

MAR 12 1998

Decision 98-03-023 March 12, 1998

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations and practices of Mario C. Araiza, an individual, doing business as Araiza Express, Respondent.

Investigation 96-04-022
(Filed April 10, 1996)

O P I N I O N

Mario Cesar Araiza, for himself, respondent.
Robert Cagen, Attorney at Law, and Patricia Johnson, for the Rail Safety/Carriers Division.

Summary

Mario C. Araiza (respondent), doing business as Araiza Express (T-169, 108), whose mailing address is 5476 Eastwood Avenue, Alta Loma, California 91701, operates over the public highways of this state pursuant to a highway contract carrier permit issued October 25, 1990.

On April 10, 1996, the Commission instituted this Order Instituting Investigation into the operations of respondent to determine.

1. Whether respondent violated Public Utilities (PU) Code §§ 3751 and 3775 by conducting operations as a highway carrier during a period of suspension and/or revocation;
2. Whether respondent violated PU Code §§ 3555, 3632, 3634, and General Order 100-M by failing to fully comply with the public liability and property damage requirements of the Commission;
3. Whether respondent's operating authority should be suspended, canceled or revoked, or, in the alternative, a fine not exceeding twenty thousand dollars (\$20,000) should be imposed for each offense pursuant to PU Code §§ 3774 and 3805;
4. Whether respondent should be ordered to cease and desist from any unlawful operations and practices; and
5. Whether any other orders that may be appropriate should be entered into the lawful exercise of the Commission's jurisdiction.

At the evidentiary hearing held in San Bernardino on November 20, 1997, before Administrative Law Judge Garde, the Commission's Rail Safety Carriers Division (RSCD) stated that RSCD and respondent have reached a settlement. The settlement, which is attached as Appendix A to this order, was marked as Exhibit 1. RSCD and respondent requested that the Commission adopt the settlement contained in Exhibit 1.

According to the settlement, respondent agrees to comply in the future with the laws, regulations, and decisions applicable to highway carriers regardless of whether this Commission or another entity is responsible for enforcement of those matters. In addition, respondent agrees to pay a total fine of \$2,500 in two installments. The first payment of \$1,250 is to be made ten days after the effective date of this order and the second payment is to be made no later than 90 days after the due date of the first payment.

Findings of Fact

1. The settlement is reasonable, consistent with the law, and in the public interest.
2. The settlement is uncontested.

Conclusion of Law

The settlement agreement should be adopted.

O R D E R

IT IS ORDERED that:

1. The settlement reached between the Commission's Rail Safety/Carriers Division and Matlo C. Araiza (respondent), doing business as Araiza Express, is adopted.
2. Respondent shall pay to the Commission a fine of \$2,500 in two installments. The first installment of \$1,250 shall be due ten days after the effective date of this order and the second installment of \$1,250 will be due 90 days after the due date for the first installment.

3. This investigation is terminated, and the docket is closed.

This order is effective 30 days from today.

Dated March 12, 1998, at San Francisco, California.

RICHARD A. BILAS

President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioner

APPENDIX A:

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations and practices of Mario C. Araiza, an individual, doing business as Araiza Express.

I. 96-04-022	
CPUC Proceeding I.96-04-022	
SPONSORSHIP: Joint / None	
Date Filed: 11/20/97	Date: 11/20/97
Administrative Code	

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is the final and complete expression of a settlement between the Rail Safety and Carriers Division (RSCD) and Mario C. Araiza (Araiza), an individual doing business as Araiza Express. The parties to this Agreement are RSCD and Araiza, jointly the "parties."

The parties agree that this Agreement applies and binds the parties and each of their employees, officers, directors, agents and predecessors and successors in interest.

On April 10, 1996, the Commission issued I.96-04-022, which orders an investigation of Araiza for alleged violations of statutes, and Commission rules and regulations, pertaining to highway carriers. Specifically, the Commission's Safety and Enforcement Division (the predecessor of RSCD in this investigation) charged Araiza with operating while his operating authority was suspended by this Commission, and for failure to maintain insurance and evidence of insurance.

WHEREAS, the parties each desire to resolve amicably the dispute among them and to dispose of the issues raised in I.96-04-022;

NOW, THEREFORE, in consideration of the foregoing, and of the mutual promises hereinafter made, and intending legally to be bound, the parties, by their authorized representatives, hereby agree and contract as follows:

APPENDIX A'

1. Araiza agrees to make payments of a total fine of \$2,500 pursuant to the provisions of Public Utilities Code Sections 3774 and 3805. Araiza agrees to make two payments of \$1,250 each for payment of the fine. Araiza agrees to make the first payment of \$1,250 no later than 10 days after the effective date of the Commission decision adopting this Agreement. Araiza agrees to make the second payment of \$1,250 no later than 90 days after the due date for the first payment. Araiza agrees to make such payment to the California General Fund.

2. Araiza admits and stipulates that he has violated the law in the manner specified in 1.96-04-022. Araiza agrees to comply in the future with all laws, regulations, and decisions applicable to highway carriers, regardless of whether this Commission or another entity is charged at such time with the enforcement of such matters.

3. Araiza agrees to a probation period for two years commencing on the effective date of the decision adopting this Agreement. The parties agree that if RSCD believes, upon information in its possession, that Araiza violated the agreement, applicable law, regulations, or decisions, a hearing before the appropriate regulatory authority will be held promptly to ascertain whether a violation has occurred. Araiza agrees that the sanction for a material violation during probation will be revocation of operating authority. In particular, but not to the exclusion of other items, if Araiza fails for any reason to make either payment of \$1,250 by the time and in the manner stipulated, Araiza agrees that revocation will occur.

4. RSCD agrees to recommend the termination of this investigation, if the Commission adopts this Agreement.

5. The Parties acknowledge and confirm that they have received sufficient consideration for the settlement set forth in this Agreement, and represent and warrant that no promise or inducement has been made or offered to them except as set forth in this Agreement; that they are executing this Agreement without

APPENDIX A

reliance upon any statement or representation by any person or party released, except as set forth in this Agreement; that they are legally competent to make the settlement set forth in this Agreement and to execute this Agreement, that this Agreement sets forth the entire understanding of the Parties with respect to the terms and conditions of their Agreement; that they have not assigned, transferred or conveyed, or purported to assign, transfer or convey, voluntarily, involuntarily or by operation of law, any or all of their respective rights or claims against the other; and that this Agreement cannot be modified except in writing signed by all parties to the modification.

6. The Parties acknowledge and stipulate that this Agreement is fair and is not the result of any fraud, duress, or undue influence exercised by any Party upon another Party or by any other person or persons upon either; that the provisions herein made are adequate, reasonable, and satisfactory to each of them; that they have arrived at the compromise that forms the basis of this Agreement after thorough bargaining, negotiation, and review of the applicable factual allegations and legal authorities and their settlement represents a final and mutually agreeable compromise of the matters set forth in this Agreement. Each Party further acknowledges that, after the execution of this Agreement, he or it may discover facts in addition to or different from those that he or it now knows or believes to be true with respect to matters encompassed by the settlement set forth in this Agreement, but that it is the intention of each Party to settle, and each Party does settle, fully, finally, and forever, the matters set forth in this Agreement notwithstanding the discovery or existence of any such additional or different facts.

7. No individual terms of this Agreement is assented to by any Party except in consideration of another Party's assent to all other terms. Thus, the Agreement is indivisible, and each part is interdependent on each and all other parts. Any

APPENDIX A

Party may withdraw from this Settlement Agreement if the Commission modifies, deletes from, or adds to the disposition of the matters agreed to herein.

8. This Agreement is to be governed and construed in accordance with the laws of the State of California applicable to settlement agreements either entered into or to be performed in the State of California.

9. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which shall constitute one single agreement.

10. The effective date of this Agreement is defined as the date when the Commission approves it by a decision.

IN WITNESS OF the settlement set forth in this Agreement, the Parties, by their authorized representatives, have signed this Settlement Agreement as of the dates below written.

By: Paul Wuerstle
Paul Wuerstle
Principal

Date: Nov. 19, 1997

The Rail Safety and Carriers Division
Public Utilities Commission
of the State of California

By: Robert Cagen
Robert C. Cagen

Date: Nov. 20, 1997

Attorney for the Rail Safety and Services
Division Public Utilities Commission
of the State of California

By: Mario C. Araiza
Mario C. Araiza

Date: Nov 20 1997

Doing Business As Araiza Express