

Decision 99-06-030 June 10, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Regulation of Used
Household Goods Transportation by Truck.

Investigation 89-11-003
(Filed November 3, 1989)

O P I N I O N

1. Summary

The motion of Paula Karrison for intervenor compensation is denied. The investigation is closed.

2. Background

By Order Instituting Investigation 89-11-003, we undertook a comprehensive review of Commission regulation of used household goods transportation over the public highways by truck. We conducted the investigation in four phases. Phase IV involved an issue on rehearing transferred from Case (C.) 95-03-057.

C.95-03-057 was a complaint brought by Paula Karrison (complainant) against A&P Moving, Inc. (defendant) on March 23, 1995. Complainant and defendant agreed to the transportation and temporary storage of complainant's household goods in 1994. A bedroom dressing table was damaged during the move. The household goods, including the damaged table, remained in storage while complainant and defendant sought to resolve the damage claim. Charges for the move and storage continued to grow. Complainant refused to pay the accumulated charges. Defendant scheduled a public sale of the goods to generate compensation for its charges. The goods were sold on July 22, 1995. As a result, complainant asked for relief, including damages.

By Decision (D.) 96-12-060, we found that we lacked authority to grant an award of damages, but, nonetheless, we established a new policy. The new policy prohibited a household goods carrier from selling the property of a shipper who had filed a formal complaint against that carrier during the pendency of the complaint.

Defendant filed an application for rehearing of the new policy. Rehearing was granted by D.97-10-034, and the rehearing was transferred to Investigation (I.) 89-11-003. A settlement was then pending in the last phase (Phase III) of the investigation. Phase IV was established to consider the matter to be reheard. D.98-04-064 resolved all issues in Phases III and IV.

On September 15, 1998, complainant filed a motion for intervenor compensation in I.89-11-003. Complainant seeks compensation from the Advocates Trust Fund (ATF)¹ for participation in Phase IV. In particular, complainant seeks authorization to present a "bill of particulars for compensation from the Fund." (Motion, p. 4.) No responses to the motion were filed.

3. Discussion

We first note that nothing in the ATF's Declaration of Trust or Bylaws, or our Rules of Practice and Procedure, requires that complainant first file a motion

¹ The ATF was established in 1982 to fund expenses related to litigation or representation of consumer interests in "quasi-judicial complaint cases." (ATF, Declaration of Trust, Article I, Section 1.1.) C.95-03-057 is a quasi-judicial complaint case. The new policy adopted therein was transferred to I.89-11-003 for rehearing. I.89-11-003 is not a "quasi-judicial complaint case." Arguably, complainant may be eligible for compensation from the ATF for participation in Phase IV of I.89-11-003 based on the underlying issue having first arisen in a complaint proceeding. Whether this is or is not the case need not be decided here, however, because complainant fails to pass other tests for compensation, as explained in the discussion herein.

seeking authorization to present a bill of particulars.² Nonetheless, we rule on complainant's motion, a step taken at her request. This will save complainant the additional effort and expense of preparing a detailed, comprehensive request that would ultimately be denied.

An award of compensation under the ATF must pass several tests. Among the tests is that "it is clearly and convincingly demonstrated that the private party has made a direct, primary and substantial contribution to the result of the case." (ATF, Declaration of Trust, Article I, Section 1.3.)

Complainant argued in favor of the policy prohibiting a carrier from executing a lien sale pending the outcome of a complaint. Complainant did not prevail on the threshold issue, or on any arguments in its favor, and her participation did not reasonably advance consideration of any issue. (See D.98-04-064, mimeo., pp. 14-39.) Complainant failed to make a direct, primary, and substantial contribution to the result of the case. Therefore, her motion must be denied.

For example, complainant argued that a lien holder must first obtain a court or Commission judgment before a lien sale may be executed. We were not persuaded. (Id., pp. 16, 33-34.) Complainant argued that California Commercial Code § 7103 defers all Commercial Code provisions, including lien sales, to the

² Intervenor compensation is generally addressed in Division 1, Part 1, Chapter 9, Article 5 (beginning with § 1801) of the Pub. Util. Code, and Article 18.8 of our Rules of Practice and Procedure. Compensation is possible for participation or intervention in all formal Commission proceedings involving electric, gas, water, and telephone utilities. This does not include proceedings involving household goods carriers. If it did, however, the proper procedure would require the filing of a notice of intent to claim intervenor compensation (Pub. Util. Code § 1804(a)(1)) followed by a request for an award of compensation (Pub. Util. Code § 1804(c)).

Commission. We found that, even if true, this did not justify our prohibiting a lien sale during the pendency of a complaint. (Id., p. 18.)

We found that we did not need to apply a generic, industry-wide rule based on what appeared to be an isolated case. (Id., p. 20.) We found that both the legislature and the Commission had long ago struck a proper balance between the interests of carriers and shippers, and nothing offered by complainant convinced us to change that balance. (Id., pp. 20-23.)

Complainant argued that our regulatory program requires shippers to wait up to nine months before acting and, therefore, the lien sale prohibition should be retained. We were not convinced. (Id., p. 26.) Complainant asserted only the Commission has authority to settle loss and damage claims. We found otherwise. (Id., p. 26.)

Complainant proposed a disclaimer to the Important Information Booklet with the intent of relieving the Commission of the lien sale issue. We declined to adopt the recommendation. (Id., pp. 28-29.) Complainant proposed new language in the Important Information Booklet regarding carrier liability. We were not persuaded of its merits. (Id., p. 29.) Complainant proposed that the Commission maintain the claims register for each carrier. We declined to adopt this proposal. (Id., pp. 30-33.)

In comments on the draft decision leading to D.98-04-064, complainant argued that the Commission must actively assert jurisdiction and resolve claims disputes. We were not persuaded. (Id., p. 34.) Complainant asserted a hearing is required before a shipper may be deprived of property. We found otherwise. (Id., pp. 34-35.) Complainant alleged facts from C.95-03-057 were ignored which were material to the resolution of Phase IV issues. We were not convinced. (Id., p. 36.) Complainant contended that she recommended changes based on the repeal of Pub. Util. Code § 3553. We found her recommended changes were

already addressed, and no further consideration was necessary. (Id., p. 39.) In short, complainant did not make a direct, primary, or substantial contribution to the result in this proceeding.

We made one change to the Important Information Booklet supported by complainant.³ That change, however, was proposed by the Office of Ratepayer Advocates (ORA), not complainant. The change is not the result of any direct, primary, or substantial contribution by complainant.

We had further opportunity to consider complainant's concerns when we addressed her application for rehearing of D.98-04-064. We were not convinced by any arguments advanced by complainant, and the application was denied. (D.99-01-035.)

Today's decision does not make any finding with regard to the issues in C.95-03-057, nor does it address any intervenor compensation issues in that proceeding. Rather, this decision only addresses complainant's motion for intervenor compensation in I.89-11-003.

4. Comments on Draft Decision

The draft decision of Administrative Law Judge Mattson in this matter was mailed to the parties on May 4, 1999 in accordance with Pub. Util. Code Section 311(g) and Rule 77.1 of the Rules of Practice and Procedure. No comments or reply comments were filed.

On June 1, 1999, eight days after comments were due to be filed, the ALJ received a document titled "Complainant's Response to Draft Decision." No

³ A sentence was added in the section "How To File A Claim." The sentence directs shippers to call the Commission if a carrier fails to respond to a written claim within the time limits, and in the manner, described in the Important Information Booklet. (D.98-04-064, mimeo., pp. 25-26.)

opposition was received to accepting this response as complainant's comments on the draft decision. We treat the response as such, even if late.

On June 4, 1999, the ALJ received a document from A&P Moving, Inc., titled "Respondent's Reply to Complainant's Response to Draft Decision." Since we treat complainant's response as comments on the draft decision, we similarly treat the reply of A&P Moving, Inc. as reply comments on the draft decision.

Complainant generally argues that the draft decision should be reversed. Complainant asserts that she should be found eligible for compensation in Phase IV, and should be compensated for her participation. We are not persuaded.

For example, complainant asserts that she should be eligible for compensation under Pub. Util. Code § 1802(h). This code section is part of the Public Utilities Act, wherein intervenor compensation and expenses are addressed. (Pub. Util. Code §§ 1801 through 1812.) As described in a previous footnote, however, this compensation is for participation in proceedings involving electric, gas, water, and telephone utilities. It does not include proceedings involving household goods.

Even if it included household goods matters, however, the statute provides for compensation when the customer makes a substantial contribution, whether that contribution is to the entire outcome, or only in part. Complainant here made no factual contentions, legal arguments, or policy or procedural recommendations that were adopted in Phase IV. Complainant did not make a substantial contribution to the outcome of Phase IV, even in part.

Complainant also argues that having already been found eligible for an award of compensation in C.95-03-057, she remains eligible in Phase IV of I.89-11-003. To the contrary, even if eligible to be considered for an award, eligibility does not guarantee an award. We here rule on complainant's motion for intervenor compensation and request to present a bill of particulars in Phase

IV of I.89-11-003. We find that complainant has not met the test for compensation under the ATF, and find no basis to consider the matter further via a bill of particulars (i.e., an itemized claim). To the extent complainant was found eligible to apply for compensation in C.95-03-057, today's decision does nothing to disturb that finding. She may seek compensation to the extent allowed by the ALJ and Commission in C.95-03-057.

Complainant argues that the public benefit resulting from Phase IV would not have occurred without her participation, even though she did not prevail. To the contrary, the application for rehearing was not filed by complainant, and it would have been considered with or without her participation. Moreover, her participation did not make a direct, primary, or substantial contribution to the final result in Phase IV.

Complainant asserts that her contribution was in the clarification of standing policies. Even if standing policies were clarified, this was not a direct, primary, or substantial contribution to the final result in Phase IV, and does not merit compensation.

Complainant asserts that she was invited to comment in Phase IV, and was then victimized by the Commission making her the recipient of both Commission and industry-wide wrath. Complainant contends this victimization is worth complainant's costs of participation. To the contrary, complainant was a party to Phase IV, and all parties were invited to comment. Complainant was not invited to participate in any way differently than any other party. Moreover, complainant was not treated with any wrath. Rather, complainant's contentions, arguments, and recommendations were addressed by opponents and the Commission, but not in any way that rose to the level of abuse or making complainant a victim.

For all these reasons, we are not persuaded by complainant's comments on the draft decision to reverse the outcome there recommended. Rather, we affirm the draft decision in today's order.

Findings of Fact

1. Complainant did not prevail on any issue, and her participation did not reasonably advance consideration of any issue.
2. Complainant did not make a direct, primary, or substantial contribution to any result in this proceeding.
3. The adopted change to the Important Information Booklet was recommended by ORA, and was not adopted as a result of any direct, primary, or substantial contribution by complainant.
4. Complainant's application for rehearing of D.98-04-064 was denied by D.99-01-035.

Conclusion of Law

Complainant's motion for intervenor compensation under the ATF for participation in Phase IV should be denied.

O R D E R

IT IS ORDERED that the September 15, 1998 motion of Paula Karrison for intervenor compensation pursuant to the Advocates Trust Fund for participation in Phase IV is denied. This proceeding is closed.

This order becomes effective 30 days from today.

Dated June 10, 1999, at San Francisco, California.

RICHARD A. BILAS

President

HENRY M. DUQUE

JOSIAH L. NEEPER

LORETTA M. LYNCH

JOEL Z. HYATT

Commissioners