

Decision 95-12-011 December 6, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations and practices of Lee Gagner, an individual doing business as GAGNER FREIGHT SERVICE, Respondent. (Filed September 1, 1994)

ORIGINAL

James Johnson, Attorney at Law, for Lee Gagner, Respondent.
Peter G. Fairchild, Attorney at Law, and William G. Waldorf, for Safety and Enforcement Division.

OPINION

On September 1, 1994, the Commission issued an Order Instituting Investigation (OII) into the highway carrier operations of Lee Gagner, dba Gagner Freight Service (Gagner). The OII sought to determine:

- "1. Whether Respondent violated Sections 702, 1061, and 1070 of the Public Utilities Code by conducting intrastate trucking operations after his operating authority was suspended for failure to meet California Highway Patrol safety requirements;
- "2. Whether Respondent's operating authority should be cancelled, revoked, or suspended, or a fine of up to \$5,000 for each day of unlawful operations be imposed pursuant to Section 1070.5 of the Public Utilities Code;
- "3. Whether Respondent violated Sections 314 and 702 of the Public Utilities Code by failing to produce records for inspection upon reasonable request by the staff;
- "4. Whether an additional fine should be imposed pursuant to Section 1070 of the Public Utilities Code for Respondent's failure to produce records at reasonable time; and

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Decision 02-12-011 December 6, 1992

Whether any other orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction.

In order to effectuate a settlement of this matter before the Commission, Gagner agreed (not to contest the above issues).

The parties have reached the following agreement which is submitted to the Commission for approval and adoption in an Order:

1. Further Proceedings. LEE GAGNER agrees that, in the event that he violates any term of this Agreement, the Commission shall reopen this proceeding to reconsider the terms of this Agreement, including, without limitation, adopting findings of violations of applicable rules and regulations and those sanctions which have been or should be imposed for any past, present, or future acts or omissions with respect to Gagner's operation as a highway carrier.

2. Monetary Payment. Lee Gagner agrees to pay a total of \$6,000, payable to the Commission, in 24 consecutive monthly installments of \$250, the first installment of which shall be due 30 days after the issuance of the Commission's decision in this proceeding.

3. Safe Operations. Lee Gagner agrees to take all necessary means to guarantee that his vehicles are safely operated in compliance with the Vehicle Code, Public Utilities Code and Title 13 of the California Code of Regulations relative to motor carrier safety.

4. Production of Records. Lee Gagner further agrees to produce all records when requested by an authorized representative of the Commission's staff in compliance with Sections 304 and 702 of the Public Utilities Code.

The parties also agree jointly by executing and submitting this Settlement that the relief requested herein is just, fair, reasonable, and in the public interest, and that the terms herein are binding when approved by the Commission. We note that Gagner was represented by counsel.

Findings of Fact

1. The quoted settlement is fair, just, and reasonable, and not adverse to the public interest.

2. Since this matter is settled, the Order should be effective today.

Conclusion of Law

The settlement should be adopted and form the basis for our Order.

ORDER

IT IS ORDERED that:

1. In the event that Gagner Freight Service (Gagner) violates any order of the Agreement, the Commission shall reopen this proceeding to reconsider its terms, including, without limitation, adopting findings of violations of applicable rules and regulations and those sanctions which have been or should be imposed for any past, present, or future acts or omissions with respect to Gagner's operation as a highway carrier.

2. Lee Gagner shall pay a total of \$6,000, payable to the Commission, in 24 consecutive monthly installments of \$250, the first installment of which shall be due 30 days after the issuance of the Commission's decision in this proceeding.

3. Lee Gagner shall take all necessary means to guarantee that his vehicles are safely operated in compliance with the Vehicle Code, Public Utilities Code and Title 13 of the California Code of Regulations relative to motor carrier safety.

Lee Gagner shall produce all records when requested by an authorized representative of the Commission's staff in compliance with Sections 304 and 702 of the Public Utilities Code.

This order is effective today and is binding on the parties.

Dated December 6, 1995 at San Francisco, California.

Findings of Fact

1. The quoted settlement is fair, just, and reasonable, and

not adverse to the public interest.

2. Since this matter is settled, the Order should be

DANIEL W. FESSLER, President
P. GREGORY CONLON, Commissioner

JESSIE J. KNIGHT, JR., Commissioner
HENRY M. DUQUE, Commissioner
JOSHUA L. NEEPER, Commissioner

ORDER

IT IS ORDERED that:

1. In the event that Gagner Freight Service (Gagner) violates any order of the Agreement, the Commission shall reopen this proceeding to reconsider its terms, including, without limitation, adopting findings of violations of applicable rules and regulations and those sanctions which have been or should be imposed for any past, present, or future acts or omissions with respect to Gagner's operation as a highway carrier.

2. Lee Gagner shall pay a total of \$6,000, payable to the Commission, in 24 consecutive monthly installments of \$250, the first installment of which shall be due 30 days after the issuance of the Commission's decision in this proceeding.

3. Lee Gagner shall take all necessary means to guarantee that his vehicles are safely operated in compliance with the Vehicle Code, Public Utilities Code and Title 13 of the California Code of Regulations relative to motor carrier safety.

PUBLIC UTILITIES COMMISSION
BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
Investigation of the Commission's own motion into the operations and practices of Lee Gagner, an individual, doing business as GAGNER FREIGHT SERVICE, Respondent.

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SAN FRANCISCO OFFICE
NO. L. 94-09-002, FILED
SEPTEMBER 1, 1994

Whether (1) the Public Utilities Code by conducting intrastate trucking operations after his operating authority was suspended for failure to meet California Highway Patrol safety requirements;

(2) Whether a controlling authority should be ~~exercised~~ AND MOTION FOR ADOPTION OF SETTLEMENT
cancelled, revoked, or annulled or a fine of up to \$2,000 for each day of unlawful operations be imposed pursuant to Section 1070.2 of the Public Utilities Code;

This agreement is entered into by and between the Safety and Enforcement Division of the California Public Utilities Commission (Safety Division) and Lee Gagner dba GAGNER FREIGHT SERVICE (GAGNER). The effective date of this Agreement shall be the date of its approval and adoption by the California Public Utilities Commission (Commission).

(2) Whether any other orders that may be appropriate should be entered in the lawful exercise of the Commission's authority to regulate intrastate highway common carriers pursuant to the Public Utilities Act, California Public Utilities Code Div. 1, Sections 201 to 2119, and the California Constitution, Article XII. GAGNER conducts such operations under its highway common carrier certificate, Cal T No. 1617639, issued January 1, 1991.

I. 94-09-002

On September 1, 1994, the Commission issued an Order Instituting Investigation (OII) into the highway carrier operations of GAGNER. More particularly, the OII sought to determine:

(1) Whether Respondent violated Sections 702 and 1061 and 1070 of the Public Utilities Code by conducting intrastate trucking operations after his operating authority was suspended for failure to meet California Highway Patrol safety requirements;

(2) Whether Respondent's operating authority should be cancelled, revoked, or suspended, or a fine of up to \$5,000 for each day of unlawful operations be imposed pursuant to Section 1070.5 of the Public Utilities Code;

(3) Whether Respondent violated Sections 314 and 702 of the Public Utilities Code by failing to produce records for inspection upon reasonable request by the staff;

(4) Whether an additional fine should be imposed pursuant to Section 1070 of the Public Utilities Code for Respondent's failure to produce records at reasonable time; and

(5) Whether any other orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction;

In order to effectuate a settlement of this matter before the Commission, as set forth below, GAGNER agrees not to contest the above allegation. Accordingly, the parties to this

I. 94-09-002

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proceeding, desiring to avoid the expense, inconvenience, and uncertainty attendant to litigation of the issues in dispute between them, have reached the following agreement which they now submit to the Commission for approval and adoption as its final disposition of the matters herein;

WHEREFORE, the parties request that the Commission adopt

1. Further Proceedings. LEE GAGNER agrees that, in the event that he violates any term of this Agreement, the Commission shall reopen this proceeding to reconsider the terms of this Agreement, including, without limitation, adopting findings of violations of applicable rules and regulations and those sanctions which have been or should be imposed for any past, present, or future acts or omissions with respect to GAGNER'S operation as a highway carrier.

2. Monetary Payment. LEE GAGNER agrees to pay a total of \$16,000, payable to the Commission, in 24 consecutive monthly installments of \$250, the first installment of which shall be due 30 days after the issuance of the Commission's decision in this proceeding.

3. Safe Operations. LEE GAGNER to take all necessary means to guarantee that his vehicles are safely operated in compliance with the Vehicle Code, Public Utilities Code and Title 13 of the California Code of Regulations relative to motor carrier safety.

4. Production of Records. LEE GAGNER further agrees to produce all records when requested by an authorized representative of the Commission's staff in compliance with Sections 314 and 702 of the Public Utilities Code.

PETER G. VAIRCHILD,
ATTORNEY AT LAW
Counsel for Safety and
Enforcement Division

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proceeding, desiring to avoid the expense, inconvenience, and
The parties also agree jointly by executing and submitting
this settlement that the relief requested herein is just, and
fair, reasonable, and in the public interest, and that the and
terms herein are binding when approved by the Commission with

WHEREFORE, the parties request that the Commission adopt
this settlement as a complete resolution of all issues in
this proceeding, which should however remain open until Lee
Gagner has fully complied with all terms and conditions set forth
herein.

violations of applicable rules and regulations and those
sanctions which have been or should be imposed for any past
Lee Gagner, an individual doing
GAGNER FREIGHT SERVICE

Dated: 2/21/95 By: [Signature]
JAMES JOHNSON, Attorney at Law
Counsel for Lee Gagner

Dated: 2-21-95 By: [Signature]
LEE GAGNER, Owner
GAGNER FREIGHT SERVICE

STAFF OF THE CALIFORNIA PUBLIC
UTILITIES COMMISSION

produce all records when requested by an authorized
representative of the Commission's staff in compliance with
Dated: 2/23/95 By: [Signature]
PETER G. FAIRCHILD,
Attorney at Law
Counsel for Safety and
Enforcement Division