

ORIGINAL

Decision No. 80527

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JOHN STEWART, dba J. S. TRUCKING  
for reinstatement of radial high-  
way common carrier permit, San  
Francisco.

Application No. 53286  
(Filed April 25, 1972)

John A. Stewart, for applicant.  
William C. Bricca, Attorney at Law, and Ted  
H. Peceimer, for the Commission staff.

O P I N I O N

The radial highway common carrier permit held by John A. Stewart was revoked December 6, 1971, by Commission Resolution No. 16796. This application was filed to request that the permit be reinstated.

A public hearing was held before Examiner Fraser on May 25, 1972, at San Francisco and the matter was submitted.

The record indicates that on June 15, 1971, the Commission mailed an "Information Request for Distribution of Revenue by Minimum Rate Tariff for the Calendar Year 1970" to 12,448 permit holders, including applicant. The notice included a warning that "Failure to comply with the request by July 15, 1971, will result in a \$25 penalty and may result in suspension or revocation of your operating authority." Of the total permit holders notified, 1,104 failed to respond within the time allotted, including the applicant. A second notice was mailed on August 15, 1971, and informed the delinquent permit holders that a \$25 fine had been assessed and placed them on notice of possible suspension and revocation for non-compliance. On October 27, 1971, the Commission notified 293 permit holders who failed to respond to the second notice, including applicant, that the Commission by Resolution No. 16796 had suspended their permits as of November 5, 1971, and would revoke said permits effective December 6, 1971, unless on or

before that date the fine of \$25 was paid and the requested information had been filed with the Commission. All but 28 carriers complied with the third notice. All three notices were mailed to the applicant by first class mail and none were returned by the post office. The information request and \$25 penalty had not been received as of the date of hearing.

The staff opposes the reinstatement of applicant's permit because it contends that applicant has a history of delinquency with respect to compliance with Commission regulations. Exhibit 2 discloses that applicant received his permit on April 28, 1964, and that since August of 1966 he was delinquent in filing required reports, or quarterly fees on 18 occasions; in addition, his operating authority was suspended during this period for five weeks due to a lapse of insurance coverage. The exhibit notes that applicant telephoned the San Francisco office of the Commission on April 3, 1972, to ask about dump truck authority and was notified at that time that his permit had been revoked. The staff's last notice to the applicant was mailed on October 27, 1971. Applicant was not advised that his permit had been revoked, since receipt of the Commission Resolution, which is a formal order of the Commission, is a combined warning and notice.

Applicant testified that due to illness he has not operated since the latter part of 1970; he had an operation to relieve an inguinal hernia on May 11, 1971, and on July 19, 1971 (Exhibit 4), his doctor suggested that he do nothing strenuous for several more weeks; his business address is where he lives with his two sons, who are 19 and 22 years old, but he has resided at a rest home owned by his wife at a different location since becoming ill and did not check his business mail for five months; he did not recall receiving any recent mail from the Commission and is certain that the letters were mislaid by one of his sons after being delivered to his business address; before his operation he had a one-man business with only one truck; if his permit is reinstated, he will operate with a partner.

Applicant further testified that he visited the Commission in July of 1971 to pay a fine of \$25 and a penalty of \$5; he paid the penalty and was advised not to worry about the fine, that it had been lifted; he then believed that he was clear and owed nothing further. Staff rebuttal disclosed that applicant paid a \$4 quarterly fee and a \$1 penalty to the Commission on July 19, 1971, for the period from January 1 to March 31, 1971. A \$25 fine had been levied but was withdrawn due to applicant's illness and operation. The \$5 payment referred to the quarterly fees due for January-March, 1971. It had nothing to do with and occurred prior to the present controversy.

Applicant was partially disabled and may not have had handed personally to him all of his business mail during the period the Commission notices were mailed. He visited the San Francisco office of the Commission in July of 1971 to pay a fine and a penalty for a prior offense. The penalty was paid and he was advised not to worry about the fine; that it had been eliminated. Applicant then supposed that he owed nothing further and that all offenses pending had been excused. The records show that if the applicant had any misunderstanding he had two opportunities since then to clear that misunderstanding. The applicant was careless in failing to comply with the Commission's regulations herein involved. The application should be denied.

After consideration the Commission finds that:

1. On June 15, 1971, the Commission mailed a request to applicant which directed that the latter provide certain information. The request included a notice that failure to provide the information by July 15, 1971, would result in a \$25 penalty and possible suspension or revocation. The request was mailed first class to applicant's business address and never returned.

2. On August 15, 1971, a second notice was mailed to the applicant, which imposed the \$25 penalty and advised that suspension and revocation would result if the notice was disregarded.

3. On October 27, 1971, the Commission notified 293 permit holders who failed to respond to the second notice, including applicant, that the Commission by Resolution No. 16796 had suspended their permits as of November 5, 1971, and would revoke said permits effective December 6, 1971, unless on or before that date the fine of \$25 was paid and the information filed with the Commission.

4. Applicant failed to comply with any of the stated requirements and his permit was revoked on December 6, 1971.

5. Applicant contacted the Commission on April 3, 1972 and was advised that his permit had been revoked.

6. Applicant has not operated since the latter part of 1970. He was partially disabled by a hernia which was finally relieved by an operation performed in May of 1971. He was restricted to light physical work until mid-August of 1971.

7. He lived at a rest home managed by his wife while he was recuperating and did not check his mail for a five-month period or go to his business office although he knew that his sons who lived at the business address never brought any mail to him. He did not realize he owed an additional \$25 after paying the \$5 penalty in July of 1971, and was not aware that he had lost his permit until he contacted the Commission on April 3, 1972.

8. Applicant was negligent in not making arrangements to receive his business mail. The two notices referred to in Findings Nos. 2 and 3 were mailed to the applicant during the five-month period the applicant had the ability to go to his business office but did not do so.

The Commission, therefore, concludes that applicant's permit should not be reinstated.

O R D E R

IT IS ORDERED that the application to reinstate the radial highway common carrier permit issued to John A. Stewart, doing business

as Black Star Line and revoked by Commission Resolution No. 16796,  
is hereby denied.

The effective date of this order shall be twenty days  
after the date hereof.

Dated at San Francisco, California, this 26<sup>th</sup>  
day of SEPTEMBER, 1972.

Vernon L. Stanger  
President  
William J. Quinn  
John J. Quinn  
John J. Quinn  
John J. Quinn  
Commissioners