

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In re Wayne F. Rowe, Director)
Transportation Department of)
the Nebraska Public Service) DEPARTMENTAL COMPLAINT
Commission,) NO. 3021
Complainant,)
vs.)
BILL REID d/b/a A & B Movers,) ORDER AND JUDGMENT
Defendant.) Entered: March 10, 1992

APPEARANCES:

For the Commission:
Mark A. Ludwig
Attorney at Law
P.O. Box 94927
Lincoln, NE 68509

BY THE COMMISSION:

On February 20, 1992 at 9:30 a.m., hearing was had in the Commission Hearing Room at Lincoln, Nebraska, on Departmental Complaint No. 3021 previously filed with the Commission on December 27, 1991, and served on defendant by certified mail. Notice of the hearing was personally served on the defendant, Bill Reid, on January 18, 1992, and by certified mail service pursuant to Commission Rules of Procedure. The defendant failed to file an answer within the prescribed 20-day period. An amended departmental complaint was filed on February 7, 1992, and certified mail service again made on defendant. Commission Attorney Hal Hasselbalch served as hearing officer at the hearing and Commissioner Daniel Urwiller was also present. The defendant failed to appear.

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

I. Preliminary Matters

Since the defendant failed to file a timely answer to the departmental complaint within the prescribed period of twenty (20) days as per Title 291, Chapter 1, Rule 027.04A, and for further failing to appear at the hearing, the Commission could have assumed the complainant's allegations were true as plead construing the defendant's failure to answer as an admission and enter a default judgment against the defendant accordingly. However, the Transportation Department proceeded to put on a prima facie case against the defendant with the testimony of witnesses and exhibits admitted into evidence. The amended complaint alleged that the defendant on three known and specified occasions conducted for-hire intrastate transport-

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ation of household goods without authority in violation of the Nebraska statutes.

II. Summary of the Evidence

Exhibits 1, 2 and 3 were first offered and admitted into evidence showing that the defendant received copies of the complaint and first amended complaint filed against him, as well as proper notice of the time, date and place of hearing as required by Commission Rules of Procedure.

Wayne Rowe was called as the Transportation Department's first witness. He is the Director of the Department and is the Complainant in this action. Mr. Rowe testified that the defendant has no current authority with the Commission to operate in the intrastate carriage of household goods, nor has he ever applied for the necessary authority. Mr. Rowe also testified that the defendant does not operate under any leased authority. According to Rowe, a departmental complaint had once before been filed against the defendant, and that complaint was dismissed upon Bill Reid's payment of a penalty.

Robert Harrison was called to testify. He is a motor transportation inspector for the Commission and was the person responsible for investigating the particular operations of defendant Bill Reid and A & B Movers.

Mr. Harrison testified that on November 9, 1991, he observed the defendant performing an illegal movement from Douglas to Burr, Nebraska. Harrison saw a Ryder rental truck backed up to the home of Dean Sears in Douglas and witnessed Bill Reid and his crew loading furniture on to the truck. Inspector Harrison followed the loaded truck to Douglas where he also witnessed Reid and his crew unload it there. Harrison said he was able to recognize Bill Reid on sight.

Exhibits were offered and admitted in evidence which included a copy of the rental agreement between Ryder Truck Rental and the defendant, a copy of the personal check from Harlan Dean Sears paid to A & B Movers in the amount of \$600, and two photographs taken by Inspector Harrison showing Bill Reid entering and exiting the house in Douglas during the furniture move.

Harrison also testified regarding an illegal move conducted by the defendant and defendant's company on December 18, 1991. Harrison observed Bill Reid pick up his crew of men from the People's City Mission in Lincoln on that date and then proceed to the Ryder Truck Rental facility to pick up the truck used for the move. The men were then observed to load furniture moving equipment and blankets from Bill Reid's

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residential address on to the Ryder truck. Harrison then followed the truck to Crete, Nebraska, where the crew loaded household goods from the home of Robert McClung and transported the load back to an address in Lincoln, Nebraska, where the truck was then unloaded. Bill Reid did not accompany the moving crew on the trip to Crete and back to Lincoln, but was observed to appear later at the Lincoln address some time after the truck's arrival there.

Exhibits pertaining to the December 18th incident were offered and admitted into evidence which included a copy of the Ryder truck rental agreement, and copies of the two cancelled checks from R. A. McClung to A & B Movers in the amounts of \$200 and \$287.50, representing a downpayment and final payment, respectively, for the move conducted on December 18. Both checks were endorsed by A & B Movers. Photographic evidence was again introduced and ultimately admitted in evidence showing the A & B Moving crew loading the furniture in Crete.

Inspector Harrison then testified that he and Inspector Jack Mahoney investigated a third illegal move conducted by A & B Movers on February 4, 1992. Harrison testified that this particular move was discovered upon a chance occurrence of passing defendant Bill Reid in Lincoln traffic as he was driving another Ryder rental truck. Harrison and Mahoney followed the truck to Unadilla, Nebraska, where it was backed up to a house there. Mr. Reid and his moving crew then proceeded to carry furniture out of the house; however, at some point Reid became aware of the inspectors' presence so did not accompany his crew when the truck left Unadilla.

Harrison and Mahoney followed the truck to Nebraska City where they observed the truck back up to a house and the crew unload the furniture. The next day Harrison and Mahoney contacted LuAnna Eis at the house in Nebraska City. Ms. Eis admitted to contracting with A & B Movers to perform the move and stated she paid defendant Reid \$450 in cash for the service. Having no receipt verifying payment, Ms. Eis agreed to sign an affidavit signifying the same in the presence of both Harrison and Mahoney (Exhibit 13).

Also admitted in evidence in addition to the affidavit by Eis, was a copy of the Ryder Truck Rental agreement for the February 4th move, and a copy of A & B Movers' advertisement taken from the Yellow Pages section of the December 1991 edition of the Lincoln, Nebraska, Telephone Book (Exhibit 14). Harrison stated that throughout the course of the three investigations testified to, all three parties which contracted with the defendant located his service through said

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Yellow Pages advertisement. The ad specifically describes A & B Movers' operation as "local and area wide moving."

III. Analysis

As previously discussed, the defendant failed to file a timely answer to the departmental complaint filed against him. Defendant further failed to appear at his hearing. Pursuant to Commission Rule of Procedure 027.04B, the Commission may in such case either enter an order assessing a civil penalty for the violation(s) alleged, or may proceed with a hearing to receive evidence and thereafter assess a civil penalty as provided by law. The hearing officer in this case decided to proceed with a formal hearing and the Transportation Department put on its evidence for the record.

From the evidence adduced at hearing, it is clear the defendant did perform the intrastate movements of household goods complained of, and that he and his company A & B Movers, did so on a for-hire basis. Of the three alleged violations complained of in complainant's petition, the evidence is clear that each and every movement was conducted absent a required certificate or permit of authority having first been issued to the defendant by this Commission in direct violation of Section 75-309 R.R.S. 1943 (Reissue of 1990) which reads as follows:

It shall be unlawful for any common or contract carrier by motor vehicle subject to the provisions of Chapter 75, articles 1 and 2, and sections 75-301 to 75-322.04 to engage in any intrastate operations on any public highway in Nebraska unless there is in force with respect to such common carrier a certificate of public convenience and necessity, or a permit to such contract carrier, issued by the commission authorizing such operations.

Nor is the defendant leased to any regulated intrastate motor carrier with the proper authority by which to conduct such movements of property. No such leases are on file with the Commission, according to Director Rowe's testimony.

Complainant also alleged in his petition that defendant violated Household Goods Tariff 7-D prescribed by the Commission pursuant to Sections 75-124, 75-308, and 75-126(1)(e) of the statutes since the defendant did not conform in charging the applicable tariff rate established for household goods movements. Further, Complainant alleges that defendant violated Section 75-307 for failing to file proof of liability insurance, and 75-305 for failing to pay the required annual intrastate registration fee.

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The defendant's failure to answer complainant's petition and to appear at hearing allows the Commission to consider such failure to answer as an admission to these additional allegations as well, even though no evidence was offered at the hearing as to allegations 5 and 6 in the petition. At the hearing the complainant did testify that the defendant had previously paid a penalty for an earlier departmental complaint which was filed against him, said penalty being satisfied after payment of a \$1,000 fine by Bill Reid.

IV. Conclusion

Because the evidence offered at hearing clearly supports complainant's allegations that the defendant on at least three known occasions violated Section 75-309 of the Nebraska Statutes; and because of the defendant's apparent blatant disregard for our laws in conducting his illegal operations not only after having been fined once before, but also for the fact that Count No. 3 in complainant's petition occurred more than two weeks after defendant had been personally served with notice of the proceedings to be heard against him, we hereby conclude that a civil penalty should be assessed against the defendant pursuant to law in an amount reasonably determined according to Rule 027.02B. The basis for such penalty determination includes, but is not limited to, the defendant's history of previous violations, the gravity of the violation(s), and the amount of the fine necessary to deter future violations.

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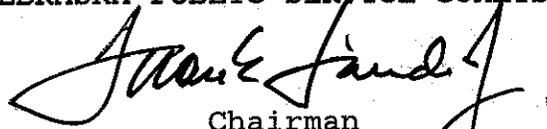
O R D E R

IT IS THEREFORE ORDERED that defendant, Bill Reid d/b/a A & B Movers, be assessed a civil penalty in the amount of one thousand five hundred dollars (\$1,500) on each of three successive counts of violating Section 75-309 R.R.S. 1943, as amended, for a total fine of four thousand five hundred dollars (\$4,500), said penalty to be made payable to the Treasurer of the State of Nebraska and remitted by cashier's check or money order to this Commission not later than thirty (30) days from the date this order is mailed to the defendant.

IT IS FURTHER ORDERED that the defendant cease and desist from any and all further operations in the intrastate transportation of property for hire without authority under penalty of further action by this Commission in the Lancaster County District Court as provided for by law under Section 75-140 et seq. R.R.S. 1943 (Reissue of 1990).

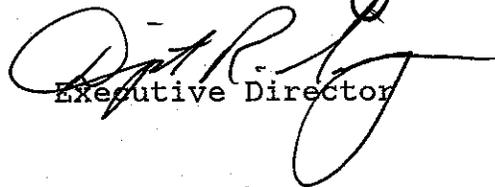
MADE AND ENTERED at Lincoln, Nebraska, this 10th day of March, 1992.

NEBRASKA PUBLIC SERVICE COMMISSION



Chairman

ATTEST:



Executive Director

COMMISSIONERS CONCURRING:

//s//Duane D. Gay
//s//Daniel G. Urwiller
//s//Frank E. Landis, Jr.
//s//James F. Munnelly
//s//Eric Rasmussen