

JR.

Decision No. 84415

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

H. CLAYTON, dba CLAYTON TRUCKING)
COMPANY, for reinstatement of)
dump truck carrier permit,)
statewide.)
File No. T 94 075 }

Application No. 55409
(Filed December 23, 1974)

Robert Feinstein, Attorney at Law,
for applicant.
T. H. Peceimer, for the Commission
staff.

O P I N I O N

Herman Clayton (Clayton) dba Clayton Trucking Company, was issued a permit to operate as a dump truck carrier effective May 19, 1970.^{1/} On October 14, 1970 that permit was suspended for failure to maintain on deposit with the Commission evidence of adequate liability insurance protection required by General Order No. 100 Series. The suspension notice, which was dated September 15, 1970, warned that if the required evidence of insurance was not received by October 14, 1970, a fine of \$25 must be paid. On November 24, 1970 a certificate of insurance was filed. The permit was reinstated on November 25, 1970.

Clayton was advised by a letter dated December 2, 1970 that while his permits had been reinstated, the \$25 fine had not been received, and unless the fine was received on or before January 2, 1971, the permits would be subject to revocation. On January 6, 1971, the Commission was notified that Clayton's insurance would be canceled on February 5, 1971. A notice of impending suspension dated January 7, 1971 was sent to Clayton, again

^{1/} This was the second highway carrier authority issued to Clayton. A radial highway common carrier permit was issued on November 4, 1969.

admonishing that failure to file the necessary evidence of insurance before February 5, 1971 would result in the assessment of a \$25 fine.

Resolution No. 16672 dated January 26, 1971 suspended Clayton's permits and warned that failure to pay the \$25 fine by March 26, 1971 would cause the permits to be revoked. The resolution concerned itself with the fine assessed on September 15, 1970. The notice transmitting the resolution was sent by certified mail. It was returned unclaimed. The notice was sent again to Clayton by regular first class mail.

In a letter dated March 1, 1971 Clayton was informed that a certificate of insurance had been received and the fine imposed by the notice of January 6, 1971 was rescinded. He was reminded that the fine assessed in the notice of September 15, 1970 had not been received and the permits would not be reinstated unless it was paid and the permits would be revoked on March 26, 1971, pursuant to Resolution No. 16672. On March 19, 1971 another letter was sent warning of the impending revocation. The fine was not paid and the permits were revoked effective March 26, 1971.

A new radial Highway common carrier permit was issued to Clayton on February 29, 1972. This permit was revoked October 19, 1972 for failure to maintain adequate liability insurance.

By this application Clayton seeks reinstatement of the dump truck carrier permit. A public hearing was held before Examiner Tanner in Los Angeles on March 3, 1975, and the matter was submitted.

Clayton's case was presented by his attorney in the form of opening and closing statements, cross-examination of the staff witness, and a single exhibit. Clayton was unable to participate due to automobile trouble on his way to the hearing.

The staff offered Exhibit 1 in evidence which is titled "Record of Herman Clayton" and consists of reproductions of documents from the Commission's Transportation Division License Section's file on Clayton. The exhibit illustrates in detail the problems Clayton experienced with maintenance of insurance coverage, payment of fines, suspension and revocation, and, most importantly, an absence of coherent communication between the staff and Clayton. The staff opposed the reinstatement of the dump truck carrier permit on the grounds that the revocation was for good cause.

Clayton's counsel argued that Clayton was a victim of a series of unfortunate circumstances. He explained that his client had paid monthly premiums to a local insurance agent during mid-1971, and believed that he was properly insured. It was alleged that the mail service in the San Fernando Valley was interrupted by the earthquake in the spring of 1971 which caused delay in mail delivery and could have caused some of the notices to Clayton to be lost.

Exhibit 2, offered by applicant, is a letter dated March 22, 1971 which reads in part:

"The Commission has considered your recent request concerning the twenty-five dollar (\$25) fine relative to Data Bank information. This is to inform you that the Commission has relieved you of the fine."

This letter was purportedly received approximately one week after the letter dated March 19, 1971, warning Clayton that his permits would be revoked on March 26, 1971 for failure to pay the \$25 fine. Clayton believed he was relieved of the fine and assumed the problem was resolved.

In mid-November 1971, a representative of the Commission's Transportation Division called on the carrier who was employing Clayton as a subhauler. The carrier was informed that Clayton's permits had been revoked. Clayton personally visited the Commission's San Francisco office November 21, 1971 where he was told he must pay the fine and insurance coverage was required. No record of this visit is in Clayton's file.

Cross-examination of the staff witness revealed that the License Section file contained no information regarding the letter received in evidence as Exhibit 2. It appears that the Systems and Procedure Branch of the Transportation Division is authorized to assess fines when a carrier fails to comply with a request for data. The License Section is not advised of such action until a carrier's permit is to be suspended for failure to comply with the data request or failure to pay a fine. At that point the License Section processes the suspension and revocation. If in the judgment of the Systems and Procedure Branch there appears good cause to excuse a carrier, a form letter is sent containing a message identical to that in Exhibit 2. No record of these notices is maintained in the carrier's license file.

Clayton's belief that he was properly insured has merit. Exhibit A to the application is a portion of a deposition of the insurance agent who was handling Clayton's liability coverage. The deposition was taken by Clayton's attorney in connection with a Superior Court action wherein Clayton was attempting to recover damages resulting from the insurance agent's assurance that the insurance was in force, when in fact no coverage existed.^{2/} Clayton's attorney stated that the suit had been settled out of court February 28, 1975 for an amount in excess of \$28,000, and that the defendant had agreed to negligence. The deposition supports that statement.

The record in this matter makes it clear that Clayton's attention to the details necessary to the successful conduct of his business needs substantial improvement. His record as reflected by Exhibit 1 raises serious questions regarding his ability to satisfactorily conduct a business as a dump truck carrier. An essential

^{2/} Case No. NW C 30577, Clayton v Hamilton - Superior Court, County of Los Angeles (Northwest-Van Nuys).

element in the conduct of such a business is the fact that it is regulated, which requires the operator to become familiar with and adhere to the regulations.

On the other hand, the confusion resulting from the action of the insurance agent, the alleged delay or loss of mail due to the earthquake, and the apparent misunderstanding of the Commission's letter excusing the fine, opens the way to a reasonable speculation that Clayton's record might have been quite different if these events, over which he had no control, had not occurred.

Findings

1. By a notice dated September 15, 1970, Clayton was advised of an impending suspension of his dump truck carrier permit on October 14, 1970 unless evidence of adequate liability insurance was deposited by that date.

2. The notice referred to in finding 1 above warned that if the required evidence of insurance was not received by October 14, 1970, Clayton would be required to pay a fine of \$25.

3. A certificate of insurance was filed on November 24, 1970 by Clayton's insurance carrier.

4. Pursuant to Resolution No. 16672 dated January 26, 1971, Clayton's dump truck carrier permit was suspended for failure to pay the fine resulting from the failure to timely file the necessary insurance coverage.

5. By a letter dated March 19, 1971, Clayton was advised that his permit would be revoked on March 26, 1971, if as of that date the fine was not paid.

6. By a letter dated March 22, 1971, Clayton was advised that he was relieved of the \$25 fine relative to Data Bank information.

7. Clayton's dump truck carrier permit was revoked March 26, 1971, pursuant to Resolution No. 16672 dated January 26, 1971.

8. Clayton regularly paid his insurance agent from May 1971 through November 1971, believing insurance coverage existed.

Conclusions

1. Clayton's dump truck carrier permit should be reinstated provided that he:

- a. Remits the \$25 fine;
- b. Files the quarterly gross revenue reports for the second, third, and fourth quarters of 1972 and pays the fees due thereon;
- c. Purchases the appropriate minimum rate tariffs applicable to the service to be performed;
- d. Files evidence of insurance; and
- e. Complies with such other rules, regulations, or requirements applicable to performing service as a dump truck carrier.

2. Clayton is admonished that his past performance implies negligence on his part. Clayton is placed on notice that any delinquency on his part in complying with Commission rules and regulations may result in Commission action leading to revocation of his permits.

O R D E R

IT IS ORDERED that:

1. The dump truck carrier permit issued to Herman Clayton, doing business as Herman Clayton Trucking, and revoked by the Commission pursuant to Resolution No. 16672 dated January 26, 1971 shall be reinstated after all fines and fees now due are paid to the Commission.

2. Operations under this permit shall not commence prior to written notice from the Commission that the conditions specified in conclusion one herein have been met.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 13th
day of MAY, 1975.

Vernon L. Stenger
President
William J. Lyons
[Signature]
[Signature]
[Signature]
Commissioner's