

Decision No. 20484

**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

F. M. HODGE, JOHN D. KWIS and  
 H. A. ROSE, a co-partnership,  
 doing business under the fic-  
 titious name of the SAN JOAQUIN  
 VALLEY TRANSPORTATION COMPANY,  
 Complainants,

Case No. 2516.

-vs-

DAVID M. GARVER,  
 Defendant.

In the Matter of the Application of  
 DAVID M. GARVER, for certificate of  
 public convenience and necessity to  
 operate freight service between  
 Fresno, Farmersville, Exeter, Lind-  
 say, Strathmore, Porterville, Orange-  
 hurst and Zante.

Application No. 14611.

Newlin & Ashburn and Arthur T. George for Complainants  
 in Case 2516, and for Protestants F. M. Hodge, John D. Kwis  
 and H. A. Rose in Application 14611.

U. C. Hayden and W. A. Conn for applicant in Application 14611.

N. H. Asp for Atchison, Topeka & Santa Fe Ry. Co., Protestants.

W. S. Johnson and A. C. Schmitt for Southern Pacific  
 Company, Protestant.

Edward Stern and W. S. Johnson for American Railway Express  
 Company, Protestant in Application 14611. and appearing  
 in Case 2516, as interests may appear.

W. S. Johnson and D. O. Collamer for Atchison, Topeka &  
 Santa Fe Ry. Co., Protestant.

BY THE COMMISSION:

O P I N I O N

F. M. Hodge, John D. Kwis and H. A. Rose, operating under  
 the fictitious name of San Joaquin Valley Transportation Company,

complainants in the above entitled proceeding, complain and allege in substance and effect that David M. Garver has for more than one year last past been operating auto trucks as a common carrier in the business of transportation of property for compensation over the public highways between Porterville and Fresno and intermediate points without having obtained from the Railroad Commission of the State of California a certificate of public convenience and necessity authorizing such operations. Complainants pray for an order that the defendants be enjoined and restrained from further operating such auto trucks as a common carrier between Porterville and Fresno and way points until he has first obtained from the Railroad Commission a certificate of public convenience and necessity.

David M. Garver, said defendant, by his written answer herein, denies each and all of the material allegations contained in said complaint and alleges further that the truck operations of said defendant over the highways of the State of California are those of a contract carrier.

David M. Garver, in accordance with his amended application herein, has petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by him of an auto truck line as a common carrier of freight between Fresno, Farmersville, Exeter, Lindsay, Strathmore, Porterville, Orangehurst and Zante and intermediate points.

Applicant proposes to charge rates and to operate under a time schedule in accordance with amended Exhibits "A" and "B" attached to said application and to use the equipment described in Exhibit "C."

Southern Pacific Company, The Atchison, Topeka & Santa Fe Railway Company, American Railway Express Company and San Joaquin Valley Transportation Company protested the granting

of said application.

Public hearings on the above entitled proceedings were conducted before Examiner Satterwhite at Fresno and Porterville, the matters were submitted and are now ready for decision. Said matters were consolidated for the purpose of receiving evidence and for decision, for the reason that the territory involved and proposed to be served in said proceedings is substantially identical.

Complainants called as their own witnesses David M. Garver, defendant, and applicant in the above entitled proceedings, together with several other witnesses who have employed the defendant to transport commodities between Fresno and Porterville and other communities proposed to be served.

David M. Garver also called a large number of witnesses in support of his proposed service.

The undisputed evidence shows that ever since October 22, 1927, or thereabouts, the said defendant has without any authority from this Commission been maintaining and conducting daily, except Sundays, an auto freight service between Fresno and Porterville and the other intermediate points named in the said application; that the number of his patrons at the time of the hearing of these proceedings totalled about 45 merchants and business men engaged in business in these various communities. These patrons have consisted for the most part up to the present time of retail merchants who deal in groceries, meats and fresh fruit and vegetables. It appears, without contradiction, that the defendant and applicant has secured the patronage of these merchants both by general solicitation on his own part and by voluntary request from the merchants. Defendant has charged and received compensation at the rate of 20 cents per hundred pounds with some exceptions for nearly all the goods,

wares and merchandise transported by him. He admitted that this rate is too low and would be unprofitable, if he was allowed to operate as a common carrier, and his amended application herein reveals very material and substantial increases in his proposed rate charges over his present rates. In this connection the testimony of many of the merchants testifying at the hearing indicates that the present low rates charged by the defendant has been one of the chief inducements offered by defendant whereby he has been able to attract the large volume of business along the route which he serves.

The record shows that the great bulk of the shipments transported by the defendant to these various towns and communities have been purchased almost wholly from the following wholesale grocers and meat firms of Fresno: Haas Brothers, the United Grocers; Sperry Flour Company; Hobbs and Parsons; Armour & Company; Western Meat Company, Swift & Company and the Virden Packing Company. In no instance have any of the transportation charges been paid by these wholesalers or jobbers, but the consignees in the various towns served have always paid the defendant for their respective shipments at or subsequent to the time of delivery. It further appears that most of the consignees in the communities served by defendant are the regular customers of the above mentioned wholesalers at Fresno and to a large extent their transportation patronage was obtained by defendant by virtue of the recommendations made in his behalf by these wholesale firms. Defendant has no back haul business at all save and except a few empties or crates returned from time to time to Fresno.

Defendant contends that his trucking service and operations between Fresno and Porterville and the other communities served is a private contract service and is based upon

private contracts, either oral or written. Defendant introduced in evidence the following written contract:

Dated Exeter, California,  
October 10, 1927.

"B & O Cash Market hereby agrees that the Mid State Transportation Company shall henceforth attend to the hauling of all my freight to and from Fresno or intermediate points.

"Mid State Transportation Company hereby agrees to perform this service faithfully, but should it be otherwise, B. & O. Cash Market reserves the right to cancel this agreement without further notice."

Signed E. B. Bledsoe and David M. Carver.

The testimony shows that the foregoing written contract was the one in form used by the said defendant and that he began to have these contracts signed up when he was advised that he could avoid becoming a common carrier by securing from any and all patrons their signatures to such a contract. The record shows that practically all the merchants and shippers using his service were requested by defendant to sign the above form of contract.

It appears that the defendant has transported shipments along his proposed route for any and all merchants requesting his service and only in a few and rare instances has he declined to render service along and over the route which he now seeks authority to serve as a common carrier.

We are satisfied from all the evidence in this proceeding that the purpose of the defendant in securing an execution of the above form of contract from practically all those merchants and others who sought and used his truck service was the carrying out of a simple scheme and device to secure all the privileges offered common carriers without assuming any of their duties or obligations.

All of the protestants offered considerable oral and documentary evidence in support of their respective protests to the granting of the above entitled application.

F. M. Hodge, General Manager of the San Joaquin Valley Transportation Company, testified at considerable length to the service rendered by this authorized truck carrier over the route sought to be served by David M. Garver. He testified to the effect that this company, under the regulation of this Commission, had for seven years operated a satisfactory and adequate service between Fresno and the other communities proposed to be served. A daily service except Sundays is regularly maintained by this protestant with trucks leaving Fresno at 7:00 p.m. and arriving at Porterville usually between 8:00 a.m. and 9:00 a.m. Although the applicant David M. Garver testified that the merchants who use his unauthorized service desire an earlier delivery, the record shows that no complaints have ever been made to this truck company for such earlier deliveries. It appears with little or no conflict in the record that the low rate indicated above which the applicant has charged has been the primary reason why he has succeeded in securing from the merchants along the route of the protesting truck line the large volume of fourth class commodities, which constitute almost the total tonnage of applicant out of Fresno.

The evidence offered by the San Joaquin Valley Transportation Company shows that its established rates for all commodities are fair and reasonable and that it cannot compete with the low rates of applicant which are too low for profitable operations as an authorized carrier. The record shows that the protesting truck line has always been ready and willing to serve the merchants along the route over which applicant proposes an additional truck service under any reasonable time schedule desired by them, but has been unable to retain the business of transporting fourth class commodities along the proposed route by reason of the fact that unauthorized truck operators for limited periods obtained this particular transportation business at rates too low to allow successful competition

by the protesting truck carrier. The record also shows, with reference to the transportation of perishable shipments, that the San Joaquin Valley Transportation Company has operated for over five years refrigerator trucks and has carried successfully and efficiently shipments of all perishables, not only over the route desired to be served by applicant from Fresno, but as far south as Los Angeles.

Southern Pacific Company and The Atchison, Topeka & Santa Fe Railway Company, protesting rail carriers, introduced evidence to the effect that they are rendering a satisfactory service between Fresno and all the communities proposed to be served. The record shows that each of these protestants operate a daily freight service, except Sundays, from Fresno to Porterville and other way-points, the freight cars arriving during the night and all shipments being available for deliveries between 7:30 a.m. and 8:00 a.m. Several shippers testified to the adequacy of the existing rail service and the record contains no complaints against these carriers. It appears that local drayage companies make prompt store door deliveries from the rail depots both at Porterville and Lindsay.

After a careful consideration of all the evidence in the above entitled proceedings, we are of the opinion and hereby find as a fact that the operations heretofore conducted by David M. Garver have been those of a transportation company in the carriage of property as a common carrier for compensation over the public highway between Porterville and Fresno and way-points and for which no certificate of public convenience and necessity has been granted by this Commission.

After a careful consideration of all the evidence in the above entitled proceedings, we are of the opinion and hereby find as a fact that public convenience and necessity do not require

