

ALJ/BRS/mrj \*\*

Mailed 10/13/98

Decision 98-10-024 October 8, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation and Order to Show Cause into the operations and practices of Joe Burnley, Sr., (TCP 9811) and consolidation with Application 96-05-041,

Respondent.

And Related Matter.

**ORIGINAL**  
Investigation 96-09-031  
(Filed September 20, 1996)

Application 96-05-041  
(Filed May 24, 1996)

Benjamin Criswell, for Joe Burnley, Sr., respondent.  
Carol Dumond, Attorney at Law, for the Rail Safety and Carriers Division.

O P I N I O N

Summary

The operating authority [TCP 9811] of respondent Joe Burnley, Sr., doing business as Royal Circle Ltd., is revoked with prejudice, due to the continuing violations in his operations as a charter-party carrier. Respondent did not dispute the findings of the Rail Safety and Carriers Division (RSCD), formerly the Safety and Enforcement Division, at the final evidentiary hearings in Investigation (I.) 96-09-031. Application (A.) 96-05-041 of Ena Davis and Joe Burnley, Sr. for passenger stage authority, which was consolidated with I.96-09-031, is denied due to the history of violations of Joe Burnley, Sr. in operating Royal Circle Ltd.

## **Background**

On September 20, 1996, the Commission opened this Order Instituting Investigation (OII) into the operations and practices of respondent to determine if respondent has violated:

1. Vehicle Code (VC) Section 1808.1 and General Order (GO) 157, part 5.02 by failing to enroll all of his drivers in the Department of Motor Vehicles (DMV) Pull Notice Program;

2. GO 157, part 3.01 by failing to obey airport rules and regulations; and by soliciting customers, who must be transported only on a prearranged basis; and

3. Public Utilities (PU) Code § 5401 and Penal Code (PC) Section 654.1 by assessing individual customer fares.

The OII stated, in part:

"If staff finds that there is evidence that the alleged conduct or pattern of violations by the respondent continues after this order is served on him, it ...may ask for suspension of the respondent's operating authority pending the final outcome in this proceeding."

RSCD presented evidence of continuing violations by respondent of the type as noted in this OII. As a result, the Commission in Decision (D.) 97-01-038 dated January 23, 1997 suspended the operating authority of respondent pending the final outcome of the OII.

## **Hearings**

Duly noticed evidentiary hearings commenced at the Commission Courtroom in San Francisco on July 21, 1997 at which time RSCD presented its testimony and exhibits. At that time respondent requested additional time to prepare for the evidentiary hearings. In the interest of allowing respondent an

opportunity to defend himself against the allegations in the investigation, these hearings were adjourned after RSCD's testimony until September 3, 1997.

**RSCD's Evidence**

RSCD presented two witnesses in support of its Investigative Report (Report), and First and Second Supplement to the Report (Supplements). Richard L. Molzner, a special agent in the Consumer Services Division, testified that respondent operated while his authority was under suspension by the Commission, and without evidence, of insurance on file at the Commission. Molzner's report was received into evidence as Exhibit No. 1.

Molzner's report includes evidence, including copies of citations for repeated violations by respondent at San Francisco International Airport (SFIA), as follows:

Date	Violation (VC = Vehicle Code PC = Penal Code)
February 20, 1996	GO 157-C Part 4.01, vehicle not listed on file with the Commission
June 14, 1996	VC 24252(a), no high beams; VC 24952, no turn signals; VC 26450, no parking brake; and VC 34501, no PUC decals
August 13, 1996	SFIA Rule 1.4.7 (E) 30, no airport decal.
August 31, 1996	SFIA Rule 1.4.7 (B) 3(a), and GO 157-C Part 3.01, no waybill, SFIA Rule 1.4.7 (E) 30, no airport decal.
October 2, 1996	Admonished for soliciting fares in violation of PU Code § 5401 and PC Sections 602.4 and 654.1.
October 10, 1996	SFIA Rule 1.4.7(E) 30, no airport decal and GO 157-C Part 4.03, no identification of the carrier. GO 157-C Part 4.04, no legible PUC number,
October 11, 1996	SFIA Rule 1.4.7 (E) 10, no permit or transponder; SFIA Rule 1.4.7 (E) 11, solicitation of passengers; SFIA Rule 1.4.7 (E) 26, altering a passenger choice of transportation; VC Section 27465 (B), a bald tire.
October 15, 1996	Admonished by SFIA Police for soliciting passengers on the lower level of the SFIA South Terminal, in violation of PC § 602.4 and PU Code § 5401.

Molzner testified that respondent typically continued to operate while his authority was suspended or revoked by the Commission, including for lack of evidence of insurance on file. Molzner stated that the history of violations of this carrier is probably more extensive than any carrier with which he has dealt.

At this time, Molzner believes that revocation could offer an additional enforcement tool to prevent illegal operations. If the Commission revokes respondent's authority, Molzner would like staff to seek a temporary restraining order against respondent in Superior Court. This could then be converted to a permanent injunction against operating on SFIA property, which would allow SFIA police to impound respondent's vehicles if he violates the permanent injunction by operating at SFIA.

Molzner further recommends that A.96-05-041 of Davis and Burnley Sr. be denied, based on Burnley's demonstrated lack of fitness to operate as a carrier of passengers.

SFIA Police Officer Frank Linney testified that respondent has been cited more than 100 times, and about 15 times since his authority was suspended. Linney further testified that he has cited respondent for numerous violations including: not having an SFIA permit, soliciting customers, unsafe vehicles, charging individual fares and having no waybill. Burnley, Sr. has been warned numerous times about his operations, yet he continues to operate in the same manner, and continued to operate at SFIA after his operating permit was suspended by the Commission in January 1997.

### **Respondent's Showing**

Further evidentiary hearings resumed on September 3, 1997. At that time, respondent again had the opportunity to cross-examine RSCD witnesses as well

as to provide his own defense. However, Burnley Sr. stated that he did not dispute RCSD's testimony, findings, and recommendations. (Tr. 9-3-97, p. 1, ln 18-20, p. 3 ln 14.) He was asked if he understood the seriousness of the charges and that if unopposed they could result in permanent revocation of his operating authority, to which he responded in the affirmative. (Tr. 9-3-97, p. 2, ln 21.)

### **Discussion**

As we stated in Interim Opinion D.97-01-038 in this proceeding, evidence of violations after the OII was issued was presented by RSCD in Supplements to its Investigative Report. We therefore suspended respondent's operating authority pending the final outcome of this investigation.

### **Jurisdiction**

Under PU Code § 5378 (a):

The Commission may cancel, revoke, or suspend any operating permit or certificate issued pursuant to this chapter upon any of the following grounds:

- (1) The violation of any of the provisions of this chapter, or of any operating permit or certificate issued thereunder.
- (2) The violation of any order, decision, rule, regulation, direction, demand, or requirement established by the Commission pursuant to this chapter.
- (7) Failure of a permit or certificate holder to operate and perform reasonable service. That failure may include repeated violations of the Vehicle Code or of regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety, by employees of the permit holder or certificate holder, that support an inference of unsafe operation or willful neglect of the public safety by the permit holder or certificate holder.
- (8) Consistent failure of the charter-party carrier of passengers to maintain its vehicles in a safe operating condition and in compliance with the Vehicle Code and with regulations contained in Title 13 of the

California Code of Regulations relative to motor vehicle safety, as shown by the records of the Commission, the Department of Motor Vehicles, the Department of the California Highway Patrol, or the carrier.

GO 157 sets forth many rules and regulations governing the operations of charter-party carriers and, among other things, provides that:

- (1) Every charter-party carrier and their drivers shall comply with the provisions of the California Vehicle Code. GO 157, (Part 1.06)
- (2) No carrier shall conduct any operations on the property of or into any airport unless such operations are authorized by both this Commission and the airport authority involved. Consistent failure to comply with the safety or traffic rules and regulations of an airport authority may result in suspension or revocation of Commission operating authority. GO 157, (Part 3.02)

Thus, failure to comply with the rules of an airport authority may constitute a violation of the Commission's GO 157 and PU Code § 5378.

PU Code § 5379 provides the following:

After the cancellation or revocation of a permit or certificate, or during the period of its suspension, or after the expiration of its permit or certificate, it is unlawful for a charter-party carrier of passengers to conduct any operations as a carrier. The Commission may either grant or deny an application for a new permit or certificate whenever it appears that a prior permit or certificate of the applicant has been canceled or revoked pursuant to § 5378 or whenever it appears, after hearing, that as a prior permit or certificate holder, the applicant engaged in any of the unlawful activities set forth in § 5378 for which his or her permit or certificate might have been canceled or revoked.

*OII*

The evidence against respondent is compelling. The operations of Royal Circle Ltd. have not complied with rules and laws, and continuing

violations appear to be the norm. Safety of the traveling public is jeopardized by respondent's operations, particularly operations conducted without insurance.

The evidence in RSCD's Investigative Report and Supplements, and the accompanying testimony of Molzner and Linney stand unrefuted. In order to protect the traveling public, we will revoke respondent's operating authority in the order that follows.

***Application A96-05-041***

Next we deal with the application of Ena Davis and Joe Burnley, Sr., A.96-05-041, to operate as a passenger stage corporation between points in Alameda, Contra Costa and San Francisco Counties and the Oakland International Airport. RCSD recommends that this application be denied because Joe Burnley, Sr. does not meet the minimum fitness requirements of the Commission for carriers holding a certificate of public convenience and necessity. As a condition to receiving a permit to operate as a Charter Party Carrier, Burnley agreed to abide by all Commission rules and regulations. However, as discussed above, he continued to operate with little or no regard for those requirements. We find that he is either unwilling or unable to operate legally and safely.

Thus we will deny this application based on Joe Burnley, Sr.'s history of continued serious violations in his operations as a charter-party carrier.

### ***Temporary Restraining Order***

Regarding the potential problem of continued operation without authority at SFIA, a peace officer has authority under PU Code § 5411.5 to impound and retain possession of charter-party carrier vehicle operating without a valid certificate or permit at the airport. However, Molzner indicated that SFIA police may be reluctant to impound vehicles without additional authority.

Therefore, it may be prudent for RCSD to seek a temporary restraining order in Superior Court against respondent, as Molzner recommends. When converted to a permanent injunction against operating on SFIA property, it orders the impound of vehicles violating the court order. Thus, enforcement would be more certain. Based on respondent's disregard of laws and rules, this may be a worthwhile tool to help insure that he will not operate in violation of this order's revocation.

### ***Judicial Review***

This is an enforcement proceeding brought by the Commission against Joe Burnley, Sr. and so this decision is issued in an "adjudicatory proceeding" as defined in § 1757.1.

### ***Findings of Fact***

1. This OII was opened to investigate whether respondent was violating relevant sections of the Vehicle Code, PC, PU Code and GOs, and San Francisco International Airport rules.
2. Respondent's operating authority was suspended by D.97-01-038 pending the final outcome of this OII.
3. A.96-05-041 for authority to operate as a passenger stage corporation was consolidated with this OII.

4. Applicant signed an agreement with staff on July 24, 1996, to comply with all codes, laws, and regulations in his operation as a charter-party carrier.

5. Respondent was cited numerous times during the period June to October 1996 for violations of San Francisco International Airport Rules and the California Vehicle Code.

6. Respondent operated during periods when his permit was suspended for lack of insurance.

7. RCSD's testimony of respondent's continued serious violations was unrefuted by respondent.

8. Respondent's violation including operation without evidence of insurance on file at the Commission, and operating unsafe vehicles, constitute a threat to the health, safety, and welfare of the travelling public.

9. Respondent presented no affirmative defense to the allegations of RCSD.

10. RCSD recommends that its staff file a temporary restraining order in Superior Court against respondent.

11. Respondent stated that he understood the seriousness of the charges and the probable result.

12. RSCD recommends that A.96-05-041 be denied.

#### **Conclusions of Law**

1. Respondent consistently violated SFIA rules and GO 157.

2. Violation of SFIA rules constitutes a violation of GO 157.

3. Respondent violated PU Code § 5401 and PC Section 654.1 by assessing individual fares.

4. Respondent violated GO 157, by soliciting customers.

5. Respondent violated VC § 24252 (a), 24952, and 26450 by operating an unsafe vehicle.
6. Violations of the California Vehicle Code constitutes a violation of GO 157.
7. Respondent operated without evidence of insurance on file at the Commission violation of GO 115-F Part (1) and GO 157.
8. Respondent's authority should be revoked due to the many continuing violations of GOs and PU Codes pursuant to PU Code § 5378.
9. A.96-05-041 should be denied pursuant to PU Code § 5379.
10. This OII should be closed.
11. A.96-05-041 should be closed.
12. This order should be effective on the date signed.
13. This is an enforcement proceeding, and so this decision is issued in an "adjudicatory proceeding" as defined in PU Code § 1757.1.

## O R D E R

### IT IS ORDERED that:

1. The operating authority of Joe Burnley, Sr., doing business as Royal Circle, Ltd. (TCP 9811-P), is revoked for continued violations of Commission General Orders and Public Utilities Codes.
2. Application (A.) 96-05-041 is denied.
3. The Rail Safety and Carriers Division may seek a temporary restraining order against Joe Burnley, Sr., in Superior Court after the effective date of this order.

I.96-09-031, A.96-05-041 ALJ/BRS/mrj\*

4. Order Instituting Investigation and Order to Show Cause 96-09-031 is closed.

5. A.96-05-041 is closed.

This order is effective today.

Dated October 8, 1998, at Laguna Hills, California.

RICHARD A. BILAS

President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners