

ORIGINAL

Decision No. 35219

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

UNITED PARCEL SERVICE BAY DISTRICT,
Complainant,

vs.

VIOLET M. KELLER, doing business as
MENLO PARK AND SAN FRANCISCO PARCEL
DELIVERY,

Defendant.

Case No. 4605

In the Matter of the Investigation
and suspension by the Commission, on
its own motion, of rates, rules and
regulations published by VIOLET M.
KELLER, doing business under the
firm name and style of MENLO PARK
AND SAN FRANCISCO PARCEL DELIVERY
for the transportation of property
between San Francisco and Palo Alto
and intermediate points.

Case No. 4606

ATHEARN, CHANDLER & FARMER and PRESTON W. DAVIS,
by Preston W. Davis, for complainant in Case
No. 4605, and interested party in Case No.
4606.

WILLARD S. JOHNSON, for Valley Motor Lines, Inc.,
intervener on behalf of complainant in Case
No. 4605, and interested party in Case No.
4606.

DOUGLAS BROOKMAN, for Holmes Express, intervener
on behalf of complainant in Case No. 4605,
and interested party in Case No. 4606.

JOHN E. HENNESSY, for Pacific Southwest Railroad
Association, interested party.

HAROLD M. HAYS, for Intercity Transport Lines and
Pioneer Express Company, interested parties.

H. A. ENCELL, for defendant in Case No. 4605, and
for respondent in Case No. 4606.

BY THE COMMISSION:

O P I N I O N

A review of the entire record in this proceeding discloses that the question of basic concern to the parties is whether Violet M. Keller, doing business as Menlo Park and San Francisco Parcel Delivery, is authorized to operate a general parcel delivery service between San Francisco and Palo Alto.

This matter embraces two cases which were consolidated for hearing and decision. The first, Case No. 4605, was initiated by the complaint of United Parcel Service Bay District which alleged, among other things, that Violet M. Keller exceeded her highway common carrier operative rights and published a tariff, designated as Local Freight Tariff No. 4, C.R.C. No. 2 of Violet M. Keller, which contained unlawful rates, rules and regulations. The second, Case No. 4606, was instituted by the Commission to determine the reasonableness and lawfulness of said tariff.

Defendant Keller, by her answer, denied generally all of the allegations contained in the complaint and averred specifically that her operations were commensurate with the rights she acquired from the Commission and hence were lawful.

Thus, the pleadings put in issue the character and extent of Violet M. Keller's operative rights.

On the issues thus joined a public hearing was held in San Francisco before Examiner Howard on October 27 and November 18, 1941. The cases were submitted on the latter date subject to

the filing of briefs which have since been received and considered, together with the evidence of record.

The facts are virtually undisputed. Complainant, United Parcel Service, presented the testimony of several witnesses and introduced numerous exhibits. Such evidence was not rebutted by the single witness who testified on behalf of Mrs. Keller, although the latter did offer to correct certain alleged errors in Mrs. Keller's tariff and to make specific changes therein to insure conformance with rate orders of the Commission. This witness also contradicted evidence relating to points of secondary importance purporting to show unlawful stock ownership by Mrs. Keller in Automotive Purchasing Company as well as unauthorized merger and consolidation of Mrs. Keller's operations with those of Automotive Purchasing Company.

Four formal proceedings involving the operative rights of Mrs. Keller or her predecessors in interest have been decided by the Commission. However, the exact character and extent of such rights was not determined therein. On July 7, 1936, by Decision No. 28969, in Application No. 20643, B. Liedberg, the originator of Menlo Park and San Francisco Parcel Delivery, was authorized to transfer his operative rights to Vernon B. Bradbury. Thereafter, by Decision No. 30272, issued October 26, 1937, in Application No. 21545, Bradbury was authorized to execute a chattel mortgage. Then, on March 27, 1939, by Decision No. 31865, in Application No. 22424, Bradbury was granted a restricted highway common carrier certificate to operate between Menlo Park and Palo Alto. Subsequently, by Decision No. 34374, issued July 1, 1941, in Application No. 24065, Bradbury was authorized to transfer his rights to Violet M. Keller.

When defendant acquired the Bradbury rights she filed a time schedule providing for regular trips at specified hours, a tariff covering shipments weighing several thousand pounds, and commenced or was prepared to inaugurate a complete parcel delivery service. Such activities resulted in the filing of the complaint by United Parcel Service Bay District and the suspension and investigation of the tariff by the Commission.

It is apparent from the evidence that the rights in question are a combination of those acquired by Liedberg from operations conducted by him prior to the time when a certificate was requisite, May 1, 1917, and those obtained by Bradbury through certification. The record fails to show the exact time of Liedberg's inauguration of service by motor truck. There is some evidence which indicates that his motor vehicle operation was not started until after May 1, 1917. However, his service was in effect in 1917 and has continued without interruption since, under claim of a prescriptive right. Such right was never challenged until this proceeding arose. It would be inequitable to revoke a right of this nature now on such meager evidence. Hence, it will be assumed that Liedberg did acquire a prescriptive right to conduct some kind of highway common carrier service, but the extent of such right must be ascertained.

The testimony and exhibits presented at the hearing reveal the nature of the service performed by Liedberg. It is established that he used a small truck with which he made one round trip a day between Menlo Park and San Francisco transporting packages or other articles weighing less than one hundred pounds each for residents of the peninsula. He operated daily except Sunday but followed no time schedule. His service was devoted primarily to the movement of such things as flowers, food

and personal belongings between the peninsula and San Francisco homes of his customers. The tariffs filed by Liedberg show that while originally the weight limitation was one hundred pounds per package, it was subsequently changed to one hundred pounds per shipment. Some confusion as to the use of the terms "package" and "shipment" is manifest as the two appear to have been employed interchangeably as though they were synonymous. No instances have been cited where Liedberg was tendered a shipment of packages exceeding one hundred pounds in weight, so it must be concluded that, properly, the restriction applied to shipments. It is clear that Liedberg rendered service not only between Menlo Park, San Francisco and intermediate points, but also laterally within one mile of the main highway between such points. He acted as the personal employee or messenger of his customers and charged a relatively high rate as compared with the sums assessed by parcel delivery operators.

Liedberg employed Vernon B. Bradbury to drive for him. When Bradbury acquired Liedberg's operative rights in 1936, he continued the service conducted by his predecessor. The evidence shows that, in addition to transporting property between the peninsula estates and San Francisco homes of his customers, he hauled articles from certain exclusive shops to his patrons when expedited service or special handling was required. These consisted of fancy groceries, poultry, candy, bon voyage fruit baskets, pastries, art goods and garden furniture. A feature of the service was that perishable and fragile articles were accepted for transportation in gift wrappings, cardboard boxes or without packing. Bradbury performed certain accessorial services too, such as delivering verbal messages from employers to servants respecting the care of the articles delivered or the manner of

their use. The Bradbury operation was described as an accommodation messenger service. Certainly it was of a highly personalized nature.

A certificate was granted Bradbury in 1939 authorizing him to operate as a highway common carrier between Menlo Park, Palo Alto and intermediate points including the right to serve laterally one mile on each side of the main highway between Menlo Park and Palo Alto to enable him to continue business for certain customers who had moved into this area. This certificate was granted as an extension and enlargement of his existing rights between San Francisco and Menlo Park and restricted service to shipments not exceeding fifty pounds in weight. It appears that the Commission, by consolidating this grant with the prescriptive rights held by Bradbury, intended to authorize him to conduct a service between Menlo Park and Palo Alto similar in all respects to that performed between San Francisco and Menlo Park, except as to the size of the shipments transported. The evidence shows that at the hearing on the application for a certificate counsel for Bradbury admitted that the existing service of other carriers was satisfactory, but said, in substance, that Bradbury performed a unique highly specialized service needed by his customers and that such an operation would not be competitive with carriers presently serving the territory.

As previously stated, Mrs. Keller acquired the rights referred to above in 1941 and shortly thereafter filed the tariff under suspension herein. It is obvious after a consideration of such tariff, that it was designed to discourage the type of service formerly operated by Liedberg and Bradbury and to inaugurate a parcel delivery service competitive with that conducted by existing carriers. No need for such additional service has

been proven, in fact, the present operators are conceded to be furnishing adequate facilities. The defendant should not be permitted to obtain indirectly an operative right which she did not seek and probably could not have attained directly.

Two points of secondary importance raised during the course of this proceeding should be considered briefly. Complainant alleged that Mrs. Keller holds stock in Automotive Purchasing Company, another public utility, contrary to the provisions of section 51(b) of the Public Utilities Act. It was admitted that Mrs. Keller owns such stock. However, this fact does not constitute a violation of said section. Complainant also contended that Mrs. Keller consolidated and merged her operations with those of Automotive Purchasing Company. The evidence is insufficient to substantiate this claim. Mrs. Keller is advised, however, that should she desire to effect such a merger or consolidation, she must secure authority from the Commission.

Full consideration of the evidence adduced compels certain conclusions of fact. Mrs. Keller's predecessors performed a specialized, restricted "on-call" operation in the nature of a messenger service; transported varied articles between the peninsula estates and San Francisco homes of their customers; hauled foods, flowers and art goods to such customers from the shops of certain merchants when expedited delivery or special handling was needed; used but one truck with which pickups and deliveries were made directly, without consolidation at a terminal; required no substantial protective packing of articles tendered for shipment; and restricted service to the handling of shipments weighing one hundred pounds or less between San Francisco and Menlo Park and to the hauling of shipments not exceeding fifty pounds in weight between Menlo Park and Palo Alto. While the

record establishes the existence of operative authority to transport commodities encompassed within the general classifications mentioned, foods, flowers and art goods, it does not show completely nor specifically what items should be included in such classifications.

It is judicially settled that a transferee acquires only such rights as were possessed by the transferor. Inasmuch as Liedberg and Bradbury by their conduct of business voluntarily delimited their operative authority Mrs. Keller, by Decision No. 34374, in Application No. 24065, acquired a circumscribed highway common carrier right. The conclusion of law follows that she is not authorized to engage in the general parcel delivery business. Therefore, Mrs. Keller will be ordered to confine her highway common carrier service within the scope of the rights which this opinion has determined she possesses. Furthermore, as it is manifest the suspended tariff contains rates for services which she is not authorized to render, she will be ordered to cancel it. In lieu of such cancelled tariff Mrs. Keller will be ordered to file an acceptable tariff which names rates for and specifically describes the commodities to be transported pursuant to her restricted highway common carrier rights.

Before concluding, one other point of discussion should be adverted to. Complainant argued Mrs. Keller should be confined to the use of a single truck when performing the service in question. If this were done obviously it would prevent the natural development of Mrs. Keller's business, which not only would be undesirable, but contrary to the usual practice of the Commission. Mrs. Keller has been found to possess a circumscribed highway common carrier right and she should be permitted to

transport shipments of all articles included in the classifications specified herein, subject to the weight limits set, and to use as much equipment as may be needed therefor should the demand for such restricted service increase.

O R D E R

Based upon the evidence of record and the findings and conclusions contained in the above opinion,

IT IS ORDERED that Violet M. Keller confine the services she performs pursuant to the highway common carrier rights she acquired by Decision No. 34374, in Application No. 24065, to operations commensurate with the operative rights which the Commission, by the preceding opinion, found she was entitled to exercise.

IT IS FURTHER ORDERED that Violet M. Keller cancel, effective not later than April 20, 1942, on not less than one (1) day's notice to the Commission and the public, rates published in Local Freight Tariff No. 4, C.R.C. No. 2, of Violet M. Keller, and file in lieu thereof a tariff containing rates consistent with and reflecting the operative authority which she is found, by this opinion and order, to possess, and specifying the commodities to be transported pursuant to such authority.

IT IS FURTHER ORDERED that upon cancellation of the rates contained in Local Freight Tariff No. 4, C.R.C. No. 2 of Violet M. Keller, the Commission's order of suspension and investigation of August 26, 1941, in Case No. 4606, suspending

the operation of said tariff, is vacated and such case discontinued.

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

Dated at San Francisco, California, this 7th day of April, 1942.

Justus F. Casner
Ray H. Piny
T. B. KAM
Francis R. Fawcett
Richard L. Lachse
COMMISSIONERS