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ORIGINAL

Decision No. 78171

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application

of

ABC MESSENGER SERVICE, INC.,
a corporation, for deviation from
certain provisions of General
Order No. 130.

Application No. 52061

(Filed July 23, 1970)

In the Matter of the Application

of

JOHN MANNING and LOWELL E. HOSKINS,
dba ONE-TWO-THREE MESSENGER
SERVICE, for deviation from certain
provisions of General Order No. 130.

Application No. 52068

(Filed July 24, 1970)

In the Matter of the Application

of

JET DELIVERY, INC., dba SPECIAL
DELIVERY SERVICES, a corporation,
for deviation from certain
provisions of General Order
No. 130.

Application No. 52069

(Filed July 24, 1970)

In the Matter of the Application

of

CREST MESSENGER & DELIVERY
SERVICE, INC., a corporation,
for deviation from certain
provisions of General Order
No. 130.

Application No. 52070

(Filed July 24, 1970)

In the Matter of the Application
of

OLYMPIC DELIVERY SERVICE, INC.,
dba ROCKET MESSENGER SERVICE,
a corporation, for deviation from
certain provisions of General
Order No. 130.

Application No. 52075
(Filed July 27, 1970)

In the Matter of the Application
of

TELEVISION MAINTENANCE, INC., dba
BUTLER SERVICE COMPANY, a
corporation, for deviation from
certain provisions of General Order
No. 130.

Application No. 52196
(Filed September 15, 1970)

Frank Loughran, for applicants.
Paul Kern, for Jiffy Messenger
Service, protestant.
Arlo D. Poe, J. C. Kaspar, and
H. F. Kollmyer, for California
Trucking Association, interested
party.
Theodore H. Peceimer, for the
Commission staff.

O P I N I O N

General Order No. 130 (set out in Appendix A) provides rules and regulations governing the leasing of motor vehicles. Those rules contain, in part, provision for the filing of leases within five days of execution (General Provision F.2) and prohibiting leases, in certain circumstances, which provide that the lessor may maintain the leased vehicle during the term of the lease (Part I, B.2, Leasing Between Carriers). Applicants, permitted carriers, seek exemption from those provisions relative

to applicants' leases with driver-lessors. The Commission staff opposes. Public hearing was held before Examiner Robert Barnett on September 24 and 25, 1970, in Los Angeles, after which the matter was submitted, subject to the filing of briefs, which have been received. The application of Crest Messenger Service (Application No. 52070) will be dismissed at the request of applicant.

The facts in this case are not in dispute. All applicants operate in essentially the same manner and, therefore, we will refer to "applicants" rather than the individual companies involved. Each applicant has permitted authority from this Commission and carries the required amount of public liability insurance. Because of the unique nature of applicants' service, their rates are based upon time rather than weight. There are no minimum rates applicable to this service. None of applicants' drivers have operating authority.

Applicants perform special delivery and messenger service in the Los Angeles area which provide customers with expedited delivery of relatively small objects of light weight, such as legal papers, film, electronic components, news releases, and blood and medical specimens. The great majority of the material transported weighs from a few ounces to a few pounds, but on occasion, shipments are transported weighing hundreds of pounds. The essence of the service is speed. In providing this service, applicants lease passenger automobiles, station wagons, and small passenger buses such as Volkswagens and Econoliners. These vehicles are leased from their owners who are then employed by applicants to drive their vehicles in applicants' service. The lease provides

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for compensation (usually on a mileage basis, but Butler Service on a flat fee basis) to be paid to the lessor for the use of his vehicle, and separately provides for compensation (on an hourly basis) to be paid to the lessor as an employee. The lease provides that the lessor is to maintain the vehicle. Lessors are paid the hourly wage whether or not work is available for them to perform. In addition to regular pay and mileage, an incentive bonus is paid to encourage the drivers to work continuously and to make pickups and deliveries as promptly as possible. The amount of this bonus equals 50 percent of the gross revenue attributable to the packages transported. From this bonus the lessor's regular salary and mileage for the leased vehicle are deducted. In other words, lessors are paid 50 percent of the gross revenue they generate, but not less than their salary and compensation for the leased vehicle. Normally, a bonus is earned above the guaranteed salary and mileage. The salary varies, as does the mileage rate, between applicants, but a typical arrangement is \$1.60 an hour, plus 10 cents a mile. The lease also provides that during the hours the vehicle is in applicants' service, drivers other than the lessor may be assigned to drive the automobile, but this is rarely done. During times other than working hours, the lease provides that the lessors have the right to use the leased vehicle for their own personal use. That is, the lessors take the vehicle home and use it as the family car.

As part of their service, each applicant operates a licensed radio dispatch station at its headquarters. Almost all leased vehicles are equipped with two-way radios. When a

customer calls the dispatch station for service, a dispatcher radios the nearest available vehicle to perform the service. Immediately upon making a pickup, the driver contacts the dispatch center, tells them that the pickup has been made and is given, if available, additional pickups along the route of delivery of the item now in his possession. This process is continued throughout the period when the vehicle is in service. The dispatcher must be told if the vehicle is to be taken out of service for any period for any reason, such as lunch or vehicle breakdown. When a vehicle is given a pickup order, unless the routing is obvious, explicit directions for the movement from origin to destination are given. Directions are given as to the order of pickup and delivery of individual shipments. No deviation is to be made by the driver in the specified movement without permission from the dispatcher. If the dispatcher desires to make a change in the movement, he will contact the driver with new orders. At all times the vehicle is in direct radio contact with the dispatch center and subject to the control of applicant. This method of operation has proven to be the most efficient method of providing the service.^{1/}

^{1/} The one applicant which does not have two-way radio contact is Butler Service Company. Its drivers operate over regular routes and call in as they reach various points on their route. Because of the regularity of the routes, Butler Service is able to contact its drivers regularly while they are on the route.

Most of the driver-lessors are primarily engaged in other lines of work, such as students, teachers, and the temporarily unemployed. These people work only for short periods of time ranging from one month to several months. However, there are some driver-lessors who are permanent employees. The driver-lessors are treated in the same way as applicants' other employees. They are given paid holidays and paid vacations; they are insured under company insurance plans covering all employees, including workmen's compensation; deductions are taken from the hourly salary and incentive bonus to cover income tax and social security. No such deduction is taken from the mileage payment for the use of the leased vehicle.

The kind of service provided by applicants has been in effect in the Los Angeles area for at least 25 years. At no time have any of the driver-lessors been required to obtain permits to perform the service for applicants. At all times applicants had permits from this Commission and had appropriate insurance coverage.

The manager of protestant Jiffy Messenger Service testified that his company competes with applicants. Service is provided by drivers who drive Ford Econoline vans leased from an independent leasing company and maintained by a Ford Motor Company agency. Protestant permits its drivers to take the leased vehicle home after work and on weekends and vacations to be used as if it was their own car. This incentive provides a permanent work force. Protestant pays the drivers a regular salary: \$2.70 an hour, 40 hours a week, with no commission.

Protestant operates pursuant to a permit issued by this Commission; none of its drivers have permits. Protestant provides complete insurance for the vehicles.

The staff asserts that the relationship between applicants and the driver-lessors is not that of an employer-employee and is in fact an arrangement between transportation companies, all of whom should hold operative authority from the Commission. Under current law such operative authority would cost \$500 for each driver-lessor for a permit and \$150 to transfer a permit. (Public Utilities Code Section 5004.) The staff presented no evidence.

Discussion

The Commission has always recognized that not all driver-lessors are highway carriers.^{2/} When a driver-lessor enters into an employee-employer relationship with a carrier and leases his motor vehicle to the carrier, if the lease provides for the control of the leased vehicle by the employer, then the driver-lessor is operating under the employer carrier's authority and need not have operating authority from this Commission. (Re Payments Made to Underlying Carriers (1949) 48 CPUC 576, 581, 582; and Re Practices by Motor Freight Carriers of Leasing the Vehicles and Subhauling (1952) 52 CPUC 32.) These principles were reaffirmed in the opinion which set forth General Order No. 130. (Re Establishment of Rules Governing the Leasing of Motor Vehicles, Decision No. 77072, dated April 14, 1970, in Case No. 8481.)

^{2/} Section 3511. "Highway carrier" means every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, engaged in transportation of property for compensation or hire as a business over any public highway in this state by means of a motor vehicle ..."

In Decision No. 77072, we discussed the problem of the driver who buys a vehicle and immediately leases the vehicle to a carrier and is employed by the carrier to drive the leased vehicle. We said, "It is our intention that the criteria set forth in Part I of the General Order are to be used to determine whether such owner-operator has successfully avoided Commission jurisdiction. If such owner-operator complies with the Part I criteria, he is not under our jurisdiction; if he does not comply, he is." One of the criteria set forth in Part I of the General Order was that the lease, "Shall provide for the exclusive possession, use, supervision, direction, and control of the motor vehicle, and for the complete assumption of responsibility in respect thereto, by the lessee for the duration of the lease; except that if the lessor, or an employee of the lessor, does not operate the leased motor vehicle, then the lease may provide that maintenance of the motor vehicle shall be the lessor's obligation." (Part I, B.2.) The exception was inserted to insure that leasing would not be used as a device to evade regulation and the minimum rate tariffs. It recognized that the party who actually paid for the maintenance often exercised sufficient control over the vehicle to preclude that vehicle's being in the exclusive control of someone else. In this sense "control" includes a consideration of shifting certain characteristic burdens of transportation from a carrier to a driver-lessor.

Applicants seek a deviation from General Order No. 130 so that applicants may execute leases whereby the driver-lessor of the vehicle maintains the vehicle and is not considered a highway carrier required to obtain a permit. Applicants assert that if such a deviation is permitted, the driver-lessors would not be considered highway carriers and would not be required to obtain permits. In this respect, applicants misconstrue the General Order. The General Order was promulgated to make the statute and case law more cohesive, not to impose regulations materially different from those set forth in court and Commission cases and the statutes. This Commission has no authority to grant exemptions from the permit requirements of the Highway Carriers' Act. Such exemptions are set forth in the Act itself and if further exemptions are in the public interest, it is for the Legislature, not this Commission, to make them. We do not construe the Code sections governing leasing to grant us authority to create exemptions from the Highway Carriers' Act under the guise of modifying leases.

The General Order does contain criteria which, if followed, would show that a driver-lessor is not required to have a permit from this Commission. But those criteria merely express existing law. If we could change the criteria for determining highway carrier operations by merely changing the leasing regulations, we would, in effect, be granting exemptions from the Highway Carriers' Act. We do not construe our authority under the leasing regulations to be so broad. Therefore, to grant the deviation sought by applicants will not help applicants avoid the

permit requirements of the Act. We must look to the actual operations of the driver-lessors to determine if they are highway carriers.

What applicants really want is a declaration that the service performed by the driver-lessors is not that of a highway carrier. They fear that the Commission will construe a lease which provides that the lessor shall provide maintenance of the motor vehicle as not placing complete control of the motor vehicle in the lessee. This fear is based upon Finding of Fact No. 9 in the opinion which accompanied the General Order. That Finding states, "When an owner-operator leases his self-propelled vehicle to a carrier and he or his employee is employed by the lessee to drive the vehicle, if the lease provides for maintenance of the vehicle to be the obligation of the lessor, then the vehicle is not under the complete control of the lessee, and, therefore, the owner-operator is subject to regulation." On reflection, it appears to us that this finding is too broad. It should be stated, not as an absolute, but merely as a presumption. That is, if the lease provides for the maintenance of the vehicle to be the obligation of the lessor, then it is presumed that the vehicle is not under the complete control of the lessee. In this way "control" is still an essential criterion to be determined, but it should not be determined solely on the basis of whether the lessee or the lessor pays the mechanic who tunes the motor. Obviously, when discussing control of maintenance by the lessee, we do not expect that in every instance the lessee will actually repair the vehicle himself or have a mechanic in his employ repair the vehicle. Certainly, if the lessee who provides maintenance

takes the vehicle to an independent garage for repairs, the lessee still controls the vehicle. The fact that the driver-lessor takes the vehicle to an independent garage and pays the bill, or repairs it himself, does not, of itself, require a different result. It is not the number of middlemen between the mechanic and the party who ultimately pays the repair bill that is determinative. Having the prohibition in the General Order emphasizes the importance of the maintenance factor in determining control of the vehicle and serves as a warning to carriers that leases with such a provision are subject to Commission scrutiny prior to execution to avoid possible Public Utilities Code violations.

The inordinate emphasis upon who maintains the vehicle, or, specifically, who pays the mechanic who repairs the vehicle, obscures the real issue in this case, that is, whether the use of the lease is a device to evade regulation. It is of no moment that the lessor and the lessee comply with all of the formal aspects of the General Order if, in the totality of the arrangement, the purpose of the lease is to evade regulation. General Provision E of the General Order states, "No carrier shall enter into or make any lease of a motor vehicle which constitutes a rebate, allowance, refund, remittance, or any other evasion of regulation in violation of the Public Utilities Code." (e.g., Sections 458, 3668, 3669.) Therefore, a finding that a person is not a highway carrier cannot be based solely upon finding that he is a bona fide employee of a highway carrier and that the lease by which he leases his vehicle to his employer places full control of the vehicle in the employer. Even if these conditions are

satisfied, there still exists the further condition that the arrangement cannot be a device to evade regulation.

This discussion in no way affects the results reached in Re Federal Cement Transportation, Inc., Decision No. 76621, dated December 30, 1969, in Case No. 8893, and Re J & H Transportation Co., Decision No. 76737, dated February 3, 1970, in Case No. 8892, wherein this Commission found arrangements by driver-lessors to lease their vehicles to prime carriers and drive the vehicle as an employee of the prime carrier to be a "lease device or arrangement" in violation of the Public Utilities Code. In those cases the payment provided for the lease of the vehicle was 28 cents a mile which was inordinately high for the mere lease of the vehicle and from which the lessor not only had to pay for maintenance, but also had deducted from the amount his wages, insurance, all taxes, and any commissions or rental fees due lessee. And, most important, the actual payments made to the driver-lessors were less than they would be entitled to have received under the applicable minimum rates. Because of all these factors the arrangement was considered to be a device in violation of the Code.

Although the maintenance provision in a lease could affect the control of the vehicle and could, standing alone, support a finding that the lease arrangement was a device to avoid regulation, it does not follow that it will be the controlling factor in all cases. It is the totality of the arrangement that we are concerned with, not individual aspects. (United States v. Drum (1960) 368 US 370, 378, 7 L ed 2d 360, 359.)

The three basic facts that comprise the totality of the arrangement which need to be determined are: (1) is the driver-lessor a bona fide employee of the lessee; (2) does the lease place control of the vehicle in the lessee; and (3) is the lease a device to evade regulation? We do not include, as a separate factor, a determination that certain characteristic burdens of the transportation business have or have not been transferred to the driver-lessors. We prefer to consider this factor as an element to be considered in determining bona fide control and bona fide employer-employee relationship. This is no more than a choice of viewpoint; no doubt we could as reasonably say that the employer-employee relationship and control of the vehicle are elements of shifting the burden of transportation. But to do so would not help in resolving cases; it would only cast doubt on prior Commission decisions which discussed the problem in terms of control and employment. In this opinion our discussion of "control" has been directed as much toward the possible shifting of the burden of transportation as to who directs the movement of the vehicle.

The staff argues that applicants do not hold the degree of control over the activities of the driver-lessors which is necessary for the lessors to be considered bona fide employees. The staff asserts that the transportation operations would be performed by independent operators in the same manner as the so-called employees are performing the operations.

And especially significant to the staff is the fact that the driver-lessors, except in rare instances, always drive their own leased vehicles. The staff argues that under the normal employer-employee situation the equipment which is required to be under the lessee's complete and exclusive control would be available to be operated by whatever driver the lessee decided to select for whatever reason such a decision would be made.

This argument relates to the control exercised by the carrier over the leased vehicle rather than to the employer-employee relationship. There are any number of employer-employee relationships where the employee provides his own vehicle for work in the business which does not lessen the employer-employee relationship. Immediately coming to mind are jobs such as outside salesmen. On the other hand, to the extent that the lessee cannot designate any driver other than the lessor to operate the motor vehicle, the lessee has somewhat less than complete control over the motor vehicle. However, the control contemplated by the General Order cannot be construed to be of such a nature as to deprive the lessor of all rights. Control is not to be equated with freedom to do whatever the lessee chooses with the vehicle. Certainly the lessee would be expected to treat the vehicle in a reasonable manner, direct its operation in a reasonable manner, and return it to the lessor at the termination of the lease in the same condition that it was received, less reasonable wear and tear. The fact that these are restrictions on the lessee's control doesn't make the vehicle any less under his control within the terms of the General Order. The control envisioned by the

General Order pertains to the relationship between the carrier and the public, and to the shifting of some of the burdens of transportation from the carrier to others. Whether a particular driver drives a particular vehicle is not always a significant aspect of these two issues, and in this case makes no difference. We have previously discussed the lessor-maintenance provision and determined that such a provision does not of itself preclude finding control of the vehicle in the lessee. Under the facts of this case we find that applicants have complete responsibility for the vehicle and, through their close supervision, control the vehicle. The burdens of providing transportation have not been shifted to the driver-lessor.

In reaching this conclusion we have considered, in addition to the general factors discussed above, the unique method of providing transportation in this case, that is, the use of personal vehicles. Because all of the leased vehicles involved in these messenger services are also used as the owner's personal family car, we can hardly expect, as a matter of economics, that applicants should be required to directly maintain them. Problems of apportionment of maintenance would be almost impossible to resolve. The actual payment made for the use of the leased vehicle is adequate to cover reasonable maintenance related to the service performed. Merely because some of the vehicles are small pickup trucks does not change this; the pickup trucks are for the convenience of the owners, not applicants. Deliveries could as easily be made in passenger automobiles.

To determine whether the arrangement in this case is a device to evade regulation, we must consider the regulations that are sought to be evaded. Some of the matters that should be considered are: evading minimum rates; evading payments to subhaulers under minimum rates such as under Minimum Rate Tariffs Nos. 7, 10 and 17; causing rebates; evading residence requirements; and enforcing the legislative mandate that a particular form of transportation requires limited entry into the field (e.g., highway common carriers, dump truck carriers, and cement contract carriers).

In this case there are no minimum rates and no rates to be paid subhaulers. The only restriction on entry into the messenger service field is the ninety-day residence requirement of Section 3572. The evidence in this case is that the driver- lessors are residents of California and are not here merely on occasional trips. The leases in question are not entered into in an attempt to evade this restriction. There is nothing special about applicants' operation that can't be performed by anybody who owns an automobile, usually passenger cars, station wagons, and small vacation-type vans. The lease payments vary from applicant to applicant, but are all adequate to cover the cost of operating these kinds of vehicles including reasonable wear and tear and maintenance.

The evidence shows that the method of operation of applicants is almost identical with that of protestant Jiffy Messenger Service. The only difference is that applicants lease their vehicles from their employees while Jiffy leases its vehicles from an independent leasing company. From the public's point of view there is no difference in the manner of rendering the service, and the source of the leased vehicles has no affect on service.

We find that the leases entered into in this case are not devices to evade regulation.

In our opinion the driver-lessors, who are employees of applicants, are not highway carriers and, therefore, do not come within the terms of Part I of the General Order. Consequently, an exemption from Part I, B.2, is not required. The lease arrangement in this case does fall under Part III of the General Order (Leasing to Carriers From Noncarriers). As to that part, applicants wish an exemption from the General Provision F.2, which requires that applicants file a copy of the lease within five days after execution, and file copies of amendments or modifications within five days after execution. It appears to us that there is no greater burden to applicants to file each lease when executed than to accumulate many leases and file them at one time. Applicants' request for exemption from General Provision F.2. will be denied.

Findings of Fact

1. Each applicant has permitted authority from this Commission and carries the required amount of public liability insurance. There are no minimum rates applicable to applicants' service; rates are based upon time rather than weight. None of applicants' drivers have operating authority.

2. Applicants perform special delivery and messenger service in the Los Angeles area which provide customers with expedited delivery of relatively small objects of light weight. The essence of the service is speed. In providing this service, applicants lease passenger automobiles, station wagons, small passenger buses, and, small pickup trucks. These vehicles are leased from their owners who are then employed by applicants to drive their vehicles in applicants' service. The lease provides for compensation to be paid to the lessor for the use of his vehicle, and separately provides for compensation to be paid to the lessor as an employee. The lease provides that the lessors are to maintain the vehicle. Lessors are paid the hourly wage whether or not work is available for them to perform. In addition to regular pay and mileage, an incentive bonus is paid. During times other than working hours, the lease provides that the lessors have the right to use the leased vehicle for their own personal use. That is, the lessors take the vehicle home and use it as the family car.

3. Most of the driver-lessors are primarily engaged in other lines of work, such as students, teachers, and the temporarily unemployed. These people work only for short periods of time ranging from one month to several months. However, there are some driver-lessors who are permanent employees. The driver-lessors are treated in the same way as applicants' other employees. They are given paid holidays and paid vacations; they are insured under company insurance plans covering all employees, including workmen's compensation; deductions are taken from the hourly salary and incentive bonus to cover income tax and social security. No such deduction is taken from the mileage payment for the use of the leased vehicle.

4. The driver-lessors are bona fide employees.

5. Applicants have complete responsibility for the vehicle leased and, through their close supervision, control the vehicle.

6. Each lease introduced into evidence in this proceeding, when taken in conjunction with the method of operation and employment actually used by applicants and their driver-lessors, is not a device to evade regulation.

7. The driver-lessors are not highway carriers.

The Commission concludes that:

1. The driver-lessors do not come within the terms of Part I of the General Order.

2. None of the provisions of the General Order are so burdensome to applicants as to require a deviation therefrom.

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O R D E R

IT IS ORDERED that the applications are dismissed.

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

Dated at San Francisco, California,
this 13th day of JANUARY, 1971.

[Signature]
Chairman
[Signature]
[Signature]

Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

Appendix A

GENERAL ORDER NO. 130

PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

RULES AND REGULATIONS TO GOVERN THE
LEASING OF MOTOR VEHICLES

General Provisions

- A. CARRIER means every carrier described in Section 3511 of the Public Utilities Code.
- B. LEASE means any contract or arrangement, other than a sale, a conditional sales contract, a chattel mortgage or statutory lien, whereby any person, firm, or corporation (herein called the lessor) who or which owns, controls, or is entitled to the possession of any motor vehicle, transfers to any other person, firm, or corporation (herein called the lessee) the right to possession and control of such motor vehicle. (LEASE does not include a subhaul agreement or a transaction subject to transportation rates based on vehicle units as prescribed by the Commission in any minimum rate tariff or published in any common carrier tariff.)
- C. MOTOR VEHICLE means every motor truck, tractor, other self-propelled vehicle, trailer, semi-trailer, or dolly used for transportation of property over the public highways.
- D. NONCARRIER means every person, firm, or corporation engaged in any business enterprise except for-hire transportation of property.
- E. No carrier shall enter into or make any lease of a motor vehicle which constitutes a rebate, allowance, refund, remittance, or any other evasion of regulation in violation of the Public Utilities Code.
- F. A carrier which enters into a lease of a motor vehicle shall:
 - 1. Keep a copy of the lease and complete records of such transaction available for inspection by the Commission staff for a period of not less than three years from the termination of the lease.
 - 2. File a copy thereof with the Commission within five days thereafter. Any amendment or modification shall be in writing and a copy thereof filed with the Commission within five days after execution.

- G. When the term of the lease is thirty days or more:
1. A carrier-lessor shall delete the leased motor vehicle from its equipment list on file with the Commission for the duration of the term of the lease;
 2. A carrier-lessee shall add such leased motor vehicle to its equipment list on file with the Commission for the duration of the term of the lease.
- H. A carrier-lessee shall place its identifying symbols as required by Public Utilities Code Section 3543 on the leased motor vehicle for the duration of the term of the lease.
- I. The provisions of this general order shall not apply to:
1. The leasing of motor vehicles without drivers from any person, firm, or corporation whose principal business is the leasing of motor vehicles without drivers;
 2. The interchange of equipment between carriers for the purpose of facilitating through movements of lading;
 3. The temporary loan of trailing equipment by one carrier to another carrier to meet any temporary equipment demands of the latter;
 4. The employment of drivers without motor vehicles from any person, firm, or corporation whose principal business is the provision of temporary employees;
 5. The leasing of motor vehicles to the Federal Government, the State, a county, a city, or a city and county.
- J. In any proceeding before the Commission the burden of proof of the fact that the compensation stated in the lease is reasonable shall be upon the respondent or proponent of the lease.
- K. This general order establishes minimum leasing regulations only and in case of conflict between this general order and the provisions of a minimum rate tariff of this Commission, the minimum rate tariff shall prevail.
- L. Upon prior application and a showing of good cause, the Commission may, with or without a hearing, authorize deviations from any or all of the provisions of this general order.

PART I

REGULATION OF LEASING BETWEEN CARRIERS

- A. No carrier shall enter into or make any lease of any motor vehicle to any other carrier except in accordance with the general provisions of this general order and the provisions of this part.
- B. Every lease between carriers shall conform to the following requirements:
 - 1. Shall be in writing, contain all of the terms and conditions of the agreement, and be executed and signed by the parties thereto, or their regular employees or agents;
 - 2. Shall provide for the exclusive possession, use, supervision, direction, and control of the motor vehicle, and for the complete assumption of responsibility in respect thereto, by the lessee for the duration of the lease; except that if the lessor or an employee of the lessor does not operate the leased motor vehicle then the lease may provide that maintenance of the motor vehicle shall be the lessor's obligation;
 - 3. Shall specifically identify the motor vehicle or vehicles;
 - 4. Shall specify the term of the lease;
 - 5. Shall specify the reasonable compensation to be paid by the lessee for the rental of the motor vehicle.
- C. A bona fide employer-employee relationship shall exist between the lessee and the driver or drivers of any leased motor vehicle.

PART II

REGULATION OF LEASING BY CARRIERS TO NONCARRIERS

- A. No carrier shall enter into or make any lease of any motor vehicle to any noncarrier except in accordance with the general provisions of this general order and the provisions of this part.
- B. Every carrier who enters into a lease of a motor vehicle to a noncarrier shall require the lessee to perform the terms and conditions thereof, without deviation.
- C. Every lease from a carrier to a noncarrier shall conform to the following requirements:
 - 1. Shall be in writing, contain all of the terms and conditions of the agreement, and be executed and signed by the parties thereto, or their regular employees or agents, prior to the beginning of the lease term;
 - 2. Shall provide for the exclusive possession, use, supervision, direction, and control of the motor vehicle, and for the complete assumption of responsibility in respect thereto, by the lessee for the duration of the lease; except that the lease may provide that maintenance of the motor vehicle shall be the lessor's obligation;
 - 3. Shall specifically identify the motor vehicle or vehicles;
 - 4. Shall specify the term of the lease;
 - 5. Shall specify the reasonable compensation to be paid by the lessee for the rental of the motor vehicle;
 - 6. Shall provide that the motor vehicle shall be operated by the lessee or an employee thereof.
- D. The lessor or any employee of the lessor shall not qualify as an employee of the lessee for the purposes of this part.
- E. The motor vehicle leased shall not display the symbols required by Public Utilities Code Section 3543 on such motor vehicle for the duration of the term of the lease.

PART III

REGULATION OF LEASING TO CARRIERS
FROM NONCARRIERS

- A. No carrier shall enter into or make any lease of any motor vehicle from any noncarrier except in accordance with the general provisions of this general order and the provisions of this part.
- B. Every lease from a noncarrier to a carrier shall conform to the following requirements:
1. Shall be in writing, contain all of the terms and conditions of the agreement, and be executed and signed by the parties thereto, or their regular employees or agents, prior to the beginning of the lease term;
 2. Shall provide for the exclusive possession, use, supervision, direction, and control of the motor vehicle, and for the complete assumption of responsibility in respect thereto, by the lessee for the duration of the lease; except that the lease may provide that maintenance of the motor vehicle shall be the lessor's obligation;
 3. Shall specifically identify the motor vehicle or vehicles;
 4. Shall specify the term of the lease;
 5. Shall specify the reasonable compensation to be paid by the lessee for the rental of the motor vehicle.

Severability

The Commission intends Part III of this general order to be severable from Parts I and II. If Part III is declared invalid, such invalidity shall not affect the other parts of this general order.

The effective date of this General Order shall be January 1, 1971.

Issued at San Francisco, California, the 14th day of April, 1970.