

Decision No. 52033**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 V. Fred Jakobsen doing business as)
 TRANS-BAY MOTOR EXPRESS CO., for an) Application No. 34969
 extension and amendment of his certifi-)
 cate of public convenience and neces-)
 sity as a highway common carrier.)

In the Matter of the Application of)
 V. Fred Jakobsen, doing business as)
 TRANS-BAY MOTOR EXPRESS CO., for an) Application No. 36086
 extension of his certificate of public)
 convenience and necessity as a highway)
 common carrier..)

Scott Elder, for applicant.
Frederick W. Mielke, for Delta Lines, Inc.,
Marvin Handler, for Peninsula Motor Express,
 Nielsen Freight Lines, William Meinhold and
Frederick E. Fuhrman, for Southern Pacific
 Company, Pacific Motor Trucking Company,
 North Western Pacific Company and Railway
 Express Agency;
Douglas Brookman, for Merchants Express Co.,
 California Motor Express, Ltd., and Valley
 Express Co., California Motor Express, Ltd.,
 and Valley Express Co.;
Willard S. Johnson, for J. Christenson Co.,
 J. A. Nevis Trucking, Inc., Cal-Central
 Trucking Co., Inc., and Karlson Bros.,
 Trucking Service, protestants.
Philip A. Winter, for C. R. Becker, doing
 business as Delivery Service Co., interested
 party.

O P I N I O N

Applicant V. Fred Jakobsen doing business as Trans-Bay
 Motor Express Co., conducts a highway common carrier service for the
 transportation of parcels or packages weighing 100 pounds or less
 between San Francisco on the one hand, and Oakland, Berkeley, Albany,
 El Cerrito, San Leandro, Piedmont, Alameda and Emeryville, on the
 other hand.

By Decision No. 50677 dated October 19, 1954, in Application No. 34969 (As Amended) the Commission denied applicant a certificate of public convenience and necessity to transport parcels or packages weighing 100 pounds or less and limited to shipments of 500 pounds or less from presently certificated Bay Area points, on the one hand, to points and places within an area bounded by Los Gatos and San Jose, on the south, Santa Rosa on the north and Sacramento and Stockton on the East, on the other hand.

On January 10, 1955, the Commission ordered a rehearing in the above matter and further ordered that it be consolidated for the purpose of hearing with Application No. 36086 filed by applicant on November 15, 1954, pursuant to Decision No. 50448 in Case No. 5478. The authority sought in Application No. 36086 is substantially the same as that sought in Application No. 34969 with the exception that the weight of the shipments was increased from 500 pounds to 1000 pounds.

The matters were heard on June 14, 1955, before Examiner Daly at San Francisco and were submitted upon the receipt of a memorandum in support of a motion to deny said applications and applicant's answer thereto.

The record indicates that applicant has for sometime past conducted extensive contract operations. Because of a court decision, which he heard about in 1951, applicant stated that he was under the impression that there was no limit to the number of contracts that he might lawfully have as a contract carrier. He asserted that thereafter he place no numerical limit on his contract carrier accounts. Applicant stated that he filed his applications pursuant to the Commission's policy announcements in Decision No. 42646 dated March 22, 1949, in Case No. 4823 and Decision No. 50448 dated August 17, 1954, in Case No. 5478. He claims to be in doubt as to the legality of the operations performed under his contract permit.

The Commission in Decision No. 50677 was of the opinion that said operations were of such a specialized and restrictive nature that they could better be performed as a contract carrier than as a highway common carrier.

The Commission was also concerned with applicant's financial ability. Except for authorizing an increase in the weight of shipments from 100 pounds to 500 pounds between certain certificated points, Application No. 34969 was denied.

A summarization of shipments transported by applicant into the proposed area as a contract carrier during the week of August 10, 1953, and selected subsequent periods, shows that he transported 6,976 shipments (Exhibit No. 3 - Part 2). During the week of August 10, 1953, applicant transported approximately 729 shipments. The exhibit also shows that service was provided to 194 different shippers and "Freight Collect" shipments were delivered to 779 different consignees.

In describing the practice he follows in acquiring new accounts applicant stated that it is his practice to request written agreements. When new accounts are solicited for his certificated area, mention is made of the service provided to the contract area. If a potential account is reluctant to enter into a written agreement, but desires to make use of the service, it is provided under a so-called oral agreement. This consists of an agreement to transport whatever the account offers at the minimum rates. No contract, either written or oral, is entered into with receivers of "Collect" shipments.

For the first quarter of 1955, applicant showed a net profit of \$8,008.95 as against \$1,582.86 for the first quarter of 1954. As of December 31, 1954, applicant indicated a net worth of \$56,895.98 (Exhibit No. 2).

Protestants argue that the Commission has properly found applicant to be providing a specialized type of service, which has all of the essential characteristics of a contract carrier operation. Therefore they contend, neither application falls within the purview of the so-called policy decisions. A true common carrier, it is asserted, would seek to provide a complete service rather than transport only such articles as are most easily handled and which produce the greatest revenue.

In reply applicant argues that his present contract operations are identical with those performed in 1950, which the Commission held to be common carrier operations requiring certification (Investigation of Jakobsen, Decisions Nos. 43526 and 43868 dated November 15, 1949, in Case No. 5004). The large and ever-increasing number of people who use his service, applicant contends, makes clearly evident the public need therefor.

The evidence demonstrates that applicant has been and is conducting substantial and extensive operations. In the event of a Commission investigation said operations could be made subject to the ruling in the Nolan Case (41 Cal 2d 392) and result in an order to cease and desist. Application No. 36086 therefore falls within the purview of Decision No. 50448 dated August 17, 1954, in Case No. 5478. Applicant appears to be financially able to provide the proposed service.

After consideration the Commission is of the opinion and so finds that public convenience and necessity require the granting of Application No. 36086, as amended. Therefore ordering paragraph (3) of Decision No. 50677, dated October 19, 1954, in Application No. 34969, which denied applicant the authority to be granted in the

ensuing order, will be vacated and set aside. Ordering paragraph (1) of said Decision No. 50677 which provided "That the limitation to the operative rights of V. Fred Jakobsen contained in the Order of Decision No. 41163 dated January 27, 1948 in Application No. 28456 be, and it hereby is amended so as to provide that applicant shall transport no parcel or package which weighs in excess of 100 pounds and that said applicant shall not accept from one consignor at one time and place parcels, packages, or pieces of property weighing more than 500 pounds in the aggregate, whether on one or more than one shipping document, consigned to one consignee at one destination" will be affirmed.

O R D E R

Applications having been filed, a public hearing having been held thereon and based upon the evidence adduced therein,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity is hereby granted to V. Fred Jakobsen, doing business as Trans-Bay Motor Express Co., authorizing him to operate as a highway common carrier as defined by Section 213 of the Public Utilities Code for the transportation of property as more particularly set forth in Appendix A attached hereto and made a part hereof.

(2) That ordering paragraph (3) of Decision No. 50677, dated October 19, 1954, in Application No. 34969, is vacated and set aside.

(3) That ordering paragraph (1) of Decision No. 50677, dated October 19, 1954, in Application No. 34969, is affirmed.

(4) That in providing the service herein authorized in paragraph (1) hereof, applicant shall observe the following service regulations:

- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted:
- (b) Within sixty days after the effective date hereof, and upon not less than five days' notice to the Commission and the public, applicant shall establish the service herein authorized and file, in triplicate, and concurrently make effective appropriate tariffs:

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

Dated at San Francisco, California, this 14th day of October, 1955.

Charles E. Pettibell
President

Justin J. Cassin

Ronald W. Gentry

William J. Shale

P. H. Hardy
Commissioners

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APPENDIX A
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V. Fred Jakobsen, by the certificate of public convenience and necessity granted in the above-numbered decision, is authorized to transport general commodities from San Francisco, South San Francisco, Oakland, Alameda, San Leandro, Emeryville, Berkeley, Albany, El Cerrito, and Richmond to:

a. Points and places on U. S. Highway 101 between San Francisco and Santa Rosa, including Santa Rosa;

b. Points and places on U. S. Highways 101 and 101-A between San Francisco and San Jose, including San Jose; and points and places on State Highway 17 between Oakland and Los Gatos, including Los Gatos; also points and places on State Highway 9 between Hayward and Moffett Field via Mission San Jose and Milpitas;

c. Points and places on U. S. Highway 40 between San Francisco and Sacramento, including Sacramento, and on State Highway 29 between its junction with U. S. Highway 40 and Napa, including Napa;

d. Points and places on U. S. Highway 50 between San Francisco and Stockton, including Stockton; points and places on State Highway 4 between its junction with U. S. Highway 40 near Pinole and Stockton; and points and places on the unnumbered county road between Martinez and the junction of said road with State Highway 4 between Port Chicago and Pittsburg.

e. Points and places on State Highway 24 between Oakland and Pittsburg; and points and places on State Highway 21 between Martinez and Mission San Jose; and also, to points and places within five miles of said highways and points and places within a five-mile radius of said terminal cities hereinabove named; and engaging also in the return transportation of parcels, packages, and pieces previously delivered by applicant.

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Applicant shall not transport any shipments of:

- (1) Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerated equipment.
- (2) Dangerous explosives.

Applicant shall transport no merchandise after sale by retail department or specialty stores to their customers.

Applicant shall transport no parcel or package which weighs in excess of 100 pounds and said applicant shall not accept from one consignor at one time and place parcels, packages, or pieces of property weighing more than 1000 pounds in the aggregate, whether on one or more than one shipping document, consigned to one consignee at one destination.