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Decision No. 87732 AUG 16 1977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the rules, regulations)
and practices of all household goods)
carriers relating to the transportation)
of used household goods and related)
property.)
_____)

Case No. 10151
(Filed August 3, 1976)

(Appearances are shown in Appendix A to D. 86965.)

OPINION

Case No. 10151 was issued for the receipt of evidence concerning a proposed general order prepared by the Commission's Transportation Division relating to services performed by household goods carriers.

Public hearing was held before Examiner Mallory in San Francisco on October 18 and November 29, 1976 and on October 20, 1976 in Los Angeles. The matter was temporarily removed from the calendar on November 29, 1976, with the understanding that should further hearings be required parties would be notified. A review of the record indicates that further hearings are not required; therefore, the proceeding was submitted on March 21, 1977, pursuant to an Examiner's Ruling.

Two prior orders have been issued in Case No. 10151. Decision No. 86965 dated February 15, 1977 incorporated into Minimum Rate Tariff 4-B

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(MRT 4-B) proposed rules contained in the staff's recommended general order which amended or amplified rules contained in MRT 4-B.^{1/} Decision No. 86981, issued on the same date, concerned conflict between the weighing requirements of MRT 4-B and the requirements for a public weighmasters' certificate in Sections 12701 and 12702 of the Business and Professions Code. The Commission concluded in that decision that it should resolve the conflict by seeking the amendment of Section 12701 of the Business and Professions Code. Remaining for consideration are the portions of the staff's recommended general order which were not adopted by Decision No. 86965.

PROPOSED GENERAL ORDER

The general order provisions as originally proposed are set forth in the Order Instituting Investigation herein. As a result of questions raised in the course of the hearing the staff presented, in Exhibit 4, a revised proposal, which was prepared after consultation with the California Moving and Storage Association. That proposal, insofar as it has not heretofore been adopted as amendments to MRT 4-B, is as follows:

1/ The rules incorporated into MRT 4-B:

- (1) Required the identification of the "T" file number of the household goods carrier in printed advertising matter, and
- (2) Provided methods for the handling of claims for reimbursement for damages due to carrier negligence in failure to pickup shipments by the preferred date or within the period of time specified in the confirmation of shipping instructions.

PROPOSED GENERAL ORDER
(Revised November 26, 1976)

RELATING TO TRANSPORTATION AND ACCESSORIAL SERVICES (INCLUDING STORAGE-IN-TRANSIT) OF USED HOUSEHOLD GOODS AS DESCRIBED IN ITEM 20(a), PARAGRAPH (1) OF MRT 4-B AND PERFORMED BY HOUSEHOLD GOODS CARRIERS AS DEFINED BY SECTION 5109 OF THE PUBLIC UTILITIES CODE.

1. Equipment and Facilities:

- a. Equipment and facilities utilized by a household goods carrier for the transportation of used household goods shall be maintained in a manner which will afford adequate protection for the household goods tendered to the carrier. The interior of vehicles used to transport household goods shipments shall be reasonably clean and visibly free from vermin and debris.
- b. For shipments transported at hourly rates, the carrier shall make a reasonable effort to determine the size of motor vehicle equipment which is appropriate to provide an adequate transportation service under the particular circumstances of the movement the carrier is requested to perform. If the carrier does not make such a reasonable effort or, upon determining appropriate equipment size, does not provide such equipment, the shipper shall not be charged any driving time for excess motor vehicle equipment which is supplied.

2. Capable Help:

- a. No carrier shall permit any driver, helper, and/or packer to be used in the transportation of any used household goods shipment or in the performance of accessorial services unless such person is trained and experienced in the movement of used household goods. Those engaged in on-the-job training programs shall be bona fide employees and adequately supervised.
- b. Carriers shall not knowingly permit drivers, helpers, and/or packers to go on duty who are under the influence of alcoholic beverages or liquors of any kind, or narcotics, or habit-forming drugs not prescribed by a physician. Drivers, helpers, and/or packers shall not drink alcoholic beverages or liquors while on duty.

Public Witness Testimony

In addition to staff evidence, testimony was received from two persons who described the problems encountered in the local movement of their household goods which related to failure to process loss and damage claims promptly and to the excessive time required to complete an hourly-rated move. A consumer affairs specialist for the Los Angeles County Department of Consumer Affairs testified concerning the handling of household goods complaints by that agency, and in support of the proposals as drafted.

Staff Evidence in Support of Proposed General Order

A transportation representative from the Commission's Transportation Division, Compliance and Enforcement Branch, presented oral testimony in support of the proposed general order. The witness stated that the contents of the proposed general order were prepared in response to the enactment of Section 5139 of the Household Goods Carriers Act in 1971. That section reads as follows:

"The Commission may establish rules for the performance of any service of the character furnished or supplied by household goods carriers. Every household goods carrier shall observe such rules. Failure to do so is unlawful."

The staff witness furnished data concerning informal complaints involving dirty, undersized, or hazardous equipment, and concerning employees who were incompetent or under the influence of alcohol or drugs. Such data were presented to support the need for the proposed performance standards.

The staff witness was questioned in detail concerning the meaning of the terms used in the proposed general order, and the manner in which the

provisions would be enforced. The staff witness agreed that the language of the proposed general order is couched in general terms and that a household goods carrier could not be certain from a reading of the general order provisions whether any specific act would be in violation of the terms of the general order. It is the position of the staff that enforcement of the provisions of the general order would be based on a so-called "reasonable man" standard. Under this standard the staff would evaluate informal complaints filed with the Commission to determine whether the general order provisions had been violated. If, in the opinion of the staff investigator, the carrier failed to conform to the standards provided in the general order, appropriate enforcement action would be taken against the carrier.

The staff witness pointed out that the practices of using subhaulers to perform all or a part of the transportation service had spread to intrastate household goods transportation within California.^{2/} The witness testified that, although the actual transportation service may be performed by a subhauler, the subhauler as well as the prime carrier would be subject to the proposed general order.

Position of California Moving and Storage Association

California Moving and Storage Association (CMSA) concurred in the need to provide additional rules that require that household goods carriers furnish the public with reasonably adequate equipment and trained personnel. It is the position of CMSA that the rules proposed by the staff are mere guidelines to adequate

^{2/} The witness indicated that such was evidenced by the 300 percent increase in the number of subhaul permits issued to household goods carriers in 1976. (Tr. 204.)

performance by household goods carriers. CMSA is concerned that severe fines and penalties may be imposed pursuant to Articles 7 and 8 of the Household Goods Carriers Act, based solely upon a staff investigator's evaluation under its reasonable man standard without opportunity of appeal to the Commission.^{3/} CMSA requested that appropriate appeal provisions be established if the proposed general order is adopted.

It is the view of CMSA that the proposed general order is more in the nature of a general policy statement rather than definitive rules which can be observed by household goods carriers. In the circumstances, CMSA requests that the Commission adopt the proposed general order provisions as a policy statement and that more definitive rules be developed by the staff in cooperation with the household goods carrier industry.

Position of Other Parties

The California Department of Consumer Affairs supports the issuance of the proposed general order, on the basis that such provisions will provide a very important protection for consumers. That department pointed out that a 5-1/2 year period has elapsed since the enactment of the legislation which triggered the staff proposals herein and that no further delays should be made before adoption of rules proposed by the staff.

^{3/} Sections 5311 through 5314 of the Household Goods Carriers Act provide for fines of up to \$500 for each violation of the terms of any order, rule, or decision of the Commission. Each violation is a separate offense. (Section 5315.) Section 5317 provides that actions to recover these penalties shall be brought in the Superior Court.

A representative of the Los Angeles County Department of Consumer Affairs, as previously noted, testified in support of the staff's proposal.

Discussion

The record indicates that the proposals of the staff were developed in response to the enactment of Section 5139 of the Household Goods Carriers Act (1971) and Small v Bekins Moving & Storage Co. (1971) 72 CPUC 90.^{4/}

The proposed rules are couched in general terms because of the practical problem of developing specific rules which would be suitable to cover all of the possible situations that could occur. The result, therefore, is that the proposals are less specific than some may desire, however, the record clearly emphasizes the difficulty of establishing more precise rules.

The proposed General Order is reasonable. We would expect that a reputable household goods carrier would ordinarily operate its business to conform with the staff's proposed rules. They make good business sense for any carrier who expects repeat business and who seriously intends to provide the public with good professional service. We would question whether any carrier who repeatedly runs afoul of the proposed rules really cares about the public and rendering adequate service. The General Order is not unduly burdensome or onerous, yet it does provide some protection to the public. If we become aware of repeated

^{4/} The complaint involved (1) failure to give appropriate notice of a delay in delivery, (2) weighing provisions, and (3) an order to the carrier directing refunds for overcharges on packing services. A broadscale investigation of the practices of household goods carriers was the relief sought in the complaint, which was denied. Delays-to-delivery rules were established by Decision No. 86965. Weighing provisions were the subject of Decision No. 86981.

violations by any one carrier we will seriously consider revoking its operating authority. We are of the opinion that adopting the staff's proposed General Order is in the public interest.

The staff is expected to exercise its judgment whether a violation exists whenever an informal complaint is made alleging failure to comply with the terms of the General Order, based on its "reasonable man" standard. If the staff determines that the carrier failed to meet that standard, it will employ whichever of its compliance procedures appears to be appropriate to the situation. These procedures include admonishing the carrier by issuance of a written "on notice" warning, which does not involve a penalty; the levying of a citation forfeiture fine, which generally can range between \$100 and \$2,000, depending on the background and seriousness of the offense; or, in aggravated situations, recommending to the Commission the issuance of an Order Instituting Investigation looking toward suspension or revocation of the carrier's authority. In the case of a citation forfeiture, the carrier is given the option of admitting the violation and remitting the fine, or denying the alleged violation and requesting a hearing before the Commission.

Our staff is part of this Commission's organization. Securing compliance through enforcement of all rules, regulations, and general orders requires judgment

on the part of the staff.^{5/} However, in the final analysis, all staff actions are subject to review by the Commission.

Findings

1. The Commission staff recommends that a general order (as set forth in the Order Instituting Investigation herein) be adopted to govern the activities of household goods carriers, in compliance with Section 5139 of the Household Goods Carriers Act and Small v Bekins Moving & Storage Co., supra.

2. Portions of the recommended general order were adopted by the Commission as amendments to MRT 4-B by Decision No. 86965 in this proceeding.

3. The remaining portions of the recommended general order, as set forth in Appendix A, attached, provide reasonable rules for standards of performance and should be adopted as specific rules governing activities of household goods carriers.

Conclusion

It is concluded that the general order, as set forth in Appendix A should be adopted as provided in the following order.

^{5/} For example, General Orders Nos. 75-B and 75-C, concerning construction and maintenance of railroad crossings, require that carriers conform to "accepted good practice". Rules in General Order No. 98-A pertaining to the operations of passenger stage corporations and passenger charter party carriers use such terminology as "satisfactorily clean", "adequately illuminate", "reasonable comfort" and "adequate ventilation". Determination of compliance with all of these requirements involves staff judgments.

O R D E R

IT IS ORDERED that:

1. General Order No. 142 (Appendix A attached hereto) is adopted.
2. General Order No. 142 shall become effective October 1, 1977.

The effective date of this order, ^{shall be thirty days after} ~~is~~ the date hereof.

Dated at San Francisco, California, this 16th day

of AUGUST, 1977.

Robert Babunil

President

William S. ...

Vernon L. Sturgeon

Joseph D. ...

Paul ...

Commissioners

APPENDIX A

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GENERAL ORDER NO. 142

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RELATING TO TRANSPORTATION AND ACCESSORIAL SERVICES (INCLUDING STORAGE-IN-TRANSIT) OF USED HOUSEHOLD GOODS AS DESCRIBED IN ITEM 20(a), PARAGRAPH (1) OF MRT 4-B AND PERFORMED BY HOUSEHOLD GOODS CARRIERS AS DEFINED BY SECTION 5109 OF THE PUBLIC UTILITIES CODE.

Adopted _____ . Effective _____ .

(Decision No. _____ . Case No. 10151.)

1. EQUIPMENT AND FACILITIES

- a. Equipment and facilities utilized by a household goods carrier for the transportation of used household goods shall be maintained in a manner which will afford adequate protection for the household goods tendered to the carrier. The interior of vehicles used to transport household goods shipments shall be reasonably clean and visibly free from vermin and debris.
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2. CAPABLE HELP

- a. No carrier shall permit any driver, helper, and/or packer to be used in the transportation of any used household goods shipment or in the performance of accessorial services unless such person is trained and experienced in the movement of used household goods. Those engaged in on-the-job training programs shall be bona fide employees and adequately supervised.

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- b. Carriers shall not knowingly permit drivers, helpers, and/or packers to go on duty who are under the influence of alcoholic beverages or liquors of any kind, or narcotics, or habit-forming drugs not prescribed by a physician. Drivers, helpers, and/or packers shall not drink alcoholic beverages of liquors while on duty.