

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

Dokter Trucking Corp.)	Formal Complaint No. FC-1168
and)	
Nebraska Bulk Transports,)	
)	
Complainants,)	COMPLAINT SUSTAINED IN PART,
vs.)	ORDER TO CEASE AND DESIST
)	
Glenn H. Franzen)	
dba Franzen Trucking)	
Route #1)	
Cozad, NE 69130,)	
)	
Defendant.)	ENTERED: April 26, 1983

APPEARANCES:

For the complainants
Bradford E. Kistler, Esq.
P.O. Box 82028
Lincoln, NE 68501

For the defendant
Scott H. Trusdale, Esq.
110 W. 9th
Cozad, NE 69130

and

Michael L. Bacon, Esq.
P.O. Box 348
Gothenburg, NE

BY THE COMMISSION:

OPINION AND FINDINGS

On October 26, 1982, Dokter Trucking Corporation and Nebraska Bulk Transports filed a complaint against Glenn H. Franzen dba Franzen Trucking. The complaint alleged that defendant leased its authority to Nebraska Salt and Grain Company on or about August 1, 1982 without approval from this Commission in violation of Section 75-318 R.R.S., 1943; defendant performed operations from August to October 1, while the authority was suspended in willful violation of Section 75-309 R.R.S., 1943; and except for the illegal operations, defendant conducted no operations from January 1, 1982 to the date of the complaint contrary to Section 75-316 R.R.S., 1943 in Chapter III Article I Section (1)(d) of the Commission's rules and regulations. The answer in the form of a general denial was filed by the defendant.

Hearing on the complaint was held January 31, 1983 with appearances as shown.

Defendant moved to dismiss the complaint on grounds that there was insufficient allegation of facts set forth in the complaint with regard to any infraction by the defendant. The motion was overruled by Commissioner Simpson. Nevertheless, defendant made an offer of proof by calling Eldon Dokter as its witness.

Eldon Dokter testified: He is president of Dokter Trucking Corporation. The formal complaint was filed on his behalf by Mr. Kistler. In a negotiating session, he heard Mr. Bacon say that Nebraska Salt and Grain would be able to lease to Franzen. He lives in Omaha. He has had occasion to

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go by many feed mills in the Omaha area regularly. He has seen Nebraska Salt and Grain vehicles with Nebraska Salt and Grain signs on them regularly and he has never seen one with a Franzen sign on it. He has seen the same thing in the Weeping Water area. In the last six months he has hauled approximately six loads into the 50-mile radius around Cozad. In a twelve month period he would have hauled 40 or 50 loads. He did not personally research the facts for the allegation that defendant willfully suspended its operations. He was informed by Mr. Kistler that Franzen's authority was suspended at Mr. Franzen's request in the spring of 1982. He became aware in late July or early August that operations were being conducted under the Franzen authority notwithstanding the Commission's order suspending the authority. He reviewed the leases on file between Nebraska Salt and Grain and Franzen's Trucking and found that a truck was being leased for \$500 per month.

Defendant then called Dean Petersen who testified: He is the president and sole owner and operating manager of Nebraska Bulk. He estimates he has hauled six or seven loads into the 50-mile radial area of Cozad within the last six months. He was also at the negotiating session where Nebraska Salt and Grain said it was leasing Franzen's authority and would continue to lease it. He has never seen a Franzen truck or sign. The reason he wanted the complaint filed is that he thought there was an illegal lease of authority or that there was something in that regard because he had never seen a Franzen placard on a truck.

The motion to dismiss was overruled.

On the case in chief Mr. Petersen testified: He sees Nebraska Salt and Grain trucks at ADM and at Ralston Purina loading ahead of him and behind him. He called the Ralston Purina and Archer-Daniel-Midland people to find out why they were loading those trucks, and they said the trucks were operating under Franzen's authority. He checked at the Commission and found that Franzen's authority was suspended.

Mr. Dokter in the case in chief testified: He checked with the Commission and found that Franzen leased equipment from Nebraska Salt and Grain. He saw Nebraska Salt and Grain units at the Ralston Purina plant in Omaha and loading at various sites in Weeping Water, Texas Gulf, Kerford, and American Cyanamid. He checked with the shipping departments at each of those places and they were customer pickups. Knowing that Nebraska Salt and Grain had a lease with Franzen he felt that there was certainly something that was not appropriate going on. He has heard that Nebraska Salt and Grain has a buy-sell operation in limestone.

The complainants called Glenn Franzen as their witness who testified: He is the owner of the authority under Docket Number M-12439. He owns no trucks at the present time. At most he operated two trucks under his authority. In the spring of 1982 he sold his last truck and requested guidance from the Public Service Commission as to what he should do to retain his motor carrier authority until he procured another truck. Exhibit #6 is a copy of the request for suspension of authority. A six-month suspension was granted, although he may not have seen it himself. Freight bills taken from his records show that operations were conducted under his authority in July, August, September, and October of 1982. He sold his truck for financial and personal reasons. At the time he sold his truck he had not had any discussions with Nebraska Salt and Grain concerning possible purchase of the authority. His business was operated out of his home. The only employee he has at this time is a secretary that handles all the business. She is paid from commissions taken from operations of the authority. She handles all the books. She handles transaction under his authority. She books loads and does the book work for him on a part-time basis. He estimates that since 1982 she has handled less than 100 loads. Payment is calculated on the amount of work she does. His secretary's name is Coleen Geiken. She is the wife of Norm Geiken who operates Nebraska Salt and Grain. His operation is insured through Great West Casualty Company of South Sioux City. His agent is Mr. Bartels. He is insured through a rider carried on Nebraska Salt and Grain. He estimates that he leases between 30 and 40 units.

He pays \$500 per month for any trucks Nebraska Salt and Grain operates under his authority. In November of 1982 sixteen loads were transported by Franzen under its intrastate authority according to the logs in its file. He does not maintain control over the equipment when it is not being used under his authority. In 1980, 40 sets of plates were issued to Franzen trucking. The equipment can be used pretty much as Nebraska Salt and Grain desires when it is not being used under his authority. When Nebraska Salt and Grain is using the equipment it does not have Franzen Trucking on the side. When the equipment is used under his authority, it is to be placarded. He has not advertised since his trucks were dispersed. If a load of feed was offered to him from Omaha to Lexington, he would contact Mrs. Geiken at her home and she would make arrangements to handle the load. A checking account is maintained for his company at Gothenburg State Bank. Although his certificate was suspended until October 1, 1982, he considered the suspension modified when the Commission approved the leases and accepted the insurance filings. Mrs. Geiken prepares freight bills. She receives any payment for the Franzen trucking operation. She puts the money in a checking account for which she is the signatory. Out of the proceeds she pays him and Nebraska Salt and Grain for the lease. She has not received any compensation. Her compensation will be negotiated at the end of the year. She bills customers once a month. She prepares the freight bills and rates. Exhibit #8 is a stack of freight bills.

The motion to dismiss was renewed when the complainant rested. It was taken under advisement.

Defendant called Coleen Geiken who testified: Her husband is president of Nebraska Salt and Grain. They have been married 17 years. She has been around the trucking business for 15 years. She is the regulatory agent for Mr. Franzen. She books his loads and does his book work. Since a lease was approved in June 1982, Franzen Trucking hauled 60-some loads. When a customer needs a load hauled it calls her. She gets hold of the dispatcher at Nebraska Salt and Grain and has her set up a truck to pick up the load. After the paper work is turned in to Nebraska Salt and Grain, they send her a copy of the bill of lading and the freight bill and once a month she invoices the customer. Nebraska Salt and Grain receives 80% of the billed rate for fuel, driver wages, and other expenses. Franzen Trucking receives 20%. Each month \$500 is charged against Franzen's share of the proceeds. At the end of 1982, Franzen Trucking had a balance between \$1,000 to \$1,080. The medical certificates are kept on file for Mr. Franzen. All the drivers also drive for Nebraska Salt and Grain. She made an inspection of the trucks at the time the leases were signed. All the trucks carry a set of Franzen's placards with them. Her understanding of the lease is that while a truck is operating on a load for Franzen Trucking, it is under the exclusive control of Franzen from the time it loads until the time it is unloaded. She prepared the freight bills in Exhibit #8 from the tickets the drivers turned in. The tariff rate is used. Nebraska Salt and Grain has a buy and sell operation in feed and feed grain. It is a feed grain dealer. Nebraska Salt and Grain hauls a lot of limestone and crushed rock. Her understanding of the difference between leasing authority and leasing equipment is that lease of authority would be actually using the authority for all one's own business where an equipment lease would be a lease of equipment to the person that has the authority doing it under his business. Nebraska Salt and Grain would haul 60 loads a week rather than 60 loads in a six month period in its own business. Her home is next door to Nebraska Salt and Grain's operations. She expects to be paid for her work for Franzen. The amount has not been discussed. She estimates she spends no more than one hour per month on Franzen Trucking business. Franzen has two major customers at present, Dawson County Feed and Central Soya. She is a part-time employee for Nebraska Salt and Grain spending a half a day, five days a week. She is also an officer, vice-president, and a stockholder of Nebraska Salt and Grain. She would not take on any new customers without contacting Mr. Franzen. The cost of the PSC plates was charged to Nebraska Salt and Grain.

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The evidence shows that defendant has maintained no significant control over his operations since August, 1982. The insurance on the operation is actually carried by Nebraska Salt and Grain with Franzen Trucking being named only as an additional insured. Although defendant points to the equipment leases which have been filed and approved by the Commission as evidence that it is only an equipment leasing operation between Franzen Trucking and Nebraska Salt and Grain, the evidence is quite clear that Franzen Trucking does not actually control the equipment except when commodities are being transported under the Franzen Trucking certificate. Although the equipment leases indicate that the equipment is being leased for \$500 per month, the testimony shows that Nebraska Salt and Grain actually retains 80% of the revenue generated by the operations under Franzen Trucking authority. The evidence also shows that it was not the certificate holder but the lessor of the equipment that has paid annual fees for the operation. All of these factors taken together present a clear picture of an operation wherein the certificate holder has leased its authority to a carrier without approval from this Commission.

From consideration of the evidence adduced and being fully informed in the premises, the Commission is of the opinion and finds:

1. The complaint filed by Dokter Trucking Corporation and Nebraska Bulk Transports against Glenn H. Franzen dba Franzen Trucking should be sustained in part and the motion to dismiss should be overruled.
2. Defendant has leased its authority without approval of this Commission in violation of Section 75-318, R.R.S. 1943.
3. Defendant should be ordered to cease and desist the method of operation under which it has been operating from August, 1982 to the present.

O R D E R

IT IS, THEREFORE, ORDERED by the Nebraska Public Service Commission that the Formal Complaint in FC-1168 of Dokter Trucking Corporation and Nebraska Bulk Transports vs. Glenn H. Franzen dba Franzen Trucking be, and it is hereby, sustained in part.

IT IS FURTHER ORDERED that Glenn H. Franzen dba Franzen Trucking be, and it is hereby, ordered to cease and desist from leasing its authority to Nebraska Salt and Grain in violation of Section 75-318, R.R.S 1943.

MADE AND ENTERED at Lincoln, Nebraska this 26th day of April, 1983.

NEBRASKA PUBLIC SERVICE COMMISSION

Harold A. Simpson
Chairman

ATTEST:

Sam E. Simpson
Executive Secretary

COMMISSIONERS CONCURRING:

Duane D. Gay