

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application)	Application No. B-1470/
of the Public Service Commission,)	PI-45
on its own motion, to conduct)	
a departmental investigation of)	FINDINGS AND CONCLUSIONS
A-1 Ambassador Limousine, Inc., dba)	
Haymarket Limousine, Lincoln, for)	
alleged violations of Commission)	Entered June 19, 2001
rules.)	

APPEARANCES:

For the Commission:

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

For the Respondent:

Elaine Waggoner
815 M Street, Suite 209
Lincoln, Nebraska 68508

BY THE COMMISSION:

By order of the Commission on March 21, 2001, a departmental investigation on A-1 Ambassador Limousine (A-1) was commenced. The March 21, 2001, order contained three specific allegations and required the respondent to file its answer on or before April 10, 2001. A hearing on this matter was held on April 11, 2001, at 1:30 p.m. 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 through its undersigned counsel. An objection to the petition was filed by Elaine Waggoner. After oral argument, the petition was denied by the Commission.

A stipulation was offered and entered into the record between the Commission and A-1 as to the facts of the case. A copy of that stipulation was offered and accepted into the record as Exhibit 4. In the stipulation, A-1 and the Commission jointly acknowledged that A-1 rented vehicles for the use in its business operations at various times between August 26, 2000, to September 8, 2000. A-1 also operated the rented vehicles without Public Service Commission plates. A-1 further acknowledged that it billed Nebraska Health and Human Services a rate of ninety-eight cents per mile, and that

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until September 22, 2000, its effective rates on file with the Commission were for hourly only. Finally, A-1 acknowledged that the rates that went into effect on September 22, 2000, provided for a mileage rate of only fifty-five cents per mile.

Mr. Dennis Wagner, vice president of A-1 appeared on behalf of the Respondent. He testified that on or about August 26, 2000, he had difficulties with some of his vehicles positioned in rural Nebraska. He further testified that A-1 had to resort to renting vehicles during the summer months in order to meet its contractual obligations. A copy of A-1's repair bills were marked and entered into the record as Exhibit 5. Mr. Waggoner testified that there was no feasible way to comply with Commission rules and regulations. He stated, in the situation A-1 was in, they could not avoid violating one rule or another. Therefore, he stated, A-1 tried to do what it reasonably could to meet its contract obligations.

Mr. Wagner further testified that he did not think that A-1 had to file rates for HHS. A-1 filed its rate with the Commission at 55 cents per mile with the anticipation of obtaining a contract with Value Options. Mr. Wagner further testified that overall, if A-1 were to charge at its fifty-five cent rate it would have resulted in higher rates to its client than if it were to have charged at the ninety-eight cent rate. Therefore, in those individual cases, A-1 argued, it committed no violation. Mr. Wagner testified that he thought that the only entity the published rates didn't apply to was Health and Human Services.

Upon questioning by Commissioner Boyle, Mr. Wagner testified that the Commission rules are were too cumbersome to follow, particularly when a carrier needs to use a vehicle on a very temporary basis. Commissioner Boyle asked Mr. Wagner whether he thought during the three month period that A-1 rented vehicles, perhaps they should have applied for Commission plates. Mr. Wagner responded that he was not made aware of every instance that A-1 had rented a vehicle. He further wasn't aware of the fact that A-1 rented a vehicle for a two week time period. Mr. Wagner further testified that he did not attempt to call Health and Human Services to request that they use another carrier for any particular appointment because he did not want to run the risk of losing that client.

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

Upon review of the relevant evidence and applicable law, we find that it has been shown by clear and convincing evidence that A-1 has willfully violated the Commission's Motor Carrier rules and regulations and Neb. Rev. Stat. § 75-126 (Reissue 1996). We further find it appropriate to impose an administrative penalty upon A-1 for the violations as discussed below.

With respect to the issue of rates, we find that despite the testimony presented by Mr. Wagner and arguments made on behalf of A-1, A-1 has clearly and willfully violated the applicable portions of Neb. Rev. Stat. § 75-126 (Reissue 1996), which provides that a carrier cannot demand, charge or collect by any device whatsoever, lesser or greater compensation for any service rendered than the rates filed or prescribed with the Commission. The argument raised by A-1 was that it was charging less than the rates on file in its tariff, therefore, it should not be in violation. We find that the statute quite clearly provides that a carrier cannot charge or collect lesser compensation that it receives from any other person which would include the Department of Health and Human Services. This is the case irrespective of whether the Department of Health and Human Services has any policies relating to wait time, loaded or unloaded miles, etc. Moreover, we do not find that Neb. Rev. Stat. section 75-303.02 (Cum. Supp. 2000) is in conflict with or gives A-1 any relief from the provisions in Neb. Rev. Stat. § 75-126 (Reissue 1996).

Next, we turn to the issue of the vehicles rented by A-1 in the summer of 2000. There were two alleged violations linked with the vehicle rentals. First, it was alleged that A-1 improperly rented vehicles to use in its business operations in violation of Title 291 Chapter 3 section 008.02(a)(8). Second, it was alleged that A-1 did not request or affix the required Public Service Commission plates to the vehicles used in its business operations in violation of Title 291, Chapter 3 section 004.03(B).

Section 008.02 provides that common carriers may lease equipment which they do not own to augment their existing equipment, and that each lease for the use of equipment shall, inter alia, be approved by the Commission. The purpose behind

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this rule is to ensure that the vehicles being used for common carriage are properly identified for benefit of the Commission and for the public. That section extends no relief for circumstances such as the unavailability of vehicles due to mechanical problems. The rental of these vehicles undoubtedly added to the number of vehicles under the control and used by A-1 even if for only a short period of time. Therefore, we find that this section is applicable to the instant case and that A-1 operated in violation of this rule.

Likewise, section 004.03(B) provides that no vehicle can be operated without the secure attachment of Public Service Commission plates. In the signed Stipulation and at the hearing, the Respondent admitted to transporting passengers in vehicles without Public Service Commission plates in violation of this rule. A-1 argued that this rule was too cumbersome for carriers, like A-1, who uses a vehicle for only a short period of time. We find this argument to be without merit. Not only are carriers afforded an opportunity to participate actively in the Commission's rulemaking process, the Commission has been made aware of no prior instances where motor carriers have complained of difficulties with following Rule 004.03(B).

Section 004.03(B) likewise serves a valid and useful purpose for the Commission as it provides the Commission with a list of properly identified vehicles which are used in each carrier's business. Properly plated vehicles are also necessary to inform the public as to identity of the agency it can turn to for complaints about a particular driver or carrier. The temporary usage of a vehicle bears no relevance on and should not distract from the important purpose of this section.

Upon the evidence received at the hearing we find clear and convincing evidence demonstrates that A-1 has violated Title 291, Chapter 5, sections 008.02 and 004.03 and Neb. Rev. Stat. section 75-126 (Reissue 1999). We now turn to the issue of what civil penalty is appropriate in this case. Neb. Rev. Stat. section 75-156 provides that the Commission may,

assess a civil penalty of up to ten thousand dollars per day against any person, motor carrier, regulated motor carrier, common carrier, or contract carrier for each

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violation of (a) any provision of section 75-301 to 75-390 administered by the commission or section 75-126 as such section applies to any person or carrier specified in sections 75-301 to 75-390 . . . or (d) any rule, regulation, or order of the commission issued under authority delegated to the commission pursuant to sections 75-301 to 75-390.

Section 75-156 also provides that the amount of the civil penalty assessed in each case must be based upon the severity of the violation taking into consideration the gravity of the violation and the good faith of the violator in attempting to achieve compliance after notification of the violation is given. In light of the directives provided for in statute, we find that the Respondent acted in good faith in attempting to achieve compliance after the Commission notified it of the violations. We also find that although we consider these violations to be severe, A-1 has not been subject to a previous action or complaint by this Commission and thus we should afford A-1 some leniency. Therefore upon consideration of the applicable statutory law, we find that A-1 shall be assessed a civil penalty in the amount of Eight Hundred Dollars (\$800) for the three violations demonstrated at hearing.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that A-1 Ambassador Limousine Inc. shall be and it is hereby assessed a civil penalty in the amount of Eight Hundred Dollars (\$800) for violating Neb. Rev. Stat. § 75-126 (Reissue 1996) and Title 291, Chapter 3, section 004.03.

IT IS FURTHER ORDERED that A-1 remit Eight Hundred Dollars (\$800) to the Commission on or before thirty days from the date of this Order.

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

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Lowell Johnson

Anne C. Boyle

Frank E. Landis

//s//Frank E. Landis

Frank E. Landis
Chairman

ATTEST:
Ad S. Pollack
Executive Director