

ORIGINAL

Decision No. 61662

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of CECIL R.
GARRETT and WAYNE J. THOMAS, co-
partners, doing business as
GARRETT AND THOMAS LIVESTOCK
TRANSPORTATION.

Case No. 6993

Elmer J. Sjostrom, for the Commission staff.
Phil Jacobson, for the respondents.

O P I N I O N

The investigation herein was commenced on October 11, 1960, by the filing of an Order Instituting Investigation to determine whether respondents have violated Section 494 of the Public Utilities Code by charging, demanding, collecting or receiving a different compensation for the transportation of livestock or for any service in connection therewith than the applicable rates and charges specified in Livestock Carriers Local Freight Tariff No. 1, Western Motor Tariff Bureau, and whether respondents have violated Section 494 of the Public Utilities Code by refunding or remitting a portion of the rates or charges specified in said tariff for the transportation of livestock.

A public hearing was held pursuant to said order in Los Angeles before Examiner Kent C. Rogers on January 17, 1961.

The records of this Commission show that respondents have a certificate of public convenience and necessity to operate as

a highway common carrier for the transportation of livestock (Decision No. 39042, dated June 5, 1946, in Application No. 27513), and also have a city carrier permit and a radial highway common carrier permit. The records also show that the respondents' certificate of public convenience and necessity and radial highway common carrier permit were ordered suspended for five days on July 28, 1959, for violation of Section 494 of the Public Utilities Code (Decision No. 58226, dated July 20, 1959, in Case No. 6250).

The staff checked all of the respondents' freight bills for the period from January 1, 1959 to July 31, 1959. It was determined therefrom that during said period the respondents had made overcharges and undercharges, based on their filed tariff (Livestock Carriers Local Freight Tariff No. 1, Western Motor Tariff Bureau, Inc., Agent, W. J. Knoell, Issuing Officer), and had made unlawful rebates on shipments for one consignee, namely, Santa Ana Meat Company. The check showed that during said period respondents undercharged said company \$461.81 for shipments carried pursuant to said certificate; that they overcharged said company \$128.47 for similar shipments; and that they unlawfully rebated to said company \$456.15, for a net undercharge of \$799.49 (Exhibits Nos. 1, 2, and 3). Respondents stipulated that said figures are substantially correct and that they have collected from the company said sum of \$799.49 (Exhibit No. 4). The respondents argued, but presented no evidence in support thereof, that the errors were mathematical and largely caused by the absence of a weighmaster at the point of destination. In view of the absence of proof we are not persuaded by this argument. They also argued that the records will show that the only illegal operations since the prior investigation are those shown on the record herein, and that the Santa Ana Meat Company is no longer a customer of theirs.

From the record herein we find and conclude that respondents violated Section 494 of the Public Utilities Code by assessing and collecting charges for the transportation of property other than the rates and charges specified in the tariffs, and that they have rebated portions of the lawful tariff charges collected in violation of Section 494 of the Public Utilities Code. While the respondents have collected the undercharges referred to, from the consignee, the fact remains that they have engaged in the said unlawful practices within a period of approximately one year after having had their certificate and radial highway common carrier permit suspended for similar illegal practices. Respondents' certificate and permit will be suspended for a period of ten consecutive days.

O R D E R

A public hearing having been held and based on the evidence therein presented and the findings herein,

IT IS ORDERED:

(1) That Cecil R. Garrett and Wayne J. Thomas shall cease and desist from further 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 ten consecutive days starting at 12:01 a.m. on the second Monday following the effective date of this order; and that they shall not lease the equipment or other facilities used in operations under this certificate and this permit for the period of the suspension or directly or indirectly allow such equipment or facilities to be used to circumvent the suspension.

(3) That respondents 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 ten days; that within five days after such posting respondents 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 respondents shall examine their records for the period from October 1, 1960 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, respondents shall complete the examination of their records hereinabove required by paragraph 4 and file with the Commission a report setting forth all undercharges found pursuant to that examination.

(6) That respondents are hereby directed to take such action, including legal action, as may be necessary to collect 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, respondents shall institute legal proceedings to effect collection and 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 14th day of March, 1961.

John E. Hutchins

George G. Hoover

Fredrick B. Holbrook

 Commissioners

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