

Decision 97-10-005 October 9, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation for Notice of Revocation of highway carrier permit [T-179,241] of Richard Eugene Rake, doing business as EZI Transport, and the practices of Richard Eugene Rake, doing business as EZI Transport,

Respondent.

ORIGINAL

1.95-11-031
(Filed November 21, 1995)

OPINION

Background

This Order Instituting Investigation (OII) was filed on November 21, 1995, requiring respondent Richard Eugene Rake to show cause why his operating authority should not be revoked. The Commission Safety and Enforcement Division, now the Rail Safety and Carriers Division (RSCD or staff), informed us that it initiated an investigation into the business practices of Rake, doing business as EZI Transport, and of Michael G. Cardoza to determine if Cardoza, aided by Rake, continued to operate as a motor carrier after the Commission in Decision 92-12-061, dated December 16, 1992 revoked Cardoza's operating authority and prohibited him from owning, operating, or controlling any trucking business in the future.

Rake was a former employee of Cardoza. The investigation uncovered evidence that Rake had apparently operated without enrolling EZI Transport's drivers in the Department of Motor Vehicles (DMV) Pull Notice Program. At least seven drivers were employed, yet none were enrolled.

EZI Transport also operated without enrolling in the California Highway Patrol (CHP) Biennial Inspection of Terminals Program and submitting its truck terminal, operation, and equipment to the CHP for inspection. Rake operated without providing a complete list of equipment to his liability insurance carrier and to the Commission.

Rake informed his workers' compensation insurance carrier that he had no employees, and that he was the sole owner and operator of EZI Transport. The staff investigation determined that EZI Transport had employed at least 19 employees and that eight employees were on the payroll within a month after Rake filed the workers' compensation application.

Since beginning business in March 1994, EZI Transport received 21 citations reported by the CHP, and was involved in an accident in which an EZI Transport driver was killed and another truck and tractor was damaged. EZI Transport's operating authority has been suspended four times, twice for cancellation of liability insurance.

Before scheduled evidentiary hearings commenced, staff filed a motion to dismiss investigation.

Motion to Dismiss Investigation

Staff's motion to dismiss the investigation was filed on August 13, 1997. Staff took two depositions in this matter, one with Rake. At that deposition, Rake made a statement on the record to the San Joaquin District Attorney's Office, including a number of admissions confirming allegations in this OII.

The District Attorney's office was aware of the Commission's investigation and was conducting its own investigation with the cooperation of Commission staff, because of possible criminal violations by Rake and Cardoza in the operations of EZI Transport.

Before Rake's deposition and statement, the District Attorney's office filed criminal charges against both Rake and Cardoza. Thereafter, an agreement between the District Attorney and Rake and Cardoza was reached as to criminal sanctions to recommend to the court. Those agreements have been implemented.

Based on Rake's deposition, staff understands that EZI Transport has not operated since December 1995, and Rake and Cardoza no longer operate as motor carriers of property.

Staff in its motion to dismiss investigation notes that the Commission's authority to regulate this kind of trucking has been removed by Assembly Bill 1683 (stats. 1996,

Ch. 1042, eff. Sept 29, 1996). Thus the current and future operations of EZI Transport and its principals are no longer a concern of the Commission. Past activities of Rake and Cardoza have been handled by the District Attorney with criminal proceedings in the San Joaquin County court system. Thus staff believes that there is no reason to continue this investigation.

Discussion

The Commission was concerned by the allegations that Rake and EZI Transport had violated many regulations and laws in its operations. We believe that staff did a thorough investigation and commend staff for cooperating with the San Joaquin District Attorney's Office in its investigation.

Since the District Attorney pursued this matter in criminal court, we see no reason to further pursue the past violations of Rake and Cardoza at the Commission.

We will dismiss this investigation in the order that follows.

Findings of Fact

1. The past violations of EZI transport and Rake and Cardoza were handled through the criminal court system of San Joaquin County.
2. Investigations of future operations of EZI Transport and Rake and Cardoza are no longer under the jurisdiction of the Commission.

Conclusions of Law

1. This investigation should be dismissed.
2. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. Investigation 95-11-031 is dismissed.
2. This proceeding is closed.

This order is effective today.

Dated October 9, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners