

Decision No. 31001

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
SARAH ADDLESTONE, executrix of the last)
will and testament of Fred Addlestone,)
also known as F. Addlestone, deceased,)
doing business under the fictitious)
name and style of Merchants Parcel De-)
livery, for an order of the Commission)
decreeing that the applicant possesses)
and may exercise an operative right as)
a freight forwarder for transportation)
of property from retail merchants in)
the City and County of San Francisco,)
State of California, to their customers)
in Alameda, Albany, Berkeley, El Cerrito,)
Emeryville, Hayward, Oakland, Piedmont,)
Richmond, Richmond Annex, San Pablo, San)
Leandro, Mt. Eden and all points within)
the territory comprehending Burlingame,)
Colma, Daly City, Los Altos, Menlo Park,)
Mountain View, Palo Alto, Redwood City,)
San Jose, Santa Clara, Sunnyvale, Wood-)
side and all intermediate points.)

Application No. 21857

ORIGINAL

Dreher, McClellan & McCarthy, by Fred L. Dreher and Frank J. McCarthy, for applicant.
Guy V. Shoup, E. W. Hobbs and M. G. Smith, for Southern Pacific Company, as their interests may appear.
E. E. Hart, for Canton Express Co., East Bay Drayage & Warehouse Co., Haslett Warehouse Co., Interurban Express Corp., Kellogg Express and Draying Co., Merchants Express Corp., Peoples Express Co., United Transfer Co., and West Berkeley Express & Draying Co., interested parties.

BY THE COMMISSION:

O P I N I O N

Applicant seeks an order from the Commission declaring that she possesses a prescriptive right as an express corporation (1) for the transportation of packages of merchandise sold at retail from San Francisco to purchasers at their respective homes, office addresses or places of employment in (a) Alameda, Albany, Berkeley, El Cerrito, Emeryville, Hayward, Oakland, Piedmont, Richmond, Richmond Annex, San Pablo, San Leandro and Mt. Eden, herein-

after referred to as East Bay points, and (b) in the territory embracing Burlingame, Colma, Daly City, Los Altos, Menlo Park, Mountain View, Palo Alto, Redwood City, San Jose, Santa Clara, Sunnyvale, Woodside and points situated between said points and San Francisco, hereinafter referred to as Peninsula points; and (2) for the transportation of packages or merchandise weighing not more than twelve pounds from retail stores in San Francisco to branches of such stores in said East Bay or Peninsula points.

A public hearing was held on May 2, 1938, at San Francisco before Examiner E. S. Williams.

A prescriptive right to operate as an express corporation is predicated on such operations having been commenced prior to August 1, 1933.¹

The evidence shows that Fred Addlestone, either as a partner or as sole owner, doing business as Merchants Parcel Delivery,² was engaged in performing a retail parcel delivery service within San Francisco from 1907 up to the time of his demise; that prior to 1920 he was also engaged in transporting property from retail stores in

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Section 50(f) of the Public Utilities Act reads, in part: "No express corporation or freight forwarder shall after August 1, 1933, commence operating between points in this State or extend its operations to or from any point or points in this State not theretofore served by it, unless and until it shall first secure from the Railroad Commission, upon formal application therefor, a certificate that public convenience and necessity require such operation."

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The business operated as Merchants Parcel Delivery was owned and managed by Fred Addlestone up to the time of his death on July 26, 1937. By order of the Court, dated July 29, 1937, Howard Addlestone, was appointed special administrator of the estate of Fred Addlestone, deceased, with authority to operate the business. By a subsequent court order dated September 7, 1937, Sarah Addlestone, the applicant herein, was appointed executrix of the last will and testament of Fred Addlestone, deceased, and empowered to operate said business pending completion of probate proceedings.

San Francisco to East Bay and Peninsula points either as a transportation company or as an express corporation; that from 1920 to August 1, 1933, and continuously thereafter, shipments for delivery to East Bay and Peninsula points were picked up at retail stores and transported by Addlestone or his successors to a terminal in San Francisco and there delivered to the United Parcel Service Bay District for transportation to the points beyond San Francisco which transportation was performed under a special agreement between Addlestone or his successors and United Parcel Service. Shipments picked up at retail stores in San Francisco were receipted for in the name of Merchants Parcel Delivery and charges for the through transportation service were billed and collected by Addlestone or his successors from the shipper. The evidence further shows that since 1925, an average of 2,100 to 5,000 shipments per month were transported to East Bay and Peninsula points in this manner and that at no time were less than 30 packages transported in any working day. It is apparent from the evidence that express operations were regularly conducted by Fred Addlestone in good faith prior to August 1, 1933; and that said Fred Addlestone therefore possesses a prescriptive right on that date; that such operations were conducted continuously thereafter by Fred Addlestone, Howard Addlestone the administrator of the estate of Fred Addlestone, and Sarah Addlestone executrix of said estate and that the prescriptive right was not therefore lost through abandonment.

It must now be determined whether or not such prescriptive rights were forfeited for other reasons.

At no time has a tariff been filed with the Commission covering the operations in issue as an express corporation. It was asserted by members of the family of Fred Addlestone and employees long associated in the business that during the entire time since

the commencement of the business and until his death in 1937, Fred Addlestone actively managed the business and that for several years prior to his death he was seriously ill and unable to attend to the operation of said business with his customary diligence. It was represented that his failure to file a tariff covering the express operations was due to his lack of knowledge of the law and to inadvertence rather than in defiance of regulation. Under the circumstances it is concluded that the failure to file a tariff should not cause the prescriptive right to be forfeited.

Applicant proposed, in the event she was found to possess a prescriptive right, to file a tariff conforming to that attached to its amended application marked Exhibit "F". The rates therein set forth are said to be those which have been charged since 1920. They are in general the same or higher than those charged by the United Parcel Service for like transportation service but lower than those of the United Parcel Service for shippers having a small volume, due to no minimum charge being provided in connection with such rates whereas the tariff of the United Parcel provides a weekly minimum charge of \$2.00.

Certain common carriers engaged in the transportation of property between the points involved in the application were represented at the hearing but offered no opposition to the application.

Upon consideration of all the facts of record, we are of the opinion and find that Sarah Addlestone as executrix of the last will and testament of Fred Addlestone, also known as F. Addlestone, deceased, doing business as Merchants Parcel Delivery Company, possesses a prescriptive right to operate as an express corporation, (1) for the transportation of packages sold at retail from San Francisco to purchasers at their respective homes, office addresses, or places of employment in (a) Alameda, Albany, Berkeley, El Cerrito,

Emeryville, Hayward, Oakland, Piedmont, Richmond, Richmond Annex, San Pablo, San Leandro and Mt. Eden, and (b) in the territory embracing Burlingame, Colma, Daly City, Los Altos, Menlo Park, Mountain View, Palo Alto, Redwood City, San Jose, Santa Clara, Sunnyvale, Woodside and points situated between said points and San Francisco; and (2) for the transportation of packages of merchandise weighing not more than twelve pounds from retail stores in San Francisco to branches of such stores in said destination territory.

O R D E R

This matter having been duly heard and submitted and the Commission now being fully advised,

IT IS HEREBY ORDERED that Sarah Addlestone, as executrix of the last will and testament of Fred Addlestone, also known as F. Addlestone, deceased, doing business under the fictitious firm name and style of Merchants Parcel Delivery, should file with this Commission a tariff as an express corporation containing rates, rules and regulations covering the operations described in the findings in the opinion which precedes this order, within thirty (30) days from the effective date of this order, and in all other respects comply with the provisions of the Public Utilities Act.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 20th day of

June, 1938.

Walter H. Brown
Frank D. Wheeler
Frank E. Nelson
Harold C. Child
Ray L. Cline

Commissioners.