

Decision No. 22408.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Application of BEN GRUELL dba )  
THE INDUSTRIAL TRANSFER COMPANY )  
for relief under Section 11 of )  
the Highway Carriers' Act. )

Application No. 22408

ORIGINAL

BY THE COMMISSION:

Ben Gruell, en propria persona.  
Wm. C. Klebenow, for Motor Truck Association of  
Southern California, interested party.  
H.J. Bischoff, for Southern California Freight  
Lines, interested party.  
C.E. Buck, for Jewel Tea Co., Inc., interested  
party.

O P I N I O N

By this application Ben Gruell, doing business as The Industrial Transfer Company, a highway contract carrier, seeks authority under Section 11 of the Highway Carriers' Act to transport property for the Jewel Tea Co., Inc., from Los Angeles to various points in southern California, at rates less than the established minimum rates.<sup>1</sup> A public hearing was held before Examiner P.W. Davis at Los Angeles.

The record shows that for the past twelve years applicant has been engaged almost exclusively in transporting property from the branch distribution plant of the Jewel Tea Co., Inc. located at 6075 S. Normandie Avenue, Los Angeles, to the homes of salesmen in Venice, Riverside, Long Beach, Whittier, Highland Park, and adjacent cities and communities. He performs this transportation by

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The applicable minimum rates in effect at the time the application was filed were those established by Decision No. 29480, as amended, in Part "M" of Case No. 4088. Effective August 7, 1939, these rates were superseded by those established in Decision No. 31606, as amended, in Case No. 4246.

means of two  $1\frac{1}{2}$  ton capacity trucks, one of which he drives himself. The shipments moving outbound from Los Angeles consist principally of groceries, together with supplies used by the salesmen and premiums which they give to purchasers of the grocery items. These commodities carry ratings in the Western Classification and Pacific Freight Tariff Bureau Exception Sheet ranging from Double 1st Class to 4th Class.<sup>2</sup> The shipments average approximately 1,000 pounds in weight and seldom, if ever, are shipments made in quantities of less than 500 pounds. The outbound loads average approximately 7,000 pounds in weight. The return loads consist of empty crates being returned by the salesmen to the Jewel Tea Co., Inc.

Applicant desires to charge for the outbound transportation rates equivalent to the 4th Class rates provided in Decision No. 31606, supra, as amended. For the return shipments of empty crates, he desires to charge 35 cents per shipment, regardless of weight. In addition, applicant seeks authority to itemize charges on a weekly statement rather than to issue a separate freight bill for each shipment in accordance with the requirements of the minimum rate orders involved.

In support of the application C.E. Buck, branch plant manager of the Jewel Tea Co., Inc., stated that the use of a classification basis in connection with the more than sixty grocery items and several hundred merchandise items handled by his company causes

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A list of the principal articles and commodities regularly shipped by Jewel Tea Co., Inc. is set forth in the application. It was stated that the average percentage distribution between classes is as follows:

2 x 1st Class. . . . .	.0005%
$1\frac{1}{2}$ x 1st Class. . . . .	.004%
1st Class. . . . .	8.0%
2nd Class. . . . .	2.6%
3rd Class. . . . .	15.5%
4th Class. . . . .	73.8955%
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	100%

great inconvenience both to the shipper and to the carrier in that articles must be so segregated that only those carrying the same rating will be packed in the same container and each article must be described and rated separately on the bills of lading. He claimed that the revenue which would accrue to the carrier under the classification basis was only about 7 per cent in excess of the revenue which would accrue under the 4th Class basis and that this amount was not sufficient to offset the cost to the carrier of rating shipments or the cost to the shipper of segregating articles and packing them separately. This witness also asserted that a flat rate based on either the 1st, 2nd or 3rd Class rates would be excessive for the service involved and that if required to pay rates on such a basis, consideration might be given by his company to the commencement of proprietary operations.<sup>3</sup> Insofar as the empty crates were concerned, the witness claimed that the return movement of crates did not involve any extra work on the carrier's part and that the rate of 35 cents per shipment would be adequate to cover the actual cost of performing the service. He stated further that the granting of permission to eliminate the issuing of separate freight bills was of no special importance to his company. On cross-examination witness Buck stated that although his company desired to obtain a reduction in freight charges, he was not prepared to say that the established minimum rates were excessive for the service required and explained that he was concerned chiefly with avoiding the necessity of classifying each article.

Applicant Gruell made no statement in his own behalf but, in response to questioning by interested parties stated that he did not consider the established minimum rates to be excessive for this transportation and that his principal interest was in obtaining authority

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<sup>3</sup> Witness Buck introduced exhibits showing that during the period from January 24 to 28, 1939, inclusive, revenue accruing under the established minimum rates amounted to \$102.81, whereas under the 4th Class basis sought the revenue would have been \$95.64, and that revenue under rates equivalent to the established minimum 1st, 2nd and 3rd Class rates for the period from January 24 to January 28, 1939, inclusive, would amount to \$136.42, \$123.50 and \$109.40, respectively.

to use a flat rate in lieu of the classification basis.

No one protested the granting of the application.

In the absence of cost information or other testimony to indicate that the established minimum rates produce excessive revenue for the transportation here involved, it is clear that authority to charge rates which would produce less revenue in the aggregate than would accrue under the established minimum rates would not be justified on this record.

Moreover, the substitution of a flat rate basis for the classification basis does not appear justified under the circumstances and conditions here shown. The requirement that commodities be classified according to their transportation characteristics was made in order that the resulting charges would be related to the cost of performing the service and to differences in commodity values, and in order that the composite rate structure would provide a reasonable equality of competitive opportunity to all carriers engaged in given types of transportation. It was designed also to enable shippers dealing in a limited group of commodities to know the transportation charges being paid on the same commodities by competitors handling more extensive lines. <sup>4</sup> While the necessity of classifying individual

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<sup>4</sup> In Decision No. 31417 of October 31, 1938, in Case No. 4121, the Commission said:

"With the enactment of the Highway Carriers' and City Carriers' Acts the duty was devolved upon the Commission of providing a stabilized rate structure which will be reasonable and non-discriminatory as to the public at large and compensatory as to the carriers. Having in mind that the traffic of certain shippers consists of a wide variety of commodities moving between a wide number of points and territories whereas other shippers distribute only a few commodities between a limited number of points, and having in mind also that the operations of certain carriers embrace transportation of many commodities throughout wide territories whereas the operations of others are extremely limited in nature and scope, it appears that the goal of a stabilized, reasonable, non-discriminatory and compensatory rate structure can best be achieved by predicating minimum rates upon the transportation characteristics of each haul, rather than upon the aggregate operations of individual carriers or shippers. In this way large and small carriers may compete on equal terms for all or any portion of the traffic of each shipper. At the same time, each small shipper will be assured that his larger commercial competitors are paying equivalent rates for equivalent service."

commodities may result in some inconveniences, they are ordinarily far outweighed by the public benefits accruing from a stabilized basis of known transportation charges. Nothing has been shown to indicate that these principles should not be applied in the instant case. The application will be denied.

O R D E R

This matter having been duly heard and submitted,  
IT IS HEREBY ORDERED that the above entitled application  
be and it is hereby denied.

Dated at San Francisco, California, this 19<sup>th</sup> day  
of September, 1939.

Paul G. ...  
Frank ...  
Ray ...  
...  
Justus J. Casner  
Commissioners.