

Decision No. 50625**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 John C. Barulich, an individual dba )  
 Airport Drayage Company, for authority )  
 to perform transportation and acces- )  
 sorial service at less than the minimum )  
 rates prescribed by the Public Utilities )  
 Commission of the State of California in )  
 the delivery of freight, pursuant to )  
 contracts based upon regularly published )  
 tariffs of Air Cargo, Inc., as incidental )  
 to interstate air transportation. )

Application No. 35296

John C. Barulich, in propria persona, applicant,  
 and Antonio J. Gaudio, attorney for applicant.  
Russell Bevans, for Draymen's Association of  
 San Francisco, and Robert Boynton, for Truck  
 Owners Association of California, interested  
 parties.  
John B. Nance and William J. Kane, for the  
 Commission's staff.

O P I N I O N

Applicant, an individual doing business as Airport Drayage Company, operates as a highway permit carrier, principally between points in the San Francisco Bay area. By this application, as amended, he seeks authority to transport property from San Francisco International Airport to points in that area for The Manufacturers and Wholesalers Association of San Francisco, Inc., and California Traffic Service, at rates less than those prescribed as minimum by this Commission.

Public hearing was held before Examiner Carter R. Bishop in San Francisco on May 7, 1954.

The traffic here in issue originates on the east coast, principally at New York, N. Y., whence it is transported by air freight to the above-mentioned airport. It consists of materials used in the manufacture of clothing and of any articles, sold in

department stores and clothing stores, of sufficiently high value to warrant movement by air. According to the record, individual lots of property are consolidated in New York for transportation as a single shipment by air to San Francisco International Airport. On arrival at the latter point applicant takes delivery of the shipment and, according to instructions which he has previously received from the consolidator, segregates the property and makes delivery to the individual receivers located in San Francisco, the peninsula, San Jose or East Bay points.<sup>1</sup> Applicant pays the air freight charges, prorates them among the individual consignors, and bills the latter for all consolidation, transportation and segregation charges incurred during the combined movement via air and highway.

The above-described services are performed under exclusive contracts with Manufacturers and California Traffic, the individual consignees of the consolidated shipments being members of one or the other of these organizations. Applicant testified that the rates for which he seeks authority herein are <sup>The same as</sup> those set forth in an air freight pickup and delivery tariff of national application.<sup>2</sup> These rates, he said, are specified in his contracts with Manufacturers and California

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<sup>1</sup> According to applicant most of the property in question consists of small packages. While the segregated lot for a consignee may vary in weight from 1 or 2 pounds up to several hundred pounds, in the great majority of cases the individual deliveries are comprised of single small packages.

<sup>2</sup> The rates in question are: to points north of the airport, including San Francisco, also to East Bay points, Richmond to Hayward, inclusive, 65 cents per 100 pounds, minimum charge \$1.45; to points south of the airport to and including Palo Alto, 65 cents per 100 pounds, minimum charge \$1.25; to points south of Palo Alto to and including San Jose \$1.00 per 100 pounds, minimum charge \$2.00. The tariff in which they are said to be published is Air Cargo, Inc. Official Air Freight Pickup and Delivery Tariff No. 3, C.A.B. No. 7. It is not on file with this Commission. Under the contracts in question applicant also receives 25 cents per bill for prorating and 25 cents per bill management fee. Appendix "A", attached, contains a comparison of charges under the minimum rates and sought rates, respectively.

Traffic. Applicant stated that, with the exception of a short period early this year, he had been applying the sought rates to the traffic in question ever since service under the contracts began, and that he was so applying them as of the date of the hearing.<sup>3</sup>

Applicant testified that he had assessed the contract rates, which are generally lower than the minimum rates and charges set forth in Highway Carriers' Tariff No. 2, on the belief that the traffic in question, being interstate in character, was not subject to the jurisdiction of this Commission. He said that during January, February and a part of March 1954 he observed the minimum rates. Assertedly, this was done because counsel for one of the associations suggested that the minimum rates might be applicable. Applicant returned to the contract rates on instructions from both Manufacturers and California Traffic. He had been unable, he said, to ascertain from the Commission's staff or from anyone else whether the traffic here in issue was subject to the minimum rates.<sup>4</sup>

Applicant testified that the service for which minimum rate relief is sought herein is different from ordinary highway freight transportation in that expedited handling of the shipments is invariably required. For this reason he finds it necessary to provide daily, 24-hour, on-call service to and from the airport. Applicant estimated that the average total weight of the daily

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According to the record, the contract with Manufacturers became operative in August 1952, and that with California Traffic in the latter part of 1953.

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According to applicant, a representative from the Commission's Field Section staff made an investigation of his operations and records while he was assessing the sought rates. Assertedly, the staff representative did not indicate whether or not the Commission's minimum rates were applicable to the traffic here in issue.

movement under his contracts with Manufacturers and California Traffic is from 500 to 700 pounds. The monthly average he estimated to be between 10,000 and 12,000 pounds.

The record discloses that the transportation involved herein constitutes only a part of applicant's for-hire operations. Applicant has a substantial volume of traffic in cut flowers, much of which he transports to the airport for movement beyond by air carrier. He also has frequent movements for the armed forces to points beyond the San Francisco Bay area. These two classes of traffic are transported generally at rates higher than those prescribed as minimum by this Commission. Applicant also is under contract with the air freight carriers to perform highway pickup and delivery service for them between the airport and points south of the San Mateo-San Francisco County line, to and including San Jose.<sup>5</sup> This transportation is in connection with interstate movements beyond the airport by air freight. It appears that the compensation received by applicant under this contract is at rates and charges identical with those sought herein from and to the same points.<sup>6</sup>

Applicant offered in evidence an exhibit which included an income statement for the 12-month period ending December 31, 1953, and a balance sheet as of that date. These statements reflected the financial results of applicant's for-hire carrier operations in their entirety. According to the exhibit, applicant's revenues during

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Applicant stated that the contract in question is with Air Cargo, Inc., a joint undertaking of the air lines, through which they conduct their air freight services.

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It is applicant's position that the transportation which he performs under contract with the air lines is clearly outside the jurisdiction of this Commission. He, therefore, did not bring it within the scope of this application.

this period amounted to \$57,590.34, while expenses totaled \$41,252.22, leaving net income of \$16,338.12, before provision for income taxes. The record indicates, however, that no allowance was made in the expenses for applicant's salary. With respect to revenues applicant stated that, during the period in question, he received approximately \$35,000 from cut flower shipments, \$20,000 from all shipments which moved at the air cargo tariff rates, including the traffic handled under contract with the air lines as well as that here in issue, and the balance from the shipments transported to points beyond the San Francisco Bay area. Applicant alleges that the contract rates are compensatory, as evidenced by the assertion that, since he began service for the associations, his over-all net revenue position has improved.

Applicant testified that if he is not permitted to charge the rates sought herein he will lose the traffic which he now handles for Manufacturers and for California Traffic. He asserted that, should he be required to assess the minimum rates, the above-mentioned associations would arrange for the traffic in question to be transported by another carrier. The latter, according to applicant, is the pickup and delivery contract drayman for the air lines as to shipments originating or terminating in San Francisco and East Bay points, and the traffic here in issue would be transported by that carrier acting in such capacity. The charges assertedly would be the same as those sought herein from and to the same points.

The executive director of Manufacturers and Wholesalers Association of San Francisco, Inc., testified in support of the application. He stated that if the outcome of this proceeding is such as to require applicant to assess the minimum rates Manufacturers will terminate its contract with him. The Association, this witness

said, has learned of another carrier which offers the same service at the rates and charges sought herein. He explained that the carrier in question would make the segregation and distribution of the consolidated air freight shipments of the Association but would be employed by the air lines rather than by Manufacturers.

The first question raised for determination in this proceeding relates to that of jurisdiction. According to the record, the shipments which applicant transports from and to the airport under its contracts with Manufacturers and with California Traffic move in interstate commerce and are incidental to transportation by air. Also, it is clear that the transportation which applicant performs under its contract with the air lines is incidental to movement by air. Transportation of property by motor vehicle, when incidental to transportation by aircraft, is specifically exempted from rate regulation by the Interstate Commerce Commission under Section 203(b)(7a) of the Interstate Commerce Act. The transportation thus exempted from federal regulation is subject to the provisions of the Public Utilities Code and to the minimum rates set forth in this Commission's minimum rate tariffs.<sup>7</sup>

The second question presented for determination involves applicant's request for relief from the Commission's minimum rates in connection with the highway transportation, and services accessorial thereto, which he renders under his contracts with Manufacturers and California Traffic. Applicant testified fully regarding the specialized character of the services involved herein. However, he

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<sup>7</sup> See Decision No. 50156 of June 18, 1954, in Case No. 5432 (Petition No. 37).

made no showing as to the costs incurred in the handling of the particular traffic for which rate relief is sought, nor as to the revenues directly attributable thereto.<sup>8</sup> Such a showing is lacking, both with respect to actual experience in the past and to estimates of operating results for a representative period in the future. Consequently, the record does not disclose whether or not the rates sought herein are or will be compensatory.<sup>9</sup> At the same time, no satisfactory explanation was given as to why part of applicant's traffic should move at less than minimum rates while most, if not all, of the remainder moves at rates higher than those prescribed as minimum.

In the absence of affirmative proof that the services rendered by applicant for Manufacturers and for California Traffic may reasonably be expected to be performed at other than a loss, the Commission is unable to make a finding that the proposed rates are reasonable. In this connection it is pointed out that, in his discussions with the Commission's staff, applicant was fully informed as to the necessity of making the kind of showing which would demonstrate the justification for the sought relief. As indicated above,

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As previously mentioned, applicant testified that approximately \$20,000 of the total operating revenues which he received during the calendar year 1953 accrued in connection with that portion of his traffic which moved at the level of the sought rates. He made no segregation of this amount, however, as to revenues received from Manufacturers and California Traffic, on the one hand, and those accruing under his contract with the air lines, on the other.

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While evidence was offered purporting to show that applicant's over-all operating results for the year 1953 were favorable, it is observed that approximately 64 per cent of his revenues were derived from the cut flower traffic and so-called special movements. Most of that traffic, according to the record, moved at rates higher than the applicable minimum rates, and none of it at rates lower than the minimum. It is possible that net operating revenues derived therefrom have offset losses which may have been sustained in connection with the particular traffic for which rate relief is sought herein.

however, applicant failed to bring into the record facts most essential for the establishment of the propriety of such relief.

After careful consideration of all the evidence, we are of the opinion and hereby find that the proposed rates have not been shown to be reasonable. The application will be denied.

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 Application No. 35296, as amended, be and it is hereby denied.

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

Dated at San Francisco, California, this 5<sup>th</sup> day of OCTOBER, 1954.

Edward E. Mitchell  
President

Justus J. Calmes

Kenneth Pottor

Jerome Higgins

Ray G. Luster  
Commissioners



## APPENDIX "A"

Charges on Representative Shipments of Property  
Taking First Class Rates

Between S.F. Airport and	Under	Weight of Shipment (Pounds)				
		5	50	100	200	300
San Francisco	Minimum Rate*	\$1.05	\$1.49	\$1.49	\$2.80	\$4.20
	Sought Rate	1.45	1.45	1.45	1.45	1.95
Oakland	Minimum Rate*	1.05	1.49	1.49	2.99	4.48
	Sought Rate	1.45	1.45	1.45	1.45	1.95
Hayward	Minimum Rate*	1.05	1.49	1.49	2.97	4.45
	Sought Rate	1.45	1.45	1.45	1.45	1.95
San Jose	Minimum Rate*	1.05	1.49	1.49	2.99	4.48
	Sought Rate	2.00	2.00	2.00	2.00	3.00
Redwood City	Minimum Rate*	1.05	1.49	1.49	2.84	4.26
	Sought Rate	1.25	1.25	1.25	1.30	1.95

\* In addition to the above-stated charges for transportation from the airport to the points of destination shown, the shipments are subject to accessorial charges for segregation, billing and prorating, among other things. These charges are set forth in various items of Highway Carriers' Tariff No. 2. When added to the line-haul transportation charges they exceed those proposed by applicant.