

approved and that the certificate issued to Applicant at A-00106208, F0001 be amended to include the following authority:

To transport, as a Class D carrier, business records, in magnetic form and paper form, between points in Pennsylvania.

Subject to the following restrictions:

No right, power or privilege is granted to transport property between points within the Borough of Hatboro, Montgomery County or to transport property where the origination point or destination point is within the Borough of Hatboro, Montgomery County.

No right, power or privilege is granted to transport property from retail or service establishments between points within Cheltenham Township, Abbington Township, or Jenkintown, Montgomery County, or to transport property where the origination point or destination point is within the Townships of Cheltenham or Abbington or the Borough of Jenkintown.

No right, power or privilege is granted to transport property for the Philadelphia National Bank.

No right, power or privilege is granted to transport property for Vicks Healthcare Division, a division of Richardson/Vicks, U.S.A.

No right, power or privilege is granted to transport property, excluding household goods in use, between points within the Boroughs of Norristown, Bridgeport and Conshohocken, Montgomery County.

No right, power or privilege is granted to transport property, excluding furniture in use and

household goods in use, between points within the Borough of Ambler, Montgomery County.

No right, power or privilege is granted to transport property between points within the Borough of Sellersville, Bucks County.

No right, power or privilege is granted to transport property for CRC Chemicals, U.S.A., from its facility in the Township of Warminster, Bucks County, to points in Pennsylvania, and vice versa.

No right, power or privilege is granted to transport checks, deposit tickets, notes, money orders, drafts, traveler's checks, commercial papers, documents, written instruments and office supplies from the facilities of the Bank of Old York Road, Fox Chase Federal Savings and Loan Association, Fidelity Bank, Union National Bank, Independence Bancorp., (including Bucks County Bank, Independence International, Freedom Valley Bank, Lehigh Valley Bank and Cheltenham Bank) located in the Counties of Bucks, Chester, Delaware, Montgomery and Philadelphia, and the City of Allentown, Lehigh County, to points in said Counties and City and vice versa.

2. That the Applicant shall not engage in any transportation granted herein until it shall have complied with the requirements of the Pennsylvania Public Utility Code and the rules and regulations of this Commission relative to the filing and acceptance of a tariff establishing just and reasonable rates.

3. That the authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to the Applicant, shall not be construed as conferring more than one operating right.

4. That, in the event the Applicant has not, on or before sixty (60) days from the final date of service of this Order, complied with the requirements set forth herein, the Application may be dismissed without further proceeding.

Exceptions of Protestant

The Protestant herein filed twenty-two Exceptions to ALJ Christianson's Initial Decision.

Protestant first contends that the ALJ misinterpreted and misapplied the standards outlined in the case of Application of Blue Bird Coach Lines, Inc., 72 Pa. P.U.C. 262 (1990). Protestant continued that no single supporting witness supported the subject application between points in Pennsylvania. The ALJ, the Protestant argues, erroneously concluded that the combined testimony of the supporting witnesses justified such a total territorial grant of authority.

We have carefully reviewed the ALJ's application of the Blue Bird case, and we find no error in the ALJ's discussion of or his application of Blue Bird. We find his discussion of the case to be comprehensive and correct. Consistent with Blue Bird the Applicant herein, satisfied its burden of proof by demonstrating in the record by a representative sampling of supporting witnesses, the public demand or need for the proposed service.

Accordingly, we shall deny this Exception of the Protestant.

The Protestant's second exception was that the ALJ erred in his discussion on pages 50, 53 (Conclusion) and 54, of the Initial Decision in "failing to make a conclusion of law that

failure of a protestant to meet the impossible burden placed upon protestant's by 52 Pa. Code §41.14(c) does not relieve an applicant from meeting its burden of proof under 52 Pa. Code §41.14(a) and (b)."

On review of this exception, we agree with the ALJ's discussion of the standards of §41.14, as interpreted by Blue Bird, and discussed by the ALJ on pages 50-54 of his Initial Decision. We hasten to point out that it is the responsibility of the Applicant herein, to satisfy the requisite burden of demonstrating public demand or need (52 Pa. Code 41.14(a)) and also to furnish proof of financial and technical fitness (52 Pa. Code §41.14(b)). Having satisfied those criteria, the burden of going forward shifted to the Protestant to demonstrate that the entry of the Applicant into the field will, on balance, adversely impact upon the operations of existing carriers.

We find the Protestant's exception on this issue to be against the weight of the evidence and, therefore, misplaced. Therefore, we shall deny this Exception of the Protestant.

We note that the Protestant's Exceptions Nos. 3, 4, 5, 6 and 7 pertain to certain evidentiary standards utilized by the ALJ. Specifically, the Protestant contends, in pertinent part, that the ALJ:

1. Ignored the testimony of Mr. Cleary that the shipper has not had a need for the service. (Tr., p. 92)
2. Erred in giving weight to the testimony of Allen J. Bloom, owner and CEO of MCI Packaging Company.
3. Erred in his conclusion that there is a need for the proposed service.

We hasten to point out that it is the role of the ALJ to ensure that a complete, comprehensive and coherent record is developed in the proceeding. Furthermore, it is well settled in the law that in considering the credibility of witnesses, their manner of testifying, their apparent candor, intelligence, personal intent and bias or lack of it, are to be considered in determining what weight shall be given to their testimony. Danovitz v. Portnoy, 399 Pa. 599; 161 A.2d 146 (1960).

Our review of the record indicates that ALJ Christianson did not act in an arbitrary or capricious manner nor did he abuse his discretion in the conduct of the evidentiary hearings in this proceeding. Additionally, we find that the ALJ's Initial Decision is in accord with the evidence and in conformity with the law. Accordingly, we shall deny the Protestant's Exceptions Nos. 3, 4, 5, 6 and 7.

Exceptions No. 7 through 10 are related to the ALJ's numerically referenced short descriptions of the evidence presented by the supporting shippers. The numerical listings in the exceptions corresponded to the ALJ's numerical listings for each of the various witnesses. The main focus of the Protestant in Exceptions Nos. 7-10 is that ALJ Christianson abused his administrative discretion. However, we have reviewed in detail the exceptions of the Protestant to these evidentiary findings of the ALJ, and we find the Protestant's exceptions on these points to be meritless.

Accordingly, we shall deny the Protestant's Exceptions Nos. 7, 8, 9 and 10.

We note that Exceptions Nos. 11, 12, 13, 14, 15, 16 and 17 are not in strict conformity with Section 5.533(b) of our Rules of Administrative Practice and Procedure, 52 Pa. Code §5.533(b). Section 5.533(b) provides that:

An exception shall be stated in specific, numbered paragraphs, identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision. Supporting reasons for the exception shall follow a specific exception. (Emphasis Added)

Consonant with the aforecited provision, we shall summarily deny the Protestant's Exceptions Nos. 11, 12, 13, 14, 15, 16 and 17.

The Protestant Exceptions Nos. 18 and 19 concern the ALJ's finding that substantial evidence exists to support a grant of full state-wide authority. Specifically, the Protestant contends that the ALJ erred in concluding at pages 61-62 of the Initial Decision that:

I do not find the support for state-wide authority to be overwhelming but upon reflection, I conclude that the support is substantial and that a full state-wide grant (subject to the restrictive amendment) has been made out.

As stated supra, it is incumbent upon the ALJ to delineate the scope of the authority granted consonant with the evidence presented. Our review of the record indicates that the Applicant provided several witnesses who, in our view, satisfy the criterion of "representative sampling" setting forth a cross-section of the community in need of the proposed service. Blue Bird.

Our careful review of the record leads us to conclude that the ALJ's recommended grant of authority is supported by substantial evidence in the record. Therefore, we shall deny Protestant's Exceptions Nos. 18 and 19.

We note that Exceptions Nos. 20, 21 and 22 are not in conformity with Section 5.533(b) of our regulations. The Protestant has failed to provide supporting reasons for these Exceptions. Accordingly, we shall deny, Protestant's Exceptions Nos. 20, 21 and 22.

#### Conclusion

We have carefully reviewed the record as developed in this proceeding including the Briefs, Exceptions and the ALJ's Initial Decision. We conclude that the ALJ's Initial Decision is amply supported by substantial evidence in the record. We further conclude that the Exceptions of the Protestant are not meritorious and, therefore, they are denied; **THEREFORE,**

#### **IT IS ORDERED:**

1. That the Exceptions filed on February 5, 1993, by Courier Unlimited, Inc., to the Initial Decision of the Administrative Law Judge herein, be, and hereby are, denied.

2. That the Application of Towaway Express, Inc., at A-00106208, F.0001, Am-A, as amended and subject to further limitation in the Initial Decision herein, is approved and that the certificate issued to Applicant at A-00106208, F.0001 be amended to include the following authority:

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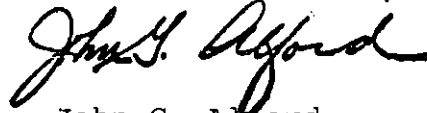
Fidelity Bank, Union National Bank, Independence Bancorp., (including Bucks County Bank, Independence International, Freedom Valley Bank, Lehigh Valley Bank and Cheltenham Bank) located in the Counties of Bucks, Chester, Delaware, Montgomery and Philadelphia, and the City of Allentown, Lehigh County, to points in said Counties and City and vice versa.

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4. That the authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to the Applicant, shall not be construed as conferring more than one operating right.

5. That, in the event the Applicant has not, on or before sixty (60) days from the final date of service of this Order, complied with the requirements set forth herein, the Application may be dismissed without further proceeding.

BY THE COMMISSION,



John G. Alford  
Secretary

(SEAL)

ORDER ADOPTED: June 24, 1993

ORDER ENTERED: JUN 30 1993

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*O/O F. I-Am-A.*

4a. Article Number  
**044500**

4b. Service Type  
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 Certified  COD  
 Express Mail  Return Receipt for  
Merchandise

*Esq.*  
*Raymond A. Thistle*

7. Date of Delivery  
**7-6-93**

5. Signature (Addressee)

8. Addressee's Address (Only if requested  
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*[Signature]*

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4a. Article Number *4505*

4b. Service Type

- Registered  Insured  
 Certified  COD  
 Express Mail  Return Receipt for Merchandise

*Esq.*

*Keith B. Tichel*

5. Signature (Addressee)

7. Date of Delivery

*DM 7-6-93*

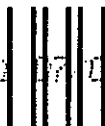
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6. Signature (Agent)

*John Copp*

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*010*  
*F.0001 Am-A*  
*LIDA*

4a. Article Number *044487*

- 4b. Service Type
- Registered  Insured
  - Certified  COD
  - Express Mail  Return Receipt for Merchandise

5. Signature (Addressee) *James H. R. Casey Esq*

7. Date of Delivery

6. Signature (Agent)

8. Addressee's Address (Only if requested and fee is paid)

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