

Decision No. 82554

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
RALPH M. ADAMS doing business as
ADAMS DELIVERY SERVICE for authority
to deviate from the provisions of
Minimum Rate Tariff Number 2 in
connection with transportation of
parcels.

Application No. 53854
(Filed February 21, 1973;
amended May 10, 1973)

Eldon M. Johnson, Attorney at Law, for applicant.
Handler, Baker & Greene, by Daniel B. Baker,
Attorney at Law, and Jerry Lee Blakeslee, for
E.S.P. Delivery Service, Inc., protestant.
J. C. Kaspar, Arlo D. Poe, Attorney at Law, and
Herbert W. Hughes, for California Trucking
Association, interested party.
B. I. Shoda, for the Commission staff.

O P I N I O N

This application was heard on May 18 and July 30, 1973
before Examiner Thompson at San Francisco and was submitted on briefs.
Ralph M. Adams, doing business as Adams Delivery Service, seeks
authority to depart from the requirements of Minimum Rate Tariff 2
for the transportation of parcels and shipments weighing 100 pounds
or less between points in the counties of Alameda and Contra Costa.
By interim order in Decision No. 81388 dated May 15, 1973, applicant
was granted authority to charge less than the minimum rates for the
transportation of parcels weighing 50 pounds or less between points
in the municipalities of Alameda, Albany, Berkeley, El Cerrito,
Emeryville, and Piedmont, on the one hand, and points and places
within Alameda and Contra Costa Counties, on the other hand.

The application was protested by E.S.P. Delivery Service,
Inc., a parcel delivery carrier engaged in operations in the same
area. On August 7, 1973 it notified the Commission that it would not
file a reply brief in this matter. On August 15, 1973 it filed

Application No. 54242 requesting authority to depart from the minimum rates. By Decision No. 82324 dated January 8, 1974 in that application and in Application No. 53915 of Finesse Delivery Service, Inc., that authority was granted.

This is an application by a highway permit carrier for authority to charge rates less than the minimum rates established by the Commission and therefore is one brought under Section 3666 of the Public Utilities Code.^{1/} In Majors Truck Lines, Inc. (1970) 70 CPUC 447, the Commission stated that the term "reasonable" used in the context of Section 3666 lies in the whole concept or policy of transportation regulation adopted by the people of this State and implemented by enactments of the legislature which have been codified in the Public Utilities Code. It was pointed out therein that it is and has been the policy of this State that public utility carriers by land should have equal opportunity to compete, provided, however, that competition through rate cutting should be prevented so as to avoid the discontinuance by such public utility carriers which necessarily would be a detriment to the needs of commerce and to the public interest (Southern Pacific Co. v R.R. Commission (1939) 13 C 2d 89); and that the legislature through the enactment of the Highway Carriers' Act^{2/} further implemented the policy by providing for the regulation of the rates of carriers other than public utilities.

^{1/} Section 3666: "If any highway carrier other than a highway common carrier desires to perform any transportation or accessorial service at a lesser rate than the minimum established rates, the commission shall, upon finding that the proposed rate is reasonable, authorize the lesser rate."

^{2/} Public Utilities Code, Division 2, Chapter 1.

Applicant is one of a number of highway permit carriers conducting parcel delivery operations in the San Francisco Bay Area. Prior to 1961 parcel delivery carriers operated under exemptions from the minimum rates. In J. S. Aaronson (1961) 58 CPUC 533, the Commission stated "that henceforth, whenever any highway carrier requests authority to depart from the provisions of the established minimum rates, the order granting such relief should prescribe the minimum rates to be assessed by that carrier in lieu thereof." By Petition for Modification No. 414 in Case No. 5432, California Trucking Association asked the Commission to investigate the exemptions that had been granted to certain highway carriers and to redefine the authorities pursuant to the principle enunciated in Aaronson. This was done in Decision No. 71900 dated January 24, 1967. By Petition for Modification No. 722 in Case No. 5432, California Trucking Association requested the Commission to order certain parcel delivery carriers conducting operations in the San Francisco Bay Area to show cause why the exemptions and/or departures from the minimum rates should not be canceled or, alternatively, modified so as to comply with the Commission policy expressed in Aaronson. This was accomplished in Decision No. 80965 dated January 16, 1973 and Decision No. 81566 dated July 3, 1973. The conditions under which parcel delivery operations were conducted in the San Francisco Bay Area and the undesirable circumstances resulting therefrom are described generally in the aforementioned decisions.

Prior to Aaronson the Commission had exempted by name carriers wholly engaged in conducting parcel delivery operations having found that the minimum rates established for freight transportation were not suitable for their operations. Several undesirable circumstances resulted from the granting of those exemptions, one of them being that nothing prevented the exempted carriers from conducting freight operations under the exemptions at unfair and unjust

competitive advantage over carriers that were not exempted, and another being that the exempted carriers had an unjust and unfair competitive advantage over those parcel delivery carriers whose rates were published or were prescribed by order of the Commission.

That the parcel delivery business is highly competitive is demonstrated by the fact that the respondents to Petition 722 that filed applications setting forth rates pursuant to the Aaronson doctrine requested almost the same scales of rates as maintained by United Parcel Service with variations in rules for application necessary to reflect individual types of operations. The rates sought by applicant here are no different in that regard.

Applicant requests authority to charge \$1.52 per parcel, plus \$.045 per pound in excess of 25 pounds, plus \$.50 for each pick up at a consignor's place of business. No package weighing in excess of 100 pounds nor measuring more than 160 inches (length and girth combined) will be accepted and a maximum weight of 100 pounds destined for a single consignee will be picked up at any one time. The rate applies only to the transportation of packages and parcels moving between wholesalers, jobbers, dealers, distributors, industries, retail stores, offices, commercial houses, schools, hospitals, clubs, governmental agencies, and institutions and does not apply to shipments transported within a single city. In general the proposed rates are the same as the Zone 2 rates maintained by United Parcel Service, and authorized E.S.P. and Finesse in Decision No. 82324, except that they contemplate same-day delivery and the minimum charge proposed is the rate for 25 pounds. The rates authorized Radial Rapid Transport, Peninsula Parcel Service, Inc., and San Francisco Parcel Service, Inc. were the lower Zone 1 rates of United Parcel Service and are not restricted to overnight service.

The evidentiary facts are, and we find that:

1. The minimum rates in Minimum Rate Tariff 2 are not the minimum reasonable rates for parcel delivery service by carriers wholly engaged in conducting parcel delivery operations. (J. S. Aaronson, supra.)

2. Applicant operates only 3/4 ton trucks as a highway permit carrier and is engaged mainly in parcel delivery service within Alameda and Contra Costa Counties; however, he also occasionally transports shipments of liquor weighing up to the capacity of his equipment.

3. United Parcel Service, Inc. is a highway common carrier engaged in wholesale parcel delivery between points in Alameda and Contra Costa Counties, among other places, and its published rates may be used, and are being used, by highway permit carriers engaged in the transportation of same kind of property between the same points.^{3/}

4. The published rates of United Parcel Service are governed by rules, including provision only for overnight delivery, that reflect its particular operations and requirements for tender.

5. Highway permit carriers engaged wholly in parcel delivery operations in the San Francisco Bay Area that have operations that do not permit them to comply with certain rules governing the application of the rates of United Parcel Service have been authorized under Section 3666 of the Public Utilities Code to charge rates equivalent to those maintained by United Parcel Service, Inc., and in general those rates are at a uniform level. Some of the authorized rates cover overnight service only and others do not.

6. The authorizations referred to above cover transportation between points in portions of Alameda and Contra Costa Counties and the parcel delivery operations of those carriers are, in part, competitive with the operations of applicant.

7. Applicant's place of business is at San Leandro. No terminals are maintained by applicant nor does he have facilities for the safe overnight storage of more than a few parcels or packages.

^{3/} P.U. Code Sect. 3663, and Item 200, MRT 2.

A large portion of applicant's operations is the delivery of packages and parcels from retail stores to their customers, for which same-day delivery is required. The "wholesale" parcel delivery is integrated with the "retail" parcel delivery service.

8. Applicant's operations are compensatory, although this is due in large part to the lower-than-average labor costs per hour incurred by applicant.

The issue is whether the proposed rates are reasonable in the light of the principles set forth in Majors, Aaronson, and the other decisions cited above. From the standpoint of equality of opportunity to compete, applicant's service differs from his two principal competitors (United Parcel and E.S.P.) in that he provides only same-day service and the competitors provide only overnight service. Applicant's proposed rates are higher than the rates of his competitors for parcels weighing less than 25 pounds and in a few instances where the Zone 1 rates of United Parcel may be applicable rather than the Zone 2 rates proposed by applicant. We are of the opinion that from a competitive standpoint the higher rates offset any competitive advantage of the same-day service.

Applicant desires to continue to occasionally transport shipments weighing up to the capacity of his vehicles at freight rates prescribed in Minimum Rate Tariff 2. This is inconsistent with Aaronson which sought to prevent carriers from transporting property under parcel rates or freight rates as they see fit and as it is to their own advantage so to do. Applicant in his brief suggests the danger of unfair competition with freight carriers can be eliminated by restricting him from the prime carrier role in a prime carrier/subhauler relationship and by restricting his highway carrier operations to vehicles with a 3/4 ton rating. He argues that the restriction in permits against engaging subhaulers has precedent, and that the limitation upon size of equipment is consistent with similar kinds of limitations provided in Item 42 of Minimum Rate Tariff 2

regarding exemptions. We are of the opinion that the permit restrictions suggested by applicant are consistent with Aaronson.

We find that, provided applicant's permits are restricted to prevent any operations of vehicles in excess of 3/4 ton rating and any operations involving the use of subhaulers, the proposed rates are reasonable. We take notice of Application No. 53615 of United Parcel Service requesting authority to increase rates. Because the competitive situation among parcel delivery carriers in the San Francisco Bay Area is subject to change at any time, we conclude that the authority sought should be subject to the same limitation provided in the authorities granted to the competing parcel delivery carriers, namely, that it be scheduled to expire December 31, 1974 unless sooner canceled, modified, or extended by the Commission.

We further find that the proposed rates are reasonable only if the operating authority of applicant is restricted as provided in the preceding opinion so as to prohibit the acceptance by applicant of any shipment that cannot be transported by him at one time on vehicles rated 3/4 ton or less. We conclude that the authority should be made effective concurrently with the issuance of amended permits reflecting such restriction. The amended permits should be issued only upon application.

O R D E R

IT IS ORDERED that:

1. Ralph M. Adams, doing business as Adams Delivery Service, is authorized to transport shipments weighing 100 pounds or less at the rates and subject to the conditions set forth in Appendix A of this decision.

2. The authority shall become effective concurrently with the issuance by the Commission, upon application by applicant, of amended permits restricting highway carrier operations by Ralph M. Adams to transportation of shipments of property in vehicles not exceeding

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a rating of three-quarter ton operated by him and not by any other for-hire carrier.

3. The authority granted herein shall expire December 31, 1974 unless sooner canceled, modified, or extended.

4. Concurrently with the exercise of the authority granted herein, or ninety days after the effective date of this order, whichever occurs the earlier, the authority granted in Decision No. 81388 is canceled.

5. Except as otherwise provided herein Application No. 53854 is denied.

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

Dated at San Francisco, California, this 12th day of MARCH, 1974.

Vernon L. Stinson
President
W. J. [Signature]
[Signature]
[Signature]
Commissioners

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A
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RALPH M. ADAMS
doing business as
ADAMS DELIVERY SERVICE

Ralph M. Adams is authorized to enter into agreements with shippers to provide wholesale parcel delivery service for parcels weighing 100 pounds or less, as follows:

Territory

Between points and places within Alameda County and Contra Costa County.

Rate

\$1.52 per parcel, plus \$.045 per pound in excess of 25 pounds, plus \$.50 for each pickup stop at a consignor's place of business.

Said rate will contemplate delivery on the day of pickup.

Rules and Restrictions

1. No package weighing in excess of 100 pounds nor measuring more than 160 inches (length and girth combined) will be accepted for delivery. A maximum weight of 100 pounds destined for a single consignee will be picked up at any one time.
2. Shipper will pay all charges.
3. Carrier will make pickups only on weekdays - Monday through Friday; no Saturday, Sunday, or holiday pickups will be made.
4. Carrier will be liable to shipper for loss of or damage to packages of merchandise entrusted to it for delivery in the amount of 80 percent of the selling price thereof, but not to exceed \$100 for any one package, such limitations to be effective whether or not such loss or damage has been due to the negligence of the delivery service.
5. An additional charge of \$.50 will be assessed for each C.O.D. collection.

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Rules and Restrictions - (Contd.)

6. Carrier will accept checks tendered by consignee for C.O.D. packages, unless shipper gives written instructions on C.O.D. delivery address tag and on C.O.D. manifest to collect cash only. Carrier will not assume responsibility for validity of checks tendered in payment of C.O.D. collections. If the carrier fails to collect any C.O.D. and such failure is not reported by the consignor to the carrier within 15 days after receipt by the delivery company of the package bearing such C.O.D., the consignor shall be deemed to have waived its right to hold the delivery company responsible for such failure.
7. The return of a package, which for any reason is returned to the consignor, after once having been delivered to the correct address will be charged for at the same rate as charged for the original delivery thereof, provided the order to return the package is given the carrier by, and the charges are paid by, the original consignor, or his agent.
8. The rate herein will not apply to any shipment with an origin and destination wholly within a single city, or any shipment covered by the provisions of Item No. 840 or Item No. 850 of Minimum Rate Tariff 1-B.
9. The rate herein will apply only to wholesale parcel delivery service. Wholesale parcel delivery service means the transportation of packages and parcels moving between wholesalers, jobbers, dealers, distributors, industries, retail stores, offices, commercial houses, schools, hospitals, clubs, governmental agencies, and institutions.