

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In re Robert R. Logsdon, Director) MOTOR CARRIER COMPLAINT
of the Nebraska Public Service) MCC-3127
Commission Transportation)
Department,)
Complainant,)
vs.) SUSTAINED
Chad D. Patterson and Fifth Avenue)
Cab, Inc.,)
Defendants.) ENTERED: MAY 21, 1996

APPEARANCES: For the Complainant:
Hal Hasselbalch, Esq.
300 The Atrium, 1200 N Street
P.O. Box 94927
Lincoln, NE 68509-4927

For the Defendants:
Marshall D. Becker, Esq.
600 Professional Tower
105 South 17th Street
Omaha, NE 68102

For Formal Intervenors Yellow Cab,
Checker Cab, and Happy Cab Co.:
Jack L. Shultz, Esq.
P.O. Box 82028
Lincoln, NE 68501

BY THE COMMISSION:

OPINION AND FINDINGS

On January 18, 1996, Robert R. Logsdon, Director of the Public Service Commission's Transportation Department, filed a complaint against Chad D. Patterson and Fifth Avenue Cab, Inc. of Council Bluffs, Iowa, in which he alleged nine violations of unauthorized taxi operations in Nebraska intrastate commerce between December 28, 1995, and January 11, 1996. A copy of the complaint was properly served on defendant on January 29, 1996. On February 6, 1996, defendant filed an answer to the complaint which denied all the material allegations of the complaint. Hearing on the complaint was held March 5, 1996, with appearances as shown.

Complainant produced six witnesses.

Dianna Hoffman testified: She is a private investigator with the Jasa Investigative Services. On December 28, 1995, at approximately 1:50 p.m. she entered a Fifth Avenue cab at Omaha Eppley Airfield and hired the driver to take her to Uta Halee in Omaha. The driver proceeded north from Eppley Airfield on Abbott Drive to John J. Pershing Drive to 30th Street in Omaha. The fare was \$9.90. The driver was asked to wait and take her somewhere else. At 2:20 p.m., the same driver was requested to drive her to the Radisson Hotel at 1504 Harney Street in Omaha. The driver identified himself as Bob

MOTOR CARRIER COMPLAINT MCC-3127

PAGE TWO

Anson. He drove to the hotel over the streets of Omaha arriving at 2:48 p.m. and charged her \$12.80. The investigation was initiated through Doug Jasa by Happy Cab. She did not tell the driver what route to take. On January 3, 1996, at 7:10 p.m., she and Investigator Jacobsen entered a Fifth Avenue cab and told the driver to take them to Immanuel Hospital. The driver drove north on Abbott Drive then took Storz Expressway to the hospital. At no time did he leave the State of Nebraska. Selection of the route was left up to the driver. When they arrived at Immanuel Hospital, they requested the driver to wait. The driver identified himself as Chad Patterson. After a 30-minute wait, they reentered the cab and requested the driver to take them to the New Tower Inn at 7th and Dodge Streets in Omaha. When they arrived at New Tower Inn, they paid the driver \$19.90 for the rides. On January 4, 1996, at 4:45 p.m., she called Mr. Patterson. Mr. Patterson answered and told her he would pick her up at the New Tower Inn a little after 5 p.m. At 5:11 p.m., Mr. Patterson did pick her up and took her to Futurisms at 11th and Jackson Streets. She recognized Mr. Patterson as the driver and the same person that drove her on January 3.

Jenny Johnson testified: She is a private investigator for Jasa Investigative Services. On December 28, 1995, she was at the Radisson-Redick Hotel at 2:48 p.m. when the Fifth Avenue cab hired by Ms. Hoffman arrived. She entered the cab and requested the driver to take her to Holiday Inn Central at 72nd and I-80 in Omaha. The driver took her to the Holiday Inn arriving at 2:55 p.m. She paid the driver \$10.05. The trip was made entirely within the city limits of Omaha. On January 4, 1996, at 5:33 p.m., she entered a Fifth Avenue Cab at Futurisms in Omaha. She recognized the driver as Chad Patterson. He transported her over the streets of Omaha to Holiday Inn Central. She paid for the ride.

James Jacobsen testified: He is a private investigator with Jasa Investigative Services. He also witnessed the ride described by Dianna Hoffman that occurred on January 3, 1996. Chad Patterson asked him to call him if they needed any help driving around town anywhere. When the driver found out where they were staying, he asked them to give him a call if they needed any help in finding a nice place to eat or transportation while staying in Omaha. He also witnessed the trip between Immanuel Hospital and New Tower Inn. The cab did not leave the State of Nebraska at any time during the ride.

Robert W. Harrison testified: He is a state deputy sheriff and an investigator for the Commission. On January 11, 1996, he hired Fifth Avenue Cab to transport him to 4930 Battlefield Drive and 3330 N. 104th Avenue in Omaha from Eppley Airfield. He entered a silver Fifth Avenue car, fitted with a door placard. The driver identified himself as Bob Anson. He told the driver he did not know his way around Omaha and that he wanted to go to the Plastilite Corporation at 4930 Battlefield Drive and then go to LaQuinta Inn at 3330 N. 104th Avenue. The driver proceeded north on Abbott Drive out of the airport to John J. Pershing Drive and eventually to the Battlefield address. The driver was given the option of choosing the route. When the cab arrived at LaQuinta Inn, he paid the driver \$21.80 for the rides. The driver asked him whether he would need a ride the next morning. After paying the driver, he notified the driver that he violated state law. Exhibit 3 shows the receipt issued for the payment of the fees. Exhibit 4 is the business

card tendered to him by the driver. He did not see any notice posted in the Fifth Avenue cab to the effect that the driver could not pick up or deliver passengers if the most direct route involves going directly to or coming directly from the North Expressway as shown in Exhibit 5.

Robert R. Logsdon testified: He is the executive director and director of transportation of the Commission. There is no Certificate of Public Convenience and Necessity on file with the Commission for Fifth Avenue Cab or Chad Patterson. There is no application pending for authority.

Chad Patterson testified: He is president of Fifth Avenue Cab. It is a corporation of which he is the sole stockholder. He requested a declaratory order from the Commission authorizing him to operate between Eppeley Airfield and Omaha. He has read Exhibit 7. The quotations in it are accurate as to what he said. He admits to having made the moves described by the witnesses in which he was directly involved. He made the movements recognizing that he did not possess authority from the Commission. He knew he could not transport passengers north out of Eppeley Airfield.

DISCUSSION

Section 75-309 (1995 Supp.) in pertinent part says:

...It shall be unlawful for any common or contract carrier by motor vehicle subject to the provisions of sections 75-101 to 75-155 and 75-301 to 75-322 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 which authorizes such operations.

Neb. Rev. Stat. 75-156(1) (1995 Supp.) provides:

In addition to other penalties and relief provided by law, the Public Service Commission may assess a civil penalty of up to five thousand dollars against any person, motor carrier, regulated motor carrier, common carrier, or contract carrier for the violation of (a) any provision of Chapter 75, article 3, or section 75-126 as such section applies to any person or carrier specified in Chapter 75, article 3, (b) any term, condition, or limitation of any certificate or permit issued pursuant to Chapter 75, article 3, or (c) any rule, regulation, or order of the commission issued pursuant to Chapter 75, article 3. The amount of the civil penalty assessed in each case shall be based on the severity of the violation charged. The commission may compromise or mitigate any penalty prior to hearing if all parties agree. In determining the amount of the penalty, the commission shall consider the appropriateness of the penalty in light of the gravity of the violation and the good faith of the violator in attempting to achieve compliance after notification of the violation is given.

The evidence shows that defendants have operated as a common carrier in Nebraska intrastate without there having been in force a Certificate of Public Convenience and Necessity according to Section 75-309. These violations were clear. There was no travel in any other state. The passengers were not involved in any air travel. The evidence is overwhelming that defendants knowingly and willfully operated without the requisite authority. Exhibit 6 is an excerpt from a hearing convened by Mr. Patterson and Fifth Avenue Cab to determine whether the Commission had jurisdiction over his operations between Eppley Airfield and downtown Omaha.

Q (By Mr. Becker) ... do you agree that you cannot legally without authority from this Commission pick up passengers at Eppley and proceed north which is still in Nebraska and end up in -- by serving Omaha?

A Yes.

Q Do you propose to do that?

A No.

Q ... if a passenger got off the airplane and said he wanted to go to a point north of Ames in Omaha, would you tell him that you did not have the proper authority?

A Yes.

Q And, the same would be that if someone calls you from a house that was located north of that boundary line, would you tell him that legally you couldn't proceed that way?

A Yes.

Exhibit 7 is the newspaper article published March 5, 1996, which Mr. Patterson stated is accurate. He charges the same rates as regulated cabs and carries the same insurance. Fifth Avenue Cab's application for declaratory order in PI-15 and the record produced in that hearing shows beyond a shadow of a doubt that these defendants were well aware of the law governing their activity and that they blatantly disregarded it.

Section 75-156 provides for penalties up to \$5,000 for violations of this sort. However, the statute also says the amount of the civil penalty should be levied in light of the gravity of the violation and the good faith of the violator in the Commission's attempt to achieve compliance after notification of the violation is given. We can find no good faith in this record. In this case, the violators had come before this Commission and discussed their operations. There is no question that Mr. Patterson and his alter ego, Fifth Avenue Cab, Inc., knew full well the law. They exhibited no good faith in attempting to operate in what they chose to believe is a gray area. They were operating where the law is black and white. In view of their conscious disregard of the statutes and rules of the Commission, these defendants should be assessed a fine well above the minimums we have levied in other cases. A fine of \$300 per the seven proved offenses should be assessed. Whether Mr. Patterson chooses to pay the \$2,100 penalty as an individual or as Fifth Avenue Cab, Inc. is not of particular concern. The penalty should be assessed jointly and severally.

MOTOR CARRIER COMPLAINT MCC-3127

PAGE FIVE

O R D E R


IT IS, THEREFORE, ORDERED that defendants, Chad D. Patterson and Fifth Avenue Cab, Inc., jointly and severally pay a penalty of \$2,100.00 to this Commission pursuant to Section 75-156. Said penalty is 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 defendants.

IT IS FURTHER ORDERED that the defendants cease and desist from all further operations in the intrastate transportation of passengers for hire without authority 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 21st day of May, 1996.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:


 //s//Rod Johnson
 //s//Frank Landis
 //s//Daniel G. Urwiller

Chairman

ATTEST:


 Executive Director

COMMISSIONERS DISSENTING:
 //s//James F. Munnelly

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

