

Decision No. 36719

**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 UNITED PARCEL SERVICE BAY DISTRICT )  
 for authority to suspend its oper- )  
 ations as a highway common carrier ) Application No. 25657  
 for the duration of the war and six )  
 months thereafter. )

PRESTON W. DAVIS and ATHEARN, CHANDLER and FARMER, by Preston W. Davis, for applicant.

WALTER A. RHODE, for San Francisco Chamber of Commerce, interested party.

BY THE COMMISSION:

**O P I N I O N**

By its application, as amended, United Parcel Service Bay District, a corporation, seeks permission to abandon the service which it now is authorized to conduct as a highway common carrier, specializing in the delivery of parcels, in the San Francisco Bay territory. A public hearing was had before Examiner Austin at San Francisco when the matter was submitted. No one opposed the granting of the application.

Under certificates of public convenience and necessity acquired from its predecessors, applicant now operates a parcel delivery service, as a highway common carrier, between the following  
 (1)  
 points:

---

(1) The operative right described was acquired by United Parcel Service Bay District from its predecessors. On January 1, 1938, an in lieu certificate was issued to that carrier by Decision No. 30564, in Application No. 21612.

1. Between San Francisco and San Jose and intermediate points, serving also the off-route points of Woodside and Los Altos.
2. Between San Francisco, San Pablo and Hayward, via Oakland, Alameda, Emeryville, Piedmont, Berkeley, Albany, El Cerrito, Richmond, Richmond Annex, San Leandro, San Lorenzo and Mt. Eden.
3. Between San Francisco, Sausalito, Mill Valley, Corte Madera, Ross, Fairfax, Manor, San Rafael, Hamilton Field, Tiburon, Belvedere, and intermediate points.

The service was restricted to the transportation of parcels not exceeding 100 pounds in weight or 160 inches in combined length and girth, with the exception of furniture tendered for transportation by retail stores using applicant's service exclusively for the delivery of merchandise sold at retail.

In the present proceeding applicant requests that the certificate granted by Decision No. 30564, as subsequently amended in minor particulars, be cancelled. Following its withdrawal from the field as a common carrier, applicant would confine its service to a limited number of stores with whom it would enter into special, long-term contracts, operating under a permit as a highway contract carrier. Assertedly, applicant's business is of such a character as to lend itself to contract rather than to common carrier operations; by so doing it would conserve both equipment and manpower; and the public would suffer no detriment.

Applicant is one of a group of parcel delivery carriers, operating under common control and management, performing the delivery service for retail department stores in the cities of Seattle, Washington; Portland, Oregon; Oakland, San Francisco, Los Angeles, Long Beach, Pasadena, and San Diego, California; New York; Philadelphia, Pennsylvania; Cincinnati, Ohio; Chicago, Illinois; and Milwaukee, Wisconsin. In all of these communities, excepting Los

Angeles alone, the service provided is identical in character, being that of a private or contract carrier. In Los Angeles United Parcel operates also as a common carrier, under certificates granted by the Commission, serving both wholesale and retail stores as well as manufacturers and jobbers. In other states, where the character of these operations has been considered by state utility commissions or by the Interstate Commerce Commission, they have been held to be contract, rather than common carriers. (2)

When it entered the San Francisco Bay territory in 1925 applicant was not certain, so it states, whether it lawfully could operate as a private carrier. To forestall any prosecution, and under advice of counsel, it acquired the operative rights as a highway common carrier, which have been described. It now is convinced, however, that any doubt concerning its right to operate as a private carrier has been dissipated.

In the actual conduct of its business, the record shows, applicant has confined its service to a selected group of retail stores with whom it has entered into long-term individual contract; it consistently has rejected others who sought to utilize its

---

(2) Re United Parcel Service of New York, Inc., decided by New York Public Service Commission June 4, 1940; Re United Parcel Service of Pennsylvania, Inc. (Public Utility Commission, 1941) 39 P.U.R. (N.S) 491; Dept. of Pub. Serv. v. United Parcel Service of Seattle, decided by Washington Department of Public Service June 8, 1942. See also, United Parcel Service of Portland (Ore.) - Purchase - A.J. Wiese (Docket MC-F-1432; 1941) 37 M.C.C. 473; United Parcel Service of Cincinnati, Inc., Docket 530, where a permit to operate as a contract carrier was granted by the Ohio Public Utilities Commission November 6, 1939. In Coronado Transfer et al v United Parcel Service of San Diego, 31 C.R.C. 208, this Commission held that defendant, an affiliate of applicant herein, was operating as a private carrier and hence was not required to obtain a certificate under the Auto Truck Transportation Act.

service; and it has differentiated between its patrons in respect to the character of the service provided, and to the charges collected. Over a period of years the number of patrons served has remained fairly constant, aggregating some 116 at present. These were selected from a field of approximately 2,000 potential customers. It never has engaged in general solicitation for business.

In choosing its customers, applicant has been governed by general considerations designed to insure the retention of its existing patronage and to reduce its operating expenses. Generally speaking, it has limited its service to the larger, established retail department stores and specialty shops. In so doing it has been guided by the policies prescribed by the management company which controls applicant and its affiliated carriers.

To accomplish this purpose, applicant constantly has rejected business proffered by other types of stores. For example, it has refused to serve mail order houses, and house to house canvassers. It also investigates carefully the reputation, business ethics and financial responsibility of each prospective customer.

Applicant consistently has endeavored to hold its operating costs to a minimum. This is important not only from the standpoint of its own revenue requirements, but also because the successful negotiation of contracts with the larger stores often depends upon the customer's ability to effect a very small margin of savings were it to substitute applicant's delivery service for its own. For this reason applicant has rejected merchandise requiring technical knowledge for its proper handling, such as dry cleaning and laundry. It insists upon handling all of its customer's parcel deliveries; it will not accept the bulkier packages alone, such as

groceries and furniture, to the exclusion of smaller packages. It rejects overflow business, which tends to overtax applicant's facilities, or which may be limited to casual shipments destined to locations difficult of access. No customer is accepted whose business is confined to sparsely settled districts. The characteristics of the merchandise are considered, traffic which might injure or deteriorate the merchandise tendered by other customers being rejected. No store offering a high percentage of C.O.D. deliveries will be served, it having found that the proportion of return packages is excessive. It prefers not to deal with any store which imposes a delivery charge, experience having shown that customers ordinarily are dissatisfied with such an arrangement. Under no circumstances will applicant itself collect such a charge for any customer. Where the volume of deliveries fluctuates widely from time to time due to periodic booster sales, the account will be rejected, as equipment needs cannot reasonably be anticipated.

From its long experience in the parcel delivery service applicant is well qualified to consult with its customers concerning the most efficient and economical methods of conducting this branch of their business. Accordingly, it has advised them in relation to the laying out of delivery departments, the installation of belt conveyors, the development of accounting procedures, the design of sales slips, and the improvement of packing and wrapping practices.

Applicant has endeavored to mold its operations to the individual needs of its patrons. Thus it has been found that in handling C.O.D. shipments some stores permit the acceptance of checks as payment, in any amount, while others require that charges exceeding a specified amount be paid in cash. Some stores allow, without restriction, the return of merchandise for credit, while

others have instructed applicant not to accept it without previous authorization. Some stores exact from their customers a written receipt, to be signed upon delivery of the merchandise, while others, under certain conditions, impose no such requirement.

The drivers, it was shown, have been specially trained for their work. At meetings called for the purpose, and through bulletins brought to their attention, they have been instructed in the proper method of performing their duties.

For the reasons mentioned applicant could not, it is claimed, undertake to serve the public generally. To do so, applicant asserts, would be detrimental to the stores with which it has entered into long term agreements, and its costs would be increased to such an extent as to jeopardize its ability to serve them. Any rate schedule sufficiently flexible to meet the individual, and sometimes conflicting requirements, of the various stores could not readily be devised. Only through the process of negotiation have the parties been able to arrive at a satisfactory rate. By limiting the number of customers to be served applicant, through its manager, has been enabled to keep in close contact with them and to adapt its service to their individual needs.

Because of the manpower shortage and the inability to replace equipment and obtain repair parts, due to the present war emergency, applicant has experienced considerable difficulty in maintaining its operations. Many employees are subject to military draft under the Selective Service laws and regulations. Officials of the War Manpower Commission have advised applicant that its business cannot be classified as a war necessity, consequently, it faces the loss of employees to the military services or to other more essential industries. Its employees are now obliged to work long

hours and even then the staff is insufficient to meet the demands of customers. These difficulties have been accentuated by recent regulations promulgated by the Office of Defense Transportation.

It is true, as applicant contends, that service of the character it provides is essentially that of a private carrier. It was shown that, even under normal conditions, applicant could not successfully conduct its business as a common carrier. And under the existing emergency conditions it would be impossible for it to do so.

Although applicant has long held authority to operate within the territory involved, as a highway common carrier, it clearly has neglected to perform the public obligations resting upon it. It has rejected the business tendered it by shippers generally, choosing rather to select those with whom it would deal. By its own admission, it has exacted transportation charges which not only were discriminatory, but which failed to conform to its tariffs. While the operations of applicant are such that it could not readily and profitably have performed its common carrier obligations, this is small excuse for a carrier of applicant's experience and standing. Appropriate action will be taken against applicant because of its dereliction of duty and violation of its tariffs.

The public, it was shown, would not be prejudiced were applicant permitted to withdraw as a common carrier, in accordance with its proposal. Other carriers, it was shown, now serve the territory. No one appeared in protest, although wide notice of the hearing was given to other carriers and to the chambers of commerce and city attorneys of the communities affected.

The application will be granted.

O R D E R

Application having been made as above entitled; a public hearing having been had; and the Commission being now fully advised:

IT IS ORDERED as follows:

(1) That United Parcel Service Bay District, a corporation, be and it hereby is authorized to abandon any and all service as a highway common carrier which it has been authorized to conduct under its existing operative rights, between the points described in the preceding opinion.

(2) That the certificate of public convenience and necessity heretofore acquired by United Parcel Service Bay District, pursuant to Decision No. 30564, as amended, in Application No. 21612, be and it hereby is cancelled and revoked.

(3) That United Parcel Service Bay District shall cancel all tariffs and time schedules on file with the Commission in its name, and in effect, on not less than ten (1) days' notice to the Commission and the public.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 23<sup>rd</sup> day of November, 1943.

Francis A. Havens  
J. J. Baker  
Justin J. Calver  
Arthur H. Clark  
Paula Dewey  
COMMISSIONERS