

ORIGINAL

Decision No. 2406

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 Vernon B. Bradbury and Samuel)
 Lilienthal to sell and Violet M.)
 Keller to purchase an automobile) Application No. 24065
 parcel delivery service operated)
 between San Francisco and Palo Alto,)
 California.)

HARRY A. ENCELL, for Applicant, Vernon B. Bradbury.

HAROLD L. LEVY, for Vernon B. Bradbury and Samuel Lilienthal.

EDWARD STERN, for Railway Express Agency, Interested Party.

PRESTON W. DAVIS, for United Parcel Service, Bay District, Protestant.

HAROLD M. HAYS, Intercity Transport Lines, Interested Party.

EDWARD TRIMMER, Highway Transport, Inc., Interested Party.

BY THE COMMISSION:

O P I N I O N

Vernon B. Bradbury and Samuel Lilienthal by the above-entitled application seek permission to sell and Violet M. Keller requests authority to purchase the highway common carrier operative rights and equipment used by Bradbury in the business of transporting and delivering parcels between San Francisco, Palo Alto and intermediate points.

Public hearing was held in this matter May 5, 1941 at San Francisco before Examiner Howard. After all of the evidence had been received a motion was made by the attorney for protestant United Parcel Service, Bay District, that any authority, granted

to Violet M. Keller to acquire the operative rights of Bradbury, limit such rights in certain respects which will be discussed more fully hereinafter. Protestant was allowed 10 days to prepare and file a memorandum in support of his motion and the same length of time was accorded applicants' attorney to submit a memorandum in answer to that of protestant. The memoranda have been received and the matter is ready for decision.

The operative rights which are the subject of this transfer proceeding were acquired by Bradbury at different times. On July 7, 1936 the Commission by Decision No. 26969 in Application No. 20643 authorized Bradbury to acquire the prescriptive operative right of B. Liedberg to transport property between San Francisco, Menlo Park and intermediate points. Liedberg's tariff showed that service was limited to the transportation of packages weighing 100 pounds or less and that rates between Atherton and Menlo Park applied one mile laterally from the highway between those points.

On May 27, 1939 by Decision No. 31865 in Application No. 22424 Bradbury was granted a highway common carrier certificate authorizing him to transport property between Menlo Park, Palo Alto and intermediate points via the main highway, including the right to render service one mile laterally from the route traversed. This certificate, which was granted as an extension and enlargement of the right between Menlo Park and San Francisco, prohibited the transportation of any single shipment weighing in excess of 50 pounds.

Bradbury borrowed money from Madeleine Haas to finance his operations. He executed a chattel mortgage covering his equipment and operative rights as security for such sum. The mortgage named Samuel Lilienthal, business agent for Madeleine Haas, as mortgagee. Lilienthal joined in the present application

to enable Bradbury to transfer clear title to the property if the Commission grants this application.

The evidence shows that applicant Violet M. Keller, the prospective purchaser, is financially solvent and would be able to continue the business now conducted by Bradbury. If the application is granted, she intends to hire men experienced in the transportation business to carry on the enterprise. The consideration to be paid by Violet M. Keller to Bradbury for the equipment, operative rights and good will of his business is the sum of \$5,150.

Highway Transport, Inc., Railway Express Agency and Intercity Transport Lines entered appearances at the hearing as interested parties and United Parcel Service, Bay District, appeared as a protestant. The latter, however, did not oppose the transfer but, as hereinbefore stated, made a motion that any authority granted to acquire Bradbury's operative rights restrict them in certain particulars. United Parcel Service requests that such authority be made subject to the following conditions:

"The service which may be performed under the operative rights acquired by virtue of this authority shall consist of an accommodation messenger service by means of not to exceed one truck and one round-trip daily on an irregular schedule. Protective packing of fragile or easily damaged articles shall be waived.

"No increase or change in such service shall be made unless public convenience and necessity therefor is first shown nor unless the written consent of the Railroad Commission thereto has first been secured."

Before it can be decided whether the requested restrictions should be imposed on Bradbury's operative rights, the extent of such rights must be ascertained as a transferor may legally convey only the rights he possesses. While the operative authority granted by the Commission indicates the extent of such

rights, it is necessary, also, to determine from the evidence whether Bradbury, by the manner in which he operated, in any way limited his rights.

The motion is divided into two paragraphs. For convenience each will be considered separately.

It is observed that United Parcel Service first asks that operations under the Bradbury rights be confined to an accommodation messenger service performed by not to exceed one truck, making only one round-trip daily on an irregular schedule, waiving protective packing of fragile or easily damaged articles.

The operative rights granted to Bradbury do not limit the transportation which may be performed thereunder to such circumscribed service as the motion seeks to impose. Hence the evidence of record must be examined to see whether Bradbury has so restricted his service by the manner of conducting his operations.

It should be noted that the term "accommodation messenger service" has no commonly recognized meaning or significance in the transportation field. Presumably the phrase is used in the motion to characterize the service which Bradbury performs for families residing in San Francisco and along the Peninsula. This operation consists of the transportation of a variety of articles between the San Francisco homes and peninsula estates of his customers. This rather personalized service comprises only about half of the business which Bradbury conducts. The other portion consists of the transportation of parcels for various stores, most of which are located in San Francisco. Bradbury has increased this latter type of business through personal solicitation and through the distribution of printed cards advertising his service.

The facts of record show that Bradbury ordinarily employs one truck which he drives himself, making one round-trip

per day between Palo Alto and San Francisco, leaving Palo Alto northbound at 8:30 A.M. and departing from San Francisco southbound at 2:30 P.M. However, it is in evidence that more than one truck has been used by Bradbury during the Christmas season. Furthermore, the record shows that more than one trip a day has been made. Bradbury testified that he did not always insist upon parcels being carefully packed. He looked at the shipments offered and, if he thought he could carry them safely without additional protective wrapping, he waived such packing.

It is apparent from the evidence that Bradbury has not confined his operations to the so-called personalized service. Had he done so there might be adequate reason to restrict transportation under his operative rights to the service actually rendered or to the performance of what United Parcel Service terms an "accommodation messenger service". It is evident also that Bradbury did not at all times confine his service to the use of one truck and to one round-trip daily. The evidence indicates that Bradbury has not always demanded strict compliance with the provisions of his tariff relating to packing requirements. If such is the fact and tariff violations occurred, they should not be repeated. However, the matter of protective packing and whether or not it should be waived is essentially one affecting the rate to be charged, and should not be made a part of a carrier's operative authority.

By the second paragraph of its motion United Parcel Service asks that no increase or change in the service performed pursuant to the Bradbury rights be made unless public convenience and necessity therefor is first shown and the written consent of the Commission secured.

The decision authorizing Bradbury to acquire Liedberg's prescriptive rights contains a condition in the order which reads

as follows:

"The rights and privileges herein authorized to be transferred may not hereafter be sold, leased, transferred nor assigned, nor service thereunder discontinued, increased or changed by Vernon B. Bradbury unless the written consent of the Railroad Commission has first been secured."

United Parcel Service doubtless bases the latter part of its motion on the above condition. The Commission some years ago instituted a practice when granting operative authority of adding thereto certain statements of law in the form of conditions. The condition above quoted is illustrative. This was done originally to advise new operators of the service regulations with which they must comply. However, such conditions were not a necessary part of a certificate for, whether they were added or omitted the law remained the same and carriers were required to comply with such regulations before they could operate lawfully. The practice of incorporating such statements as part of the operative authority has been discontinued.

By the second part of its motion what United Parcel Service requests in effect is that the Commission resume its former practice by specifically incorporating a statement of law in the Bradbury operative rights if the transfer is authorized. No useful purpose would be served by adding the condition sought, as under existing law a common carrier must obtain a certificate before enlarging or altering the character of its operations and, to secure a certificate, must show that public convenience and necessity require the changed or increased service. To accede to such a request would needlessly encumber the operative rights.

It should be noted that, when reduced to its essence, what United Parcel Service seeks by its motion is curtailment of the volume of business which may be handled under Bradbury's existing operative rights. It is common practice for the Commission

to regulate the nature, character or type of transportation which a carrier may perform. This is done by specifying the territory or points which may be served or by naming the commodities which may be transported or by designating the class or portion of the public for which service may be performed. However, it would be most unusual for the Commission to create an operative right and then arbitrarily limit the amount of business which could be conducted pursuant to it. Before such action would be taken exceptional facts would have to be present, which do not appear in this matter. Growth of a carrier's business consistent with the rights granted him should not be forestalled. It is manifest that Bradbury's rights are not restricted now in the manner United Parcel Service seeks to limit them, either by the operative authority granted by the Commission or by the actual operations conducted pursuant thereto. Therefore, United Parcel Service's motion to limit his operative rights will be denied. The evidence of record shows that there is a public need for the service conducted by Bradbury and that Violet M. Keller is financially able and intends to continue such service if the transfer is authorized. Full consideration has been given to this matter and the Commission is of the opinion and finds that public convenience and necessity require that this application be granted.

O R D E R

Based upon the evidence of record and upon the conclusions of law contained in the foregoing opinion,

IT IS ORDERED as follows:

(1) That Vernon B. Bradbury is authorized to transfer the highway common carrier operative rights granted to him by

Decisions Nos. 28969 and 31865 and the equipment used in conducting business thereunder to Violet M. Keller, and the latter is granted the right to acquire said operative rights and hereafter to operate thereunder as a highway common carrier.

(2) That Vernon B. Bradbury and Violet M. Keller comply with General Order No. 80 by filing in triplicate within sixty (60) days from the effective date of this order and upon not less than five (5) days' notice to the Commission, a withdrawal and adoption notice as required by said general order.

(3) That Violet M. Keller comply with Part IV of General Order No. 93-A within sixty (60) days from the effective date of this order and upon not less than five (5) days' notice to the Commission and the public.

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

Dated at San Francisco, California, this 11th day of July, 1941.

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COMMISSIONERS