

Decision 89 09 045 SEP 7 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application for California Excursions)
& Transportation (Re: suspension,)
revocation, or denial of renewal)
authority of property or passenger)
carrier at request of California)
Highway Patrol) .)

Application 89-06-039
(Filed June 22, 1989)

Mailed

SEP 8 1989

Alex Konecny, for California Excursions
& Transportation, applicant.
Paul Wuerstle, for the Commission
Transportation Division.

O P I N I O N

Application

California Excursions & Transportation (applicant) filed this application for a hearing to contest the Commission's denial of renewal of applicant's TCP 845-B operating authority certificate for charter-party carrier of passengers.

Background

Public Utilities (PU) Code § 768 provides the Department of California Highway Patrol (CHP) with the primary responsibility for regulating the safety operations of passenger stage corporations, highway common carriers, and other motor carriers. Pursuant to this code section, the Commission is directed to cooperate with the CHP to ensure safe operations of such carriers.

On December 19, 1988 the Commission issued Resolution TL-18266 directing the Executive Director to deny, suspend, or revoke the operating authority of a passenger carrier or a property carrier upon the CHP finding that a carrier does not maintain its vehicles in a safe operating condition in compliance with Title 13 of the California Administrative Code relative to

motor vehicle safety. This resolution relied on both new legislation and continuing statutory authority.¹

Among the safety requirements identified in Title 13 are:

a. Hours of Duty (Section 1212).

A driver cannot drive more than 12 hours within a work period, or drive after having been on duty for 16 hours without being off duty for 8 consecutive hours.

b. Driver's Record of Duty (Section 1213).

A driver shall maintain a record and record a driver's hours to ensure compliance with Section 1212.

c. Vehicle Inspection and Maintenance (Section 1232).

Carriers must regularly and systematically inspect, maintain, and lubricate all vehicles subject to their control.

d. Safety Compliance Ratings (Section 1233).

A carrier's terminal and maintenance facilities are assigned a safety compliance rating of satisfactory or unsatisfactory to reflect a carrier's overall compliance with the laws and regulations governing driver's hours of service, vehicle condition, preventive maintenance practices, and pertinent records. An unsatisfactory rating means that the carrier demonstrates continued disregard of statutory or regulatory requirements, has numerous violations, or has serious violations that adversely affect the safe operation of vehicles.

¹ PU Code §§ 768, 1033.7, 1070, 3774, 3774.5, 5285.5, 5373.1(c), 5374, 5378(a), and 5378.5, and Vehicle Code § 34505.1.

Hearing

An evidentiary hearing was held in Los Angeles on July 17, 1989. Applicant's owner, Alex Konecny testified for applicant. CHP Motor Carrier Specialists Spahr and Leighton testified for the Transportation Division. Spahr is the safety inspector who inspected applicant's vehicles and terminal. Leighton is the acting commander of the CHP's Motor Carrier Safety Unit, Southern Division.

Spahr inspected applicant's vehicles and terminal on May 16, 1989 and issued a report on the results of his inspection, Exhibit 1. Applicant's terminal was rated unsatisfactory because of several Vehicle Code safety violations. The violations included:

1. 28 instances of drivers not keeping a record of hours of duty;
2. 6 instances of drivers working more than their allotted duty;
3. Defective steering on one vehicle; and
4. an inadequate preventative maintenance program.

This is not applicant's first unsatisfactory rating. An October 1988 inspection, by Spahr, also resulted in an unsatisfactory rating. Spahr discussed the results of both inspections with applicant. After discussing the May 16, 1989 inspection, applicant signed an affidavit stating that he read the inspection results and was aware that his operating authority may be revoked for failure to pass the CHP safety inspection, attached to Exhibit 1.

The CHP Southern Division Commander reviewed Spahr's findings, and recommended to the CHP Enforcement Services Division (ESD) that applicant's operating authority not be renewed because applicant's two unsatisfactory ratings demonstrate applicant's

continued lack of compliance with safety requirements and disregard for public safety.

Subsequently, on June 8, 1989 the ESD summarized the results of applicant's May 1989 safety inspection and recommended to the Commission that applicant be denied a renewal of its operating authority. Based on this recommendation and consistent with the Resolution TL-18266, the Commission issued a notice that applicant's operating authority would not be renewed due to failure to meet the CHP safety requirements. Applicant received the notice on June 16, 1989 and filed this application on June 22, 1989.

Applicant testified that safety violations did exist. However, he believes that his vehicles are safe. He represents that several of the vehicle safety violations were corrected while Spahr inspected his vehicles. Further, he represents that he is not negligent. His insurance is up-to-date and he regularly pays his transportation reimbursement fee to the Commission, most recently on March 3, 1989.

Although applicant acknowledges that driver safety violations exist, he disputes some of Spahr's findings, asserting that the driver "on duty" definition is unclear and that Spahr used applicant's payroll records instead of drivers' field records. The payroll records were used because applicant's drivers' daily logs were either incomplete or not available.

Applicant testified that paper work was not a priority because he needed to keep his vehicles on the road to make vehicle loan payments, insurance payments, and to support his mother. However, he represented that his drivers are now required to keep daily logs. To show how the logs would be prepared, applicant showed copies of drivers' manifests and daily logs for the period November 17, 1988 to July 16, 1989, the day before this evidentiary hearing. The drivers' logs were prepared by applicant in retrospect.

Discussion

There is no dispute that safety violations existed. Applicant did correct some vehicle safety violations during the CHP inspection. However, as Spahr testified, such on-the-spot correction does not demonstrate that applicant's preventative maintenance program is adequate. If Spahr had not inspected applicant's operation, applicant would not have known that the safety defects existed and his vehicles could have been placed on the highway with these safety defects. Applicant has not shown that his preventative maintenance program is adequate.

Applicant's representation that all of his drivers are now required to keep daily driver logs does not result in the compliance of drivers' safety requirements. Spahr reviewed the drivers' logs presented at the hearing by applicant to show how the records would be maintained and concluded that driver safety violations continue to exist. The primary infraction is the number of hours that a driver is on duty. Section 1201(j) of Title 13 defines on duty as the status of a driver from the time a driver begins work, or is required to be in a readiness to work, until the time the driver is relieved from work and all responsibilities for performing work. Applicant has not shown that his drivers' hours of duty or his drivers' record of duty conform to Title 13 safety requirements.

Applicant was given a notice of denial to operate on November 23, 1988 and again on June 12, 1989. These notices were the result of Spahr's October 1988 and May 1989 inspections, respectively. Both notices state that it is unlawful to conduct operations as a charter-party carrier of passengers. However, as demonstrated by the drivers' daily logs shown at the hearing, applicant ignored these notices and continues to disregard public safety by operating without operating authority.

This application was filed to contest our denial to renew applicant's operating authority. As such, applicant has the burden

to show why the denial should not be continued. As discussed above, applicant has not met his burden of proof and continues to disregard public safety by operating without authority. Applicant's request to reinstate his operating authority is denied. Applicant should cease all operations immediately on receipt of this order. If applicant does not cease operations he may be guilty of a misdemeanor subject to prosecution, pursuant to PU Code § 5411.

This does not relieve the applicant from possible prosecution for violations which may have occurred prior to his receipt of this order.

The only remaining matter is the status of applicant's March 3, 1989 transportation reimbursement fee. Applicant's payment of such a fee does not nullify applicant's safety violations and does not revoke our denial to renew applicant's operating authority. Because no information was available to determine the time period that the payment pertained to, the Transportation Division should review its reimbursement fee records to determine whether adequate controls exist to identify fees received from carriers not authorized to operate. If these procedures are not adequate the Transportation Division shall enhance such controls.

Findings of Fact

1. PU Code § 768 provides the CHP with the primary responsibility for regulating the safety of passenger carriers and directs the Commission to cooperate with the CHP to ensure safe carrier operations.

2. Resolution TL-18266 directs the Executive Director to deny, suspend, or revoke a passenger carrier's operating authority upon the finding of the CHP that a carrier does not maintain its vehicles in a safe operating condition in compliance with Title 13 of the California Administrative Code.

3. Applicant's terminal was rated unsatisfactory by the CHP on May 16, 1989.

4. An October 1988 inspection of applicant's terminal also by the CHP resulted in an unsatisfactory rating.

5. Applicant signed an affidavit on May 16, 1989 that he read the May 16 inspection result and was aware that his operating authority may be revoked.

6. The ESD recommended that applicant be denied a renewal of his operating authority.

7. On June 16, 1989 applicant received a notice that his operating authority would not be renewed.

8. Paper work was not a priority of applicant because he needed to keep his vehicles on the road to make vehicle loan payments, insurance payments, and to support his mother.

9. There is no dispute that safety violations existed.

10. Applicant would not have known that vehicle safety violations existed if Spahr did not inspect applicant's operations.

11. Spahr's review of drivers' logs presented at the hearing showed that safety violations still exist.

12. Applicant was given a notice of denial to operate on November 23, 1988 and again on June 12, 1989.

13. Applicant continues to operate without operating authority.

14. Applicant sent its transportation reimbursement fee on March 3, 1989.

Conclusions of Law

1. Applicant should not be granted a renewal of its operating authority because applicant has not shown why the revocation of its operating authority should not be continued.

2. The Transportation Division should review its transportation reimbursement fee collection procedures in accordance with the preceding discussion.

O R D E R

IT IS ORDERED that:

1. The Executive Director's denial of renewal of the operating authority of California Excursions & Transportation (applicant) is affirmed.

2. Applicant shall cease all operations on receipt of this order. If applicant does not cease operations he may be guilty of a misdemeanor subject to prosecution, pursuant to Public Utilities Code § 5411.

3. The Transportation Division shall review its Transportation Reimbursement fee collection procedures to determine whether adequate controls exist to identify fees received from carriers not authorized to operate. If the Transportation Division finds that such procedures are not adequate it shall enhance its procedures to identify such carriers.

4. A certified copy of this order shall be personally served on applicant.

5. A copy of this order shall be served on the Director of the Transportation Division.

This order is effective today.

Dated SEP 7 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.

Wesley Franklin

WESLEY FRANKLIN, Acting Executive Director