

Decision No. 62732**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 property in the City and County of San Francisco and the Counties of Alameda, Contra Costa, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Mateo, Santa Clara, Santa Cruz, Solano and Sonoma.

Case No. 5441
Petition for Modification No. 50
(Filed May 12, 1961)

In the Matter of the Application of MERCHANTS EXPRESS OF CALIFORNIA, a corporation, for authority to charge less than certain minimum rates prescribed in City Carriers' Tariff No. 2-A, Highway Carriers' Tariff No. 1-A.

Application No. 43348
(Filed April 25, 1961)

Berol & Geernaert, by Edw. M. Berol, for Merchants Express of California, applicant.
Vaughn, Paul & Lyons, by John G. Lyons, for San Francisco Warehouse Co., petitioner.
Handler & Baker, by Marvin Handler, for Haslett Warehouse Co., protestant.
R. D. Toll, J. X. Quintrall and A. D. Poe, for California Trucking Associations, Inc.; R. A. Dahlman, for R. J. Reynolds Tobacco Co.; interested parties.
Henry E. Frank and Grant L. Malquist, for the Commission staff.

O P I N I O N

By these proceedings, Merchants Express of California and San Francisco Warehouse Co. seek authority to charge less than the established minimum rates for the transportation of manufactured tobacco products from their warehouses in Oakland and Emeryville, respectively, to points in the Oakland Jobber Zone.^{1/} Haslett Warehouse Co. protests the granting of the authority.

^{1/} An area in southwestern Oakland bounded generally by 30th Street on the north, Broadway and Lake Merritt on the east, Oakland Estuary on the south and San Francisco Bay on the west.

Copies of the application and petition as well as notice of hearing were served in accordance with the Commission's procedural rules. Public hearings were held in San Francisco before Examiner Jack E. Thompson on June 26, 1961 and August 8, 1961, on which latter date the matters were taken under submission.

Merchants, San Francisco Warehouse and Haslett are warehousemen and draymen in San Francisco and in Oakland. Merchant's affiliate Walkup Drayage and Warehouse Co. performs the drayage and warehousing in San Francisco. All three warehousemen, or their affiliated corporations, perform highway common carriage in the San Francisco Bay area. For many years past they have stored and distributed in that area cigarettes and tobacco products for the major tobacco manufacturers. Some of the facts and circumstances leading to the instant proceedings are recited in Decision No. 49582, dated January 18, 1954, in Application No. 34712 (Haslett) and in Decision No. 58818, dated July 22, 1959, in Applications Nos. 41031 (S.F. Whse.) and 41107 (Walkup), of which decisions we take official notice.

Following World War II, R. J. Reynolds Tobacco Co. stored its products at Haslett's warehouse at 51 Webster Street, Oakland. Haslett performed transportation of the products from the warehouse to the receivers, most of whom are jobbers in tobacco products. American Tobacco (except for a short time during which it maintained its own warehouse in San Francisco), Liggett and Myers, and Brown and Williamson stored products at the warehouse of S. F. Warehouse in San Francisco. Shipments to Oakland receivers were transported by S. F. Warehouse or by one of its affiliates. Phillip Morris and P. Lorillard stored at the warehouse of Walkup Drayage and Warehouse Co. in San Francisco and shipments of their products to Oakland were transported by Merchants. Haslett, S. F. Warehouse, Merchants and Walkup all participate in the same tariff covering warehousing of

tobacco products. The transportation rates from Oakland warehouses to Oakland jobbers are governed by City Carriers' Tariff No. 2-A - Highway Carriers' Tariff No. 1-A. Shipments between San Francisco and Oakland are governed by Minimum Rate Tariff No. 2. In 1953, following an increase in the rates of City Carriers' Tariff No. 2 (Decision No. 48187, 52 Cal. P.U.C. 376) Reynolds found that it could effect distribution to Oakland jobbers at less cost from San Francisco than from Oakland. It notified Haslett that unless Oakland distribution costs could be lowered, it would move its storage to San Francisco. In order to prevent the loss of that traffic, Haslett filed Application No. 34712 and by Decision No. 49582, referred to hereinabove, was authorized to transport the tobacco products of Reynolds from the warehouse to the Oakland Jobber Zone at less than the minimum rates. This, in a sense, maintained the status quo. In the next succeeding four years there were upward adjustments made at various times in the minimum rates in City Carriers' Tariff No. 2 (East bay), Minimum Rate Tariff No. 2 (transbay) and in City Carriers' Tariff No. 1-A (San Francisco) so that by 1959 the competitive advantages were reversed with Haslett being able to provide Reynolds with lower distribution costs than Walkup and S. F. Warehouse could provide their storers. At that time American Tobacco moved its storage for Oakland distribution from S. F. Warehouse to Haslett's warehouse in Oakland. Other storers threatened to move all of their storage to Oakland for distribution to the San Francisco Bay Region. Walkup and S. F. Warehouse filed applications to assess rates for transportation within San Francisco for their customers at levels comparable to those assessed by Haslett in Oakland. Authority was

granted by Decision No. 58818, hereinabove mentioned, and therein we stated:

"The Draymen's Association of San Francisco moved that the rates sought be established as minimum rates in City Carriers' Tariff No. 1-A and that the Haslett rates be established as minimum rates in City Carriers' Tariff No. 2-A. Such motion is not without merit in that there is little difference in the transportation of tobacco or any other products moving in volume by one carrier from its own warehouse as compared to another. The granting of the motion would not, however, provide the solution to the underlying problem here; that is the competition among warehousemen on either side of the bay for the storage accounts of the manufacturers of tobacco products. . .

* * *

"The conditions surrounding the distribution of tobacco products in the San Francisco Bay area add support to the proposition that minimum rates should be considered on a broader regional basis in the Bay Area than at present. Until, as a result of further proceedings in Case No. 5441, such matters are considered, the warehousemen should have equal opportunity to compete."

At that time the Commission had before it in Case No. 5441 the matter of whether there should be established a single minimum rate structure for the San Francisco Bay Counties area. That proceeding was discontinued (after hearings thereon) by Decision No. 62211, dated June 27, 1961.

On October 20, 1959, Haslett received authority to charge American Tobacco Co. the same rates as it assessed Reynolds for transportation from its warehouse to the Oakland Jobber Zone.

Haslett has solicited the storage of the other tobacco companies and informed them that if storage is moved to its warehouse, and there is sufficient volume of traffic moving to the Oakland Jobber Zone (75,000 pounds per month), it would seek authority from the Commission to assess the same rates as it charges Reynolds and American. The tobacco companies notified Walkup and S. F. Warehouse of that solicitation. The latter responded by leasing a warehouse at 1466 Powell Street, Emeryville, and proposing to meet the offer made by Haslett. Walkup met the offer through its affiliate Merchants

which has a warehouse at 1301 Wood Street, Oakland. On June 8, 1961, P. Lorillard placed tobacco in storage at that facility for distribution in the Oakland area. The instant petition and application are a result of the competition for this traffic.

Protestant moved for denial of the authorities sought on the grounds that applicant and petitioner have not shown that the shippers could tender 75,000 pounds per month for distribution to the Oakland Jobber Zone, that they have not presented adequate evidence of the cost of conducting such an operation, and that the shippers did not make an appearance in support of the pleadings.

Applicant and petitioner did not present an estimate of the cost of providing the service. They contended that the wages paid to drivers, which constitute the largest expense factor, are the same for Haslett as they are for them. They state further that other expense factors, such as cost of equipment, fuel and tires, are about the same. Protestant offered evidence to show that the dispatching of vehicles by Haslett is different from that of S. F. Warehouse and Merchants. However, the evidence shows that while there may be some difference, from an over-all cost standpoint, it appears to be minor.

The evidence shows that the marketing of cigarettes and tobacco products is highly competitive; that the commodities are very desirable traffic to warehousemen and carriers, and that competition among the warehousemen for that traffic is very keen. At present Reynolds and American have a cost advantage in distributing their products in the Oakland Jobber Zone and Haslett has an advantage in distributing their products in the Oakland Jobber Zone and Haslett has an advantage over its competitors in retaining and soliciting the traffic. Those advantages stem from the fact that Haslett is authorized to assess lower rates for shipments of Reynolds and American than its competitors, and, because of that authority and

the traffic resulting therefrom, is apparently in a better position than its competitors to solicit other traffic. The evidence shows that if the physical movement of tobacco products by Haslett from its warehouse in Oakland to the Oakland Jobber Zone differs from the movement by applicant from its warehouse in Oakland or by petitioner from its warehouse in Emeryville, any differences are insignificant. We find that the advantage resulting from the authority granted to Haslett in Decision No. 49582 and Decision No. 59187 should be removed. The canceling of that authority is not a proper issue in this proceeding, and, because the minimum rates for transportation within Oakland, within San Francisco and between San Francisco and Oakland are still adjusted independently in separate minimum rate tariffs, such action would merely result in restoring the conditions that existed in 1953 under which Haslett was at a competitive disadvantage. In view of all of the circumstances, we find that hearings should be scheduled for the purpose of determining just, reasonable and nondiscriminatory minimum rates to be assessed by all respondents in Case No. 5441 for the transportation of cigarettes and manufactured tobacco products as may be necessary to stabilize and maintain just and fair competitive relationships involved therein. We further find that pending such determination the applicant and petitioner should be authorized to assess and collect rates as low as, but no lower than, those authorized for Haslett. Subsequent to the submission of the instant application and petition, the Haslett rates were increased by approximately five percent to reflect increased costs, particularly wages.² Consequently the Haslett rates currently are higher than those herein proposed by applicant and petitioner. The Commission finds that, pending the general determination referred to hereinabove, the application of the current

^{2/} Decision No. 62658 dated October 10, 1961 in Application No. 43770. The Commission takes official notice of this decision.

Haslett rates by the applicant and petitioner will be reasonable and consistent with the public interest.

We are mindful of the decision cited by protestant in which the Commission has stated that a showing that proposed rates are compensatory is a condition precedent to the granting of a departure from the minimum rates under Section 3666 and Section 4015 of the Public Utilities Code. We still adhere to that principle; however, this is a special case under which all of the major manufacturers of cigarettes together with all of the carriers presently engaged in warehousing and distributing those products within the area are involved so that to all practical purposes the action being taken herein consists of establishing the same rates for all carriers presently participating in said traffic as an interim measure until minimum rates to be assessed by all carriers can be established. We find such action to be necessary and in the public interest.

Applicant, petitioner and protestant agreed at the hearing that the proper solution to this competitive problem is the establishment of a uniform scale of minimum rates on this commodity within the area involved. They asserted that they will assist the Commission by providing data toward that end. We expect those parties to present sufficient data for that purpose at the hearings which will be scheduled in Case No. 5441.

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 that:

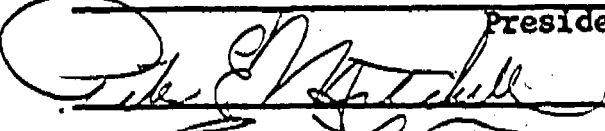


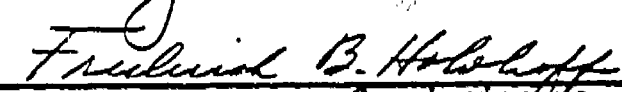
1. Merchants Express of California, a corporation, and San Francisco Warehouse Co., a corporation, and each of them, are authorized to assess less than the applicable minimum rates set forth in

City Carriers' Tariff No. 2-A - Highway Carriers' Tariff No. 1-A, but not less than those set forth in Appendix A attached hereto and by this reference made a part hereof, for the transportation described in said Appendix A.

2. The authority herein granted shall expire November 1, 1962, unless sooner canceled, changed, or extended by order of the Commission.

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

Dated at Los Angeles, California, this 24th day of OCTOBER, 1961.

 President


 Commissioners

Commissioner Everett C. McKeage, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A TO DECISION NO. _____

Authorized rates for the transportation of cigarettes and manufactured tobacco products as described in Items 26880 to 26940, inclusive, of Western Classification No. 77 by:

San Francisco Warehouse Co. from its warehouse at Emeryville, California, for Liggett and Myers Tobacco Company and Brown and Williamson Tobacco Corporation; and

Merchants Express of California from its warehouse in Oakland, California, for Phillip Morris, Inc., and P. Lorillard Co;

to points and places within the Oakland Jobber Zone described below:

<u>Minimum Weight</u>	<u>Rates in Cents per 100 Pounds*</u>
Any Quantity	109
500 Pounds	55
1,000 Pounds	44
2,000 Pounds	38

*These rates are subject to a minimum weight of 75,000 pounds per month.

The OAKLAND JOBBER ZONE consists of the area bounded as follows:

Beginning at the intersection of San Francisco Bay and the Oakland approach to the San Francisco-Oakland Bay Bridge; thence northeast along said bridge approach to the intersection of 32nd Street; thence northeast on 32nd Street to Peralta Street, south on Peralta Street to 30th Street; east on 30th Street to Broadway; south on Broadway to 26th Street; east on 26th Street to Harrison; south on Harrison to Lakeside Drive; southeast on Lakeside Drive to Oak Street; thence south on Oak Street to 12th Street; east on 12th Street to Fallon Street; south on Fallon Street to Estuary; west on Estuary to Waterfront and north to point of beginning, including both sides of designated streets.

End of Appendix A