

**ORIGINAL****42700**

Decision No. \_\_\_\_\_

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Establishment of )  
 rates, rules and regulations for the )  
 transportation of property by common )  
 carriers as defined in the Public )  
 Utilities Act and highway carriers as )  
 defined in the Highway Carriers' Act. )

Case No. 4808

Appearances

Clair W. MacLeod, for V. Fred Jakobsen, dba  
 Transbay Motor Express Company.  
 Reginald L. Vaughan, for Canton Transbay Express,  
 Inc., East Bay Drayage and Warehouse Company,  
 Haslett Warehouse Company, Inter-Urban Express  
 Corporation, Kellogg Express and Draying Co.,  
 Merchants Express Corporation, West Berkeley  
 Express and Draying Company, United Transfer  
 Company, and Highway Transport, Inc.  
 Edward M. Berol, for The Common Carriers' Conference  
 of the Truck Owners Association.  
 Russell Bevans, for Draymen's Association of  
 San Francisco.  
 Clifton E. Brooks, for Delivery Service Company.  
 Scott Elder, for Merchants Parcel Delivery.

SUPPLEMENTAL OPINION

V. Fred Jakobsen, an individual doing business as  
 Transbay Motor Express, and Merchants Parcel Delivery, a corpora-  
 tion, are highway carriers. Jakobsen operates between San Francisco  
 and East Bay cities as a common carrier subject to the Public  
 Utilities Act. His rates for that service are specified in his  
 tariffs on file with the Commission. He conducts other operations  
 in the San Francisco Bay area under a contract carrier permit  
 issued pursuant to the provisions of the Highway Carriers' Act.  
 For these operations he is required to observe rates no lower  
 than the minimum rates established by Decision No. 31606, 41 C.R.C.  
 671 (1938), as amended. Merchants has no common carrier rights  
 under the Public Utilities Act. It holds a contract carrier permit.

Service is rendered thereunder between San Francisco, on the one hand, and Alameda, Contra Costa, Marin, San Mateo and Santa Clara County points, on the other. Decision No. 40692 of September 10, 1947 (unreported) exempted Merchants, without qualification, from observing the established minimum rates notwithstanding that it had represented that its entire highway carrier operation was the transportation of shipments weighing less than 100 pounds from retail stores to their customers. Jakobsen and other carriers operating in the San Francisco Bay district urge that this exemption be limited to retail delivery service from San Francisco to the area Merchants serves. Should Merchants' exemption not be so restricted, Jakobsen asks that he be relieved from observing the minimum rates on shipments weighing less than 100 pounds transported between San Francisco and East Bay cities and between San Francisco and Oakland, on the one hand, and points within 70 miles from those cities, on the other.

Public hearings were had at San Francisco on October 21 and December 5, 1949, before Examiner Mulgrew. Briefs were filed.

Merchants is not opposed to the weight and territorial limitations sought to be imposed on its exemption. The propriety of the exemption is not challenged in so far as transportation from retail stores to their customers (so-called "retail parcel delivery") is concerned. The controversy is confined to the treatment which should be accorded other small shipments.

In Decision No. 31606, supra, the Commission held that the exemption from minimum rate provisions of numerous carriers "performing peculiar types of transportation services," as proposed, was justified. One class of carriers involved was described as "express and parcel delivery carriers offering highly specialized services in competition with the United States Parcel Post." The Commission

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found that the record then before it did not show the extent to which, if at all, the rates of such carriers were unreasonable, discriminatory, unjustified by transportation conditions, or otherwise unlawful. It accordingly concluded that their rates should not be required to be changed. Subsequent decisions, including No. 40692 involving Merchants and hereinbefore referred to, granted exemptions to carriers which made showings that their services were similar to those of carriers covered by Decision No. 31606 exemptions.

Merchants is a carrier of small shipments exclusively. Its president explained that representations that the company's operations were limited to retail parcel delivery service had been made in error, and that it had handled and was handling small shipments for other businesses. He claimed that transportation conditions surrounding the delivery of small shipments for retailers were similar to the conditions attending the delivery of shipments of like size from other business establishments. The transportation characteristics of such shipments, he said, were the same. He asserted, moreover, that all such deliveries were competitive with parcel post service and that exemption from the established minimum rates was necessary to meet that competition effectively. Jakobsen, on the other hand, represented that in his operations involving deliveries from business establishments other than retail stores the need for authority to go below the minimum rates was occasioned only by competition with Merchants. Similarly, the other carriers urging restriction of the Merchants' exemption to retail parcel delivery service claimed that other delivery services were competitive with carriers of general freight not limiting their operations to small shipments. They asserted that exemptions not restricted to retail traffic should be authorized only upon a showing that rates to be assessed thereunder would be reasonable.

The showing made discloses that under its unqualified exemption from the established minimum rates Merchants enjoys an undue rate advantage over other for-hire carriers on the traffic in controversy here. Merchants' exemption, in so far as that traffic is concerned, should be limited to the extent that deviation from the minimum rates is justified by the nature of the operation and the competitive influences affecting it. Such a determination cannot be made on this record. However, Merchants should not be permitted to enjoy its undue rate advantage indefinitely. It should, of course, have a reasonable opportunity to propose the rates it considers suitable and to submit supporting evidence. Its present exemption will, therefore, be allowed to remain in effect until February 28, 1950. Merchants will be expected promptly to take the steps necessary to secure such further authority as it may deem justified. Meanwhile, Jakobsen will be given authority to deviate from the minimum rates, as requested, but on a temporary basis expiring February 28, 1950. Should he desire such authority beyond that date he will be expected seasonably to apply therefor.

Upon consideration of all the facts and circumstances of record, we are of the opinion and hereby find that the exemption from minimum rates granted Merchants Parcel Delivery by Decision No. 40692 of September 10, 1947, should be modified and the exemption sought by V. Fred Jakobsen, doing business as Transbay Motor Express, should be granted to the extent hereinbefore indicated and as provided by the order herein; and that in all other respects petitioners' proposals have not been justified and should, therefore, be denied.

Decision No. 31606 exempted V. Fred Jacobsen (sic), doing business as Special Delivery Service Co., from observance of the

minimum rates. Jakobsen no longer conducts the operation referred to. The exemption will be canceled.

O R D E R

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

IT IS HEREBY ORDERED that Decision No. 31606 of December 27, 1938, as amended, in Case No. 4246, be and it is hereby further amended (1) by revoking, effective March 1, 1950, the authority granted Merchants Parcel Delivery, a corporation, by Decision No. 40692 of September 10, 1947, in that proceeding, and by granting said Merchants Parcel Delivery in lieu thereof authority to observe rates lower than the minimum rates established by the aforesaid Decision No. 31606, as amended, on shipments weighing 100 pounds or less delivered from retail stores in San Francisco to the stores' customers in Alameda, Contra Costa, Marin, San Mateo or Santa Clara Counties and on shipments of such weight returned by the customers to the stores; (2) by granting V. Fred Jakobsen, an individual doing business as Transbay Motor Express, to expire February 28, 1950, authority to observe rates lower than the minimum rates established by the aforesaid Decision No. 31606, as amended, on shipments weighing 100 pounds or less transported between San Francisco or Oakland, on the one hand, and points not more than 70 constructive miles therefrom, on the other, and, in connection with his highway common carrier operations, authority to establish such lower rates, to expire February 28, 1950, in his tariffs on file with the Commission not earlier than five (5) days after the effective date of this order and on not less than five (5) days' notice to the Commission and to the public; and (3) by canceling the authority granted to V. Fred Jacobsen, doing business as Special Delivery Service Co., in paragraph (a) of Finding 14 of the aforesaid Decision No. 31606.

IT IS HEREBY FURTHER ORDERED that in all other respects the petitions of V. Fred Jakobsen and Canton Transbay Express, Inc., et al., filed September 23, 1949, and October 21, 1949, respectively, in this proceeding, be and they are hereby denied.

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

Dated at San Francisco, California, this 17<sup>th</sup> day of January, 1950.

R. E. Dunning  
Justus F. Quacken  
Isaac M. L. L. L.  
Harold P. Hill  
Frederick W. Potter  
Commissioners