

Decision 89 05 016 MAY 10 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

APPLICATION FOR HEARING OF BLUE
GOOSE CHARTER LEASING (DORIS PEAK),
(Re: suspension, revocation, or
denial of renewal authority of
property or passenger carrier at
request of California Highway
Patrol).

MAY 10 1989

Application 89-02-024
(Filed February 15, 1989)

Rollin N. Rauschl and Jeffery Stearman,
Attorney at Law, for Blue Goose Charter
Leasing, applicant.
Carol Matchett, Attorney at Law, for the
Transportation Division.

OPINION

Doris J. Peak (Peak), dba Blue Goose Charter Leasing, applied for a hearing to contest the Commission's denial of renewal of her operating authority TCP-4559-B,S (Class B certificate and sightseeing permit). Notice of Denial was mailed to Peak on February 10, 1989, this application was filed on February 15, and public hearing was held on March 8, 1989 before Administrative Law Judge Robert Barnett.

By way of background, on January 1, 1989 Commission Resolution TL-18266 became effective, which directed the Executive Director of the Commission to deny, suspend, or revoke the operating authorities of passenger carriers and property carriers on the basis of the recommendation of the California Highway Patrol (CHP). The resolution relied on both new legislation and continuing statutory authority. (See Public Utilities (PU) Code §§ 768, 1033.7, 1070, 3774, 3774.5, 5285.5, 5272.1(c), 5374, 5378(a), and 5378.5, and Vehicle Code § 34505.1.)

Particularly applicable to this case is PU Code § 5374 which states:

"Before a permit or certificate is issued, the commission shall require the applicant to establish reasonable fitness and financial responsibility to initiate and conduct the proposed transportation services. The commission shall not issue a permit or certificate pursuant to this chapter unless the applicant certifies on a form acceptable to the commission that the applicant will maintain its vehicles in a safe operating condition and in compliance with the Vehicle Code and with regulations contained in Title 13 of the California Administrative Code relative to motor vehicle safety."

Paragraph 3 of Resolution TL-18266 states:

"Upon receipt of written recommendation from the Highway Patrol that an application for new, or renewal, charter-party carrier authority be denied for failure to pass safety inspection the Executive Director shall deny the application."

Peak's authority to operate was to expire in September 1988 and she filed a timely application for renewal. The Commission's Transportation Division notified the CHP of the renewal application and requested an inspection. The CHP inspected Peak's operation in October 1988 and found safety violations. Reinspections were performed on January 9, 11, and 18, 1989, and further violations were found, including two mechanical safety violations, failure to maintain drivers' duty status records, and failure to have complete maintenance records. (Exhibit 4.) The CHP recommended that the application be denied. On February 10, 1989, the Executive Director, pursuant to Resolution TL-18266, denied Peak's renewal application for failure to pass the CHP safety inspection. Peak then filed this application.

An inspector for the CHP testified that she inspected Peak's operation on October 28, 1988, and found a number of Vehicle

Code violations, among which were: 1) on two occasions drivers worked more than their allotted duty time, 2) incomplete entries on driver logs, 3) incomplete entries on maintenance records, and 4) minor vehicle maintenance defects. A warning was given to Peak on November 4, 1988, that the violations could result in revocation of operating authority.

On January 9, 11, and 18, 1989, further inspections of Peak's operations were made and further violations were noted, which included failure to make proper driver duty status log entries (Title 13 CAC 1213(c)); failure to maintain driver logs at the home terminal (Title 13 CAC 1213(d)); and failure to maintain required records for motor carriers (Title 13 CAC 1234(a) and 1234(f)(5)). Again, Peak was warned that her authority was in jeopardy.

A CHP supervising inspector testified that he reviewed Peak's violations and recommended suspension pursuant to Vehicle Code Section 34505.1 because of failure to maintain complete drivers' records and because drivers had excessive duty hours. The carrier did not maintain adequate records to show on duty hours as distinct from driving hours.

The carrier presented its owner and its general manager who testified that the carrier has been in business for 7 years, has kept its records in essentially the same manner over the 7 years, has been inspected by both the CHP and the U. S. Department of Transportation inspectors (Peak has Interstate Commerce Commission authority), and had no violations prior to the ones asserted in this case. The owner said that she did not receive from the CHP an adequate explanation of the record keeping requirements. She is a small operator and the paperwork is burdensome.

Discussion

Peak argues that a denial of renewal of her operating authority is too severe a penalty for what are essentially

paperwork violations and minor duty-hour violations. Further, some of the violations were for interstate trips not subject to PUC or CHP authority.

Title 13 of the California Administrative Code relative to motor vehicle safety states, in part:

Subchapter 6.5, Motor Carrier Safety

"1234. Required Records for Motor Carriers.

"The following records are required:

"(a) Driver's Record. Motor carriers shall require each driver and each co-driver to keep a driver's record pursuant to Section 1213. Motor carriers shall keep the original copies of all driver's records for 6 mo.

"(b) Driver's Authorized Vehicles. Motor carriers shall maintain a record of the different types of vehicles and vehicle combinations each driver is capable of driving as specified in Section 1229."

* * *

"(e) Daily Vehicle Inspection Reports. Motor carriers shall require drivers to write and submit a daily vehicle inspection report pursuant to Section 1215(b). Reports shall be carefully examined, defects shall be corrected before the vehicle is driven on the highway, and carriers shall retain such reports for at least one month.

"(f) Inspection, Maintenance, Lubrication, and Repair Records. Motor carriers shall document each systematic inspection, maintenance, and lubrication, and repair performed for each vehicle under their control. These vehicle records shall be kept at the carrier's maintenance facility or terminal where the vehicle is regularly garaged. Such records shall be retained by the carrier for one year and include at least:

- "(1) Identification of the vehicle, including make, model, license number, or other means of positive identification.
- "(2) Date or mileage and nature of each inspection, maintenance, lubrication, and repair performed.
- "(3) Date or mileage and nature of each inspection, maintenance, and lubrication to be performed; i.e., the inspection, maintenance, and lubrication intervals.
- "(4) The name of the lessor or contractor furnishing any vehicle.
- "(5) On school bus and SPAB records, the signature of the person performing the inspection."

G.O. 98-A, part 13, states:

- "13.01. CHARTER-PARTY CARRIERS TO MAINTAIN RECORDS OF CHARTER TRIPS. All passenger charter-party carriers shall institute and maintain a set of records which will reflect the following information on each charter performed:
- "1. Name and address of person requesting or arranging the charter and date the request was made.
 - "2. Who paid for the transportation and how and when such payment was made.
 - "3. How the charge made for the trip was computed.
 - "4. Points of origin and destination, mileage of trip and route (listed for each day when charter was overnight or for a longer period).
 - "5. Total number of hours the driver was on duty and total driving time; identification of bus or buses used.

- "6. Identification of driver and person, if any, who had charge of the charter group.
- "7. Driver's itinerary, to be completed by the driver, which will list:
 - "(a) All stops, with the time of arrival and departure.
 - "(b) Any supplementary service performed not provided for in the original charter order.
 - "(c) Driver's remarks, if any, regarding the conduct of the charter and performance of the bus."

From the frequency of iteration and the detail required, it should be obvious to any charter-party operator that record keeping is an important and necessary duty. The fact that it is subsumed under Motor Vehicle Safety should be evidence enough of its importance. The driver's log is one of the most important documents required to be kept by operators because it shows hours on duty; almost 90% of motor carrier accidents, according to the CHP, are caused by driver fatigue. And having suffered three recent inspections with unsatisfactory record keeping notations and a refusal to approve the renewal of operating authority, Peak should realize that the CHP and this Commission take record keeping seriously.

Peak argues that certain driver's duty-time violations occurred on interstate trips and should not be considered in determining intrastate authority. Peak is wrong. Not only is the CHP required to apply federal standards when determining motor vehicle violations, but this Commission considers safety violations in determining fitness wherever they might occur. "The commission shall cooperate with the Department of the California Highway Patrol to ensure safe operation of [motor carriers]." (PU Code

§ 768; see PU Code § 5374.) A safety violation in Nevada reflects adversely on a carrier just as much as one in California.

The CHP enforces both the California Motor Carrier regulations and the federal regulations (49 CFR 395.3). A carrier such as Blue Goose Charter Leasing operates in both interstate and intrastate commerce. Both the CHP and this Commission agree that an operator which engages in dual operations must comply with both the federal and state laws and that safety recommendations by the CHP to this Commission may be based on interstate operations. There is an obvious relationship between a driver's safety record in interstate commerce and its record in intrastate commerce.

Findings of Fact

1. In September 1988 Blue Goose Charter Leasing applied for renewal of its charter-party Class B certificate and sightseeing permit.
2. The Border Division Motor Carrier Safety Unit of the CHP conducted carrier fitness evaluation inspections of Blue Goose Charter Leasing on October 28, 1988, and January 9, 11, and 18, 1989.
3. The CHP found, among other violations, that the carrier's records indicate that the carrier (i) was allowing drivers to exceed the maximum allowed driving hours, (ii) had incomplete driver's duty status records, (iii) had incomplete maintenance records, and (iv) does not meet the CHP's safety requirements.
4. The CHP recommended that the Blue Goose Charter Leasing renewal application be denied.
5. The evidence adduced at the hearing supports the findings of the CHP and its recommendation to deny the renewal application; and we find that Blue Goose Charter Leasing violated the safety regulations of the PU Code, the California Vehicle Code, and Title 13 of the California Code of Regulations.

Conclusion of Law

The Commission concludes that the applicant has not shown that the denial should not be confirmed.

During the pendency of this application Peak filed another application with this Commission for a renewal of her operating authority, which was referred to the CHP for a fitness evaluation. Should the CHP approve of Peak's operation then the Executive Director should issue the operating authority.

ORDER

IT IS ORDERED that the Executive Director's denial of renewal of the operating authority of Doris J. Peak, doing business as Blue Goose Charter Leasing, is confirmed.

This order is effective today.

Dated MAY 10 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY

[Signature]
Victor Weisler, Executive Director
[Signature]