

Decision No. 61626

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into the rates, rules and regulations, charges, allowances and practices of all common carriers, highway carriers and city carriers relating to the transportation of any and all commodities between and within all points and places in the State of California (including, but not limited to, transportation for which rates are provided in Minimum Rate Tariff No. 2.)

Case No. 5432
Petition for
Modification No. 205

Joseph S. Aaronson, petitioner.
W. N. Greenham, for Pacific Motor Trucking Co;
Preston W. Davis, for United Parcel Service, Inc.;
J. C. Kaspar, Arlo D. Poe, James X. Quintrall,
 for California Trucking Associations, Inc.;
 protestants.
Phillip A. Winter, for Delivery Service Co., interested
 party.
 John F. Specht, for the Commission staff.

O P I N I O N

Joseph S. Aaronson, doing business as Peninsula Delivery and Transport Co., holds permits authorizing operations as a radial highway common carrier of shipments not exceeding 100 pounds in parcel delivery service within a 30 mile radius of the City of San Mateo. By this application, filed December 12, 1960, he requests exemption from the requirements of Minimum Rate Tariff No. 2.

Public hearing was held January 17, 1961 before Examiner J. E. Thompson at San Francisco.

We find the following facts:

1. Prior to July 24, 1958, one Earnest Delaplane was engaged in providing a parcel delivery service within a radius of 30 miles of San Mateo and was granted exemption by Decision No. 56448, dated April 1, 1958, from the minimum rates in the

transportation of drug supplies, auto parts, bakery supplies, photographic films and prints, and radio and electronic parts and equipment in shipments of 100 pounds or less within a 30 mile radius of the City of San Mateo.

2. On August 20, 1958, Charles C. Canlas acquired the business from Delaplane and was issued a permit to operate as a radial highway common carrier in the transportation of packages weighing less than 100 pounds within a 30 mile radius of San Mateo.

3. By Decision No. 57363, dated September 23, 1959, in Case No. 5432, Petition No. 115, Canlas was granted the same exemption from the minimum rates as had been granted Delaplane.

4. On December 28, 1960, pursuant to application filed by Canlas and petitioner herein, the permits of Canlas were transferred to petitioner.

5. Since the acquisition of the business, petitioner has been continuing the operation in the same style, and generally for the same shippers at the same rates, as did his predecessor.

6. The business consists of the transportation of packages and parcels from retail stores within an area extending generally from San Bruno to San Carlos, inclusive. Petitioner conducts the operation with small panel trucks.

7. Petitioner was informed by his predecessor that a portion of the business was the transportation of parcels from Smith and Dahl and from Pacific Wholesale, two firms which are not retail stores. In the three weeks petitioner has been operating, he has not received a request for service from those shippers, however,

it is for that transportation that petitioner seeks exemption from the minimum rates.^{1/}

8. Carriers operating in the area served by petitioner who have been exempted, either in whole or in part, from the provisions of Minimum Rate Tariff No. 2 for the transportation of small shipments, other than from retail stores, are:

- (a) United Parcel Service and Peninsula Delivery Service, highway common carriers with tariffs on file who are wholly exempt from the provisions of Minimum Rate Tariff No. 2 (Decision No. 52199, Appendix A). Their published rates, however, may be used by highway permit carriers under the provisions of Item 200 of Minimum Rate Tariff No. 2.
- (b) Passenger stage corporations, including Greyhound Corporation, in the transportation of express. Greyhound does not provide store-door service.
- (c) Melvin Roy, dba Flo Dell Company is authorized to assess 65 cents for shipments weighing 25 pounds or less (Decision No. 52199, Appendix B).
- (d) Howard W. Wilson, dba Ace Delivery, exempted for transportation of wholesale drugs, wholesale electronic and electrical supplies and equipment in shipments of 100 pounds or less between points in area between South San Francisco and San Jose. (Decision No. 57063).
- (e) James A. Block, dba Tri-City Parcel Delivery exempted for transportation of drug supplies, auto parts, photographic film and prints, and radio and electronic parts and equipment in shipments of 100 pounds or less between points on the San Francisco Peninsula from South San Francisco on the north to Palo Alto on the south. (Decision No. 52820).

^{1/} Minimum Rate Tariff No. 2 does not apply to shipments weighing 100 pounds or less when delivered from retail stores or retail store warehouses where the property has been sold at retail by a retail merchant or when returned to the original retail store shipper via the carrier which handled the outbound movement, and, provided the distance between point of origin and point of destination does not exceed 35 constructive miles.

Applicant contends that he should be granted the exemption because he is merely continuing the operations of a service for which exemption was previously granted, and because he is a parcel delivery carrier conducting operations similar to those of other carriers, including competitors, who have been granted exemption similar to that sought herein.

Protestant California Trucking Associations, Inc. argues that the petition should be denied because petitioner "has made no showing". Aside from that, however, while protestant does not attribute any of the following practices to petitioner, it contends that exemptions, such as sought here, provide a carrier with an unfair advantage in the solicitation of freight from shippers. It was asserted that carriers having such exemptions, and especially where the operating authorities are not restricted, can and have solicited and accepted all freight from shippers on the basis of lower rates for the small shipments and have turned over the large shipments, which they cannot handle, to other carriers who purportedly act as subhaulers. C.T.A. argues that if exemptions are granted to carriers for parcel delivery, the Commission should make certain that the carrier can only be engaged in transportation of parcels under parcel rates.

United Parcel Service, a protestant who is engaged in providing parcel delivery under parcel rates in the area, argued that the petitioner admits holding his service out to the public and performing daily service so that he is operating as a highway common carrier without first having obtained a certificate of public convenience and necessity. Counsel for protestant argued that the Commission cannot authorize the carrier exemption from the minimum rates in the transportation of property that he is not lawfully able

to perform. Aside from that aspect, protestant is also concerned over the granting of exemptions to carriers who can transport property under parcel rates or freight rates as they see fit and as it is to their own advantage so to do. United Parcel Service asks that if exemptions are sought on the basis of parcel delivery operations, the Commission require the carrier to assess parcel rates on all transportation.^{2/}

Delivery Service Company is a parcel carrier operating in Alameda and Contra Costa Counties. Its interest in this proceeding is the principle involved in granting exemptions purportedly based upon parcel delivery operations. Like C.T.A. and United Parcel Service it urges that if a carrier is going to engage in parcel operations, it be restricted to such operations under parcel rates and if a carrier intends to conduct freight operations, it be required to assess freight rates, but that a carrier not be authorized to assess alternatively and interchangeably rates in cents per parcel and rate in cents per shipment.

Conclusions

The ultimate issue herein is whether the petitioner should be exempted from the requirements of Minimum Rate Tariff No. 2. A granting of such exemption presupposes that the established minimum rates are not suitable, reasonable or proper for the operation conducted by petitioner. There is substantial evidence that petitioner is engaged exclusively in the transportation of parcels

^{2/} From an economic standpoint, this would preclude the movement by the carrier of shipments over 100 pounds, or of more than a few packages. Typical parcel rates are 16 cents per package plus 3 cents per pound, 57 cents per package up to 40 pounds and 3 cents per pound thereafter, and 25 cents for each ten pounds or fraction thereof per package.

under parcel rates. We have found that the minimum rates in Minimum Rate Tariff No. 2 are not the minimum reasonable rates for parcel delivery service by carriers wholly engaged in conducting parcel delivery operations and, hence, have exempted carriers operating solely as parcel delivery carriers from said minimum rates. Under such circumstances it is reasonable to conclude that petitioner should be granted such exemption; however, the arguments of protestants and interested party that the Commission either by restriction of operating authority or by conditions attached to the order granting exemption, remove any possibility of the carrier engaging in operations other than parcel delivery, have considerable merit. Exemptions were first granted in 1939 by Decision No. 31606. Those carriers granted exemptions were common carriers maintaining tariffs naming the rates they assessed. Since that time, exemptions have been granted to highway permit carriers who do not maintain schedules of rates. Ordinarily the operating permits of those carriers have been restricted to the transportation of shipments not exceeding 100 pounds, as in the case of the permit held by petitioner. It appears that such restriction is not sufficient to restrict the operation to a parcel service at parcel rates.

Section 3666 of the Public Utilities Code was amended in 1959 so as to enable the Commission to authorize radial highway common carriers to depart from the established minimum rates. Here-to fore, in proceedings brought under that section, and particularly involving highway contract carriers, we have prescribed the minimum rates to be assessed by the individual carrier in lieu of the established minimum rates. We are of the opinion that henceforth,

3/ Section 3666 - If any highway carrier other than a highway common carrier desires to perform any transportation or accessorial service at a lesser rate than the minimum established rates, the Commission shall, upon a finding that the proposed rate is reasonable, authorize the lesser rate.

whenever any highway carrier requests authority to depart from the provisions of the established minimum rates, the order granting such relief should prescribe the minimum rates to be assessed by that carrier in lieu thereof. In the case of a parcel delivery carrier, the establishment or approval of minimum parcel rates to be assessed by it will remove the possibility of any abuse of the exemption granted.

In the instant proceeding, petitioner has not presented for approval a proposed schedule of minimum rates for his services. Other than that, he has made an adequate showing justifying the relief sought. We are not persuaded, as contended by United Parcel Service, that the evidence would support a finding that petitioner is operating between fixed termini or over a regular route. There is no evidence showing that petitioner transports property between any pair of termini, not wholly within the limits of an incorporated city, daily or on any regular basis.

Petitioner should not be placed at a disadvantage because of what might be termed a change of policy by the Commission. He has made a showing of the same type made by his predecessors, namely Earnest Delaplane and Charles C. Canlas, and by some of his competitors, namely, Tri City Parcel Delivery and Ace Delivery. In the circumstances we will exempt petitioner from the requirements of Minimum Rate Tariff No. 2 for a period of about six months. Within that time petitioner will have opportunity to file an application requesting authority to depart from the established minimum rates and setting forth the minimum rates he desires to assess in lieu thereof.

O R D E R

Based on the evidence of record and on the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED:

1. That Joseph S. Aaronson is authorized to charge, assess and collect parcel rates and charges different from the minimum rates and charges established by the Commission for the transportation of drug supplies, auto parts, bakery supplies, photographic films and prints, and radio and electronic parts and equipment in shipments of 100 pounds or less between points within a 30 mile radius of the City of San Mateo.

2. That the authority granted herein shall expire October 1, 1961 unless sooner modified, canceled or extended by order of the Commission.

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

Dated at San Francisco, California, this 7th day of MARCH, 1961.

E. Lyn Fox President
George G. Hoover
Fredrick B. Hildhoff
Commissioners

Peter E. Mitchell
Commissioners Everett C. McKeage being
necessarily absent, did not participate
in the disposition of this proceeding.