

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In re Robert R. Logsdon, Director)	MOTOR CARRIER COMPLAINT
of the Nebraska Public Service)	MCC-3069
Commission Transportation Department,)	
)	
Complainant,)	
vs.)	ORDER AND JUDGMENT
)	
Bill Reid, dba A & B Movers, Lincoln,)	
Nebraska,)	
Defendant.)	ENTERED: APRIL 26, 1993

APPEARANCES: For the Complainant:

Mark A. Ludwig
Attorney-at-Law
P.O. Box 94927
Lincoln, NE 68509

For the Defendant:

Bill Reid
1733 S.W. 21st Street
Lincoln, NE 68522
(Pro se)

BY THE COMMISSION:

On March 31, 1993, pursuant to proper notice, hearing was had in the Commission Hearing Room at Lincoln, Nebraska, on the complaint filed herein on January 14, 1993. Personal service was made on defendant and on defendant's attorney of record, Lavern Holdeman, by certified mail. On March 1, 1993, complainant filed a first amended complaint in this action with personal service made on defendant on March 1, 1993. The defendant failed to file an answer to either complaint. Defendant was personally served with notice of hearing on the amended complaint on March 1, 1993. Commission Counsel Hal Hasselbalch served as hearing officer. The defendant appeared without counsel.

OPINION AND FINDINGS

I. Summary of the evidence.

Robert R. Logsdon testified: He is the Transportation Department director and the complainant in this action. The defendant has no intrastate operating authority in Nebraska, nor has he at any time applied for such authority. The application process has been explained to the defendant in past conversations with department staff. The defendant has no leases on file with the department showing operation under any certificated carriers. Therefore, the defendant may only operate his services within the City of Lincoln and a five-mile radius around the city limits. The defendant previously appeared before the Commission on a complaint filed in 1990, upon which the defendant settled the matter by payment of a \$1,000.00 fine. In 1992, the defendant was brought before the Commission on three additional counts and was fined a total of \$4,500.00. The Commission suspended that fine on the understanding that if the defendant further operated without intrastate authority, the fine would be reinstated. The defendant has

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been made aware of the laws and regulations with respect to transportation operating authority on numerous occasions.

Jim Avilla testified: He is a rental representative for Ryder Truck Rentals in Lincoln, Nebraska. Mr. Avilla testified that the defendant rented trucks from Ryder Rentals on a weekly basis. During the seven months Mr. Avilla has worked for Ryder in Lincoln, the defendant has come into his office on a regular basis, at least four times a week. When the defendant rents the vehicles, he always signs the rental agreements himself. The defendant would always be present to pay his weekly rental bill to Ryder. The witness testified to a specific rental agreement (Exhibit 3) which showed that defendant rented a Ryder truck on October 5, 1992, and returned it on October 19, 1992. The defendant initialled and signed the rental agreement form. Cash was paid by defendant for the rental. A total of 1,124 miles were put on the vehicle by the defendant for that particular rental period.

On cross examination the witness testified that the vehicle rented through the lease agreement in question was kept out two weeks instead of one week because defendant was late with his payment.

Gretchen Cooper testified: She contracted the services of defendant to move a piano from Salem, Nebraska, to her home in Lincoln, Nebraska, on October 14, 1992. She testified that Salem is located about 100 miles southeast of Lincoln in Richardson County. Ms. Cooper located the defendant's services by referencing the yellow page ads in the Lincoln Telephone Book. One moving company that Ms. Cooper contacted through the yellow pages informed her that they could not move her piano because it was outside of the Lincoln area. Ms. Cooper then spoke with the defendant directly over the telephone, and the defendant never informed her that he could not make the movement of the piano from Salem to Lincoln. Ms. Cooper did not lease the vehicle for the movement, nor did she provide the vehicle. Ms. Cooper was present during the delivery of the piano to her home in Lincoln on October 15, 1992. Bill Reid was also present. Ms. Cooper paid the defendant \$385.00 for the movement of the piano. The defendant requested cash but accepted Ms. Cooper's check as payment (Exhibit 4). The check was made out to A & B Moving and was endorsed by A & B Movers, dba Bill Reid. The defendant also requested that sales tax be paid on the movement, but Ms. Cooper refused payment of any sales tax noting that being a bookkeeper, she was aware that sales tax is not paid on moving services.

On cross examination the witness testified that pickup and delivery of the piano was not made as promised by the defendant, as defendant promised pickup by 7:00 p.m. on October 14, 1992, but did not arrive until approximately 12:30 a.m. on October 15. On redirect the witness testified that she had asked the defendant not to pickup the piano on the evening of October 14 if such pickup would run too late into the evening, for the reason that her parents are elderly.

After the complainant rested, the defendant made a short statement in which he admitted to picking up the piano in Salem and bringing it back to Lincoln. He further testified that the piano was held on the truck all night and delivered later that day.

II. Analysis

From the evidence adduced at hearing, it is clear the defendant did perform the intrastate movement of the piano from Salem, Nebraska, to Lincoln, Nebraska, and did so on a for-hire basis. The defendant, having no certificate of authority from this Commission and having no leases on file showing operation under a certificated carrier, may only make movements of household goods in the City of Lincoln or within a five-mile radius thereof. The evidence shows that Salem is approximately 100 miles from Lincoln, and we take judicial notice that Salem is located in Richardson County. Defendant thus violated Neb. Rev. Stat. Section 75-309 (1990 Reissue), 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.

Exhibit 3 indicates that the defendant rented a Ryder truck during the period in which the movement complained of was made. Although circumstantial in connection to the movement complained of, defendant admitted to moving the piano by truck in his own testimony. The lease agreement was negotiated and signed by the defendant as testified to by the Ryder Rental representative. Exhibit 4 is the check drawn on the partnership account of Gretchen Cooper and shows payment to A & B Moving in the amount of \$385.00, as well as endorsement on the back of the check by A & B Movers, dba Bill Reid. The defendant disputed neither his participation in the movement complained of, nor his receipt of payment in the amount of \$385.00 for said movement. By the defendant's own admission, he made the movement of the piano from Salem to Lincoln for delivery at Gretchen Cooper's home on October 15, 1992.

III. Conclusion

Because the evidence offered at hearing sufficiently supports complainant's allegations that the defendant violated Section 75-309 of the Nebraska statutes as cited herein, we hereby conclude that a civil penalty should be assessed against the defendant pursuant to law in an amount reasonably determined by Rule 027.02B of the Commission's Rules of Procedure. The basis for such penalty determination includes, but is not limited to, the defendant's history or non-history of previous violations, the gravity of the violation, and the amount of the fine necessary to deter future violations. The evidence offered at hearing shows that defendant has appeared before this Commission on at least two previous Transportation Department complaints. On one complaint the defendant paid a civil penalty of \$1,000.00 in settlement of the action filed against him. In a subsequent complaint, which was filed alleging three separate offenses, this Commission assessed a penalty against the defendant in the amount of \$4,500.00, said penalty being thereafter suspended on the condition that defendant make no further illegal intrastate movements or suffer reinstatement of the \$4,500.00

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penalty. Now the defendant is again before us on at least the fifth known violation brought before this Commission for disposition. Although we do not take up the matter of defendant's probation violation in this docket, we are disturbed by defendant's repeated usurpation of the Motor Carrier Act which this Commission is obliged by law to enforce. The complainant has prayed that a civil penalty of \$500.00 be imposed on defendant for the illegal movement complained of herein. We find that the requested penalty of \$500.00 in complainant's prayer is more than fair and reasonable and should accordingly be assessed against the defendant.

O R D E R

IT IS, THEREFORE, ORDERED that defendant, Bill Reid, dba A & B Movers be, and is hereby, assessed a civil penalty in the sum of five hundred dollars (\$500.00) for violating Neb. Rev. Stat. Section 75-309, as amended, said penalty to 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 all further operations in the intrastate transportation of property for hire without authority outside the exception provided under Neb. Rev. Stat. Section 75-303(4), as amended, under penalty of further action by this Commission in the Lancaster County District Court as provided for by law under Neb. Rev. Stat. Section 75-140 et seq.

IT IS FURTHER ORDERED that the defendant file proof of insurance with this Commission as is required under Neb. Rev. Stat. Section 75-307 if defendant has not already complied by the date of this order.

MADE AND ENTERED at Lincoln, Nebraska, this 26th day of April, 1993.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Daniel A. Mueller

//s//Rod Johnson

//s//Frank E. Landis, Jr.

//s//James F. Munnelly

Frank E. Landis, Jr.
Chairman

ATTEST:

James F. Munnelly
Executive Director