

Decision No. 86885

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Patrick L. Barnes, an individual)
doing business as BARNES PACKAGE)
EXPRESS SERVICE, for authority to)
transport shipments of 100 pounds)
or less at less than the minimum)
rates prescribed in Minimum Rate)
Tariffs Nos. 1-B and 2 pursuant to)
Section 3666 of the Public Utilities)
Code.)

Application No. 56031
(Filed October 29, 1975;
amended March 8, 1976)

O P I N I O N

By Decision No. 85896 dated June 2, 1976, applicant Patrick L. Barnes, dba Barnes Package Express Service, was granted authority to deviate from the minimum rates for the transportation of shipments weighing less than 100 pounds between points in the San Francisco Bay Area. The authority was limited to service from or to a terminal of a passenger stage corporation. The interim authority was granted for the purpose of permitting the development of actual operating data to be presented at a public hearing.

By letter dated September 28, 1976 applicant was requested to supply cost and operational data. This request was made as an effort to avoid a public hearing, if possible, yet protect the rights of interested parties. The requested information was furnished on December 15, 1976, copies of which were supplied to all parties known to be interested in this matter.

The operational data show that, for the period of June 2 through October 30, 1976, applicant generated \$8,613 of which \$7,688

was earned under the temporary authority, and resulted in an overall operating ratio of 84.5 percent. Included as an expense were applicant's wages as driver. According to the report the drivers' wages are set at \$42 per day for three to six hours work, depending on volume.

The information supplied indicates that the rates are reasonable. As was noted in Decision No. 85896, the rates here in issue are on a level compatible with competitors.

No protest or request for public hearing has been received since the receipt of applicant's operational data on December 15, 1976.

We find that the rates proposed by applicant are reasonable and conclude that the application should be granted.

Since conditions under which the service is performed may change at any time, the authority granted in the ensuing order will expire at the end of one year unless sooner canceled, modified, or extended by order of the Commission.

O R D E R

IT IS ORDERED that:

1. Patrick L. Barnes, doing business as Barnes Package Express Service, is authorized to depart from the minimum rates set forth in Minimum Rate Tariffs 1-B and 2 by charging those rates set forth in Appendix A of this decision. This authority does not include any deviation from any rates, rules, or regulations except as specifically set forth in Appendix A.

2. The authority granted shall expire one year after the effective date of this order unless sooner canceled, modified, or extended by order of the Commission.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 25th
day of JANUARY, 1977.

*I will file dissent
William G. Jones, Jr.*

Robert Batminal

President

Thomas L. Sturgeon

Leonard Ross

Commissioners

APPENDIX A

A charge of \$1.35 per shipment weighing 100 pounds or less between points within the territory encompassed by the East Bay Metropolitan Zone Group, the Hayward-Milpitas Metropolitan Zone Group, and the San Jose Metropolitan Zone Group as described on page 237 of Distance Table 7 in connection with property transported from or to a terminal of a passenger stage corporation and having prior or subsequent movement as an express shipment. Except that on shipments having both their origin and destination within the city limits of Oakland, the charge shall be \$1.00 per shipment.

Freight bills will be rendered for the above-described transportation at billing periods not exceeding one month following the date the property is delivered.

COMMISSIONER WILLIAM SYMONS, JR., Dissenting

This decision granting a deviation is defective for the reasons previously set forth in detail in my August 24, 1976, dissenting opinion to Decision Nos. 86274 through 86279.

1. Bad Public Policy. Indiscriminate granting of deviations undermines the regulatory framework established by the Commission and the Legislature for motor freight transport (Major Truck Lines, Inc. (1970) 71 CPUC 447). Minimum rate regulation in California is being washed away by this and similar Commission decisions which have opened the flood gates on deviations.

2. The Problem of Adequate Process. When there are protestants, as in this case, Bus Express Service and the California Trucking Association (CTA), the hearing process affords the Commission a good look at the situation which is supposedly existent that allows a departure from minimum rates. The protestants are allowed to introduce evidence, and more importantly, by cross-examination to test openly the accuracy and completeness of the "facts".

In fact, this is a responsible way for the Commission to administer Public Utilities Code Section 3666 which calls for a finding prior to allowing such a departure:

"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. (Former Sec. 11. Amended 1959, Ch. 1566.)"
(Emphasis added)

But such a regular course did not occur. What happened in this case? As part of the initial order, an interim authority, without a finding of reasonableness, was issued (D.85896, June 2, 1976). Calling it "interim" was mollifying. To further soothe alarm, that decision spoke of gathering facts and a future "public hearing" (p.2). But the hearing never was.

In spite of renewed protest by CTA, the decision went out without the "public hearing".

3. Unreasonable and Destructive. And was the result reasonable?

I do not see that it was. We must not allow a deviation where a reasonable cost of operation would exceed revenues. This can easily lead to a predatory no-win situation for all carriers. Yet, in giving the speed treatment to deviations, such situations begin to recur. Examination of Mr. Barnes' operations in light of the protest of CTA, changes this small operation from a profit to a loss. Mr. Barnes' one-truck operation statement presents a \$1,334 profit. Yet, when the CTA-spotted omissions are considered -- Social Security tax of \$348 and an allowance for truck replacement (say only \$100 a month)-- the result is a loss of \$214. Applicant's silence on these items may have been inadvertent. But our staff should have caught it. Granting deviations below reasonable costs, which allow carriers to get by now on the absence of truck payments or some temporary circumstance, can lead to predatory competition. Each party hopes to win the business for himself, to outlast his competitor in a struggle where both are eating their "seed corn". This is the destructiveness Minimum Rate Regulation protects against.

4. Less Than 20-day Effective Date. This order is made effective immediately. This Commission would be best advised to heed its own tradition and the spirit of Public Utilities Code Section 1705, which provides that Commission orders normally "... take effect and become operative 20 days after the service thereof ..." If no good reason for instantaneous effect is shown, extraordinary haste is out of order. Parties are cut off from statutory provisions allowing a suspension while their application for rehearing is reviewed (PUC § 1733(a)). Whistling decisions through this Commission is hardly judicious nor is it conducting the people's business in an orderly manner.

San Francisco, California
January 25, 1977


WILLIAM SYMONS, JR.
Commissioner