

ORIGINAL

Decision No. 58826

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Cecil R. Garrett and Wayne J. Thomas doing business as GARRETT and THOMAS LIVESTOCK TRANSPORTATION CO. }

Case No. 6250

Ivan Mc Whinney, for respondents.
Martin J. Porter, for the Commission staff.

O P I N I O N

On April 7, 1959, this Commission issued an order of investigation into the operations, rates and practices of Cecil R. Garrett and Wayne J. Thomas, doing business as Garrett and Thomas Livestock Transportation Co., who are engaged in the business of transporting property over the public highways as a highway common carrier and as a permitted carrier under Section 3515 of the Public Utilities Code. Pursuant to said order a public hearing was held on June 5, 1959 at Los Angeles before Examiner James F. Mastoris at which time evidence was presented and the matter submitted.

Purpose of Investigation

The purpose of this investigation is to determine whether the respondents violated Section 494 of the Public Utilities Code by charging and collecting a different compensation for the transportation of property than the applicable rates and charges specified, in their tariff schedules filed and in effect at the time of the transportation.

Staff's Evidence

Evidence produced by the staff of the Commission indicated that the respondents improperly rated 21 shipments of cattle that were transported primarily between various southern California points

during the period from March to May 1958. It was alleged that violations of the respondents' tariff occurred as follows:

- (1) That the carrier failed to collect any compensation for transportation performed as to six of these shipments;
- (2) That it failed to rate shipments separately on more than half of the shipments in question;
- (3) That it failed to obtain a public weighmaster's certificate on many shipments;
- (4) In the absence of such public weighmaster's certificate the carrier failed to use the specified weight required by its tariff;
- (5) That it failed to show proper description of the livestock carried;
- (6) That it failed to show the precise point of origin on its freight bills; and
- (7) That it failed to assess charges on the minimum weight specified for two units of equipment as required by its tariff.

Respondents' Position

The respondents did not challenge or contest the staff's charges but conceded that the aforementioned violations took place as described. Mitigating evidence was offered to the effect that the failure to observe the tariff rules was not the result of a deliberate attempt to depart from the tariff but rather the consequence of simple negligence and careless billing practices. Statements were not mailed or bills not collected for transportation performed because of an apparent oversight on the part of the firm's bookkeeper and not because of any arrangement to grant preferences to shippers. Further it was pointed out that had the documentation been correct many of the errors in rating that occurred would have been avoided. In addition it was explained that some mistakes were

attributed to the carrier's use of conventional livestock trucks when the circumstances of the hauling called for the transportation of the cattle by new specialized equipment. Not possessing these types of trucks the respondents were forced to use more than one unit of equipment and as a result inadvertently mis-rated the entire movement. Because of the late-hours delivery of cattle weight certificates could not always be obtained. The carrier in such cases usually utilized the more accurate purchaser's weight rather than the arbitrary weight specified in Item 123 of its tariff.

Corrective steps changing the billing and operational procedure which precipitated this investigation have been recently inaugurated by the respondents in order to improve their rating practices.

Findings

In view of the undisputed evidence we find that the respondents violated Section 494 of the Public Utilities Code by assessing and collecting a charge for the transportation of property other than rates and charges specified in their tariffs. Additional relevant facts as to the shipments in question, together with our conclusions concerning the correct minimum charges for these shipments, are set forth in the table that follows:

<u>Freight Bill No.</u>	<u>Date</u>	<u>Charge Assessed By Respondents</u>	<u>Correct Minimum Charge</u>	<u>Undercharge</u>
1289	3/10/58	\$ 44.95	\$ 66.99	\$ 22.04
1311	3/12/58	275.33	311.08	35.75
1340	3/18/58	505.91	516.00	10.74
1347	3/19/58	83.12	91.92	8.80
1685	5/22/58	232.44	281.84	49.40
1370	3/24/58	198.00	216.00	18.00
1378	3/27/58	196.64	216.00	19.36
1558	4/30/58	620.87	666.03	45.16
1568	5/ 1/58	156.00	238.68	82.68
1650	5/15/58	185.68	204.00	18.32
1662	5/18/58	165.00	207.46	42.46
1666	5/19/58	79.18	88.46	9.28
1675	5/20/58	230.67	310.36	79.69
1680	5/21/58	392.50	452.00	59.50
1683	5/22/58	71.28	102.00	30.72

Total Undercharges amount to \$531.90

Penalty

Although negligence in rating may be understandable we cannot condone negligence producing the type and scope of violations of a carrier's tariff found in this matter, especially where the operators have been in the transportation business for many years and should be familiar with truck rating procedures and their own tariff. Charging rates which depart from the tariff rate on file have a disturbing economic impact on other carriers for-hire regardless of whether the departure is caused by deliberate or careless conduct and even when the percentage of violations is comparatively small. Therefore in view of all the circumstances including the evidence in mitigation respondents' certificate of public convenience and necessity and radial highway common carrier permit will be suspended for a period of five days and they will be ordered to collect the undercharges hereinbefore found and, in addition, the charges not collected for the transportation performed and reflected in the following freight bills:

Freight Bill No. 13337 dated May 4, 1958
Freight Bill No. 13497 dated May 18, 1958
Freight Bill No. 13338 dated May 4, 1958
Freight Bill No. 15735 dated May 19, 1958
Freight Bill No. 13494 dated May 16, 1958

Because of the peculiar circumstances surrounding the transportation of one bull reflected in Freight Bill 13408 dated May 4, 1958

(Part 12 of Exhibit 2) and in the interests of justice the respondents will not be ordered to collect the charges for this shipment.

This was an unique, infrequent charitable haul in deference to the customs and practices of the livestock dealers and compensation to the carrier was not contemplated or expected. Respondents will be directed, to examine their records from June 1, 1958 to the present time in order to determine whether any additional undercharges have occurred, to file with the Commission a report setting forth the additional undercharges, if any, they have found. Respondents will

also be directed to collect any such additional undercharges.

O R D E R

A public hearing having been held and based upon the evidence therein adduced,

IT IS ORDERED:

1. That Cecil R. Garrett and Wayne J. Thomas shall cease and desist from future violations of Section 494 of the Public Utilities Code.

2. That the certificate of public convenience and necessity to operate as a highway common carrier, acquired by Cecil R. Garrett and Wayne J. Thomas, by Decision No. 39042, dated June 5, 1946, and Radial Highway Common Carrier Permit No. 19-15024 issued to said individuals are hereby suspended for five consecutive days starting at 12:01 a.m. on the second Monday following the effective date of this order.

3. That Cecil R. Garrett and Wayne J. Thomas shall post at their terminal and station facilities used for receiving property from the public for transportation, not less than five days prior to the beginning of the suspension period, a notice to the public stating that their certificate of public convenience and necessity and radial highway common carrier permit have been suspended by the Commission for a period of five days; that within five days after such posting Cecil R. Garrett and Wayne J. Thomas shall file with the Commission a copy of such notice, together with an affidavit setting forth the date and place of posting thereof.

4. That Cecil R. Garrett and Wayne J. Thomas shall examine their records for the period from June 1, 1958 to the present time for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.

5. That within ninety days after the effective date of this decision, Cecil R. Garrett and Wayne J. Thomas shall file with the

Commission a report setting forth all undercharges found pursuant to the examination hereinabove required by paragraph 4.

6. That Cecil R. Garrett and Wayne J. Thomas are hereby directed to take such action as may be necessary, including court proceedings, to collect the charges for transportation performed under Freight Bills Nos. 13337, 13497, 13338, 15735, 13494 as described in Exhibit 2 received into evidence in this proceeding, and to collect the amounts of undercharges set forth in the preceding opinion, together with any additional undercharges found after the examination required by paragraph 4 of this order, and to notify the Commission in writing upon the consummation of such collections.

7. That, in the event charges to be collected as provided in paragraph 6 of this order, or any part thereof, remain uncollected one hundred twenty days after the effective date of this order, Cecil R. Garrett and Wayne J. Thomas shall submit to the Commission, on the first Monday of each month, a report of the undercharges remaining to be collected and specifying the action taken to collect such charges and the result of such, until such charges have been collected in full or until further order of this Commission.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Cecil R. Garrett and Wayne J. Thomas and this order shall become effective twenty days after the completion of such service upon the respondents.

Dated at San Francisco, California, this 28th day of July, 1959.

Cecil R. Garrett
President

Walter H. ...

Theodore H. ...

Commissioners

Peter E. Mitchell

Commissioner C. Lyn Fox, being necessarily absent, did not participate in the disposition of this proceeding.