

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In re Robert R. Logsdon, Director of the Nebraska Public Service Commission Transportation Department,)	MOTOR CARRIER COMPLAINT
)	MCC-3087
)	
Complainant,)	
vs.)	ORDER AND JUDGMENT
)	
Brad Olson, dba Pro Movers, North Platte, Nebraska,)	
)	
Defendant.)	ENTERED: APRIL 5, 1994

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

BY THE COMMISSION:

On March 2, 1994, pursuant to proper notice, hearing was had in the Commission Hearing Room at Lincoln, Nebraska, on the complaint filed in this docket with the Commission on January 12, 1994, and served on defendant personally on January 13, 1994. The defendant filed no answer to the complaint, nor did defendant appear at hearing. Commissioner Frank Landis served as hearing officer. Commissioner Duane Gay was also present.

OPINION AND FINDINGS

I. Summary of the evidence.

Robert R. Logsdon testified: He is the director of the transportation department and the complainant in this action. He stated that the defendant has no authority to operate in Nebraska intrastate commerce, nor has he applied for the necessary authority. Defendant is not leased to any certificated carrier. The only for-hire transportation that defendant may legally perform is within the City of North Platte wherein he is based or five miles around North Platte. This is the first complaint the Commission has filed against the defendant.

Robert Harrison testified: He is a motor transportation inspector with the PSC. On December 10, 1993, Mr. Harrison was dispatched to an address in Lincoln after the PSC office received word from its inspector in North Platte, Steve Finke, that an illegal move would take place from North Platte to Lincoln that day. Mr. Harrison contacted the manager of the apartment house and waited to see if the truck would show up at the Lincoln address. The manager informed him that the new tenant would arrive there later in the evening. Mr. Harrison waited until 5:45 p.m. and then observed a Ryder rental truck pull into the lot. Mr. Harrison made contact with the parties driving the truck and was informed by the driver, Mark Ripple, that he was an employee of Pro Movers out of North Platte. The driver told Mr. Harrison that Pro Movers was the same entity as Brad Olson Moving and that Brad Olson owned Pro Movers. The driver further informed the inspector that the

load of furniture came from the North Platte area. A warning ticket was issued to Brad Olson Moving for operating with no authority. A copy of said warning ticket was admitted into evidence as Exhibit B. Mr. Harrison also testified that he secured a copy of the original estimate given to Delores Craig, the moving party, from the defendant that showed \$1,140 as being the amount charged for the movement. A copy of said estimate marked as Exhibit C was admitted into evidence. The exhibit shows the statement was issued to Delores Craig in Maywood, Nebraska, in account with Pro Movers of North Platte, Nebraska.

Steven Finke testified: Mr. Finke is the PSC motor transportation inspector for the North Platte area. On or about October 6, 1993, Mr. Finke received a complaint that Mr. Olson's company may be operating illegally in the North Platte area. On or about October 12, 1993, Mr. Finke had a telephone conversation with Brad Olson and advised Mr. Olson at that time that he could only legally move goods inside the city of North Platte or within a five-mile radius of North Platte. Mr. Finke told the defendant that to go outside of this radial area, Mr. Olson would have to obtain authority from the state to make such movements. On or about December 7, 1993, Mr. Finke received another complaint that Mr. Olson may be making an illegal move from Maywood, Nebraska, to Lincoln, Nebraska. On December 9, Mr. Finke went to the post office in Maywood and obtained an address in Lincoln where the moving party would be moving to. Mr. Finke then contacted Inspector Harrison in Lincoln with the information. On December 10, Mr. Finke observed a Ryder rental truck at a residence in Maywood; and after the truck loaded up and left, he contacted Inspector Harrison in Lincoln telling him that he believed the truck was en route to Lincoln and would arrive later that afternoon. Mr. Finke testified that Lincoln is approximately 300 miles from Maywood.

On December 23, 1993, Inspector Finke received a tip that the defendant may be making another illegal move from Wellfleet, Nebraska, to North Platte, Nebraska. On that same date, Finke observed the defendant drive into an address in North Platte with a U-Haul truck. Subsequent to this observation, the inspector contacted the moving party and obtained from her a statement given to her from Brad Olson indicating the time and billing for said movement. A copy of this statement was marked as Exhibit D and admitted into evidence. This statement is a bill for the movement of furniture and appliances from Wellfleet to North Platte, Nebraska, in the amount of \$320. Mr. Finke testified that Wellfleet is approximately 26 miles south of North Platte.

One of complainant's subpoenaed witnesses, Delores Craig, failed to appear at hearing. With the consent of the hearing officer, a notarized affidavit was secured from the witness testifying to the events of the movement of goods by the defendant from Maywood to Lincoln, Nebraska, on December 10, 1993. Said affidavit was marked as Exhibit E and filed in this docket on March 14, 1994. The affidavit signed by Delores Craig states that defendant did move her household goods from Maywood to Lincoln, Nebraska, on or about December 10, 1993, for the sum of \$1,140. Photocopies of check No. 3105 and 3113 on Mrs. Craig's personal bank account and signed by herself signify payment made to Brad Olson.

II. Analysis

From the evidence adduced at hearing, and from post-hearing filed Exhibit E, we find that the defendant did perform two intrastate movements of household goods and that he and/or his company, Pro Movers, did so on a for-hire basis. The defendant, has no certificate or permit of authority issued from this Commission, nor is he leased to any certificated carrier. Therefore, he may only make legal intrastate movements of household goods within the City of North Platte wherein he is domiciled or within a five-mile radius thereof.

Neb. Rev. Stat. Section 75-309, as amended, 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.

We find the defendant did indeed violate Section 75-309 by transporting regulated commodities in Nebraska intrastate commerce without authority from Maywood to Lincoln, Nebraska, on one occasion, and from Wellfleet to North Platte, Nebraska, on another.

The evidence shows that prior to making the two movements complained of herein, the defendant had been warned either by personal contact with a PSC motor transportation inspector, or by the issuance of a warning ticket. However, even though defendant was verbally warned in October 1993 and issued a warning ticket in early December 1993 for conducting an illegal movement, he proceeded to conduct yet another illegal intrastate movement on or about December 23, 1993. It would appear from the evidence that defendant's noncompliance was willful and deliberate. We also note the defendant filed no answer to the complaint and failed to appear at the hearing. Under our rules, we could have, therefore, entered judgment against defendant prior to receiving any evidence.

III. Conclusion

Because the evidence 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 violations, the good faith of the defendant in attempting to achieve compliance after notification of the violation is given, and the amount of the fine necessary to deter future violations. The complainant has requested a fine of \$1,000. Because two illegal movements were made after the defendant had previously been apprised of the law regarding regulated intrastate

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transportation, we find that complainant's recommendation is probably reasonable. However, as this is the first complaint filed against defendant, and since in the past practice we have fined first-offense household goods movers \$500, the maximum penalty for a Class IV misdemeanor, we will accordingly assess that amount against the defendant for the violations committed herein. If the defendant is ever found to have made illegal intrastate movements from this date forward, any future fine(s) will be substantially increased in severity.

O R D E R

IT IS, THEREFORE, ORDERED that defendant, Brad Olson, dba Pro Movers be, and is hereby, assessed a civil penalty in the amount 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.

MADE AND ENTERED at Lincoln, Nebraska, this 5th day of April, 1994.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Daniel D. H. Smith
Duane D. Gay

//s//Rod Johnson
//s//Frank E. Landis, Jr.
//s//James F. Munnelly

ATTEST:

James F. Munnelly
Chairman

D. R. King
Executive Director