

Decision No. 36973

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.

**ORIGINAL**

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

BY THE COMMISSION:

FIRST SUPPLEMENTAL OPINION

By her petition filed in the above-entitled consolidated proceedings, Violet M. Keller, doing business as Menlo Park and San Francisco Parcel Delivery, defendant in Case No. 4605 and respondent in Case No. 4606, (hereinafter referred to as Keller) seeks a modification of Decision No. 36345, rendered May 11, 1943, in said proceedings. Specifically, she requests that this decision be amended so as to find as a fact that the operative right purchased by Keller from Vernon B. Bradbury, the successor of B. Liedberg, would permit the handling of packages, instead of shipments, subject to a weight restriction of 100 pounds each, between San Francisco and Menlo Park and intermediate points.

The operative right with which we are concerned, as stated in Decision No. 36345, was transferred by Liedberg, the original owner, to Bradbury, who, after securing an extension, conveyed it to Keller. (1) That decision recites, at page 9, that:

"The service, however, was restricted to the handling of shipments weighing 100 pounds or less between San Francisco and Menlo Park, and to the handling of shipments not exceeding 50 pounds in weight between Menlo Park and Palo Alto.\*\*\*\*\*We now find that defendant is vested with such an operative right, subject to the weight limitations last described. By our decision in the transfer proceeding, (2) under which defendant Keller acquired this operation, we arrived at a similar conclusion. We now reaffirm that decision." (Emphasis supplied)

Keller points to the statement appearing in Decision No. 34374 (43 C.R.C. 631, 632) to the effect that:

"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. 28969, 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\*\*\*\*\*" (Emphasis supplied)

Because of these inconsistencies in the findings, the Commission, it is contended, acted erroneously when it undertook to limit the traffic that might be handled to shipments, rather than packages, not

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(1) Pursuant to Decision No. 28969, rendered July 7, 1936, in Application No. 20643, this operative right, which arose under the "grandfather" clause of the Auto Truck Transportation Act of 1917, was transferred from B. Liedberg, the original operator, to Vernon B. Bradbury. At the latter's instance the operation was extended to Palo Alto, by Decision No. 31865, rendered May 27, 1939, in Application No. 22424. Keller was authorized to acquire the operation from Bradbury by Decision No. 34374, rendered July 1, 1941, in Application No. 24065.

(2) Decision No. 34374, supra.

exceeding 100 pounds in weight. Assertedly, the Commission, through its reaffirmance of Decision No. 34374, acknowledged that the restriction extended to packages, and was not confined to shipments.

The quoted finding, in Decision No. 36345, followed closely the finding contained in Decision No. 35219, rendered April 7, 1942, in the instant proceedings. There we stated, at page 5:

"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." (Emphasis supplied)

On page 6 we said:

"This certificate authorizing an extension between Menlo Park and Palo Alto 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." (Emphasis supplied)

Again, at page 7, it was found as a fact that Keller's predecessors had performed a service restricted "to the handling of shipments weighing 100 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." (Emphasis supplied) This decision, however, is no longer in force, it having been vacated by Decision No. 36345, rendered on rehearing.

In the decision authorizing the extension of Bradbury's

operations to Palo Alto, the Commission recognized that he could engage in the transportation of packages not exceeding 100 pounds each between San Francisco and Menlo Park; <sup>(3)</sup> and he was permitted to extend the service to Palo Alto, subject to the restriction that no shipment in excess of fifty pounds could be transported to and from the points embraced within such extension.

In his original tariff, (C.R.C. No. 1), which became effective March 23, 1920, Liedberg published rates applicable to the transportation of packages or parcels, naming none for those weighing in excess of 100 pounds. In a tariff subsequently filed (C.R.C. No. 2) which became effective December 29, 1928, a rule appeared which provided that the rates named therein should apply on "miscellaneous shipments of packages and parcels not exceeding 100 pounds in weight."

The testimony of those familiar with the nature of the operations, offered in the instant proceeding, as well as that given in other proceedings incorporated by reference in the present record, establishes that both Liedberg and Bradbury undertook to carry any package weighing not over 100 pounds. It was shown that any package of 100 pounds or less was transported, but those exceeding that weight were rejected. In practice, the restriction actually applied rested on a package, rather than upon a shipment basis.

In our judgment the challenged finding, contained in Decision No. 36345, was erroneous and accordingly it will be corrected.

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(3) In Decision No. 31865, supra, we found that Bradbury"\*\*\*\*\*has been engaged in the transportation business for approximately three years between San Francisco and Menlo Park and intermediate points by virtue of having acquired the prescriptive operative right of one B. Liedberg. The transportation of property was limited to packages weighing not in excess of one hundred pounds,\*\*\*\*\*" (Emphasis supplied)

We therefore find as a fact, in lieu of the finding appearing on page 9 of Decision No. 36345, that the service conducted by Bradbury and by his predecessor, Liedberg, which Keller is entitled to perform, was and is restricted to the transportation of packages weighing 100 pounds or less between San Francisco and Menlo Park and intermediate points; and to the handling of shipments not exceeding 50 pounds in weight to and from points situated between Menlo Park and Palo Alto (including Palo Alto and excluding Menlo Park).

FIRST SUPPLEMENTAL ORDER

Application therefor having been made; the Commission being now fully advised; and good cause appearing;

IT IS ORDERED that Decision No. 36345, rendered herein on May 11, 1943, be and it hereby is amended by substituting the finding hereinabove set forth for that appearing on page 9 of said decision.

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

Dated at San Francisco, California, this 4<sup>th</sup> day of April, 1944.

Richard Sacke  
Justin F. Cooney  
Francis D. Havenner  
Wm. M. Allen  
Joseph Powell  
COMMISSIONERS