

ORIGINAL

Decision No. 48721

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,)	Case No. 5392
operating, among other places, between San)	
Francisco and Oakland, Berkeley, Alameda,)	
Emeryville, Piedmont.)	

John K. Power, for the Commission's staff
Clair W. MacLeod, for V. Fred Jakobsen, respondent
Brooks & Winter, by Clifton E. Brooks, for Delivery
Service Co. and Roger L. Ramsey and Preston W.
Davis, by Roger L. Ramsey, for United Parcel Service,
interested parties.

O P I N I O N

Nature of Proceeding

This is an investigation, on the Commission's own motion, for the purpose of determining whether respondent, V. Fred Jakobsen, doing business as Trans Bay Motor Express Company, should be ordered to cease and desist from transportation of property between San Francisco, Oakland, Berkeley, Alameda, Emeryville and Piedmont, both as a highway common carrier and as a highway contract carrier of the same commodities between the points named, or any other points, allegedly in violation of Section 3542, Public Utilities Code of the State of California. Also involved is a determination of whether the certificated or permitted carrier operative rights of respondent should be cancelled, revoked, or suspended.

Public Hearing

Public hearing was held before Commissioner Potter and Examiner Gregory at San Francisco on February 19, 1953 at which the case was submitted for decision, largely upon a written stipulation of fact filed as an exhibit.

Respondent's Operations

The evidence shows that respondent owns and operates motor trucks as a carrier for hire over various public roads and highways within and between portions of San Francisco and the counties of Alameda and Contra Costa; that he holds a certificate of public convenience and necessity, granted by this Commission, as a highway common carrier of property between San Francisco, on the one hand, and Oakland, Alameda, Berkeley, Emeryville and Piedmont, on the other; that his tariff on file with the Commission (Local Freight Tariff No. 4, Cal. P.U.C. No. 3) names Albany, El Cerrito and San Leandro, in addition to the points above mentioned. The three latter points are served without the necessity of additional certificated authority, pursuant to the provisions of Section 1063 of the Public Utilities Code, as lying within three miles of the corporate limits of the East Bay cities for which respondent holds certificated rights. Respondent's certificate and tariff are both limited to the transportation of shipments weighing 100 pounds or less, except the transportation of phonograph records to which the limitation does not apply. Respondent also possesses permits to operate as a highway contract carrier and as a city carrier (Public Utilities Code, Secs. 3517, 3911).

Respondent conducts his operations from terminals located in San Francisco and Oakland. Prior to November, 1951, he transported shipments weighing less than 100 pounds between San Francisco and the East Bay points mentioned above for various persons, firms and corporations and billed and collected the charges for such shipments under the terms of his published tariff.

Early in November, 1951, respondent entered into contractual arrangements with 11 shippers he was then serving in

the capacity of a highway common carrier and agreed thenceforth to transport shipments for them to points other than those for which he held certificated authority. In the latter part of November, 1951, and later, the agreements were amended purportedly to permit respondent to transport shipments in excess of 100 pounds between points in the certificated territory. As a result of these arrangements, as amended, respondent carried shipments of the same commodities, for the same shipper, as a highway common carrier when the shipment weighed under 100 pounds and as a highway contract carrier when over 100 pounds, between San Francisco, Alameda, Albany, Berkeley, El Cerrito, Emeryville, Oakland, Piedmont, or San Leandro. Charges were billed and collected separately for services rendered in both categories.

After the issuance of the Order Instituting Investigation herein, respondent cancelled the amended contractual arrangements with his shippers and withdrew highway contract carrier service on shipments over 100 pounds between his certificated points. He notified the Commission of such action by letter dated August 27, 1952. Subsequent investigation by members of the Commission's Field Section confirmed the discontinuance of service on shipments weighing in excess of 100 pounds between the points named in respondent's tariff.

Conclusions

Section 3542 of the Public Utilities Code declares that

"No person or corporation shall engage or be permitted by the Commission to engage in the transportation of property on any public highway, both as a common carrier and as a highway contract carrier of the same commodities between the same points".

The uncontradicted evidence shows that respondent, as a highway contract carrier, transported a variety of articles,

including drugs, stationery, ladies apparel, curtains and mohair material, in shipments weighing more than 100 pounds between points authorized in his restricted highway common carrier certificate.

Respondent asserts that in transporting the questioned traffic he was acting in good faith under advice of counsel and that he desisted from the practice shortly after service upon him of the Order Instituting Investigation. There is nothing in the record to indicate the contrary. The Commission, however, in a decision issued shortly after respondent had entered into his letter agreements with his patrons, held such dual operation, by one possessing a similarly restricted certificate and likewise acting under advice of counsel, to be in violation of Section 3542 of the Public Utilities Code. (Harry Steward, 51 Cal. P.U.C. 289.) The record here contains no facts which would justify a different conclusion.

The Commission concludes that it will not be necessary to pursue this investigation further, in view of respondent's cessation of the operation in question.

O R D E R

Public hearing having been held herein, the matter having been submitted for decision, the Commission now being fully advised and basing its order upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED that the investigation herein be and it hereby is discontinued.

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

Dated at South Pasadena, California, this 6th day of June, 1953.

A. J. [Signature]
 President
Justice J. Caswell
Harold [Signature]

 Commissioners

Commissioner Kenneth Potter, being necessarily absent, did not participate in the disposition of this proceeding.

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