

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In re Robert R. Logsdon, Director)
of the Nebraska Public Service)
Commission Transportation)
Department,)
Complainant,)
vs.)
Capital Express, Inc. (M-13867))
Defendant.)

MOTOR CARRIER
COMPLAINT
MCC-3071

FILED

FEB 3 1993

EXECUTIVE DIRECTOR
NEBRASKA PUBLIC SERVICE
COMMISSION

COMES NOW Robert R. Logsdon, complainant in the above-captioned cause, pursuant to Neb. Rev. Stat. Section 75-322.02 (1990 Reissue), and for complaint against Capital Express, Inc., defendant, alleges as follows:

1. Complainant is the Director of the Transportation Department of the Nebraska Public Service Commission (Commission) and is the custodian of the Commission's Motor Transportation Department documents and records.

2. Defendant, Capital Express, is a motor carrier conducting for-hire intrastate carriage in the State of Nebraska. The Commission records and documents show that the defendant has a permit of authority issued from the Commission to operate as a contract carrier as follows:

General commodities, except explosives and hazardous materials, in half-ton pickup trucks or van-type vehicles between Omaha and Omaha Public Power District facilities at or near Elkhorn and Fort Calhoun Nuclear Power Plant at or near Fort Calhoun over irregular routes under continuing contract(s) with Omaha Public Power District.

3. On or about June 25, 1992, defendant violated Sections 75-309 and 75-126(1)(e) of the Nebraska statutes, as amended, for operating as a common carrier without a certificate of authority having been issued by the Commission by transporting two pieces of freight for Packers Engineering in Omaha, Nebraska, to Fremont Beef in Fremont, Nebraska, for \$4.00, which represents an undercharge of \$7.50.

4. On or about June 25, 1992, defendant violated Sections 75-309 and 75-126(1)(e) of the Nebraska Statutes, as amended, for operating as a common carrier without a certificate of authority having been issued by the Commission for transporting 33 pieces of freight from Packers Engineering in Omaha, Nebraska, to Hormel in Fremont, Nebraska, for \$40.00, which represents an overcharge of \$16.50.

5. On or about June 18, 1992, defendant violated Sections 75-309 and 75-126(1)(e) of the Nebraska Statutes, as amended, for operating as a common carrier without a certificate of authority having been issued by the Commission for transporting 16 pieces of freight from Packers Engineering in Omaha, Nebraska, to Hormel in Fremont, Nebraska, for \$16.40, which represents an overcharge of 40 cents.

6. On or about July 23, 1992, defendant violated Sections 75-309 and 75-126(1)(e) of the Nebraska Statutes, as amended, for operating as a common carrier without a certificate of authority having been issued by the Commission for transporting 14 pieces of freight from Packers Engineering in Omaha, Nebraska, to Hormel in Fremont, Nebraska, for \$14.80, which represents an overcharge of \$1.80.

7. On or about October 1, 1992, defendant violated Sections 75-309 and 75-126(1)(e) of the Nebraska Statutes, as amended, for operating as a common carrier without a certificate of authority having been issued by the Commission for transporting 15 pieces of freight from Packers Engineering in Omaha, Nebraska, to Hormel in Fremont, Nebraska, for \$46.50, which represents an undercharge of \$7.50.

8. On or about October 21, 1992, defendant violated Sections 75-309 and 75-126(1)(e) of the Nebraska Statutes, as amended, for operating as a common carrier without a certificate of authority having been issued by the Commission for transporting 34 pieces of freight from Packers Engineering in Omaha, Nebraska, to Hormel in Fremont, Nebraska, for \$40.00, which represents an overcharge of \$9.00; and for transporting 1 piece of freight from Packers Engineering in Omaha, Nebraska, to Fremont Beef in Fremont, Nebraska, for \$10.00.


9. On or about October 29, 1992, defendant violated Sections 75-309 and 75-126(1)(e) of the Nebraska Statutes, as amended, for operating as a common carrier without a certificate of authority having been issued by the Commission for transporting 70 pieces of freight from Packers Engineering in Omaha, Nebraska, to Hormel in Fremont, Nebraska, for \$40.00, which represents an overcharge of \$3.00.


10. Defendant, Capital Express, Inc., was granted its existing contract authority by transfer from Professional Courier Services, Inc. (M-13648) on December 22, 1992. Therefore, defendant had no permitted authority whatsoever from the Commission to make the movements complained of, supra.

WHEREFORE, complainant prays the Commission for an order levying a civil penalty against the defendant pursuant to Neb. Rev. Stat. Section 75-322.02, as amended, and Title 291, Chapter 1, Rule 027.02 of the Commission's rules in an amount not less than one thousand dollars (\$1,000.00) and any other order the Commission deems appropriate and which is within its jurisdiction to render,

including, but not limited to, an order that the defendant cease and desist from operating outside its granted contract authority and from failing to obey the terms of the applicable tariff rates.

DATED this 2nd day of Feb., 1993.


Robert R. Logsdon
Complainant
NPSC Transportation Department


Mark A. Ludwig #19207
Attorney for Complainant
P.O. Box 94927
Lincoln, NE 68509
(402) 471-3101

VERIFICATION

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

Robert R. Logsdon, being first duly sworn on oath, deposes and says that he is the duly appointed and qualified Director of the Transportation Department of the Nebraska Public Service Commission; that he is the Complainant in the foregoing pleading; that he has read the allegations contained therein and understands them to be true to the best of his knowledge and belief.


Robert R. Logsdon, Complainant

Subscribed and sworn to before me this 2nd day of February, 1993.

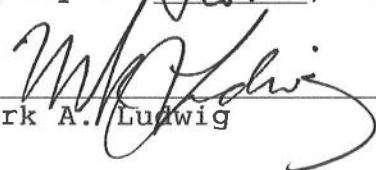
S E A L




Notary Public

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing complaint was served on the defendant, Capital Express, Inc., 4365 S. 89th Street, Omaha, Nebraska, 68127, by certified mail, return receipt requested, this 3rd day of Feb., 1993.


Mark A. Ludwig

NOTICE

1. Pursuant to Title 291, Ch. 1, Rule 027.03A(5), defendant is hereby notified that the Commission will set a hearing date for this complaint and give notice to the defendant of said date and location of the hearing. Defendant is further notified that failure to file an answer to this complaint within twenty (20) days from the date of service will be construed as an admission of the allegations stated therein.
2. Failure by the defendant to file an answer or to appear at the hearing allows the Commission to (a) immediately enter an order assessing a civil penalty as provided for by law, or (b) to proceed with the hearing and receive evidence of the alleged violation(s) and thereby assess civil penalties as provided for by law.
3. Upon failure to pay any civil penalty determined by the Commission, such civil penalty unpaid shall constitute a debt to the State of Nebraska and be collectible by civil action in the District Court of Lancaster County, Nebraska.