

ORIGINAL

Decision No. 41163

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of V. Fred Jakobsen for an amend- ) Application No. 28456  
ment of certificate authorizing )  
the use of motor trucks. )

Appearances

Clair W. MacLeod, for applicant.  
E. H. Hart and Reginald L. Vaughan, for Canton  
Express Co., East Bay Drayage and Warehouse  
Co., Inter-Urban Express Corp., Peoples Express  
Co., United Transfer Co., West Berkeley &  
Draying Co., and Haslett Warehouse Co.,  
protestants.

O P I N I O N

Applicant is a highway common carrier. He operates between San Francisco, on the one hand, and Oakland, Alameda, Berkeley, Emeryville and Piedmont, on the other. His operative rights, limited to a "motorcycle truck service," were acquired from William M. and Makin E. Smith, Jr.<sup>1</sup> He seeks authority to substitute "motor trucks" for "motorcycle trucks" and, upon such substitution, to limit his service for all commodities except phonograph records to shipments weighing 100 pounds and less.

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The Smiths were granted a certificate of public convenience and necessity by Decision No. 27975 of May 20, 1935, in Application No. 19893. Decision No. 31972 of May 2, 1939, in Application No. 22709 authorized Jakobsen to acquire a one-fourth interest in the operation. The remaining three-fourths interest was transferred to Jakobsen pursuant to the authority contained in Decision No. 37433 of October 31, 1944, in Application No. 26363.

During the time Jakobsen held the one-fourth interest, a further restriction to the general effect that retail deliveries could not be made was imposed at the request of the owners. (Decision No. 33867 of February 4, 1941, in Application No. 23980).

Public hearings were had at San Francisco before Examiner Mulgrew.

The following provision was incorporated in the decision granting the operative rights to applicant's predecessors:

"Applicants shall file their written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof, stipulating in said acceptance that said certificate is accepted for the exclusive use of motorcycle trucks and that the certificated right herein shall never be claimed as permitting the use of other vehicles than three wheel motorcycles in contradistinction from four-wheel auto trucks of the conventional commercial type and/or automobile chassis."

An acceptance of the certificate, including this stipulation, was filed. Protestants contend that the proposed substitution of trucks for motorcycles would be a violation of the stipulation. They further contend that a "distinct and separate" showing of convenience and necessity based upon truck operation is required if applicant is to be authorized to use trucks.<sup>2</sup> On the ground that the use of motorcycles is not a proper consideration in determining whether applicant should be permitted to use trucks, counsel for protestants objected to the receipt of any evidence relating to motorcycle operations. The examiner properly permitted the receipt of such evidence.

Applicant urges that the operation of motorcycles is not as safe as the operation of trucks, that he could better maintain his scheduled service with trucks, and that the cost of motorcycle operation

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Reference was also made to Decision No. 31863 of March 27, 1939, in Application No. 22497, in which it was found that the record made did not justify the truck operations then proposed by the Smiths. Protestants argue, and applicant disputes, that this finding supports the contention that a "distinct and separate" showing is required for such authority.

is excessive in comparison with the cost of truck operation. The granting of the sought authority, he claims, would permit him to preserve and improve his existing service. He asserts that the sought authority is not designed to enable him to compete with protestants and other carriers for traffic differing from that which he now handles.

The record is replete with evidence demonstrating the hazards of motorcycle operation. The risks in driving these vehicles are so great that applicant has experienced considerable difficulty in hiring men. Many of those hired have quit as soon as they appreciated the danger of the work. Others have proven unsatisfactory. There have been numerous equipment breakdowns. The breakdowns have disrupted scheduled service.

Protestants do not dispute that driving a motorcycle is hazardous. By cross-examination of one of applicant's witnesses they brought out that it was hazardous long before applicant's predecessors obtained their certificate of public convenience and necessity. Their witnesses testified, however, that the operation of trucks is not free from risk. According to these witnesses overloading of equipment increases the risk and causes an abnormal breakdown experience. Their testimony indicates that applicant transports heavier loads than his equipment is built to handle.

With respect to relative costs, applicant's showing is designed to demonstrate that important savings would result from the substitution of trucks for motorcycles. Protestants' showing, on the other hand, indicates that his expenses for truck operation would be greater than those contemplated. In view of the conclusions hereinafter reached it is not necessary to deal at length with the cost figures of record.

Various shipper witnesses testified that applicant's service was the for-hire carrier service best suited to their requirements. They said that they had used the service and found it generally satisfactory. Most of them also said that they had at times been inconvenienced by applicant's failure to meet his schedules. The shipments handled for them by applicant, they testified, were for the most part small in weight and consisted of goods needed immediately by their customers. Shippers of phonograph records explained that their larger customers sometimes required shipments weighing more than 100 pounds, that the sale of records was highly competitive, and that it was necessary to arrange for deliveries to all customers in the same area at approximately the same time. In the East Bay cities, they said, this had been done successfully by patronizing applicant's service.

It has been demonstrated that, with the equipment now operated, applicant's drivers are exposed to more risks than those attending the operation of trucks. There has been one driver fatality. There have been serious injuries to other drivers. These accidents probably would not have occurred in truck operation. Other users of the public highways have been exposed to risks by the operation of the motorcycle equipment, particularly by its operation in rainy and foggy weather and over the San Francisco-Oakland Bay Bridge and other thoroughfares.

It is clear that applicant provides a specialized service that in a large measure meets the public need for an expedited transbay package service. The granting of this application would not widen the scope of his operating authority. Indeed, if anything, the 100-pound-per-shipment limitation would restrict applicant's operating authority more rigidly to the package transportation field. Although protestants question applicant's ability to provide the same expedited service with trucks, there

appears to be no sufficient ground for concluding that he would be unable to furnish service substantially comparable to that provided with motorcycles. The shippers are concerned with the character of the service, not with the type of vehicle used to provide it.

With respect to the cost of the proposed truck service and the rates therefor, applicant is experienced in both motorcycle and truck operations. He does not intend to increase his rates. In fact, he hopes that the rates may be lowered to meet parcel post competition.

The significance of the stipulation filed by applicant's predecessors has evidently been misconstrued by protestants. In Decision No. 27975, supra, which required this filing, it was found that the protestants in the proceeding now before us and other carriers then involved were "not rendering a small package service such as these applicants are giving and which the public requires" and that such package service did not appear to be "in active competition with protestants' truck operations." The fact that the Commission then chose to limit the certificate to "motorcycle truck service" and to require a stipulation from applicants disclaiming any right to provide a truck service under that certificate does not foreclose us from changing the provisions of the order granting these rights in the respects now proposed.

The showing here made is persuasive that public interest will be served by the granting of the sought authority. A safer type of equipment will be used. Service in all likelihood will be bettered. Rates are not proposed to be changed.

Upon consideration of all the facts and circumstances of record, we are of the opinion and find that applicant has justified the proposed substitution of trucks for motorcycles upon the limitation of his operative authority to shipments weighing 100 pounds or less, except shipments of phonograph records.

O R D E R

Based on the evidence of record and on the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED that V. Fred Jakobsen be and he is hereby authorized to substitute motor trucks for motorcycle trucks in his transbay highway common carrier service as described in the preceding opinion not earlier than ten (10) days from the effective date of this order; that his operative rights for said service be and they are hereby limited, effective ten (10) days from the effective date of this order, to shipments weighing 100 pounds or less, except shipments of phonograph records; and that his tariffs shall be amended accordingly no later than ten (10) days from the effective date of this order and on not less than three (3) days' notice to the Commission and to the public.

This order shall become effective twenty (20) days from the date hereof.

Dated at San Francisco, California, this 27th day of January, 1948.

R. T. Indarajan

Frank H. Russell

Harold P. Kula

Commissioners