

Decision No. 88089 NOV 8 1977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Associated Independent
Owner-Operators, Inc.,

Complainant,

vs.

J. S. Shafer, Jr., dba
Trucking by J. S. Shafer, Jr.,

Defendant.

Case No. 10325
(Filed May 3, 1977)

James Foote, for Associated Independent
Owner-Operators, Inc., complainant.
Graham & James, by David J. Marchant and
David H. Renton, Attorneys at Law, for
J. S. Shafer, Jr., defendant.

O P I N I O N

J. S. Shafer, Jr., defendant, is a highway permit carrier engaged in the transportation of bulk commodities in dump truck equipment.

Associated Independent Owner-Operators, Inc., complainant, is a nonprofit association of highway permit carriers.

The complaint alleges that defendant is and has since November 8, 1975 operated as an overlying carrier in violation of General Order No. 102 (GO 102) which requires, among other things, that an overlying carrier that engages subhaulers maintain and file with this Commission a bond in the amount specified in the general order guarantecing the payment of charges by the overlying carrier to the subhaulers.

The complaint contains several requests for affirmative relief stemming from the alleged continuing violation of GO 102. Defendant's answer admitted that he failed to have a subhaul bond on file with the Commission during a period of time subsequent to November 8, 1975, but asserted that such a bond is now on file. As an affirmative defense defendant asserted that on or about March 10, 1977, he was served with a Citation Forfeiture for Violation of the Public Utilities Code (No. F-1362) charging him with engaging subhaulers without having a bond on file with the Commission. On or about April 11, 1977, defendant stated to the Commission staff that he would not contest the citation and paid the fine of \$600 levied by the Commission. Defendant claims that his failure to contest the citation and his payment of the fine operated to create a final judgment of the Commission and that a final judgment is res judicata and bars the complaint in this case, in that the complaint seeks to have defendant found guilty of the same offense based on the same facts as were involved in the earlier judgment.

Defendant filed a motion to dismiss the complaint on June 8, 1977.

Public hearing was held in San Francisco on September 22, 1977, and the matter was submitted subject to the filing of late-filed exhibits which have been received.

Complainant introduced Exhibit 1 through a witness from the Commission's Transportation Division. Exhibit 1 is a copy of Citation Forfeiture for Violation of the Public Utilities Code No. F-1362 addressed to John S. Shafer, Jr., dated March 10, 1977. Exhibit 1 also includes a form dated April 4, 1977 signed by J. S. Shafer, Jr., stating that he would not contest Citation Forfeiture No. F-1362 and would transmit a fine in the amount of \$600. Cash receipt No. 82838, dated April 21, 1977, was issued by the Commission to J. S. Shafer, Jr., in the amount of \$600.

Exhibit 2 is a letter dated May 9, 1977 signed by J. S. Shafer, Jr., and addressed "To Our Subhaulers". That letter reads, in part, as follows:

"This is to inform you that J. S. Shafer, Jr. does have a sub-haul bond on file with the Public Utilities Commission of the State of California.

"I wish to personally apologize to you for this oversight. This will also serve as an amendment to our sub-haul contract as required by General Order No. 102-F. of the Commission. Please complete the bottom of one of these forms and return to me in the enclosed postage-paid envelope. The second one is for your records."

The letter contains reference to Bond Number L05-016492 issued by Balboa Insurance Co., Los Angeles.

At the hearing defendant renewed its motion to dismiss. In response complainant argued that it does not feel that the fine of \$600 is adequate in view of the nearly \$3,000,000 gross revenues assertedly earned by defendant in the period in which no bond was on file. Complainant also argued that the yearly cost of a subhauler bond approximates the amount of the assessed fine; therefore, no real penalty was assessed. No evidence was offered by complainant to support the claimed amount of revenue earned by defendant nor of the cost of obtaining a subhaul bond.

Complainant presented no evidence with respect to the affirmative relief requested by it, nor reference to any provisions of the Public Utilities Code or other provisions of law which would permit those actions to be taken.

Discussion

Citation Forfeiture No. F-1362 contains the following language:

"Upon payment of the fine herein above specified...no further proceedings before

the Commission will be had with respect to the matter described in this citation."

The matter described in the citation is as follows:

"You are hereby cited with having violated Sections 3575 and 3737 of the Public Utilities Code by engaging subhaulers without having a bond on file with the Public Utilities Commission as required by General Order No. 102-F."

The complaint alleges the same violation for which a fine was paid by defendant, and the complaint was filed subsequent to the issuance of the Citation Forfeiture and the payment of that fine. As indicated in the Citation Forfeiture, defendant cannot be again penalized for that violation. No new offense is alleged in the complaint. In the circumstances the complaint should be dismissed.

Findings

1. Defendant was cited on March 10, 1977 for failure to maintain a subhaul bond on file with this Commission as required by GO 102.
2. Defendant admitted that violation and paid a fine to the Commission of \$600 on April 21, 1977.
3. A subhaul bond in the name of John Samuel Shafer, Jr., as required by GO 102 was issued on May 6, 1977 and filed with the Commission on May 10, 1977.
4. The complaint herein was filed May 3, 1977. It alleged the same violation as that admitted by defendant and for which a fine was paid pursuant to Citation Forfeiture No. F-1362 referred to paragraph 1 above.

5. Citation Forfeiture No. F-1362 states no further proceeding before the Commission will be had with the matter described in that citation upon payment of the fine specified in that document.

Conclusions

1. In view of the language set forth in Citation Forfeiture No. F-1362, defendant cannot be penalized in another proceeding before this Commission for the violation for which a fine was paid as specified in that document.

2. The complaint herein should be dismissed.

O R D E R

IT IS ORDERED that the complaint in Case No. 10325 is hereby dismissed.

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

Dated at San Francisco, California, this 8th day of NOVEMBER, 1977.

Robert Batunich
President
William J. Quinn
Yvonne L. St. John
Clifford W. Hoyle
Commissioners

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.