany and El Cerrito during and continuously since 1928.

(2) Applicant has perfected schedules of rates and delivery hours, all of which are set forth in Exhibit "A", as amended and as hereinabove mentioned, and which have completely satisfied the requirements of the merchants who have employed his services.

(3) The service which applicant has rendered has been reliable, expeditious, economical, satisfactory and adequate from the standpoint of his patrons, and compensatory to himself.

(4) The service which applicant has rendered stamps him unequivocally as a contract carrier and is characterized by the following features:

(a) He has a bona fide contract with each of his 34 patrons.

(b) Each contract binds the merchant to employ exclusively the services of the applicant carrier in the delivery of all merchandise specified therein.

(c) Each contract binds the applicant carrier to schedules of delivery hours and rates in the performance of such specialized transportation of merchandise.

(d) Each contract is for a definite period of time and cannot be terminated during the period of its duration unless the merchant or the carrier should sell or cease his business.

The application was protested by United Parcel Service, an existing certificated common carrier which is operating a service between the same cities now served by the applicant.

The existing certificated service, somewhat comparable to that proposed, was shown by the uniform testimony of all the witnesses above mentioned to be unsatisfactory in that it entailed considerable breakage and loss, and it was likewise shown to be inadequate in that its schedules were less frequent and failed to accommodate the necessary delivery demands of the patronizing merchants.

At the conclusion of the hearing, United Parcel Service withdrew its protest against the granting to the applicant of the certificate sought in Application No. 19884. All other protests were likewise

thereupon withdrawn.

All of the contentions embraced in Case No. 4042 were thoroughly exploited by counsel for complainant in the cross examination of the above mentioned witnesses. It is obvious from the foregoing that the record failed entirely to sustain the contentions of any one of the three counts embraced in said complaint. Correspondingly, at the conclusion of said hearing, complainant asked that the Commission make its order herein whereby the first count of said complaint be dismissed with prejudice, and the second and third counts therein be dismissed without prejudice.

It patently appears that it is in the public interest that applicant be permitted to enlarge his scope and operations from those of the contract carrier, which he has been, to those of a common carrier to which he aspires. By such enlargement he will dedicate his highly satisfactory, necessary and successful enterprise to the entire public.

Summing up the entire situation, applicant proved all of his contentions, and clearly supported and justified his claims for a certificate as prayed for with the exception that no showing was made which would justify any service affecting the cities of Richmond and Hayward. Therefore, it must be concluded: First, that a certificate of public convenience and necessity should be issued unto the applicant exactly as prayed for excepting therefrom the Cities of Richmond and Hayward; second, the first count in Complaint No. 4042 should be dismissed with prejudice; and the second and third counts in said complaint should be dismissed without prejudice.

V. Fred Jakobsen is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state, which is not in any respect limited

to the number of rights which may be given.

The following form of order is recommended.

ORDER

Public hearing having been held in the above entitled matters and both of them having been submitted,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by V. Fred Jakobsen, an individual, doing business under the firm name and style of Special Delivery Service Co., of an inter-city, auto-truck, pick-up and delivery service for the transportation of property, as a common carrier, between San Leandro, Alameda, Oakland, Piedmont, Emeryville, Berkeley, Albany and El Cerrito, and intermediate points, and along the routes traversed in reaching said points.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such service be and the same is hereby granted to said V. Fred Jakobsen, an individual, doing business under the firm name and style of Special Delivery Service Co., subject to the following conditions:

1. Applicant Jakobsen shall file his written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
2. Applicant Jakobsen shall file in triplicate and make effective within a period of not to exceed thirty (30) days from the date hereof, on not less than ten days' notice to the Commission and the public a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which, in volume and effect, shall be identical with the rates and rules shown in the exhibit attached to the application, and as amended, in so far as they conform to the certificate herein granted.
3. Applicant Jakobsen shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days from date hereof, on not less than five (5) days' notice to the Commission and the public, time schedules, according to form provided in General Order No. 83, covering the service herein authorized, in a form satisfactory to the Railroad Commission.

4. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.
5. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that Count No. 1 in Case No. 4042 be and the same is hereby dismissed with prejudice; and that Counts Nos. 2 and 3 in Case No. 4042 be and the same are hereby dismissed without prejudice.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

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

Dated at San Francisco, California, this 30th day of September, 1935.

John Whittell

M. A. Cunniff

M. S. Loring

Walter Moore

Frank R. DeWine

Commissioners.