

ORIGINAL

Decision No. 78224

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of BERNARD REZNICK, an individual, doing business as UNIVERSAL MAIL DELIVERY SERVICE, for authority to deviate from certain provisions of General Order No. 130.

Application No. 52269
(Filed October 29, 1970)

Donald Murchison, Attorney at Law,
for applicant.
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 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). Applicant seeks exemption from those provisions relative to applicant's leases with driver-lessors. The Commission staff opposes. Public hearing was held before Examiner Robert Barnett on December 4, 1970, in Los Angeles, after which the matter was submitted. This case should be considered as a companion case to Re ABC Messenger Service, Inc., et al, Decision No. 78171, dated January 13, 1971, in Application No. 52061.

Applicant has operating authority from this Commission and carries the required amount of public liability insurance. At the hearing the following facts were stipulated:

"Applicant performs a mail delivery service in the Los Angeles area. Basically, a mail delivery service delivers mail between firms (customers) and the post office, both incoming and outgoing, and as such, operates as an agent of the firm.

"In providing this service, applicant leases and uses passenger type vehicles, including passenger automobiles, station wagons, and personal type passenger buses and equipment such as Volkswagens and Econoliners. Such vehicles are used under the provisions of a written lease which separately provides for use of the vehicle and employment of the owner of the leased vehicle to drive it as the employee of applicant at a fixed compensation. The term of the lease is usually 90 days with automatic renewal on a month-to-month basis, subject to a 30-day notice for termination. The leases provide for usage of the equipment by lessee during stated hours of each day. They also provide that during the time when applicant is not vested with possession and use of the equipment under the terms of the lease, possession and the right to use the equipment is in the lessor. During such period the lessors use the vehicles as their own personal means of transportation and as their personal vehicle.

"Of necessity, a mail delivery service must operate in a manner completely foreign to that of the normal trucking operations of dry freight by motor truck, in that the mail delivery service must operate on a fixed daily time schedule of pickup and delivery at the firm, and all such time schedules are based upon a matter of minutes rather than, as in the case of the dry freight operator, on the basis of a full day or on an overnight scheme of service. Therefore, the most important ingredient of the service is immediate pickup and delivery of the item involved. The customers of applicant, by written service agreement, contract for applicant's service requiring scheduled daily pickup and delivery of mail to and from the post office involved. The agreements are executed on a month-to-month basis. In order to satisfy the foregoing service, vehicles are dispatched on a regular route basis, although constant contact with the dispatcher is maintained to determine if there is any added or reduction of service.

"The mail delivery customer is desirous of having his incoming mail delivered as soon as possible (from the post office) and his outgoing mail (to the post office) picked up as late as possible in order to reach the post office before it closes. Therefore, in order to serve approximately 800 firms, the organization must operate numerous short routes (over 100) with all part-time drivers (approximately 100 drivers). Applicant operates some 30 pieces of company-owned equipment, each piece of which performs three distinct route operations (i.e., morning, noon and evening routes) and applicant employs, generally, three different part-time drivers per vehicle to accomplish the foregoing. The

owner-operator, on the other hand, performs but one specific regular route operation, utilizing his own equipment. One of the peculiar aspects of the mail delivery service requiring small routes is that subsequently all of the mail must be deposited in the city in which it is picked up, as provided by federal regulation. Hence, mail pickup from the firm in Glendale must be deposited in the Glendale post office and cannot be combined with any other city's mail and deposited elsewhere. Since the post office closes at or about 5:30 to 6:00 P.M., and most firms' mail is not ready to go until approximately 5:00 P.M., it can readily be seen why so many small routes are the only solution to the problem. Again, all of this is in contradistinction with the normal regulated motor truck carrier.

"In addition to compensation paid to the owner-operator for the use of his vehicle, based upon mileage, each of said outside service personnel is an actual employee of the company and is paid on a regular wage basis for the time employed by him in the rendition of his temporary service operations. By temporary is meant that the average route operation of the employee covers a period of one to three hours. From his wages are deducted the usual SUI, FICA and withholding tax deductions, and said operator and his leased piece of equipment are completely subject to the complete control, direction and supervision of applicant at all times.

"As soon as a particular area has sufficient customers to warrant placement of a company-owned truck on the route, such is accomplished and hence the organization experiences an outside service employment turnover of 100 percent per year.

"The aforementioned method of operation has been uniformly found in the Los Angeles area by applicant and other persons engaged in this kind of business for 17 years. It has proved to be a satisfactory method of operation for the persons who provide the service, for the drivers, and for the customers."

Applicant's use of driver-lessors is so similar to that set forth in the ABC Messenger Service case that the result in this case should be similar. Just as the driver-lessors in ABC Messenger Service were found not to be highway carriers, so the driver-lessors in this case are not highway carriers. In fact, this applicant's case is stronger in that company-owned vehicles replace leased vehicles on particular routes as soon as the route serves sufficient customers to make the replacement economically feasible.

Findings of Fact

1. Applicant has certificated and permitted authority from this Commission, and carries the required amount of public liability insurance. None of applicant's drivers have operating authority.
2. All of the stipulated evidence set forth in the body of this opinion is found to be true.
3. The driver-lessors are bona fide employees.
4. Applicant has complete responsibility and control of the leased vehicle.

5. Each lease by which applicant leases a motor vehicle from the person who drives the leased vehicle, when taken in conjunction with the method of operation and employment actually used by applicant and his driver-lessors, is not a device to evade regulation.

6. 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 applicant as to require a deviation therefrom.

O R D E R

IT IS ORDERED that the application is dismissed.

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

Dated at San Francisco, California,
this 26th day of JANUARY, 1971.

[Signature]
Chairman
William J. Jones
[Signature]
Vernon L. Stinson

Commissioners