

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application)	Application No. B-1351/
of the Public Service Commission,)	PI-44
on its own motion, to conduct a)	
departmental investigation of)	FINDINGS AND CONCLUSIONS
Midwest Special Services, Inc.)	
for alleged violations of)	
Commission rules.)	Entered: June 19, 2001

APPEARANCES:

Michael T. Loeffler
300 The Atrium
1200 N Street
Lincoln, Nebraska 68508

Jack Shultz
P.O. Box 82028
Lincoln, Nebraska 68501

BY THE COMMISSION:

By order entered March 21, 2001, the Nebraska Public Service Commission (Commission), opened on its own motion, a departmental investigation of Midwest Special Services, Inc. (Midwest) for alleged violations of Commission rules. Midwest was served a copy of the departmental investigation and was given the opportunity to answer the allegations contained therein. On April 11, 2001, the Commission held a hearing on the alleged violations in the Commission Hearing Room in Lincoln, Nebraska, with appearances as shown above. A petition of Formal Intervention was filed by R & F Hobbies Inc. d/b/a Prince of the Road. The petition was denied by the Commission after hearing oral arguments between Midwest and Prince of the Road.

The Commission listed three allegations in its departmental investigation order which were as follows: (1) Midwest operated vehicles without proper door identification in violation of rule 004.04, (2) Midwest operated outside of its authority by originating transportation in those counties from which they are restricted and (3) that Midwest charged and was compensated at rates different from those listed in its tariff filed with the Commission in violation of Neb. Rev. Stat. section 75-126 (Reissue 1996).

A stipulation between the Commission and Midwest was offered

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and accepted into the record as Exhibit 4. The parties jointly stipulated that Midwest had been contracting with NDHHS for transportation at the rate of \$0.93 per mile. During that time, Midwest had rates on file for the transportation of persons and their baggage for \$0.85 per mile plus waiting time. The parties further stipulated that Midwest has operated vehicles transporting individuals without identification. The parties finally stipulated for the record that on certain dates listed in the Stipulation, Midwest provided transportation services to an individual from Beatrice to an address in Lincoln, and a separate individual from Lincoln to an address in Papillion.

Midwest called two witnesses to testify in support of its affirmative defenses. Mr. Mike Reddish, an employee with the Nebraska Department of Health and Human Services, testified that he was employed at the Juvenile Parole Administration Department of Correctional Services prior to January 1997. During that time, he was charged with arranging transportation for parole absconders apprehended within or outside the state of Nebraska. He further testified that he frequently contacted Midwest to provide the these transportation services. In January of 1997, the Juvenile Parole Administration merged with four other agencies at Health and Human Services. He testified that generally, the apprehended juveniles would be restrained with handcuffs, restraining belt, and leg irons.

Mr. Lannie Roblee, co-owner of Midwest, testified next. Prior to 1993, Midwest operated as Midwest Prisoner Transportation. He testified that at the time he worked with Mr. Reddish, he did consider the juveniles transported by Midwest to be prisoners. He further testified that these passengers were under the control and custody of the state of Nebraska. Mr. Roblee testified that after the merger that Mr. Reddish referenced in his testimony, the classification of his passengers became unclear. He therefore made an application to the Commission for additional authority. Subsequent to that time, he also made a second application for authority in Supplement Two in the last part of 2000.

Mr. Roblee further testified that he had been advised by the Commission staff over the years that he didn't need vehicle identification pursuant to the Commission's Motor Carrier Rules and Regulations because he was transporting prisoners. The reasoning for this was because of the increased need for security. He

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further testified that until this past year, the Commission staff has never cited him for a violation of rule 004.04, even though the Commission conducts annual inspections. Mr. Roblee testified that since the time the issue was raised in Prince of the Road's formal complaint filed in October of 2000, he has marked all of Midwest's vehicles in an effort to bring Midwest into compliance with the Commission rules.

Mr. Roblee provided testimony that the rates Midwest charged to HHS during the time period covered in the departmental complaint were less than the published rate. Exhibits 5 and 6 were offered and accepted into the record to support that testimony.

O P I N I O N S A N D F I N D I N G S

With respect to the allegations that Midwest violated the Commission's signage rules, Midwest does not argue that the facts alleged in the departmental complaint are untrue. Rather, Midwest asserts that, for the most part, it reasonably relied upon the advice and direction of the Commission staff and acted in good faith. Although Midwest's subsequent compliance actions are taken into account in the determination of civil penalties, we find that Midwest in fact, did willfully violate rule 004.04 of the Commission's Motor Carrier Rules and Regulations by not properly marking its vehicles. We reiterate for the purposes of this proceeding that waivers from the Commission's rules are available in few instances, and even then, the Commission waives those rules as one public body through a formal process.

Midwest also argues that it should not be punished for rates charged if the rates charged were actually less than its tariffed rates. However, section 75-126 provides that a carrier cannot demand or collect for an lesser amount either. Midwest further argues that it is the Health and Human Service Department's policy not to pay for wait time. We feel that this policy is irrelevant and should not have anything to do with the carrier's published tariff rate. Therefore, we disagree with respect to both of these defenses. We find that Neb. Rev. Stat. section 75-126 clearly indicates that the carrier is to be compensated at the rates actually published in its tariff. If Midwest wishes to provide transportation to HHS on a regular basis, it should take that into account determining and when filing its rates with the Commission for approval. We therefore find that Midwest has willfully

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violated Neb. Rev. Stat. section 75-126 (Reissue 1999).

Finally, Midwest admits that it provided passenger transportation from Beatrice to Lincoln on several occasions between December of 1999 and October of 2000 and from Lincoln to Papillion on nine separate occasions between August 2000 and December 2000, beyond the scope of its authority. Upon consideration of the testimony and the evidence before us, we find that Midwest willfully exceeded the scope of its authority in violation of Commission rules and state law.

We turn next to the issue of the appropriateness of civil penalties. In our opinion, all of alleged violations specified in the departmental complaint were proven by clear and convincing evidence. We find it appropriate in this case, to levy an administrative penalty upon Midwest for the violations proven.

In assessing an administrative penalties we look to Neb. Rev. Stat. 75-156 (Cum Supp. 2000) which provides that the amount of the penalty "shall be based upon the severity of the violation charged." That section further provides that,

[i]n determining the amount of the penalty, the commission shall consider the appropriateness of the penalty in light of the gravity of the violation and the good faith of the violator in attempting to achieve compliance after notification of the violation in given.

In light of this criteria we find that Midwest did make good faith attempts to mitigate the underlying offenses. Midwest brought their vehicles into compliance upon the realization that the Commission would indeed enforce rule 004.04 of its Motor Carrier Rules and Regulations. Therefore, upon consideration of the gravity of the offense and the good faith of the violator in attempting to achieve compliance, we find that Midwest should be fined a penalty of six hundred dollars (\$600) to be proportionate to the gravity of the all violations proven in the above-captioned proceeding.

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O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Midwest Special Services is hereby found in violation of Title 291, Chapter 3 sections 002.01 and 004.04, and Neb. Rev. Stat. section 75-126(Reissue 1996).

IT IS FURTHER ORDERED that Midwest Special Services remit a sum of Six Hundred Dollars (\$600) to the state of Nebraska for the violations herein described.

IT IS FURTHER ORDERED that Midwest Special Services remit to the Nebraska Public Service Commission the fine assessed above within thirty days from the date of this Order.

MADE AND ENTERED at Lincoln, Nebraska this 19th day of June, 2001.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

James Johnson
Kenneth C. Boyle
Paul Johnson

//s//Frank E. Landis

Frank E. Landis
Chairman

ATTEST:

Ad S. Pollard
Executive Director

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION
