

Decision No. 44115

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

Commission Investigation into the )  
operations and practices of WM. E.)  
RHODES, doing business as BERKELEY)  
PARCEL SERVICE. )

Case No. 5163

ORIGINAL

Halsey L. Rixford, for the Field Division.  
Phillips & Avakian, by Spurgeon Avakian, for respondent.  
Clair W. MacLeod, for V. Fred Jakobsen, doing business  
as Trans-Bay Motor Express Co., and Clifton E.  
Brooks, for C. R. Becker, doing business as  
Delivery Service Co., interested parties.

## O P I N I O N

This proceeding was instituted upon the Commission's own motion by the issuance of an order of investigation on December 6, 1949, to determine whether respondent is operating as a highway common carrier anywhere in the State of California, and particularly between San Francisco and East Bay cities, and between East Bay cities, without the requisite certificate of public convenience and necessity.

A public hearing was held in San Francisco on February 14, 1950, before Examiner Gillard, and the matter submitted for decision.

Respondent commenced his delivery service in June, 1947, with no prior experience. He now possesses city, radial and contract carrier permits, and operates thereunder with six pieces of equipment (mostly panel delivery) from his home and office in Berkeley. He uses no terminals, but operates an on-call service coupled with a scheduled pick-up service for his "contract" customers. A majority of his business is transporting intracity shipments.

The Field Division rested its case upon the results of two separate checks of respondent's records relative solely to his intercity operations plus the conversations had with respondent during the course of those investigations.

During the month of February, 1949, according to an exhibit prepared by the Field Division, respondent transported 721 shipments of stationery, printed matter, tools, radio parts and other small-lot commodities for 56 patrons between San Francisco and Oakland and Berkeley, and from each of those cities to other East Bay points. <sup>(1)</sup> Movements were regular and comparatively heavy between: San Francisco and Oakland-Berkeley-Richmond; Berkeley and Emeryville-Richmond-Oakland-San Francisco; Oakland and Berkeley-Emeryville-San Francisco. Between all other points carriage ranged from medium to light in number of shipments, frequency of service, and number of shippers.

Based upon the investigation above summarized, an order of investigation was issued herein on December 6, 1949, and served upon respondent on December 30, 1949.

On December 15, 1949, the Field Division checked respondent's operations for the first 10 days of December, 1949. It shows that respondent carried 496 shipments for 23 patrons, and that in every case the person engaging his services also paid the freight charges. Respondent claimed oral "contracts" <sup>(2)</sup> with nine of

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(1) Alameda, Emeryville, Richmond, El Cerrito, Albany, San Pablo, San Leandro, Hayward and Piedmont.

(2) No evidence of the terms of these contracts was introduced.

these shippers, for whom 377 of said shipments were carried, and of the remaining consignors, eleven made five or fewer shipments, one made six shipments and two made seven shipments each. Twenty-eight cities were served from three points of origin - Oakland, Berkeley and San Francisco. Points of destination were all East Bay cities from Richmond to Hayward, Vallejo and Benicia in Solano County, Rodco, Martinez, Pittsburg, Concord, Antioch, Walnut Creek, Lafayette and Orinda, in Contra Costa County, Newark, Niles and Pleasanton, in southern Alameda County, and Moffett Field, San Bruno, Burlingame, San Mateo, Redwood City, Palo Alto and San Jose, on the peninsula.

Products carried were notions, printed matter and stationery, office supplies and other small lot merchandise. No more than five shippers were served between any two points above named, except between Berkeley and Oakland, and Berkeley and San Francisco in which cases transportation was conducted for eleven and eight shippers, respectively. Movements between cities were small in number, except from Berkeley to Oakland (154 shipments) and San Francisco (125 shipments). Of these, 96 to Oakland were carried for two consignors, and 80 to San Francisco were carried for one consignor.

The nature of respondent's business is exemplified by the shipments from Berkeley to San Francisco and Oakland. The 80 shipments above referred to were carried for Standard Process & Engraving Co. of Berkeley to 25 different consignees in San Francisco - including department stores, book stores, printing companies and transportation companies. Fifteen of these consignees received but one shipment each; while the remaining ten received

from two to eleven shipments. The commodity description given on the exhibit for all these shipments is "stationery" - although the field division representative testified that for each shipper the commodity description used by him in compiling the information was generic rather than particularized as on the freight bill.

The only other fairly regular shipper from Berkeley to San Francisco was California Art & Engraving Co., for which 20 shipments of "printed matter" destined to 14 consignees were transported by respondent. Nine of these received one shipment each, while the other five each received either two or three deliveries.

Kaemper-Barrett Dealers Supply sent 34 shipments from Berkeley to 31 Oakland consignees. Twenty-nine of these received one shipment each; the other two received two and three shipments respectively. The commodity description is in each case "electric and radio parts". The other large Berkeley-Oakland patron is Perkins Stationery, for whom 62 shipments of "stationery" were carried to 48 consignees. Thirty-eight of these received one shipment each; deliveries to the remaining ten ranged from two to four each.

Respondent testified that he gives regular morning and evening pick-up service to his nine "contract" customers. All other service is on-call. He further stated that he had been told by the field division representative in March, 1949, that his operation between San Francisco and East Bay points was probably too heavy, and that any number of contracts over nine might subject him to formal action. Respondent accordingly curtailed his operations from San Francisco to East Bay points, reduced his oral "contracts" to

nine, and diversified his operation by including cities in Solano, Contra Costa, San Mateo, Santa Clara and southern Alameda Counties as points of destination. He also eliminated all collect shipments, and changed the form of his listing in the classified section of the Oakland telephone directory from "Berkeley Parcel Service - Pick Up Today - Deliver Today - Fastest Service in East Bay - Competent - Courteous Drivers - 2426 Fulton (B), BE 7-5950" to "Berkeley Parcel Service, 2426 Fulton (B), BE 7-5950". Respondent indulged in no other form of solicitation or advertising.

In the March, 1949, conversation above referred to, respondent stated that he usually operated over U. S. Highways Nos. 40 and 50 and State Highway No. 17. No evidence or testimony was produced concerning routes used by respondent in his operations as they existed at the time of the December, 1949, investigation.

Respondent testified that most of his business was for intracity shippers, and that after the first investigation he had instructed his drivers not to pick up intercity parcels from those patrons. However, he stated that because of the proximity of East Bay cities, and the flow of business between them, his intracity patrons would sometimes place intercity shipments with the group of parcels to be picked up, and his drivers, contrary to his instructions, would inadvertently or carelessly take and deliver them. He estimated this happened about 20 times a month.

An examination of the exhibit reflecting respondent's December, 1949, operations, sustains this contention. From Berkeley to Oakland, out of 11 shippers served, two had one shipment each and two had two shipments each. Out of the total of 23 shippers

served during this period, three had one shipment only, three others had two shipments each and two others had three shipments each. For these eight shippers, therefore, a total of 15 shipments were transported.

No finding of an "integrated business unit" in the sense referred to in the Stapel decision<sup>(3)</sup> can be made herein. The sole evidence to support such a finding is that respondent operated six pieces of equipment from one office. On the other hand, he uses no terminals, and no evidence of routes was presented. Except for his nine "contract" customers, he operates "on-call", from which combinations of shipments from several patrons does not always result. Even for some of his "contract" customers, specialized service is rendered and not combined with other shipments. For example, relative to printing firms, trucks are dispatched to pick up individual shipments of cuts and proofs in a special delivery service to meet printing deadlines. With reference to frequency of service between points served during the nine working days covered by the December, 1949, check, the exhibit discloses the following: 57 pairs of termini were served; one was served on all nine days; two on eight days; four on six days; two on five days; four on four days; seven on three days; six on two days; and 31 on one day.

It appears from the record that respondent materially altered his operations after the March, 1949, investigation, and that such change was not known to the Field Division until the

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(3) Pacific Southwest Railroad Assn. et al vs. Harold A. Stapel et al, Decision No. 43828.

December investigation, which was conducted after the order of investigation was issued herein.

The evidence fails to establish that at the time of the latest investigation by the Field Division, respondent has been operating between fixed points or over regular routes as a highway common carrier within the meaning of the Public Utilities Act, and therefore the investigation will be discontinued.

O R D E R

A public hearing having been held in the above entitled matter and based upon the evidence adduced and the conclusions and findings set forth in the opinion,

IT IS ORDERED that the investigation herein concerning William E. Rhodes be and it is hereby discontinued.

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

Dated at San Francisco, California, this 2<sup>nd</sup> day of May, 1950.

W. E. Rhodes

Justus E. Craemer

Harold P. Kula

Permitt D. Potter  
COMMISSIONERS

Commissioner Justus E. Craemer, being necessarily absent, did not participate in the disposition of this proceeding.