

Decision No. 26165

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

I. J. NATHAN,  
Complainant,

vs.

JOE GARCIA,  
Defendant.

**ORIGINAL**

Case No. 3408.

Rex W. Boston, Esq., for Complainant.  
R. S. Sawyer, Esq., for defendant.  
Reginald L. Vaughan, Esq., for Regulated Carriers,  
Inc., Intervener.

Richard E. Wedekind, Esq., for Pacific Electric  
Railway Company, and Pacific Motor Transport  
Company, Interveners.

BY THE COMMISSION:

O P I N I O N

The complainant I. J. Nathan is engaged in the operation of a truck line for the transportation of livestock between Los Angeles and various points within the State of California. The operations as conducted are by authority of a certificate originally granted to C. H. Warrington by Decision No. 13835, Application No. 9979, July 23, 1924, acquired by H. C. Greve by Decision No. 15953, Application No. 12197, February 8, 1926 and transferred to complainant I. J. Nathan by Decision No. 25335, Application No. 18493 November 7, 1932.

Complainant charges that defendant Joe Garcia is engaged in the business of transporting livestock as a common carrier for compensation, between Los Angeles and points in

California, over the public highways between fixed termini without having first obtained a certificate of public convenience and necessity for such operations as required by Chapter 213, Statutes of 1917.

Public hearings were held before Examiner Geary at Los Angeles on March 29 and 30 and May 10, 1933. The matter was submitted and is now ready for an opinion and order.

Defendant maintains that he is operating as a private or contract carrier and not over a regular route or between fixed termini. The evidence shows that defendant now operates and for more than three years past has operated over the public highways between Los Angeles and points which may be generally described as Fresno in the San Joaquin Valley, Santa Maria on the coast line and Bishop in the Owensyo region, to the north and San Diego and Imperial Valley to the south. The points just mentioned are the extremes and defendant accepts livestock at almost all of the intermediate shipping points. Some twenty-eight exhibits furnishing details of stock consignments were filed at the hearing and these show a fairly constant movement of livestock to Los Angeles from the following points:

Calipatria, Brawley, Calexico, Holtville, Westmoreland, Bakersfield, Tehachapi, Santa Barbara, Ventura, Santa Paula, Redlands, Santa Ana, Chino, Hemet and Pomona.

An exhibit (Number 27) shows that defendant regularly advertises in the Western Livestock Journal, a weekly magazine, generally circulated among the stock people inviting the public to patronize the trucks. The advertisements employ the following persuasive language: "Fast, dependable service, careful and competent drivers, double decks for hogs and sheep, one carload in each truck and trailer, no job too big for me. We go any

time day or night, etc."

Witnesses representing consignees at Los Angeles presented exhibits and testified in detail as to the volume of shipments, number of animals in each load, and the charges paid. The testimony showed very clearly that this defendant has been serving almost all of the livestock dealers in Los Angeles with perfect regularity; that apparently he entered into no written contracts and that the services are being performed under verbal agreements. As a general rule the charges collected were those published in railroad tariffs between the same points of origin and destination. Defendant, however, renders a service superior to that given by the railroads by reason of the fact that his trucks will pick up the animals at the ranch shipping points. The testimony also shows that Mr. Garcia was formerly an employee of H. C. Greve and after leaving the organization of the predecessor of this complainant secured a truck and became a competitor in the same territory, serving at the beginning only the movements between Los Angeles City points and gradually enlarging the scope and volume. The equipment now consists of four trucks and four trailers.

Defendant has accepted practically all livestock offered for transportation between the points within the territory described and only refused occasional shipments when equipment was not available or the payments offered were not satisfactory. Defendant's operations, while not on fixed schedules are performed with regularity in response to any and all shippers or receivers and most of the transportation is destined to either Los Angeles, Vernon, Pomona or Anaheim from regular designated points. The limited amount of services performed to off-route points is not great in volume and does not alter the

character of operations between fixed termini.

Defendant does not possess a certificate of public convenience and necessity as a common carrier and has no legal rights to perform a common carrier service as is now being given to the public. An order should be issued requiring defendant to cease and desist until such time as the operations performed have been authorized according to the statute.

An order of this Commission finding an operation to be unlawful and directing that it be discontinued is in its effect not unlike an injunction issued by a court. A violation of such order constitutes a contempt of the Commission. The California Constitution and the Public Utilities Act vest the Commission with power and authority to punish for contempt in the same manner and to the same extent as courts of record. In the event a party is adjudged guilty of contempt, a fine may be imposed in the amount of \$500 or he may be imprisoned for five days or both. C. C. P., Sec. 1218; Motor Freight Terminal Co. vs. Bray, 37 C.R.C. 224; re Ball and Hayes, 37 C.R.C. 407; Wormuth vs. Stamper, 36 C.R.C. 458; Pioneer Express Company vs. Keller, 35 C.R.C. 571.

It should also be noted that under Section 8 of the Auto Stage and Truck Transportation Act (Statutes of 1917, Chapter 213, as amended), a person who violates an order of the Commission is guilty of a misdemeanor and is punishable by a fine not exceeding \$1,000, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. Likewise a shipper or other person who aids or abets in the violation of an order of the Commission is guilty of a misdemeanor and is punishable in the same manner.

O R D E R

IT IS HEREBY FOUND that Joe Garcia is operating as a transportation company as defined in Section 1, subdivision (c) of the Auto Stage and Truck Transportation Act (Chapter 213, Statutes of 1917, as amended), with common carrier status between Los Angeles and Fresno, Santa Maria, Bishop, San Diego and Imperial Valley, and without a certificate of public convenience and necessity or prior right authorizing such operations.

Based upon the findings herein and the opinion;

IT IS HEREBY ORDERED, that Joe Garcia shall cease and desist directly or indirectly or by any subterfuge or device from continuing such operations;

IT IS HEREBY FURTHER ORDERED, that the Secretary of this Commission shall cause a certified copy of this decision to be personally served upon Joe Garcia, and that he cause certified copies thereof to be mailed to the District Attorneys of Inyo, Kern, Santa Barbara, Ventura, Los Angeles, San Bernardino, Orange, Riverside, San Diego and Imperial, and to the Department of Public Works, Division of Highways, at Sacramento.

The effective date of this order shall be twenty (20) days after the date of service upon defendant.

Dated at San Francisco, California, this 17<sup>th</sup> day of July, 1933.

C. C. Lewis  
Leon C. Hedrick  
W. H. Carr  
W. B. Harris  
Walter W. ...  
COMMISSIONERS.