FW

ORIGINAL

Decision No. 43868

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission Investigation into the operations and practices of V. Fred Jakobsen, doing business as Trans Bay Motor Express Company, operating, among other places, between San Francisco, Oakland, and Berkeley, on the one hand, and San Jose and points intermediate thereto along or near U.S. Highways 101 and 101 Alternate, on the other.	Case No. 5004

SUPPLEMENTAL OPINION AND ORDER MODIFYING PRIOR DECISION AND DENYING REHEARING

On November 15, 1949, the Commission issued Decision No. 43526 in the above case, ordering the respondent to cease and desist from operating as a highway common carrier unless and until he should have obtained from this Commission a certificate of public convenience and necessity.

On December 5, 1949, the respondent filed a petition for rehearing in respect to said decision.

Upon further consideration of the matters contained in said petition, we are of the opinion that said decision should be modified in order to clarify the principles applicable in the determination of the issues raised in the above case. We believe this purpose may be accomplished without a public hearing, and in our opinion no good cause has been shown by the applicant for the granting of a rehearing.

O R D E R

IT IS ACCORDINGLY ORDERED THAT:

(1) The following language appearing in Decision No. 43526 be and the same is hereby stricken from said decision:

> "The circumstance that respondent requires the prepayment of transportation charges may or may not be of significance in determining whether his operations are those of a common carrier as distinguished from a contract carrier. It is one factor to be considered. However, common carriers may and in many cases do insist upon the prepayment of their charges.
>
> "Solicitation of traffic is merely an incidental rather than a controlling factor in determining common carrier status in this instance. In this connection, it is noteworthy that in each instance to which our attention is called where purported contracts were amended from time to time the amendments were in the form of a letter upon respondent's stationery and the shipper was asked to execute and return a duplicate copy. In most cases, the amendments providing for service to additional territory became effective within a relatively short period of time.
>
> "The rendition of more frequent service than given by other carriers is not evidence of an operation indicative of that of a contract carrier. A like service was held out to all whom respondent elected to serve. It is true, as stated by respondent's counsel, that the evidence does not show that service has been extended to all who wanted it. However, it must be borne in mind that acts of discrimination in serving certain shippers and refusing to serve others cannot be recognized as ipso facto transforming an otherwise common carrier operation into that of a contract carrier. Nor does the restriction of respondent's service to the so-called small package field indicate something other than a common carrier status. Such carriers may restrict service to the transportation of goods of a kind that they undertake or are accustomed to carry. (Company Civil Code Sec. 2169.)"

(2) The following language be and the same is hereby substituted for the language ordered stricken in paragraph (1) above:

> "The circumstance that respondent requires the prepayment of transportation charges merely has the effect of avoiding any presumption that he had held out his services to consignees of collect shipments (Pacific Southwest Railroad Association, et al. v. Harold A. Stapel, et al., Case No. 4927, Decision No. 43828, dated February 14, 1950).
>
> "Solicitation of traffic, or the absence thereof, is not a controlling factor in determining whether a carrier is a common carrier (Pacific Southwest Railroad Association v. J. P. Nielsen, Case No. 4820, Decision

FW

"No. 43557, dated November 22, 1949.) In this connection, it is noteworthy that in each instance to which our attention is called where purported contracts were amended from time to time the amendments were in the form of a letter upon respondent's stationery and the shipper was asked to execute and return a duplicate copy. In most cases, the amendments providing for service to additional territory became effective within a relatively short period of time.

"The rendition of more frequent service than given by other carriers is not evidence of an operation indicative of that of a contract carrier. A like service was held out to all whom respondent elected to serve. It is true, as stated by respondent's counsel, that the evidence does not show that service has been extended to all who wanted it. However, it must be borne in mind that acts of discrimination in serving certain shippers and refusing to serve others cannot be recognized as ipso facto transforming an otherwise common carrier operation into that of a contract carrier. (Pacific Southwest Railroad Association v. J. P. Nielsen, supra.) Nor does the restriction of respondent's service to the so-called small package field indicate something other than a common carrier status. Such carriers may restrict service to the transportation of goods of a kind that they undertake or are accustomed to carry. (California Civil Code Sec. 2169.)"

(3) Decision No. 43526, as hereinabove modified, be and the same is hereby in all other respects affirmed.

(4) The respondent's petition for rehearing in respect to Decision No. 43526 be and the same is hereby denied.

Dated at San Francisco, California, this 28th day of February, 1950.

R. E. Mittelstaedt
Justus F. Craemer
Harold P. Huls
Kenneth Potter

Commissioners