

Decision No. 87152

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of BRIDGFORD DISTRIBUTING COMPANY to deviate from the provisions of Minimum Rate Tariff No. 2 and from General Order No. 130 to the extent necessary to permit the commingling of interstate and intrastate shipments.

Application No. 55847
(Filed August 1, 1975;
amended November 17, 1975)

William J. Monheim, for applicant.
Richard W. Smith, Attorney at Law, and
H. W. Hughes, for California Trucking
Association, protestant.
Joel Anderson, Jack Johnson, and T. H. Peceimer,
for the Commission staff.

O P I N I O N

Applicant, a highway contract carrier, seeks authority to deviate from the rates, rules, and regulations in Minimum Rate Tariff 2 (MRT 2) and from the provisions of General Order No. 130 in connection with certain transportation performed for Bridgford Foods Corporation.

Public hearing was held before Examiner O'Leary at Los Angeles on March 2, 1976. The matter was submitted subject to the filing of late-filed Exhibit 3 which has been filed.

Applicant is a wholly owned subsidiary of Bridgford Foods Corporation. Applicant holds contract carrier authority from the Interstate Commerce Commission (ICC) authorizing transportation under contract with Bridgford Foods Corporation. Pursuant to its ICC authority, applicant transports frozen biscuits and rolls from Dallas, Texas, to Fullerton, California. This transportation is

performed with equipment owned by applicant and with equipment leased to applicant on a per-trip basis (trip lease) under leasing provisions of the ICC. The trip lessors do not hold operating authority from this Commission. In many instances portions of the shipments moving from Dallas to Fullerton ultimately move to points in northern California. The portions moving to northern California are combined with products manufactured at Fullerton and transported via private carriage.

After unloading at Fullerton the equipment owned by applicant is utilized to transport other products of Bridgford Foods Corporation to Dallas. Trip lessors, upon unloading at Fullerton, proceed empty to points in northern California, usually the Salinas or San Joaquin Valley areas to obtain an eastbound interstate shipment of exempt commodities as a backhaul. The private carriage vehicles which are utilized to transport bakery products to northern California points from Fullerton return to Fullerton empty after delivery of the products in northern California.

If the authority sought herein is granted, applicant would utilize the trip lessors to transport freight from Fullerton to northern California points in lieu of private carriage. Under applicant's proposal trip lessors, upon arriving at Fullerton, would off load only that portion of the shipment from Dallas which does not ultimately move to northern California points. The property moving to northern California points from Dallas would be combined with products manufactured at Fullerton destined for points in northern California. Under the proposal applicant would assess Bridgford Foods Corporation the rates set forth in its schedule of rates on file with the ICC plus a \$50 substitution charge and a charge of \$10 for each delivery point. Applicant would, in turn, pay the trip lessor a reduced amount negotiated between applicant and the trip lessor.

Applicant asserts that the granting of the sought relief would promote fuel conservation through a more efficient use of vehicles in that trip lessors would reduce their deadhead miles substantially, and movements by private carriage from Fullerton to northern California would be reduced in direct proportion to the number of trip lessors proceeding north loaded from Fullerton.

Discussion

Applicant here seeks a deviation from the provisions of General Order No. 130 which provides rules and regulations governing the leasing of motor vehicles, and from the minimum rates set forth in MRT 2. In connection with the sought deviation from General Order No. 130, applicant requests that the Commission reevaluate its previous interpretations of the definition of highway carrier so that the trip lessors are not considered highway carriers for purposes of California regulation.

Applicant's proposal to deviate from the provisions of General Order No. 130 is similar to proposals in two previous applications before the Commission, Re ABC Messenger Service Inc., et al. (1971) 71 CPUC 694, 699 and Re Morgan Drive Away Inc., et al. (1971) 71 CPUC 709, 712, wherein we stated:

"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 make exceptions to 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 exceptions to 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."

The Commission further stated in Re Morgan Drive Away Inc., et al. (1971) 71 CPUC 709, 712, 713:

"One who provides a driver and a vehicle to transport property over the public highways for compensation is a highway carrier. For such a person to avoid regulation, this Commission has consistently held that he, at the very least, must enter into an employee-employer relationship with a carrier and lease his motor vehicle to the carrier under a lease that provides for the control of the motor vehicle in the carrier. Further, he cannot enter into this lease agreement if such an agreement is a device to evade regulation. (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.)

"In this case it is not disputed that the driver-lessors are not employees of the applicants. We need go no further. (Cf. United States v. Drum (1962) 368 US 370, 393, 7 L ed 2d 360, 374 (dissent).) Under the evidence presented in this case, the driver-lessors are highway carriers and are required to have operating

authority from this Commission before they can transport intrastate shipments."

The trip lessors in the instant application are highway carriers as defined in Section 3511 of the Public Utilities Code who are required to obtain operating authority from this Commission before they can transport intrastate shipments.

Findings

1. Applicant holds a highway contract carrier permit from this Commission.
2. Applicant is a wholly owned subsidiary of Bridgford Foods Corporation.
3. Applicant holds contract carrier authority from the Interstate Commerce Commission.
4. Applicant leases motor vehicles for transportation in interstate commerce on a trip basis from driver-lessors who are not employees of applicant.
5. Applicant desires to utilize the driver-lessors for transportation of intrastate shipments.
6. The driver-lessors, if utilized to transport intrastate shipments under agreement with applicant, would be engaged in transportation of property for compensation over the public highways in this state by means of a motor vehicle and would be highway carriers required to have operating authority from this Commission to perform intrastate transportation.

The Commission concludes that the application should be denied.

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O R D E R

IT IS ORDERED that Application No. 55847 is denied.
The effective date of this order shall be twenty days
after the date hereof.

Dated at San Francisco, California, this 29th
day of MARCH, 1977.

Paul F. Bateman
President
William S. Givens, Jr.
James L. Sturgeon
Tom
Richard D. Givens
Commissioners