

ORIGINALDecision No. 67542

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
practices, rates, charges and con-
tracts of LIVE STOCK TRANSPORT
COMPANY, a corporation, and LIVE
STOCK EQUIPMENT LEASING, a cor-
poration.)

Case No. 7358
Filed May 22, 1962

Russell & Schureman, by R. Y. Schureman, for
respondent.
Lawrence O. Garcia, for the Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion to determine, primarily, whether Live Stock Equipment Leasing is the alter ego of Live Stock Transport Company and is being used as a device whereby the transportation of property between points in California is being performed for shippers at rates less than those prescribed in the highway common carrier tariff of Live Stock Transport Company.

A duly noticed hearing was held in this matter before Examiner Rowe, in Los Angeles, on March 13 and 14, 1963 and the matter was submitted. On July 16, 1963, the Commission entered an order setting aside the submission and reopened the matter for the limited purpose of taking evidence on rates. Respondent's petition to set aside the Commission's order of July 16, 1963 was denied on September 24, 1963. A further hearing was held before Examiner Jarvis in Los Angeles, on March 11, 1964. The matter was submitted subject to the filing of the transcript, which was filed on April 9, 1964.

The record discloses that on February 8, 1960 Live Stock Equipment Leasing (hereinafter referred to as Equipment Leasing)

entered into a contract with Coast Packing Company, Inc., (hereinafter called Coast Packing) which in part, provided that, on demand, Equipment Leasing would lease specified units of livestock transportation equipment to Coast Packing at the rate of 22 cents per mile, whether or not the equipment was loaded. The lease also provided that Equipment Leasing was to pay all vehicle license and registration fees on the vehicles; keep the vehicles in good operating condition; furnish all tires, fuel, oils, lubricants, repairs and parts necessary for their operation; and maintain property damage and public liability insurance on the vehicles. The lease also provided that:

"Lessee [Coast Packing] shall have the exclusive possession, use and control of said motor vehicles except at such times that the motor vehicles are in the possession of Lessor for repair and servicing. Lessee shall permit said motor vehicles to be operated only by competent and licensed drivers who shall be employees of Lessee and Lessee shall pay their wages and all social security, payroll and withholding taxes on such wages and carry and maintain workmen's compensation covering said drivers. Lessor shall have no control over the selection, employment or discharge of any of the drivers of said motor vehicles, provided, however, Lessor may require the discharge by Lessee of any driver employed by it who carelessly or negligently damages or threatens damage to any of said motor vehicles."

On January 20, 1961, Equipment Leasing entered into a substantially similar lease with Wilson & Co., Inc., (hereinafter called Wilson). The rental established in the Wilson lease was 21½ cents per mile.

The evidence clearly establishes that the drivers who operated the equipment under the terms of the leases were employed by and received their compensation from Coast Packing or Wilson. Wilson's office manager testified that the drivers who operated the leased equipment under the Wilson lease were employed by Wilson; that Wilson is a party to a contract with the Teamsters Union respecting these drivers; that three of the seven drivers employed by Wilson had been continuous Wilson employees since 1948, 1953 and 1959, respectively; that Wilson is a self-insurer under the California Workmen's Compensation claims to some of the drivers during operations under the lease; and that Wilson had borne all losses for damaged livestock transported in the leased equipment.

It is clear from the foregoing evidence that the transactions involved related to the leasing of operating equipment rather than the furnishing of transportation. In the circumstances it is not necessary to discuss the question of alter ego because, even assuming Equipment Leasing to be the alter ego of Live Stock Transport Company no different result would occur.

No other points require discussion.

The Commission makes the following findings and conclusions.

Findings of Fact

1. The lease of February 8, 1960, between Coast Packing Company, Inc., and Live Stock Leasing was a bona fide lease of operating equipment.

2. The lease of January 20, 1961, between Wilson & Co., Inc., and Live Stock Leasing was a bona fide lease of operating equipment.

Conclusions

1. The evidence fails to establish that either respondent has engaged in any conduct which resulted in a violation of law.

2. This investigation should be discontinued.

O R D E R

IT IS ORDERED that the investigation in Case No. 7358 is hereby discontinued.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 14th day of JULY, 1964.

Frederic B. Halshoff
President
George T. Trover
Hubert L. Brown

Commissioners

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