

Decision No. 61777**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into)
 the rates, rules, 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. 199)

David Emanuel, for Raymond N. Johnson,
 petitioner.
Vincent W. Ellis, for Mickey's Delivery
 Service; J. C. Kaspar, Arlo D. Poe and
 James X. Quintrall, for California
 Trucking Associations, Inc.; protestants.
Roger Ramsey, for United Parcel Service;
Philip A. Winter, for Delivery Service
 Co.; John P. Hellmann, for Johnson and
 Johnson; interested parties.
R. J. Carberry and John A. Specht, for the
 Commission staff.

O P I N I O N

By the petition herein Raymond N. Johnson, doing business as Security Service, seeks exemption from the applicable minimum rates, rules and regulations, as set forth in Minimum Rate Tariff No. 2, for the transportation of drugs and sundries in packages weighing 100 pounds or less, from wholesale pharmaceutical houses to drug outlets, hospitals and pharmacies. The sought exemption would apply to movements between points located within a radius of 75 miles of San Jose. Petitioner holds a radial highway common carrier permit from this Commission.

The petition alleges that the minimum rates set forth in Minimum Rate Tariff No. 2 were not designed for the transportation here in issue, that the Commission has granted similar exemptions

to other carriers operating in the same area, and that petitioner cannot operate without meeting the competition of said carriers unless the exemption sought herein is authorized.

Public hearing of the petition was held before Examiner Carter R. Bishop at San Francisco on January 6, 1961.

The evidence of record discloses the following facts: Petitioner secured his radial highway common carrier permit in September 1960, same being limited to transportation performed within a radius of 100 miles of San Jose. He transported drugs and sundries for a San Jose wholesale drug house only during the two-week period of October 10-25, 1960. No other for-hire transportation has been performed by petitioner in California, either before or since that time.¹ The transportation in question was performed in a truck which petitioner operated under lease. The rates assessed were the "small shipment service" rates set forth in Item No. 149 of Minimum Rate Tariff No. 2. No for-hire transportation was performed after October 25, 1960, because the shipper informed petitioner that unless the latter could reduce his charges to the levels of those assessed by United Parcel Service or the parcel post said shipper would find it necessary to perform the transportation itself.² Following the termination of for-hire service, the wholesale drug firm employed petitioner as its driver and took over the lease on the truck which petitioner had been using. Since that time, and as of the date of the hearing in this proceeding, petitioner had been making, as an employee of the drug firm, the deliveries which he proposes herein to make as a for-hire carrier at exempt rates.

¹ According to the record, petitioner had some experience, in prior years, in the trucking business with his father in an eastern state.

² The record indicates that the drug house in question engages extensively in proprietary trucking operations.

While petitioner seeks exemption for shipments to points within a 75-mile radius of San Jose, his deliveries will be confined to Hollister, Salinas, Monterey and Santa Cruz. While he holds a radial permit, he will not serve the public generally, but will haul only for the aforesaid wholesale drug house, with the possibility of making similar deliveries at some time in the future for one or two drug distributors located on the San Francisco peninsula.

United Parcel Service, a certificated highway common carrier, with published and filed tariffs, also operates between San Jose and the above-mentioned points. It has full exemption from the minimum rates. The only other competing carrier of whom petitioner has knowledge is Vincent W. Ellis, doing business as Mickey's Delivery Service. The record shows that Ellis does not have exemption from the minimum rate provisions. According to the record, he has, on the contrary, consistently observed the provisions of the minimum rate tariff.

The record further shows that petitioner was not aware of the fact that, as a radial highway common carrier, he is permitted, without further authority of the Commission, to meet the rates of United Parcel Service for the same transportation.³

Granting of the petition was opposed by the aforesaid Vincent W. Ellis, doing business as Mickey's Delivery Service, and by California Trucking Associations, Inc. The first-mentioned testified that he had transported drugs and sundries for the drug house involved herein prior to the time when petitioner made his transportation arrangement with said house. The testimony of this witness, on the basis of his experience in making deliveries for the drug company, was at variance with that of petitioner regarding the same operation.

³ Under the provisions of Item No. 200 series of Minimum Rate Tariff No. 2.

The representative of California Trucking Associations, Inc., argued that the evidence was insufficient to justify the granting of the sought relief. He cited prior decisions of the Commission, involving similar situations, in support of his position. Counsel for United Parcel Service argued that petitioner should be operating under a highway contract carrier permit, rather than a radial, and that, in view of the limited scope of petitioner's proposed operations, that carrier should be seeking authority, under Section 3666 of the Public Utilities Code, to deviate from the minimum rates, instead of seeking a general exemption.

Representatives of the Commission's Transportation Division staff assisted in the development of the record.

The principal basis for petitioner's request for exemption is the allegation that such relief is necessary in order to meet the competition of other carriers. The only competing carrier shown on this record to have exemption from the minimum rates is United Parcel Service. Moreover, it appears that, if petitioner were to resume carrier operations, he could meet the rates of United Parcel Service under the alternative rate provisions of Minimum Rate Tariff No. 2, and without further authority of this Commission.

Upon consideration we are of the opinion and hereby find that the sought exemption from observance of minimum rate provisions has not been justified. The petition will be denied.

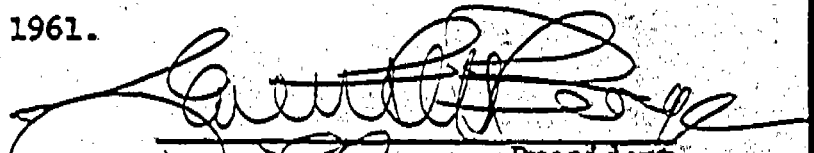
O R D E R


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


IT IS ORDERED that Petition for Modification No. 199,
in Case No. 5432, is hereby denied.


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

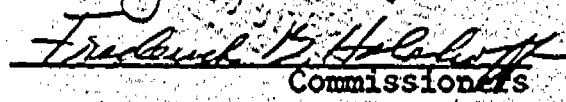
Dated at San Francisco, California, this 4th
day of APRIL, 1961.



President







Commissioners