

ORIGINALDecision No. 73108

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pan American World Airways, Inc.,
a corporation,

Complainant,

vs.

Barrett Transportation, Inc., a
corporation,

Defendant.)

Case No. 8430
Filed May 31, 1966

Leigh Athearn, of Athearn, Chandler & Hoffman, for complainant.
Varnum Paul and John G. Lyons, of Vaughan, Paul & Lyons, for defendant.
 Laurence L. Pillsburg by Leigh Athearn, for Pacific Southwest Airlines; Gordon Pearch by Leigh Athearn, for Western Airlines, Inc.; Noel Dyer and Gene Overbeck, for American Airlines; Brobeck, Phleger & Harrison by Gordon E. Davis, for United Airlines, Inc.; and Noel Dyer and E. Eileen Fleming, for Trans World Airlines, intervenors.
James M. Cooper, for San Francisco Chamber of Commerce, interested party.
Hilton H. Nichols and John F. Specht, for the Commission staff.

O P I N I O N

The complaint, filed on May 31, 1966, charges that the defendant has violated Section 494 of the Public Utilities Code by charging for the transportation of baggage without due regard for the rates and regulations prescribed in its tariff. It is specifically alleged that defendant has billed the complainant one cent per pound for all of the baggage carried for the complainant's

passengers on the defendant's vehicles, from the San Francisco Downtown Terminal to the San Francisco International Airport, pursuant to Rule No. 40(b) of its Local Passenger Tariff No. 3. The said rule makes a charge of one cent per pound for all "baggage carried unaccompanied by a passenger originating at or destined to the San Francisco International Airport." It is further alleged that all or substantially all of the baggage is accompanied by a passenger and that since Local Passenger Tariff No. 3 was never lawfully filed by the defendant, Local Passenger Tariff No. 2 is still in effect, which provides that said baggage be carried free. It is also alleged that the lease agreement from Barrett Terminals under which the defendant operates, provides that the lease is "expressly conditioned" on the bus operator carrying baggage of airline passengers without charge to any "of the initial airline tenants or any subsequent airline tenants." The complaint prays that an order be issued to prohibit the defendant from demanding or collecting said unlawful charge. An answer was filed on June 9, 1966. It denied any unlawful operation, stated the lease provision quoted applies only to baggage the passenger carries on the bus with him and alleges that the charge for unaccompanied baggage is due from the party who tenders it. The answer further alleges that the baggage for which the defendant has charged the complainant was all tendered by the complainant, not by individual passengers, and that the complainant has failed to show the defendant that any of the baggage was accompanied by a passenger.

An amendment to the complaint was filed on June 28, 1966. It added two subparagraphs to the original complaint. Petitions to Intervene were filed on June 24, 1966 by Pacific Southwest Airlines; Trans World Airlines, Inc.; American Airlines, Inc.; United Airlines,

Inc.; and Western Air Lines, Inc. All of the intervenors joined the complainant and prayed for the same relief.

A hearing was scheduled and heard before Examiner Fraser, in San Francisco, on July 1 and 13, 1966. It was submitted on opening and closing briefs which have been received.

About 10 years ago five airlines signed identical leases with Barrett Terminals, Inc., wherein they agreed to occupy and maintain ticket booths in the San Francisco Downtown Terminal. Six more airlines leased space at later intervals. The lease provided for a bus service to transport airline passengers and their baggage from the terminal to the San Francisco International Airport and pursuant to this agreement the present defendant was licensed to operate on the premises. The license contract was executed on September 26, 1957 and included a provision that the bus operator would comply with all of the terms of the lease including carrying airline passengers' baggage without charge. The defendant and the terminal company are owned by different members of the same family but there is no joint ownership or control.

The defendant adopted its Local Passenger Tariff No. 2 (Cal. P.U.C. No. 2) on April 7, 1958 to become effective on April 10, 1958. Defendant and the Commission staff contend that Rule No. 40 of this tariff provides for a one cent per pound surcharge for all baggage transported unaccompanied by a passenger. The complainants dispute this interpretation of the tariff rule. Defendant filed Application No. 47173 (Exhibit 5) and Decision No. 69945 (Exhibit 6), dated November 9, 1965, was issued to authorize the defendant to start providing service from Berkeley to the San Francisco International Airport. The decision prompted the defendant to publish Local Passenger Tariff No. 3 (Cal. P.U.C. No. 3), and it became effective

on November 22, 1965. Complainant contends that the one cent per pound surcharge for all unaccompanied baggage was adopted by Tariff No. 3 without authority and was never included in Tariff No. 2. This interpretation is not accepted by the defendant or the Commission staff.

Prior to August 1, 1965 the airlines weighed all baggage and each passenger was limited to approximately 50 pounds on the ticket he purchased. If the baggage weighed more than the limit a surcharge was imposed for every extra pound. After this date the airlines adopted a dimensional rule which allowed each passenger to carry three pieces of luggage (of no greater circumference than 62 inches, 55 inches and 45 inches, respectively). Baggage destined to points in the continental United States is no longer weighed.

Airline passengers entering the downtown San Francisco terminal either carry their own bags or have them brought in by one of the Sky Cap porters. The latter are employed by an independent hiring company which functions under contract with the airlines. The bags are deposited in front of the airline counter and the ticket agent ties a colored tag and a destination tag to the handle of each bag not carried on the aircraft by a passenger and lifts the tagged bags to a moving runway behind the counter. The moving belt carries the bags to the unloading area, where the porters check airline, destination and flight number, then load the bags on a cart and push it out to the bus loading ramp, next to the bus scheduled to take the baggage to the airport, where it is loaded on the bus by Barrett employees. The colored tags advise the Barrett personnel at the airport where the bag is to be unloaded. The bags are unloaded at the proper terminal of the San Francisco International Airport by Barrett personnel (since April 15, 1966) and stacked on the

sidewalk next to the bus. The Sky Cap porters then carry the bags to the airline concerned. If there is more than one bus load of baggage the bags scheduled for early flights are loaded first. Prior to April 15, 1966 the porters moved the baggage on and off the buses. The Sky Cap porters requested early in 1966 that additional help be hired and it was suggested, defendant claims by the airlines, that the porters cease loading and unloading the buses as a means of reducing their work load. The porters notified the defendant that after April 14, 1966 they would not load the baggage on the buses, nor unload it from the busses. Defendant was forced to hire three men to work three eight-hour shifts daily at the downtown terminal in San Francisco and three more at the San Francisco International Airport. Each man receives a wage of \$20 a day. These men only load and unload the buses. They do not carry bags to the bus or away from the bus.

On April 15, 1966, the defendant advised the airlines that it was forced to start collecting the one cent a pound charge for unaccompanied baggage. Defendant weighed all baggage not carried on the bus, or brought to the bus, by passengers and billed each airline one cent a pound for the total weight of baggage presented each month for transportation to the airport. Bags accompanied by a passenger, i. e., delivered to the bus or carried on the bus by a passenger, were not weighed. Defendant contends that the party presenting the baggage, unless he is a bus passenger, must be charged for its transportation. Defendant also contends that only the airlines can determine whether their passengers will ride to the airport with the defendant. The latter does not see those who use other transportation. Thus, all baggage must be considered unaccompanied until complainant proves otherwise.

The defendant's evidence will be presented first to simplify the recitation of the facts. The president of the defendant corporation testified as follows: After August 1, 1965 the defendant was presented many more bags, larger bags and heavier bags; the number of passengers also increased; defendant contends that some airline passengers are checking their bags with the airline through to destination, then riding to the airport with friends, in a cab, or even in a rented car; defendant is thereby required to transport their baggage without charge, since the passengers do not purchase a bus ticket; defendant's costs have greatly increased in San Francisco and it can no longer afford to provide the free transportation of baggage; there is no way for the defendant to prevent this at the present time and it may be necessary for the airlines to revise their terminal procedure to eliminate the free transportation of baggage; it is defendant's understanding that in at least one city a passenger is required to purchase a bus ticket if his baggage is transported by bus; in another city (Chicago), a bus ticket must be purchased from the airline if the baggage is checked two or more hours before the flight is scheduled to leave; the baggage is accompanied when the person owning it rides the defendant's bus to, or from, the airport, even if the baggage and passenger are transported on different schedules; defendant has never computed the cost of hauling unaccompanied bags and no study was made to determine how many unaccompanied bags are hauled; defendant's tariff provides for an additional charge on baggage over 50 pounds in weight, but there is no practical way to enforce this provision; the airlines suggested that the defendant alter its tariff to include the dimensional baggage rule used by the air carriers, but defendant refused because of a survey which showed

less than 20 out of 27,000 airline check-ins were charged for excess baggage; the airlines also wrote a letter to the defendant wherein they agreed to place a special tag on the bags of all who advise they will not take the bus to the airport; these tags would be purchased (for 50 cents or \$1 each) from defendant by the airline and sold for the same price to passengers who do not take the bus; the purchase of a tag for each bag placed on the bus would reimburse the defendant for transporting the unaccompanied bags; the defendant did not accept the offer; defendant would prefer that passengers who check in with the airlines two or more hours before flight time be required to purchase a bus ticket and that the airlines weigh all bags and report or tag those in excess of 50 pounds.

The witness further testified that the defendant has not charged the one cent per pound on baggage from Berkeley, Oakland or San Jose to the San Francisco International Airport, and does not plan to do so in the future; comparatively small amounts of prechecked baggage are received from these other points and the cost of transporting it is not excessive; defendant is now operating profitably; defendant estimates an additional income of at least \$10,000 a month if the one cent per pound surcharge is authorized.

Six of the complainants presented oral and documentary evidence. Pan American World Airways, Inc., hereinafter called Pan Am provided a witness who testified that Pan Am completed a four day survey of all passengers checking in from 7 a.m. to 4 p.m., on Friday, June 24, 1966; Saturday, June 25, 1966; Sunday, June 26, 1966; and Monday, June 27, 1966 (Exhibit 8). The witness further testified that on June 24 a total of 31 people checked in, with 26 advising they were taking the bus and 5 stating they would not take the bus; on June 25, out of a total of 55, only 6 were not

taking the bus; on June 26, out of a total of 44, only 6 did not go by bus; June 27 had a total of 23 with all taking the bus; thus, out of 153 passengers checking in, only 17 did not take the bus.

The testimony from United Airlines, hereinafter called United, emphasized the importance of the San Francisco Downtown Terminal in the promoting of passenger convenience. The testimony revealed that as soon as the airline passenger arrives at the terminal his baggage is handled and checked through to the destination of his flight. The passenger does not have to carry his bag to the bus, wait until it is loaded, and later unload it. The checking of bags downtown eliminates congestion and the need to present and check the bags at the airport; it does away with the necessity for passengers to arrive at the airport several hours before flight time to anticipate having to stand in line to purchase a ticket and again to check baggage; all this is completed downtown. A witness testified that United checks in between 500 and 1,000 passengers daily; surveys indicate the passengers averaged 1.3 bags checked per person in April-June 1965 (Exhibit 10), and 1.4 bags in April-June 1966 (Exhibit 9); overnight passengers carrying only a briefcase have also increased in number since September 1964 when United started its commuter service. The commuter passengers frequently ride the defendant's buses, but check no baggage.

The tariff (C.A.B. No. 43) under which United operates was placed in evidence as Exhibit 11. Rule No. 26 of the tariff reads in part as follows (all of the airline tariffs have this rule):

"GROUND TRANSPORTATION

Carrier does not assume responsibility for the transportation of any passenger or his baggage between any airport used by such carrier and any city or other place in any area served through such airport. Ground transportation to and from any such airport is provided only by independent operators, who are not agents or servants of any carrier, and at the passenger's expense."

United placed one of the invoices received from the defendant in evidence as Exhibit 12. It reads as follows:

"United Airlines
400 Post Street
San Francisco, Calif.
Attn: Mr. Mason

6-3003

June 24, 1966

According to our Tariff on file with the California Public Utilities Commission we submit herewith our charges for baggage unaccompanying a passenger from the Downtown Terminal to the San Francisco Intl. Airport.

<u>DATE</u>	<u>WEIGHT</u>	<u>AMOUNT</u>
6/10/66	23424	
6/11/66	11966	
6/12/66	11412	
6/13/66	16893	
6/14/66	14215	
6/15/66	16534	
6/16/66	12957	
	<u>107401</u> lbs. at 1¢	\$1,074.01

Thank you."

The witness testified this invoice (Exhibit 12) is identical in format to eight others they have received; the nine invoices cover the nine-week period from April 15, 1966 through June 16, 1966, and the total sum the defendant has requested United to pay is \$9,154.61. The witness further testified that United completed a survey of passengers at the downtown terminal to ascertain how many would take the bus. The passengers were asked "Are you taking the Barrett Transportation Co. bus to the airport?" The results of the survey are as follows, from Exhibit 13.

UNITED AIR LINES, INC.Survey of United Passengers Checked In
at San Francisco Downtown Terminal
Not Taking Airport Bus

<u>Day</u>	<u>Date</u>	<u>Total Passengers Checked In</u>	<u>No. of Passengers Stated Would Not Take Bus</u>	<u>Percent Not Taking Bus</u>
Friday	June 24	858	9	1.04%
Saturday	June 25	700	11	1.57
Sunday	June 26	609	20	3.28
Monday	June 27	513	2	0.39
Tuesday	June 28	547	16	2.92
Wednesday	June 29	664	14	2.10
Total		3,891	72	1.85

The witness stated that passengers were checked from 6:00 a.m. to 8:30 p.m. at five checking stations. This is the entire working day for United at the downtown terminal. The bags checked were not weighed.

Trans World Airlines, Inc., hereinafter called TWA, provided a witness who testified that TWA maintains overseas and domestic schedules. On flights terminating outside of the continental United States the baggage is usually weighed.

If the flight originates and terminates within the United States, the baggage is not weighed. The witness testified that a survey completed in June 1965 indicated that TWA checked 1.4 bags per passenger and a second survey completed a month or so after they discontinued weighing the domestic baggage showed 1.7 bags checked per passenger. An invoice from the defendant was placed in evidence as Exhibit No. 15 and the witness further testified that a survey was made by TWA personnel of all passengers checking in with TWA at the downtown terminal on Sunday, June 26, and Wednesday, June 29, 1966, to determine how many were taking the bus to the airport; on June 26 250 passengers checked in and 4 said they would not take the bus; on June 29 the figures were 275 and 7, respectively; the totals are 525 and 11. None of the bags checked were weighed.

The manager of San Francisco Passenger Services, for American Airlines, hereinafter called American, testified as follows:

It is estimated that about 10 percent of the bags carried on the buses are brought to the bus by those who ride the bus; these riders have to identify their bag when they leave the bus, to be sure it is unloaded at the right place; if the bag is checked at the airline counter it is tagged with a colored ribbon which identifies where it is to be unloaded; the last-named method is more convenient for the average passenger; the witness identified and placed in evidence Exhibit 16, which is a Barrett invoice on baggage transported for American (week of June 10 to June 16, 1966); and testified on the results of a survey of 85 percent* of American's passengers who checked in at the downtown terminal from June 24 through June 28, 1966; in table form the day-by-day statistics are as follows:

<u>Day</u>	<u>Date</u>	<u>Total Checked</u>	<u>Taking Bus</u>
Friday	6/24/66	127	120
Saturday	6/25/66	96	96
Sunday	6/26/66	103	98
Monday	6/27/66	62	61
Tuesday	6/28/66	69	69
		<u>457</u>	<u>444</u>

* If more than three people were in line, the agent discontinued the survey to save time. Witness estimated 85% of check-ins were questioned.

A witness for Western Airlines, Inc., hereinafter called Western, authenticated Exhibit 17 and placed it in evidence; the witness stated that the exhibit reveals the day-by-day results of a five-day survey of passengers handled at the Western booth in the San Francisco Downtown Terminal; the passenger was asked if he was riding the Barrett bus to the airport and if he was whether he

would board in the next half hour; the last question was included to identify those who may eat, have a cup of coffee, or attend to some business before boarding the bus; the exhibit reads in part as follows:

<u>Day and Date</u>	<u>Passengers Using Barrett Bus</u>			<u>Not Using Barrett Bus</u>	<u>Total Passengers</u>
	<u>Within Half Hour of Check In</u>	<u>Not Within First Half Hour of Check In</u>	<u>Total</u>		
Friday 6-24-66	191	33	224	21	245
Saturday 6-25-66	140	15	155	13	168
Sunday 6-26-66	94	56	150	6	156
Monday 6-27-66	165	24	189	6	195
Tuesday 6-28-66	126	27	153	14	167
<u>Total</u>	<u>716</u>	<u>155</u>	<u>871</u>	<u>60</u>	<u>931</u>
	76.9%	16.6%			
<u>Percent of Total</u>			93.5%	6.5%	100%

A vice president of Pacific Southwest Airlines, hereinafter called PSA, testified as follows: PSA operates exclusively in California, with flights between San Francisco, Oakland, San Jose, Burbank, Los Angeles and San Diego; its passengers spend less time away from home than those traveling on other airlines and are referred to as "commuter or briefcase" passengers; PSA was billed on 82,556 pounds of baggage, unaccompanied, on four invoices, for the period from May 13, 1966 through June 9, 1966 (28 days); PSA carried 56,000 passengers during the month of May with 7 percent (or 3,290) originating at the San Francisco Downtown Terminal; assuming 3,290 is a reasonable estimate of the number of passengers through the terminal in 28 days, the 82,556 pounds amount to 20.8 pounds per passenger; other factors indicate this estimate is accurate; PSA did not ask any passengers whether they intended to take the bus to the airport, but PSA's business has been increasing

as indicated by the following table showing the number of passengers transported from 1961 through 1965 and as projected through 1966.

<u>Year</u>	<u>No. of Passengers</u>
1961	713,000
1962	1,032,000
1963	1,305,000
1964	1,532,000
1965	1,863,000
1966	over 2,000,000 estimated.

The testimony from several of the Airlines (United, American, Western) revealed that on March 18, 1966 a letter was mailed by American to the defendant wherein the airlines agreed to purchase (at 50 cents each) "expedite" tags from the defendant to be placed on all bags of passengers who advise they will not be taking the defendant's buses to the airport; the airlines would then require the passenger to pay for the tags. It was noted that the "expedite" tags are already used where an airline puts a mislaid, repaired or late delivered bag on the defendant's bus to follow its owner to destination. It was agreed that the defendant wrote a reply dated April 8, 1966 wherein it was suggested that all passengers identify their bags before the bus is loaded; and that this policy, if adopted, would cause such delay, confusion and inconvenience, that the reason for opening and maintaining the downtown terminal would be completely frustrated. The airlines placed Exhibit 14 in evidence, which is the airlines' terminal "porter agreement." A witness (from United) testified that under the terms of the agreement all of the airlines pay a share of the porter expense and Barrett Terminals Company pays the porters for work done in the baggage handling room. Exhibit 19 is reproduced below.

It shows all airlines billed by the defendant for the period indicated.

BARRETT TRANSPORTATION, INC.

Billings to Airlines for Unaccompanied Baggage
(Period April 15 to June 30, 1966)

<u>Name</u>	<u>Amount</u>
United Air Lines	\$10,968.02
Trans World Airlines	4,075.95
American Airlines, Inc.	2,542.77
Western Airlines	4,043.06
Pan American Airways	762.66
Delta Airlines, Inc.	562.95
Pacific Southwest Airlines	2,173.33
National Airlines, Inc.	462.99
West Coast Airlines	60.77
Qantas Empire Airways, Ltd.	171.69
Japan Airlines	146.78
British Overseas Airways Corp.	23.88
Pacific Airlines, Inc.	1.55
Grand Total	<u>\$25,996.40</u>

A rate expert from the Commission staff placed Exhibit 18 in evidence. Rule No. 40 from Barrett Transportation, Inc., Local Passenger Tariff No. 3 (Cal. P.U.C. No. 3), effective November 22, 1965, and Rule No. 40 of Barrett Transportation, Inc., Local Passenger Tariff No. 2 (Cal. P.U.C. No. 2), effective April 10, 1958, read as follows:

Cal. P.U.C. No. 3

BAGGAGE

Rule
No.

- (a) Hand baggage not exceeding fifty (50) pounds in weight for each adult fare, and not exceeding twenty-five (25) pounds in weight for each half fare, will be carried free.
- (b) Excess baggage and baggage carried unaccompanied by a passenger originating at or destined to the San Francisco International Airport:
 - (1) Between San Jose and San Francisco International Airport, and intermediate points, will be charged for at the rate of two (2) cents per pound.
 - (2) Between San Francisco and San Francisco International Airport will be charged for at the rate of one (1) cent per pound
 - (3) Between Oakland and San Francisco International Airport will be charged for at the rate of one (1) cent per pound.
 - (4) Between Berkeley and San Francisco International Airport will be charged for at the rate of two (2) cents per pound.

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Cal. P.U.C. No. 2

BAGGAGE

Rule
No.

- (a) Hand baggage not exceeding 50 (fifty) pounds in weight for each adult fare, and not exceeding 25 (twenty-five) pounds in weight for each half fare, will be carried free.
- (b) Excess baggage and baggage carried unaccompanied by a passenger originating or destined to the San Francisco International Airport:
 - (1) Between San Jose and intermediate points, will be charged for at the rate of two (2) cents per pound.
 - (2) Between San Francisco and Oakland will be charged for at the rate of one (1) cent per pound.

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The staff rate expert defined "unaccompanied baggage" as "Baggage for which no ticket has been purchased or no fare has been paid and is shipped separately, that is in and of itself completely separate from a passenger." He testified that even though a bag goes on the 9:15 a.m. bus and the passenger on the 5 p.m. bus, the baggage is accompanied; if the bag goes on the bus and the passenger goes in a friend's car it is unaccompanied. He further testified that Tariff No. 3 is the lawful tariff of the defendant and that Tariff No. 2 was canceled by the filing of Tariff No. 3; also that the tariff provision which authorizes a one cent per pound charge for unaccompanied baggage transported from San Francisco to the airport originated in section (b) of Rule No. 40, of Tariff No. 2; the first paragraph (of section (b)) must be combined with the last (2) subsection of (b) to obtain the correct interpretation; (complainants vigorously contend that (b)(2) of Rule 40 of Tariff No. 2 must be read by itself and provides for a one cent a pound charge between San Francisco and Oakland only) complainants' interpretation of the (2) subsection is logical if the last paragraph is read by itself, but for complete understanding it must be combined with the first paragraph of section (b) (Rule No. 40, Tariff No. 2); it also follows therefrom that the one cent a pound charge for unaccompanied baggage was authorized on April 10, 1958; however, no attempt was made to charge or collect it until April 15, 1966.

The complainant and intervenors contend first, that most of the baggage was accompanied; second, that Tariff No. 3 was unlawfully adopted due to including an unauthorized one cent per pound charge not in Tariff No. 2 and not authorized by the Commission; therefore, Tariff No. 2 which does not authorize the one cent

per pound charge is still in effect; third, the imposition of the charge is contrary to the terms of the licensing agreement under which the bus line received permission to enter the premises of the terminal company; fourth, to classify all baggage delivered by the airlines as unaccompanied is an unreasonable construction of the tariff; fifth, the collection of the charge made by the defendant will result in an unreasonable return and profit to the bus company; and sixth, the fact that defendant made no effort to collect this charge for eight years is a binding interpretation on the defendant. United contends that it is impractical to determine which bags are accompanied and the tariff provision is therefore unreasonable. The defendant contends first, that the tariff requires defendant to charge the one cent a pound unless the party presenting the baggage can prove it is accompanied. Thus, defendant does not claim that all baggage is necessarily accompanied. Defendant further contends that Rule No. 40 of Tariff No. 3 contains the lawful charge.

Findings and Conclusions

The Commission finds that:

1. Defendant adopted its Local Passenger Tariff No. 2, which became effective on April 10, 1958.
2. Rule No. 40 of Local Passenger Tariff No. 2 provides for a one cent a pound charge on unaccompanied baggage transported from San Francisco to the San Francisco International Airport.
3. Defendant adopted its Local Passenger Tariff No. 3, which extended its operating authority into Berkeley and became effective on November 22, 1965, thereby canceling Tariff No. 2.
4. Rule No. 40 of Local Passenger Tariff No. 3 restated the rule in Local Passenger Tariff No. 2, which authorized a charge of one cent a pound for unaccompanied baggage.

5. Baggage is accompanied when the passenger who delivers it to the airline rides the defendant's bus from the downtown terminal in San Francisco to the San Francisco International Airport; even though the bags are transported at a different time, or day than the passenger.

6. Defendant made no effort to assess or collect any charge for unaccompanied baggage from April 10, 1958 to April 14, 1966, a period of eight years.

7. On April 14, 1966, Sky Cap porters ceased loading and unloading defendant's buses at the San Francisco Downtown Terminal and the San Francisco International Airport. Defendant thereupon hired three additional men at each location, at a cost of \$120 a day, to continue loading and unloading the vehicles.

8. Since April 15, 1966, defendant has levied a one cent a pound unaccompanied baggage charge on all baggage presented by the airlines at the downtown San Francisco Terminal for transportation to the San Francisco International Airport.

9. Each airline receives a weekly voucher from the defendant, which lists the total poundage transported during the period covered and the charge claimed to be due.

10. None of these vouchers have been paid although defendant continues to mail them to the airlines.

11. Defendant is not charging for unaccompanied baggage transported from the San Francisco International Airport, Oakland, Berkeley, or San Jose.

12. No more than one in 10 airline passengers who leave baggage with the airlines send it unaccompanied on defendant's vehicles.

13. Defendant transports a large number of commuters who travel with only a briefcase, which is carried at all times by the passenger.

14. If the vouchers submitted are paid the defendant's annual income will be increased by an estimated \$120,000.

15. Rule No. 40 is clear in context but impossible to enforce without complete cooperation from the airlines and their passengers. The carrier cannot determine by itself what baggage is unaccompanied.

16. Defendant's practice of charging the airlines one cent per pound on all baggage received is arbitrary and discriminatory since the charge for the unaccompanied baggage should be levied only against those who check their baggage and neglect to ride to the airport on the bus.

17. If the airlines are forced to pay the baggage fares for this group, it is a discrimination against those who pay their fare and accompany their baggage as well as a violation of Sections 453 and 494 of the Public Utilities Code in that those who send unaccompanied baggage would not pay for its transportation.

18. Rule No. 40 was disregarded for eight years and when enforced was applied only at the San Francisco Downtown Terminal; although it was equally applicable at Oakland, Berkeley, San Jose and the San Francisco International Airport. It was not applied outside of San Francisco due to a lack of personnel and facilities at other points. These factors are further indications that the rule in its present form is difficult and impractical to enforce.

19. Rule No. 40 should be canceled and defendant should immediately formulate and adopt a revised rule.

20. All weekly vouchers wherein the airlines were charged one cent per pound for all baggage delivered to the defendant should be canceled by the latter.

21. In view of our findings on other issues we will not discuss the licensing agreement or the terminal lease.

We conclude that Rule No. 40 in defendant's tariff cannot be enforced without permitting many who check their bags with the airlines from obtaining free transportation of baggage on defendant's vehicles in violation of Sections 453 and 494 of the Public Utilities Code; we further conclude that Rule No. 40 of defendant's tariff should be canceled and a new rule substituted therefor, and that defendant should be ordered to cancel the vouchers wherein a cent per pound charge for all baggage delivered to defendant is imposed.

O R D E R

IT IS ORDERED that:

1. Barrett Transportation, Inc., is hereby authorized and directed to cancel Rule No. 40 in its Local Passenger Tariff No. 3 (Cal. P.U.C. No. 3).
2. Defendant shall amend its tariff by the insertion of a rule providing a special charge to be levied for the transportation of excess baggage and baggage unaccompanied by a passenger.
3. Defendant shall cancel all vouchers submitted to the airlines wherein a one cent per pound charge was imposed for all baggage received from the airlines.

The Secretary of the Commission is directed to cause personal service of this order to be made upon defendant and its attorney. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 19th day of SEPTEMBER, 1967.

[Signature]
President

[Signature]

William J. Quinn

[Signature]
Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.