

ORIGINAL

Decision No. 38468

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of)
 FRANK J. BROWN, doing business as)
 A. & B. GARMENT DELIVERY, for a)
 certificate of public convenience)
 and necessity to operate as a highway)
 common carrier of garments, clothing,)
 and wearing apparel, between Los)
 Angeles, Beverly Hills, Glendale,)
 Inglewood, Long Beach, Pasadena, San)
 Pedro, Santa Monica, Westwood, and)
 Wilmington.)

Application No. 26633

ARLO D. POE and WYMAN C. KNAPP,
 for applicant.

PRESTON W. DAVIS, for United
 Parcel Service, protestant.

BY THE COMMISSION:

O P I N I O N

Decision No. 35452, dated June 9, 1942, as amended,
 by Decision No. 35557, dated July 7, 1942, authorized Frank J.
 Brown and Mascotte Ralston, copartners, doing business as
 A. & B. Garment Delivery, (1)
 to establish and operate a highway
 common carrier service for the transportation of garments,
 clothing, and wearing apparel on hangers, and merchandise in
 packages weighing not to exceed eight pounds, to be used in
 connection with and shipped in company with garments in bags,
 between wholesalers and retailers in Los Angeles, Belvedere
 Gardens, Florence, Walnut Park, Vernon, and Huntington Park,

(1) By Decision No. 36225 Frank J. Brown was authorized to purchase and acquire said rights and also certain described automotive equipment and other property. He is now the sole owner and operator of said business.

(2)
subject to certain conditions.

By this application, as amended, applicant now requests authority to establish a similar service, over irregular routes between Los Angeles, Belvedere Gardens, Florence, Walnut Park, Vernon, and Huntington Park (the points named in Decision No. 35557), on the one hand, and Beverly Hills, Glendale, Inglewood, Long Beach, Pasadena, San Pedro, Santa Monica, Westwood, and Wilmington, on the other hand, and between Beverly Hills, Glendale, Inglewood, Long Beach, Pasadena, San Pedro, Santa Monica, Westwood, and Wilmington.

The application having been publicly heard before Examiner Chiesa on October 18, 19 and 22, 1945, in Los Angeles, evidence having been adduced, and the matter submitted, it is now ready for decision.

Applicant established this specialized service in 1940 and it has met with such favor with the garment industry that the business has expanded from the one truck used in the beginning to the fifteen trucks now operated. The evidence shows that applicant is the only carrier offering this type service to the public in Los Angeles and vicinity and that the service is preferred to the delivery of garments in packages.

Six wholesalers testified that the proposed service is superior to the delivery of garments in packages and that it is needed and would be used by them in delivering their merchandise to retailers located in the cities or communities

(2) The condition provides that - "No property of any kind or type or in a shipping form not provided for in the foregoing certificate shall be transported from, to or between points not included within the scope of the certificate in equipment contemporaneously used to provide the service herein authorized. This condition shall not apply to intra-city transportation within Los Angeles."

named. All of said witnesses have their places of business in Los Angeles. It was stipulated by counsels for applicant and protestant that 13 additional witnesses who had appeared at the hearing and represented wholesalers, would testify substantially to the same effect. Twenty proprietors or managers of ready-to-wear retail stores testified that applicant's service saves them time and expense as garments are received in condition permitting ready sale; that they preferred delivery on hangers; needed this type of transportation service and would use it. It was also stipulated that sixteen additional retail witnesses who were present would similarly testify. Several witnesses testified that it was often necessary and convenient to interchange or deliver garments from one store to another and that on occasion garments were returned to wholesalers and that applicant's service would be used for this purpose if made available to them.

Applicant's present right, together with the rights herein sought, would enable him to render service between wholesalers and retailers between any of the points named. Although the record indicates that practically all manufacturers, jobbers, and wholesalers of wearing apparel transported by applicant are now located in Los Angeles, we believe, in view of the restricted character of the service and general demand therefor, that it is desirable and in the public interest that it be made available to all present and future wholesalers and retailers in the localities named.

Applicant proposes a daily service similar to that which he is now performing, that is, pickup from wholesalers in the afternoon with delivery to retail stores not later than

the following morning: Service will also be provided between retail stores: Two additional trucks will be required to take care of the new service. The record shows that applicant will have sufficient equipment and is financially responsible. ⁽³⁾ The proposed rates "are 15 cents per bag plus 1 cent per pound, but not less than 15 cents per bag plus 2 cents per garment, for all garments except women's blouses or shirts which shall be 1 cent each".

Protestant's principal objection is that this matter should not have been heard at this time because, due to war conditions, protestant has been unable to establish a similar service in the territory which it serves and, therefore, ⁽⁴⁾ applicant should not be given an advantage by allowing him to show that a public need for additional service now exists. Protestant argues that if this proceeding is delayed long enough it will be able to acquire the equipment and employees with which to establish a like service and consequently there will be less or no need for the proposed service. Protestant's counsel called attention to a ruling by this Commission to the effect that an inadequate present service due to war conditions should not be the basis for the issuance of a new certificate.

In Decision No. 38012, dated June 19, 1945, wherein we discussed this subject, we said, in part, as follows:

****the Commission could not equitably grant a permanent certificate of public convenience and necessity where the showing of applicant is rested primarily upon the inadequacy of the services provided by the existing carriers when those inadequacies are largely the result of prevailing wartime conditions and limitations.****

(3) Exhibits Nos. 1, 2 and 4.

(4) Los Angeles and extended suburban areas as per Decisions Nos. 10886, 13429, 16425, 18121.

The record is clear in this proceeding that applicant was and is the only carrier offering the public this unique service. Protestant's service, therefore, was never adequate as it was nonexistent. There is nothing in this record to justify a conclusion that the showing applicant has made rests primarily on the inadequacy of protestant's service resulting largely from wartime conditions or limitations.

Upon careful consideration of the full record in this proceeding we find that public convenience and necessity require the establishment and operation of a highway common carrier service for the transportation of property as herein proposed and, therefore, the application will be granted.

Pursuant to counsel's stipulation, the order will issue subject to the same conditions imposed by the First Supplemental Order, Decision No. 35557, dated July 7, 1942.

Frank J. Brown is hereby placed upon notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate-fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the State, which is not in any respect limited to the number of rights which may be given.

O R D E R

Public hearing having been held in the above-entitled proceeding, the matter having been duly submitted, and the Commission being fully advised,

IT IS ORDERED as follows:

(1) That a certificate of public convenience and necessity be and it is hereby granted to Frank J. Brown for the establishment and operation of a highway common carrier service for the transportation of garments, clothing, and wearing apparel when transported on garment hangers, and merchandise incidental thereto and shipped in company therewith in packages weighing not to exceed eight pounds, between wholesalers and retailers, between Beverly Hills, Glendale, Inglewood, Long Beach, Pasadena, San Pedro, Santa Monica, Westwood and Wilmington. For the purposes of this decision and the certificate herein granted, San Pedro, Westwood and Wilmington, are defined respectively as follows:

Commencing at the intersection of Santa Cruz and Harbor Boulevard, south on Harbor Boulevard to Fourteenth Street, west on Fourteenth Street to Gaffey Street, north on Gaffey Street to Santa Cruz Street and east on Santa Cruz to point of commencement.

Commencing at the intersection of Heath Avenue and Pico Boulevard, thence west on Pico Boulevard to Centinella Avenue, thence north on Centinella Avenue to Wilshire Boulevard, thence east on Wilshire Boulevard to Sepulveda Boulevard, thence north on Sepulveda Boulevard to Sunset Boulevard, thence east on Sunset Boulevard to the westerly boundary of the city of Beverly Hills, thence south along the western boundary of the city of Beverly Hills to the point of commencement.

Commencing at the intersection of Figueroa Street and Pacific Coast Highway, south on Figueroa Street to "E" Street, east on "E" Street to Banning Avenue, north on Banning Avenue to "M" Street to Broad Avenue, north on Broad Avenue to Pacific Coast Highway and west on Pacific Coast Highway to point of commencement.

This certificate is granted as an extension and enlargement of the

certificate granted by Decision No. 35452, dated June 9, 1942, as amended by Decision No. 35557, dated July 7, 1944, and is subject to the following condition:

No property of any kind or type or in a shipping form not provided for in the foregoing certificate shall be transported from, to or between points not included within the scope of the certificate in equipment contemporaneously used to provide the service herein authorized. This condition shall not apply to intra-city transportation within Los Angeles.

(2) That in the operation of said highway common carrier service, pursuant to the foregoing certificate Frank J. Brown shall comply with and observe the following service regulations:

- (a) Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days from the effective date hereof.
- (b) Applicant shall, within 60 days from the effective date hereof and on not less than one days' notice to the Commission and the public, establish the service herein authorized and comply with the provisions of General Order No. 80 and Part IV of General Order No. 93-A by filing, in triplicate, and concurrently making effective, appropriate tariffs and time tables satisfactory to the Commission.
- (c) Subject to the authority of this Commission to change or modify such at any time by further order, applicant shall conduct said highway common carrier service over and along the most appropriate route or routes.

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

Dated at San Francisco, California, this 10th day of December, 1945

Harold Rudman
Frank W. Lewis
James F. Dunge
Lawrence Kule
 COMMISSIONERS