

Decision No. 75289**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 UNITED PARCEL SERVICE, INC., for)
 authority to depart from the minimum)
 rates and rules of MRT 2, MRT 4-B,)
 CCT 1-A, MRT 1-B, MRT 5, MRT 8,)
 MRT 9-B, MRT 11-A, and MRT-15 under)
 the provisions of the City Carriers')
 Act and of the Highway Carriers' Act.)

Application No. 50158
 (Filed April 9, 1968)

And Related Matters.

)Case No. 5432, Petition No. 496
)Case No. 5330, Petition No. 36
)Case No. 5435, Petition No. 101
)Case No. 5438, Petition No. 65
)Case No. 5439, Petition No. 69
)Case No. 5441, Petition No. 138
)Case No. 5603, Petition No. 51
)Case No. 7783, Petition No. 12

Roger L. Ramsey and Irving R. Segal, for United Parcel Service, Inc., applicant and petitioner.
Richard W. Smith, H. F. Kollmyer and A. D. Poe, for California Trucking Association;
Handler, Baker and Greene, by Daniel W. Baker, for A & B Garment Delivery of San Francisco;
E. H. Griffiths, for various carriers;
John T. Reed, for California Manufacturers Association; E. F. Westburg, for California Retailers Association; interested parties.
John W. Henderson and Robert W. Stich, for the Commission staff.

O P I N I O N

These matters were heard and submitted May 10, 1968 before Examiner Thompson at San Francisco.

United Parcel Service, Inc., holds a certificate authorizing it to transport general commodities as a highway common carrier between all points in California subject to certain restrictions which provide, among other things, that packages or articles shall not weigh more than 50 pounds and each package or article shall be a

separate and distinct shipment, and no service shall be rendered between retail stores and their branches or warehouses, or between said stores, branches or warehouses and the premises of customers of such stores. It also holds permits as a city carrier^{1/} and as a highway contract carrier under which applicant performs transportation of property for retail stores.

By this application and these petitions applicant seeks authority to depart from the minimum rates and rules established in the Commission's minimum rate orders or minimum rate tariffs to the extent such orders or tariffs may be deemed by the Commission to be applicable to the following services:

1. Service performed by United Parcel Service, Inc., under its certificate of public convenience and necessity as a highway common carrier, under rates, rules and regulations in its tariff on file with the Commission.
2. Service performed by United Parcel Service, Inc., as a highway contract carrier and city carrier under written contracts with retail stores, between said stores and the branches, warehouses and customers of said stores, at rates per package, per parcel or per piece or at rates per package count or per piece unit count.
3. Service performed by United Parcel Service, Inc., under written contracts with retail stores, between said retail stores and their branches and warehouses in vehicles with drivers assigned on a time basis, or time and mileage basis.

The application and the petitions were filed in response to findings and conclusions of the Commission in its Decision No. 73416, dated November 28, 1967, in Case No. 5432, Petition No. 414. In said decision the Commission found in effect that the rates, rules and regulations set forth in Minimum Rate Tariff No. 2

^{1/} By legislation enacted subsequent to the hearing herein the City Carriers' Act was repealed.

were not suitable for the service performed by petitioner as a highway contract carrier under written contracts with retail stores, between such stores and their branches, warehouses and customers, at rates per package, per parcel or per piece or per package count or per piece unit count, and granted petitioner exemption for such transportation from the rates and rules in Minimum Rate Tariff No. 2.

In Decision No. 73416 the Commission also indicated that other minimum rate tariffs of the Commission may contain items or provisions which, though similarly not designed or intended for the type of service performed by petitioner under its common carrier tariff or under its written contracts with retail stores, might be deemed technically applicable to such service. The Commission concluded that petitioner should file its application to depart from minimum rates and rules established by the Commission and fully disclose its operations, rates and practices, and any charge, publication or contract at rates less than the established minimum rates. Pending a determination of the issues in said application, petitioner was authorized by Decision No. 73416 to depart until June 1, 1968, from any and all of the minimum rates established by the Commission to the extent necessary to continue to perform transportation as a highway common carrier at rates now maintained in its tariff, and to continue to perform transportation as a highway contract and as a city carrier for retail stores under the provisions of written contracts entered into and now in force with said retail stores. By supplemental order in Decision No. 74153, dated May 21, 1968, the authority was extended from June 1, 1968 until the effective date of a decision in these proceedings.

A & B Garment Delivery of San Francisco (A&B) opposes the granting of an exemption from minimum rates in connection with services performed by applicant for retail stores in vehicles with drivers assigned on a time basis or time and mileage basis.

California Trucking Association (CTA) takes the position that any authority to deviate from the minimum rates should delineate the service geographically, should specify the type of service to be performed at the rates, and should set forth the rates and charges to be assessed in lieu of the established minimum rates.

Applicant's certificate specifies the type of common carrier service it may perform. Its tariff sets forth the rates and charges it assesses. It presently is authorized to depart from the minimum rates in Minimum Rate Tariff No. 2 in connection with transportation performed under its highway common carrier certificate. The issue herein is whether it should be authorized to depart from other minimum rate tariffs in connection with such transportation. Applicant's highway common carrier service involves the transportation of packages or articles weighing not more than 50 pounds between all points in California. No distinction is made concerning commodities handled or the particular communities served in the application of the rates in its tariff. For shipments moving short distances applicant's rate is 29 cents per package plus three cents per pound regardless of whether the shipment originates in San Francisco, Oakland, Los Angeles, San Diego or any other point in California, and is that same rate whether the commodity is nails, lemons or a small whatnot shelf. Authority to depart from the minimum rates is necessary to the conduct of applicant's highway common carrier operation and such authority should be granted.

Applicant holds authority to depart from Minimum Rate Tariff No. 2 in the transportation of property under written contract with retail stores at rates in cents per package, per parcel or per piece or at rates per package count or piece unit count. It seeks authority to depart from other minimum rate tariffs for the same type of transportation. It was shown that retail stores served by applicant tender a wide variety of articles, some of which are subject to the rates and rules prescribed in various minimum rate tariffs. It was also shown that applicant handles such articles and transports them at rates in cents per package, per parcel or per piece or at rates per package count or piece unit count in the same manner as it does commodities for which rates are named in Minimum Rate Tariff No. 2. Authority to depart from the provisions of those other minimum rate tariffs to the same extent as applicant has authority to depart from the rates and rules in Minimum Rate Tariff No. 2 is justified by transportation conditions and such authority should be granted.

We conclude that applicant should be granted the same authority to depart from the several minimum rate tariffs as it now has in connection with Minimum Rate Tariff No. 2 for transportation performed under rates in its common carrier tariff and for transportation performed as a contract carrier at rates in cents per article, per parcel, per piece, per package count or per piece count. CTA's position, discussed in Decision No. 73416, was that any authority granted should delineate and specify the service to be performed and set forth the rates to be charged in lieu of the minimum rates, citing J. S. Aaronson, 58 Cal.P.U.C. 533, 537. As we stated in said Decision No. 73416, the policy enunciated in

Aaronson is not applicable here where the rates to be charged under the authority are parcel delivery rates published in a common carrier tariff or where the rates to be charged under the authority are required to be in cents per parcel which will obviate the possibility of the carrier engaging in freight transportation operations at reduced rates per shipment. Similarly, although it is the policy of the Commission to authorize departures from the minimum rates for only a temporary period such as one year, such policy has not been followed, nor is it applicable, when the rates involved are parcel delivery rates, as is the case here, or when the service is to be performed by common carriers in remote areas where the minimum rates are not suitable (Decision No. 71900 in Case No. 5432, Pet. 414).

With respect to rates which are on a time basis, applicant requests authority to depart from the minimum rates to the extent necessary to enable it to continue to provide four large department stores, which for convenience herein will be called May Co., Macy's, Capwell and Emporium,^{2/} with vehicles and drivers for transferring merchandise, fixtures and supplies between the stores and their respective branches or warehouses. This service is described in the contracts with those stores as miscellaneous hauling. The terms of the contracts with the four stores differ; however, the format of providing rates for miscellaneous hauling is substantially the same in all four contracts. Every three months a certified public accountant examines applicant's records and accounts and determines for the previous quarter the cost of providing miscellaneous hauling for each store. That cost is divided by the number of miscellaneous

^{2/} May Department Stores Company (Los Angeles); Macy's California, a division of R. H. Macy and Co. (San Francisco); H. C. Capwell Company (Oakland); The Emporium, a unit of The Emporium Capwell Company (San Francisco).

hauling counts totaled during that quarter for that store. Miscellaneous hauling count is a numerical value assigned to a particular type of equipment when furnished by the hour, by the day or by the week. Counts are also prescribed for overtime pay and for helpers. The quotient of the division is termed the base rate for the ensuing quarter. The billing rate is the base rate plus a percentage such as 5 percent. During that period applicant charges the store the billing rate times the miscellaneous hauling counts. At the end of that quarter the certified public accountant reviews the records and determines the cost for that period. The terms of the contracts provide that if for that quarter the total miscellaneous hauling counts times the base rate (not the billing rate) exceeds the total cost, then applicant will refund to the store one-half of such excess; and, if the amount computed is less than the cost the store will pay applicant one-half of the deficiency. This latter provision applicant calls its cost-sharing program.

On the surface, the format described above calls for charges that will recover in excess of the costs of providing the services. Exhibit 9 shows that for the three years 1965, 1966 and 1967 applicant performed miscellaneous hauling at a reasonable profit for May Co., Emporium and Capwell^{3/} and the revenues received from the three stores for the three years totaled \$2,041,844, and expenses totaled \$1,947,641 for the period, resulting in an operating ratio of 95.4 percent.

There was testimony that applicant causes to be prepared monthly and quarterly detailed analyses of the costs of providing the service for the four stores. Such analyses were not offered at the

3/ Service for Macy's did not commence until after 1965.

hearing. The vice president of applicant who testified concerning these matters was unable to state the method by which particular items of expense were determined or allocated. In other words, from the data in this record it is not possible to determine whether the costs shown by applicant represent reasonable allocations of expense for the services involved. There are indications from testimony that they may not be. One such indication is the statement by the vice president that applicant provided two 1947 model tractors at the May Co. warehouse which were utilized in emergency operations and, because they were fully depreciated on applicant's books, the only vehicle expense charged to May Co. was the maintenance cost of the equipment. While it may be true that applicant may have already recovered the cost of its investment in those tractors the question is presented of whether a rate would be reasonable which does not consider some value of the equipment provided. We are of the opinion that it would not be reasonable as that term is used in Section 3666 of the Public Utilities Code. Reasonableness involves considerations other than cost. Using applicant's approach to cost development any carrier with a large fleet of vehicles could assign certain vehicles which have been recorded as fully depreciated to a favored customer and claim that the cost of providing service to that customer is substantially less than the same service provided another customer in vehicles which have only one or two years of depreciation expense to be recorded. Such claim, however, would not be a reasonable basis for a reduced rate under Section 3666.

Another indication that the revenues and expense figures provided by applicant may not provide a basis for determining the reasonableness of rates under Section 3666 is the testimony that certain vehicles are assigned to the stores on a weekly basis and

when the store does not have use of one of those vehicles applicant "borrows" it and uses it either in its common carrier operation or for operations for some other retail store and credits the retail store with an amount for such use. While such practice may result in greater use of equipment, more flexibility and availability of equipment for the carrier and less transportation cost to the store it does not strain the imagination to realize the chaotic conditions that would result if all carriers were to engage in such practice. It must be kept in mind that, as stated in Decision No. 73416, the transportation of property at vehicle unit rates contemplates the movement of goods in quantity and is a freight transportation service which is offered and is provided by many carriers which are governed by minimum rates and rules. Reasonable regulation does not permit the Commission to allow United Parcel Service to engage in a practice prohibited to others solely because United has an extensive common carrier operation in which it can utilize vehicles that may be idle although committed under vehicle unit rates to the retail store.

The fiscal years or quarters specified in the contracts with the four retail stores terminate as follows: May Co., Emporium, and Macy's, the last day of February; Capwell's, the last day of January. While the evidence will not support a finding that the expenses developed by applicant for operations conducted for the four stores are reasonable, the evidence as a whole permits of a strong inference that the charges collected by applicant for such services as provided for in the contracts have been compensatory and there is a firm basis to believe that the rate formulae provided in such contracts will provide reasonable rates and charges for such services.

A. 50158, C.5432(Pet. 496), et al. ds

Applicant has been providing interstore transfer for the four retail stores for some time. It would not be equitable to those stores to cause an abrupt discontinuance of such service without reasonable notice when there is a strong inference that the rates provided by the formulae are compensatory even though applicant's showing for rate relief under Section 3666 was deficient. We conclude that applicant should be authorized to depart from the minimum rates and rules to the extent necessary to perform warehouse and interstore transfer for the four retail stores at hourly rates or weekly rates provided by the formulae specified in the respective contracts with the four stores, subject to the condition that when vehicles are assigned to the store for a period of time they shall be for the exclusive use of such store.

With respect to applicant's request to provide such service to other retail stores at an hourly rate of \$9.85 per hour, Exhibit 10 indicates an estimated cost of \$9.294 per hour. It was also shown that several elements of expense were not included in such estimate. It has not been shown that the proposed rate is compensatory.

The record shows that applicant and A & B Garment Delivery (protestant herein) both provide interstore transfer at hourly rates for retail merchants. We take official notice of Decision No. 75077, dated December 10, 1968, in Case No. 5432, Petition No. 518, under which A & B Garment Delivery was authorized to publish a rate of \$10.50 per hour for such service.^{4/} A & B performs such service as

^{4/} Said rate was and is, respectively, the minimum hourly rate prescribed in City Carriers' Tariff No. 1-A and Minimum Rate Tariff No. 1-B.

A. 50158, C.5432 (Pet. 496), et al. ds

a highway common carrier. The various minimum rate tariffs authorize any highway permit carrier to meet the published rate of common carriers by land.

We find that:

1. Applicant transports articles, packages and parcels for retail stores as a highway contract carrier at rates in cents per piece, per package, per parcel or per piece count and per package count.

2. Applicant transports packages and articles weighing not more than 50 pounds and not exceeding 108 inches in length and girth combined with each article or package rated as a separate and distinct shipment between all points in California as a highway common carrier.

3. Minimum rates have been established by the Commission in Minimum Rate Tariff No. 1-B, Minimum Rate Tariff No. 4-B, Minimum Rate Tariff No. 5, Minimum Rate Tariff No. 8, Minimum Rate Tariff No. 9-B, Minimum Rate Tariff No. 11-A and Minimum Rate Tariff No. 19 for the transportation of property some of which is transported by applicant.

4. Such minimum rates are neither suitable nor reasonable for the transportation described in Findings Nos. 1 and 2, above.

5. By Decision No. 71900 in Case No. 5432, Petition No. 414, applicant has been authorized to depart from the rates and rules in Minimum Rate Tariff No. 2 for the transportation described in Finding No. 2 herein.

6. By Decision No. 73416 in Case No. 5432, Petition No. 414, applicant has been authorized to depart from the rates and rules in Minimum Rate Tariff No. 2 for the transportation described in Finding No. 1 herein.

7. By said Decision No. 73416, as modified by Decision No. 74153, applicant has been authorized to depart from any and all minimum rates pending the effective date of a decision in Application No. 50158, herein, to the extent necessary to continue to perform transportation under its highway common carrier tariffs and pursuant to contracts entered into with retail stores.

8. The interstore transfer and other types of transportation performed by applicant for retail stores, and referred to by it as "miscellaneous hauling", at vehicle unit rates, including hourly rates and weekly rates, is a freight transportation service subject to minimum rates and rules established in Minimum Rate Tariffs Nos. 1-B, 2, 5, 9-B, 15 and 19.

9. Applicant seeks authority to depart from said minimum rates and rules to the extent necessary to:

- (a) Continue to provide miscellaneous hauling for May Co., Macy's, Emporium and Capwell at hourly and weekly rates as provided in contracts entered into with said retail stores; and
- (b) Provide interstore and warehouse transportation for other retail stores at a rate of \$9.85 per hour.

10. Applicant has not shown that the proposed \$9.85 per hour rate is reasonable.

11. The contracts entered into by applicant with May Co., Macy's, Emporium and Capwell call for rates which are in excess of the cost of providing the service.

12. Applicant has not shown that the costs to be determined pursuant to those contracts include all expenses or reasonable allocations of expenses for such operation; however, the evidence as a whole provides a strong indication that such rates are compensatory.

13. Said contracts permit the use by applicant of vehicles assigned to said retail stores on a time basis for which use applicant credits the account of the retail store.

14. The aforesaid practice is one not permitted under the rules established in any of the aforesaid minimum rate tariffs, nor is it available to any highway common carrier or highway permit carrier.

15. The number of vehicles regularly assigned to the four retail stores on a time basis are: May Co., 65 vehicles; Macy's, 58 vehicles; Emporium, 40 vehicles; Capwell, 6 vehicles.

16. An order requiring applicant to discontinue providing vehicles on a time basis to said stores without providing reasonable notice to said stores that such service may not be available to them or without providing them with adequate opportunity to arrange for transportation in lieu of such service would substantially disrupt the operations of said stores and seriously inconvenience their customers who comprise a substantial portion of the public.

We conclude that:

1. Applicant should be authorized to depart from the minimum rates and rules established in Minimum Rate Tariffs Nos. 1-B, 2, 4-B, 5, 8, 9-B, 11-A, 19 and reissues of said minimum rate tariffs in the publication and maintenance of rates in its tariff and schedules of rates governing the transportation of property authorized in a certificate granted by the Commission in Decision No. 70125, dated December 21, 1965, in Application No. 47874.

2. Applicant should be authorized to depart from the aforesaid minimum rates and rules in the transportation of property transported under written contracts with retail stores between said retail stores and their branches and warehouses, and between said retail stores, their branches and warehouses, on the one hand, and

the premises of the customers of said stores, on the other hand, at rates per package, per parcel or per piece or at rates per package count or per piece unit count.

3. Applicant should be authorized to transport property for May Co., Macy's, Emporium and Capwell in vehicles assigned on a time basis at the rates specified in the contracts entered into with said companies, respectively, when such transportation is between the retail store, its branches or warehouses.

4. Applicant, May Co., Macy's, Emporium, Capwell, and each of them, should be notified, and they are notified, that the authority to assess rates on a time basis will be scheduled to expire on a date certain and that any extension of such authority will be made only upon an application timely filed, preferably no later than October 1, 1969, and a showing made by applicant that said transportation at said rates is compensatory and that proper and reasonable allowances and allocations have been made to develop the cost of such transportation.

5. The authority to transport property at rates on a time basis should be subject to the condition that vehicles assigned to said stores on a time basis shall be in the exclusive use of said retail store during said time.

6. In all other respects the application and the petitions filed herein should be denied.

7. So as to set forth in one decision all authorities granted to applicant to depart from minimum rates, all such outstanding authorities should be canceled and be restated consistent with the findings and conclusions herein.

O R D E R

IT IS ORDERED that:

1. All authorities to depart or deviate from the established minimum rates heretofore granted to United Parcel Service, Inc., and more particularly the authorities granted in the provisions of the decisions of the Commission specified and listed below, are canceled:

Decision No. 71900, dated January 24, 1967
Decision No. 71996, dated February 7, 1967
Decision No. 73416, dated November 28, 1967
Decision No. 74153, dated May 21, 1968.

2. United Parcel Service, Inc., is authorized to depart from the rates and rules in the minimum rate tariffs listed below, and in reissues thereof, in the publication and maintenance of rates in its tariffs and schedules of rates governing the transportation of property authorized in a certificate of public convenience and necessity granted by the Commission in Decision No. 70125, dated December 21, 1965, in Application No. 47874:

Minimum Rate Tariffs Nos. 1-B, 2, 4-B, 5, 8, 9-B,
11-A and 19.

3. United Parcel Service, Inc., is authorized to depart from the rates and rules established in the minimum rate tariffs listed below, and in reissues thereof, in the transportation of property transported under written contract with retail stores between said retail stores and their branches and warehouses, and between said retail stores, their branches and warehouses, on the one hand, and the premises of the customers of said stores, on the other hand, at rates per package, per parcel, or per piece or at rates per package count or per piece unit count:

Minimum Rate Tariffs Nos. 1-B, 2, 4-B, 5, 8, 9-B,
11-A and 19.

4. United Parcel Service, Inc., is authorized to depart from the rates and rules established in the minimum rate tariffs listed below, and in reissues thereof, for the transportation of property at hourly rates or weekly rates for:

- (a) May Department Stores Company;
- (b) Macy's California, a division of R. H. Macy and Co.;
- (c) The Emporium, a division of The Emporium Capwell Company;
- (d) H. C. Capwell, a division of The Emporium Capwell Company;

as set forth in a formula for miscellaneous hauling in the written contracts entered into between applicant and said companies, respectively, when such property is transported between the retail store, its branches or warehouses:

Minimum Rate Tariffs Nos. 1-B, 2, 4-B, 5, 8, 9-B, 11-A, 15 and 19, subject to the condition that during the time vehicles are assigned to a store said vehicles shall be used exclusively for the transportation of the property of said store.

5. The authority granted in paragraph 4, above, shall expire February 1, 1970 in the case of transportation performed for H. C. Capwell Company and on March 1, 1970 in the case of transportation performed for the other three companies listed therein.

6. In all other respects Application No. 50158 and the petitions listed in the caption of the decision are denied.

7. In addition to the service of this decision to be made upon the parties herein, the Secretary shall cause a copy of this order to be served by first class mail upon:

A. 50158, C.5432 (Pet. 496), et al. ds

May Department Stores Company (Los Angeles)
Attention: Traffic Department

Macy's California (San Francisco)
Attention: Traffic Department

The Emporium (San Francisco)
Attention: Traffic Department

H. C. Capwell Company (Oakland)
Attention: Traffic Department.

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

Dated at San Francisco, California, this
4th day of FEBRUARY, 1969.

William J. Vukasin, Jr.
President

Augustin

J. P. Vukasin, Jr.

Sharon

Commissioners

Commissioner J. P. Vukasin, Jr., being
necessarily absent, did not participate
in the disposition of this proceeding.