

Decision No. 28505

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

I. J. NATHAN,

Complainant,

vs.

JOE GARCIA,

Defendant.

Case No. 3408

**ORIGINAL**

In the Matter of the Application )  
of JOE GARCIA for certificate of )  
public convenience and necessity )  
to operate truck line for hauling )  
of livestock service as a common )  
carrier between various points )  
in Southern California, with )  
Los Angeles Union Stock Yards )  
and the Vernon Packing House )  
districts and packing houses and )  
feed yards in and about the City )  
and County of Los Angeles, as the )  
focal centers. )

Application No. 19063

Elmer P. Bromley and H. E. Lindersmith for  
Joe Garcia, applicant in Application No. 19063  
and defendant in Case No. 3408.

Rex W. Boston, for James A. Ross and/or I. J. Nathan,  
protestants in application; also for I. J. Nathan  
and/or James A. Ross as his interest may appear  
in complaint case.

Robert Brennan and Wm. F. Brooks, for The Atchison,  
Topeka & Santa Fe Railway Co., protestant in  
application, and as interested party in complaint  
case.

R. E. Wedekind for Southern Pacific Company, Pacific  
Electric Railway Company and Pacific Motor Transport  
Company, protestants in application and interested  
party in complaint case.

E. E. Bennett and E. W. Renwick for Los Angeles &  
Salt Lake Railway Company, protestants in application  
and interested party in complaint case.

CARR, Commissioner -

OPINION and ORDER ON REHEARING IN CASE No.3408

OPINION and ORDER ON APPLICATION NO.19063

On November 12, 1932, I. J. Nathan filed his complaint against Joe Garcia charging unlawful common carrier operations. On July 17, 1933, by Decision No.26165, Garcia was ordered to cease and desist his operations. On August 29, 1933, a re-hearing was granted. The effective date of the cease and desist order has been extended from time to time, the latest order extending it to November 21, 1933.

On August 23, 1933, Joe Garcia filed his application seeking, in general, certification for the operations from which he was ordered to cease and desist.

These two matters were consolidated for hearing and were heard on October 26th and 27th, at which time they were submitted.

The complainant, Nathan, has disappeared. There is before this Commission, and being disposed of concurrently herewith, an application by James A. Ross to declare the Nathan right vested in him upon the ground that Nathan was his agent and that the Greve certificate was purchased by him from Greve's trustee in bankruptcy, the title being taken in Nathan's as a matter of convenience. Nathan or Ross have now but one unit of equipment in shape for operation. No operations of any consequence are being carried on under the certificate.

Joe Garcia formerly worked for Greve when the latter held and was operating under his certificate. Over four years ago Garcia left the employment of Greve, worked for the Wilson Packing Company about six weeks and then started on his own account in the business of moving livestock by truck. For a time he operated in partnership with George Saul. In 1930 Greve sought a cease and desist order against Garcia and Saul.

The Commission, however, concluded that the operations complained of were essentially radial in nature and did not require certification, and dismissed the complaint (Greve vs. Garcia et al., 35 C.R.C. 735.) It was recognized that the Garcia-Saul operations might attain a frequency and regularity that would bring them within the category of operations requiring certification in order to be lawful. Shortly after this decision, which was in January, 1931, Garcia consulted his attorney respecting the advisability of seeking a certificate and was advised that in view of the Commission's decision no application should be made. Garcia, who by this time had acquired the business, from time to time renewed his equipment and secured some, but not a substantial amount of additional equipment.

Greve again complained of Garcia's operation on April 20, 1932 - (Case No.3241). Hearings on the complaint started but Greve having been thrown into involuntary bankruptcy, a dismissal of the complaint was requested by his counsel. It was dismissed.

The controversies presented by the case and the application have to do with the movement of livestock by truck in the southern part of the state. This movement has assumed large proportions. Stock is trucked chiefly from the Union Stock Yards at Vernon to packing houses in Vernon and in Los Angeles, Anaheim and near Pomona; from ranches to the Union Stock Yards and to packing houses; and between the stock yards and feeding grounds. A substantial part, if not the bulk of this business of transporting livestock has moved from rail to truck. The truck movement radiates out from the Los Angeles Metropolitan District, a distance of from 200 to 250 miles. Truck transportation is

quicker than rail; it gathers the stock at the ranch obviating the necessity of trailing into the railroad yards, seems to cause less shrinkage in the process of transportation and holds forth other advantages. At present there are approximately 70 truck and trailer units operating in the southern part of the state. Of these Garcia has 5, and Nathan or Ross 1 or 2. There are about 30 operators, many of whom have but one unit. They operate from various points ranging from Santa Maria and Fresno to the Imperial Valley. There is not a surplus of equipment.

This method of transportation, at first perhaps merely a convenience to the livestock industry, has developed to a point where it may properly be said to have become a necessity. Certainly the industry would resent bitterly its elimination. If of a nature requiring certification, the character and make-up of the operators by which carried on are such that public authority would be exceeding the bounds of reasonable discretion in attempting to confine or limit the movement to but one operator.

The most difficult question presented is whether the operations of Garcia, which apparently are typical of those of other operators, are of a nature to require or justify certification. Stated differently, have his operations, which in 1930 were deemed to be radial in nature, acquired a frequency and regularity such as to justify on the one hand a cease and desist order or on the other certification? It is always a nice question to locate the line between radial and regular operations. The criteria to aid in fixing the line are not definite nor certain. Obviously, under such circumstances, an operator in the situation of Garcia should not be penalized for any error of judgment in making a determination requiring such nicety of distinction.

If it be concluded here that Garcia's operations are still of a radial nature, as they formerly were held to be, then the complaint and the application should both be dismissed. If on the other hand the conclusion is that they have acquired the status of regularity, their certification now would render unimportant the disposition of the complaint case.

Garcia now asks for a certificate over various routes reaching out from the Los Angeles Metropolitan District into all sections of Southern California where livestock is raised, and irrespective of the regularity or frequency of his present movements offers to serve on call all demands from the territory reached by such routes. So far as the complaint case is concerned, it must be concluded that as to some at least of Garcia's business he is actually operating regularly. As corollary to this conclusion the Commission's jurisdiction to certificate attaches and the evidence clearly establishes public convenience and necessity for the general service now conducted and as proposed to be conducted by Garcia. It would hardly be practical to separate his operations, certificating only those as to which a cease and desist order would lie and declaring the others to be at present radial in nature, nor is it necessary to attempt such a course in view of Garcia's offer of service.

The routes as to which certification is sought are described in Exhibit 13, and the rates proposed to be published and charged are set forth in Amended Exhibit A of the application. Lateral rights of 10 miles on either side of the several routes are shown to be adequate to reach the various ranches where livestock movements originate. Some reference should be made to the proposed rates. They are, according to Garcia, the rates which he has long charged.

Apparently the rate structure just grew. Garcia, when he started hauling for a customer, made a rate which he thought was about the corresponding rail rate. Sometimes, as a matter of fact, it was higher and sometimes lower. The structure as thus built up has many inconsistencies. In various particulars it would seem vulnerable to attack by shippers for undue preference and prejudice. This Commission, in a proceeding of this character, will not perform for applicant the work of preparing a proper tariff. He should, in formally filing a tariff, seek to remove the inconsistencies contained in his proposed rates and start out as a regulated carrier with a tariff less subject to criticism and attack. The order herein will give the applicant some leeway to correct and perfect his tariff proposals.

I recommend the following form of order:

ORDER

Petition for rehearing having been granted in the above entitled Case No.3408, rehearing having been held and the matter having been duly submitted and now being ready for decision,

IT IS HEREBY ORDERED that Decision No.26155, dated July 17, 1933, be and the same hereby is reaffirmed in all respects.

IT IS HEREBY FURTHER ORDERED that the effective date of said decision be and the same hereby is extended to and including December 1, 1933.

Joe Garcia having made application for a certificate of public convenience and necessity to establish and operate service as a common carrier of livestock only and on call only to and from ranches, packing houses, feed yards and stock yards, within the area bounded by the terminal points of Santa Maria, Fresno, Bishop, Imperial Valley, including Calexico, and San Diego and stock yards and packing houses and feed yards in and about Los Angeles, over certain routes and, as amended, ten miles on either side thereof,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation of such service between said terminal points and Los Angeles and between all intermediate points and ten miles on either side of the routes traversed, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and the same hereby is granted to Joe Garcia over and along the following routes, and ten miles on either side thereof:

Routes to and from Union Stock Yards, Vernon, California:

1. Los Angeles Union Stock Yards via 26th and Santa Fe Avenue; Santa Fe Avenue to 9th Street; 9th Street to Heuser Packing, 2300 East 9th Street, Los Angeles.
2. Los Angeles Union Stock Yards; Vernon Avenue to Santa Fe Avenue; Santa Fe Avenue to Aliso Street; Aliso Street to Vignes, to Cudahy Packing Company, 803 Macy Street, Los Angeles, California.
3. Same as Route No.2 to Wilson & Company, 1000 Lyons Street, Los Angeles, California.
4. Stock Yards to Downey Road to Bandini Road; Bandini Road to Atlantic Blvd.; Atlantic Blvd. to 9th Street; East on 9th Street to Whittier Blvd.; Whittier Blvd. to Durfee Road; Durfee Road to Valley Blvd.; Valley Blvd. to Pomona, Ontario and San Bernardino.
5. Downey Road to Vernon Avenue; Vernon Avenue to Santa Fe Avenue; Santa Fe Avenue to 9th Street; 9th Street to Alameda; North on Alameda to Spring Street; Spring Street to Avenue 20; Avenue 20 to San Fernando Road, to San Fernando.
6. Same as Route No.5 to Burbank; to Magnolia Avenue and to Lankershim.
7. Downey Road to Bandini; to Telegraph Road, thence to Santa Fe Springs; Santa Fe Springs to Buena Park and to Huntington Beach Road. Take first street, Artesia, into Anaheim.



8. Downey Road to Slauson; Slauson to Norwalk; Norwalk to Cerritos Avenue; thence to Bellflower.
9. Downey Road to Slauson; Slauson to Alameda; to Florence; Florence Avenue to Redondo Blvd.; thence to Inglewood to New Manchester; New Manchester to Sepulveda; Sepulveda to Centinela into Venice and Santa Monica.
10. Vernon Avenue to Santa Fe Avenue; Santa Fe Avenue to 9th Street; 9th Street to Alameda; north on Alameda to Spring Street; Spring Street to Avenue 20; Avenue 20 to San Fernando Road; thence north to Weldon Canyon Road to Ridge Route; to Bakersfield and points north to Fresno on State Highway 99; also same route to Tipton; Tipton to Corcoran; also Delano to Porterville.
11. From Los Angeles Union Stock Yards on Vernon Avenue to Santa Fe Avenue; Santa Fe Avenue to 9th Street; 9th Street to Alameda; North on Alameda to Spring Street; Spring Street to Avenue 20; Avenue 20 to San Fernando Road; thence to Saugus; North via Mint Canyon and State Highway to Palmdale, Lancaster and Mojave; from Mojave via highway to Lone Pine, Bishop and Owens valley points; also Mojave via State Highway to Tehachapi and Bakersfield.
12. Follow same route as No.11 to San Fernando Road, to Mission Blvd.; thence to Chatsworth; Chatsworth to Santa Susana, Owensmouth, Simi and Moorpark.
13. Via Route No.11 to San Fernando Road; thence to Castaic Junction; thence on State Highway to Piru, Fillmore, Santa Paula, Saticoy and to Ojai Valley.

14. Downey Road to Vernon Avenue; Vernon Avenue to Santa Fe; Santa Fe to Slauson; Slauson to Centinela; Centinela to Washington; Washington to Lincoln Blvd.; Lincoln Blvd. to Roosevelt Blvd.; Roosevelt Blvd. to Oxnard; Oxnard via State Highway to Ventura; Santa Barbara, Goleta and Buellton; via Coast Highway to Santa Maria.

15. Downey Road to Bandini, Bandini to Atlantic; North on Atlantic to Garvey; Garvey to San Gabriel Blvd.; San Gabriel Blvd. to Colorado Blvd.; Colorado Blvd. to Pasadena; thence Colorado Blvd. to Sierra Madre; thence to Covina, San Dimas, Glendora; thence via State Highway on Foothill Blvd. to San Bernardino; also San Bernardino via State Highway to Barstow, Victorville, Daggett and Goffs.

16. Downey Road to Atlantic Blvd.; Atlantic Blvd. to 9th St.; 9th St. to Whittier Blvd.; Whittier Blvd. to Garvey Road; Garvey Road to Valley Blvd.; Valley Blvd. to Ontario; Ontario to Bloomington; Bloomington to Colton; on State Highway from Colton to Redlands; Redlands to Banning and Beaumont; to Indio, and Coachella; thence to Westmoreland, Brawley, El Centro, Calexico and Imperial Valley points; also same route to Ontario, thence via highway to Wineville, Riverside, Perris and Hemet.

17. Downey Road to Bandini Road; to Telegraph Road; to Santa Fe Springs; Santa Fe Springs to Buena Park; thence to Santa Ana via Highway #101; Highway #101 to Oceanside; Oceanside to Vista via State Highway; Vista to Escondido; thence to Ramona via Highway; thence to Witchcreek on State Highway; Witchcreek to Warner Hot Springs; also same route to Oceanside; thence State

Highway to Bonsall, Fallbrook and Pala.

18. Same route as No.17 to Santa Ana; thence to Santa Ana Canyon via Highway to Corona; thence to Elsinore via State Highway; Elsinore to Perris and Hemet.

19. Same route as No.17 to Oceanside; thence on Highway No.101 to San Diego and Mexican border.

20. Downey Road to Slauson Avenue; Slauson Avenue to Alameda; Alameda to Compton, Dominguez and Wilmington, and ten miles on each side of all the highways and routes herein named,

and subject to the following conditions:

1. Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.

2. Applicant shall file, in triplicate, and make effective within a period of not to exceed thirty (30) days from the date hereof, on not less than ten days' notice to the Commission and the public a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which, in volume and effect, shall be substantially in accord with the rates and rules shown in amended Exhibit "A" filed at the hearing insofar as they conform to the certificate herein granted, or rates satisfactory to the Railroad Commission.

3. Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days from date hereof, on not less than five days' notice to the Commission and the public, time schedules covering the service herein authorized, in a form satisfactory to the Railroad Commission.

4. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

5. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

The foregoing Opinion and Order are hereby approved and adopted as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 16<sup>th</sup> day of November, 1933.

C. J. Seavey  
Leon Oulley  
M. H. Cunn  
W. B. Harris  
Arthur J. ...  
COMMISSIONERS.