

EME

Decision No. 23313

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

H. C. GREVE,  
Complainant,

vs.

JOE GARCIA and GEORGE SAUL,  
copartners,  
Defendants.

ORIGINAL

Case No. 2871

Rex W. Boston, for Complainant.

Elmer P. Bromley, H. E. Lindersmith  
and Edward B. Jones, for Defendants.

BY THE COMMISSION:

O P I N I O N

H. C. GREVE, complainant herein, possesses a certificate of public convenience and necessity for the transportation of live stock, by automotive vehicles, between Globe Mills Feed Yards, and Union Stock Yards, Los Angeles, and termini as remote therefrom as Dulzura, San Diego County, Imperial Valley, Santa Barbara and Mojave. The service is performed "on call" and no scheduled operation is maintained to or between any points. His focal point is the Union Stock Yards at Los Angeles, and his headquarters are adjacent thereto in the City of Vernon. In his complaint he alleges, in brief, that Joe Garcia and George Saul, copartners, have established and maintain a similar service, with headquarters adjacent to the stock yards, and are conducting the same as a common carrier service over the same routes in direct competition with him and to his injury, without first having obtained authority from this Commission, as required by Chapter 213, Statutes of 1917, as amended.

Defendants, in their answer, deny that they are common carriers, or that whatever transportation they are conducting is over the authorized routes of complainant or in competition with him, or is such a service as requires a certificate of public convenience and necessity provided for in section 5 of said Chapter 213, Statutes of 1917, as amended.

Upon the issues thus joined, a public hearing was conducted by Examiner Williams at Los Angeles. Subsequent to the filing of the original complaint supplements thereto were filed, alleging continuation of said illegal operation to October 3, 1930.

Complainant Greve testified that he has followed trucks of defendants that transported cattle from the Union Stock Yards, Los Angeles, to Grant Brothers, near Ontario, Oehls Packing Company, near Colton and other destinations. His testimony goes no further than that, except to identify Garcia as the driver of the truck.

Through T. E. Johnson, Superintendent of Los Angeles Union Stock Yards, a complete listing of all live stock transported to or from the stock yards by defendants between May 1, and October 2, 1930 (Exhibits Nos. 3 and 4) were placed in the record. While these exhibits show 53 outbound shipments to 26 separate consignees, and 112 inbound shipments from 42 consignors, they show no greater frequency than seven movements to one consignee (El Monte Meat Company, El Monte), and fourteen from one consignor (Walter Greening, San Juan Capistrano) during the period alleged. There is no proof that compensation was paid to defendants for these movements. Union Stock-Yards' tickets (Exhibit No. 2) show delivery charges based on the number of animals in each load, and not a transportation charge. As to movements between fixed termini, these records show five movements each to Rosemead Packing Company, Rosemead, Grant Bros., Ontario, and Paulson Packing

Company, San Fernando, and three to Oehls Packing Company at Colton. As before stated, these movements are not supported by proof of compensation to defendants.

That defendants are conducting their business for compensation and as a common carrier, complainant sought to prove by public advertisements of defendants (so admitted by them) in Western Live Stock Journal (Exhibit No. 1) and the Premium List of the Fifth Annual Live Stock Show at Los Angeles (Exhibit No. 5). In the advertisement of May 1, and other dates in the Live Stock Journal, defendants stated:

"Ship by Truck. Cattle - hogs - sheep, and save shrinkage. We know how. Many years of experience trucking live stock. Our prices are reasonable. Carloads are our specialty. Service day or night. No trip too long or short, etc." (including address and telephone number).

That this of itself is an offer by defendants to the public to conduct a service as a common carrier between fixed termini or over a regular route must seriously be doubted. Subsequently, after the filing of the complaint herein, the advertisements omitted any reference to prices.

Substantial proof of compensation is found in the testimony of Tom Kardashian and J. P. Loubet. Kardashian testified as to seven shipments of hogs from the ranch of the San Pedro Commercial Company at Buena Park, five shipments being to Los Angeles and two to Vernon, and in each case stated the price collected by defendants, ranging from \$10.00 to \$20.00 a load, according to the number of animals hauled. Through Harry F. Biedleman, a hog raiser near Buena Park, complainant established the fact that his hauling had been solicited by Garcia, and also that Garcia asked less for hauls than complainant's rates. Loubet paid for two hauls to Pomona. There is no direct testimony as to compensation for other hauls.

At the conclusion of complainant's testimony, defendants elected to rest without introducing any testimony in their behalf.

The original certificate for complainant's "on call" authority was granted to his predecessor, C. E. Warrington, by Decision No. 13835 on Application No. 9979, dated July 23, 1924. Five routes between Globe Mills Feed Yard and Union Stock Yards and packing houses were authorized, none farther away than Signal Hill (Long Beach). By Decision No. 15228 on Application No. 11125, dated August 13, 1925, fourteen additional main routes, with branches and laterals covering practically all of California south of Mojave and Santa Barbara, were granted Warrington. On December 31, 1925, the Commission promulgated its Decision No. 15818 on Application No. 11303 of Ben Moore. On February 8, 1926, Warrington's certificates were transferred to E. C. Greve, complainant herein, by Decision No. 15953 on Application No. 12197, only fifteen days after rehearing in the Ben Moore case had been denied by this Commission, and before an appeal to the Supreme Court had been denied by that body.

We have cited transactions contemporaneous with the Ben Moore case because we believe, after inspection of the record in the instant proceeding, that defendants are in the same status as to their operation--that they are "on call" carriers, not operating over regular routes nor between fixed termini, unless, perhaps, continued frequency of operation between specific points does, in fact, bring them under the provisions of Chapter 213, Statutes of 1917, as amended (27 C.R.C. 388). Let us test this frequency of operation during the period covered by the complaint (May 1, to October 2, 1930), based on Exhibits Nos. 3 and 4.

The most frequent service was between San Juan Capistrano and Union Stock Yards--14 times between May 18, and September 2, and at no other time, and to several consignees.

The next most frequent is between the stock yards and El Monte, seven times, between August 19, and September 15, and at no other time.

The next most frequent is between stock yards and San Fernando, five trips between June 7, and August 14.

Analysis of the record shows no greater frequency or number of hauls. It is apparent, therefore, that the frequency shown is not convincing of "regular" operation between fixed termini in these instances.

The Kardashian shipments between Buena Park and Los Angeles, Los Angeles Union Stock Yards (in Los Angeles County) or Vernon were made May 7, June 5, August 19, September 30, and October 1, 1930; certainly not a frequency constituting regularity of operation between any fixed termini or over a "regular" route.

We, therefore, upon the record herein, find as a fact that defendants have not brought their operation within the provisions of Chapter 213, Statutes of 1917, as amended, and that this Commission is without authority to order them to cease and desist operations, as prayed for by complainant. An order dismissing the complaint accordingly will be entered.

#### ORDER

H. C. GREVE having made complaint against Joe Garcia and George Saul, copartners as above entitled, a public hearing having been held, the matter having been duly submitted on concurrent briefs, which have been filed, and now being ready for decision,

IT IS HEREBY ORDERED that the complaint herein be, and the same hereby is, dismissed.

Dated at San Francisco, California, this 26th day of January, 1931.

W. J. [unclear]  
Leon [unclear]  
W. J. [unclear]  
M. B. [unclear]  
Jos. G. [unclear]  
Commissioners.