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9/26/96

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 (A.))
96-05-041.)

ORIGINAL
FILED

PUBLIC UTILITIES COMMISSION
SEPTEMBER 20, 1996
SAN FRANCISCO OFFICE
I.96-09-031

Respondent.)

ORDER INSTITUTING INVESTIGATION

The California Public Utilities Commission (Commission) is the agency responsible for regulation of intrastate passenger carrier operations in California pursuant to Article XII of the California Constitution, by the Public Utilities (PU) Code, commencing with Section 1031 et seq. and 5351 et seq. and by General Orders (GO) 157 and 158 series. These statutes and regulations require carriers, among other things, to maintain adequate proof of public liability and workers' compensation insurance, to serve public convenience and necessity, and to operate and maintain their passenger vehicles in safe operating condition. These regulations further require that operators obey the provisions of the California Vehicle Code, participate in the Department of Motor Vehicles (DMV) "Pull Notice Program" and comply with airport regulations.

Safety and Enforcement Division's (S&E) Passenger Compliance Unit (staff) advises us that it initiated an investigation into the business practices of Joe Burnley, Sr., doing business as Royal Circle Ltd. (TCP 9811-P). This investigation was initiated because of the respondent's apparent disregard for San Francisco Airport (SFO) rules and regulations despite repeated citations by SFO airport police and admonishments by the staff. The investigation also revealed a

failure to resolve a claim for luggage lost due to the neglect of the carrier.

On August 20, 1996, staff's initial investigation was concluded. The investigation revealed that there is evidence to support a finding that the respondent may have violated the following provisions of the PU Code:

- o Failure to enroll all its drivers in the DMV's Pull Notice Program, violation of GO 157 series, Part 5.02 and Vehicle Code Section 1808.1.
- o Failure to obey airport rules and regulations, violation of GO 157, Part 3.02.
- o Charging individual fares, violation of PU Code, Section 5401 and Penal Code Section 654.1.
- o Failure to conduct prearranged transportation, violation of GO 157, Part 3.01.
- o Failure to file a current listing of all vehicles with the Commission, violation of GO 157, Part 4.01.

LICENSE HISTORY

On May 17, 1995, Joe Burnley, Sr., an individual, doing business as Royal Circle Ltd., filed an application for a charter-party permit. The permit, TCP 9811-P, was granted on July 24, 1995.

On May 24, 1996, Ena Davis and Joe Burnley, Sr., an equal partnership, doing business as, Royal Circle Transportations, filed an application [A.96-05-041] for authority to operate as a passenger stage corporation between points in Alameda, Contra Costa and San Francisco Counties and the Oakland International Airport. The Safety and Enforcement Division filed a protest to this application on June 28, 1996.

Conditions To Burnley's Charter-party Permit

When S&E staff became aware that Joe Burnley had filed for charter-party authority it had concerns, based on prior experience, that Burnley might not be fit to be licensed to serve the public as a charter-party carrier.

Staff ultimately executed an agreement which Burnley also signed on July 24, 1995. The agreement basically stated staff would not oppose Burnley's application for authority as a charter-party carrier if Burnley obeyed General Order 157-B (now GO 157-C) and airport rules. Staff advises us that since the date of that agreement Burnley has been cited or admonished at least five times by the San Francisco Airport Police and has continued to violate the PU Code, GO 157 series, and the Vehicle Code.

The Solicitation Problem

Airports in the Bay Area, and particularly SFO, are concerned with limousine operators that unlawfully hail or solicit passengers (instead of having pre-arranged trips booked in advance). Many of these limousine companies also act like taxis at various tourist locations in San Francisco. This solicitation and "taxi-like" activity by limousine operators has the taxi industry in San Francisco "concerned too." Staff has received numerous telephone calls from the taxi industry asking that the Commission enforce regulations, particularly Part 3.01 of GO 157, which requires charter-party carriers to provide transportation only on a prearranged basis. Staff has worked with SFO and the San Francisco Police Taxi Detail to reduce this problem.

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Failure To Obey Airport Rules

Paragraph 4 of the July, 1995 agreement between Staff and Burnley reads:

"Royal Circle, Ltd. will obey General Order 157-B, Part 3.01 by conducting all business only on a prearranged basis. "Prearranged basis", as defined in Section 5360.5 of the Public Utilities Code, means that the transportation of the prospective passenger was arranged with the carrier either prior to the passenger's arrival at the airport or by telephone after arrival."

Since July 24, 1995, the date of that agreement, staff states that Burnley has received at least five citations or admonishments for various violations of airport rules.

DMV Pull Notice Program

On July 15, 1996, staff sent a request to the Department of Motor Vehicles to obtain the Pull Notice Program records for Royal Circle, Ltd. The records revealed that the only driver in the Program is Burnley's son, Joe Burnley, Jr. [CDL: M0511925]. Joe Burnley, Sr. did not list himself as a driver, although staff believes that the elder Burnley often drives. While Royal Circle, Ltd. is in the DMV program (this is now required to obtain a TCP permit), Joe Burnley, Sr.'s failure to enroll himself is a violation of Part 5 of GO 157 and Section 1808.1(e) of the Vehicle Code.

Failure To Resolve Customer Loss

In April of 1996, staff received a letter from an attorney representing a woman from Germany who alleged that her suitcase was lost by "Royal Circle Transportation Company." Initially Burnley maintained that his company was not

responsible. After staff's investigation, photographic evidence, and an interview, Burnley acknowledged that Royal Circle was responsible. Burnley was requested to resolve the claim and finally paid a partial payment of \$250 toward the full amount of \$714. Again, staff is concerned because this incident could be indicative of Burnley's basic reluctance to fulfill his obligations and follow the rules and regulations of the CPUC and the San Francisco Airport.

Charging Individual Fares

Section 5401 of the PU Code states:

"Charges for the transportation to be offered or afforded by a charter-party carrier of passengers shall be computed and assessed on a vehicle mileage or time of use basis, or on a combination thereof".

And Section 654.1 of the Penal Code reads:

"It shall be unlawful for any person...to sell or offer for sale...or hold himself out as one who sells or offers for sale or negotiates, provides or arranges for transportation of a person or persons on an individual fare basis over the public highways of the State of California unless such transportation is to be furnished or provided solely by, and such sale is authorized by, a carrier having a valid and existing certificate of convenience and necessity, or other valid and existing permit from the Public Utilities Commission of the State of California"

Staff interviewed passengers on Burnley's vans that were stopped by the SFO Police. The passengers stated that their fares were based upon a dollar amount per person. One passenger said that Royal Circle honored her \$1 off coupon with SFO Airporter. She and her group were charged \$9 per person. Another

passenger said she and the others in her group were charged \$10 per person.

Failure To Maintain Current Equipment List

On February 24, 1996, Joe Burnley, Sr. and Jr. were arrested and cited at SFO for several violations of airport rules. The vehicle shown on the citation was a Ford Aerostar, license no. 4Z73370. This vehicle was never added to the list on file with the Commission as required in Part 4.01 of GO 157 series.

DISCUSSION

Public Utilities Code Sections 5374 and 5375 require applicants for charter-party authority, among other things, to establish reasonable fitness to initiate and conduct the proposed transportation services. The commission may refuse to issue operating authority to any applicant who has not demonstrated that it possesses the requisite fitness.

In App. of Walter Hoffman ((1976) 80 Cal. P.U.C. 117) we said:

"... 'reasonable fitness' connotes more than mere adequacy or sufficiency in training competency, or adaptability to the appropriate technical and vocational aspects of the service to be rendered. It also includes an element of moral trustworthiness, reliance, and dependability. The standards must be based on the interests of the public and distinguished from the interests of the applicant, and the burden rests with the applicant to demonstrate that he is reasonably fit to be entrusted with a renewal of Commission authority."

S&E reports that it has repeatedly counseled Joe Burnley dba Royal Circle, Ltd. to comply with provisions of the

Public Utilities Code, General Order 157 series, airport rules and regulations, and to cease his solicitations.

This carrier has a problematic history and it appears that the unlawful conduct apparently occurring before receiving a permit has continued. If violations continue after issuance of this order, it will be a clear signal that the carrier is unable or unwilling to ever comply with laws and regulations, and revocation would be an appropriate sanction.

O R D E R

Therefore, IT IS ORDERED that:

1. This order shall be personally served on the respondent Joe Burnley, Sr., doing business as Royal Circle, Ltd.
2. The staff, if it elects to do so, may present additional evidence beyond that described in this order, either by testimony or through documentation. If this carriers's operating authority is suspended during the pendency of this investigatory proceeding, it shall be reinstated only upon order of the Commission initiated in this docket.
3. The Executive Director shall cause a certified copy of the Order of pending revocation to be personally served upon respondent Joe Burnley, Sr., doing business as Royal Circle, Ltd., whose place of business is 485 42nd Street, Oakland, California 94609. If personal service cannot be made, despite diligent effort, then service may be made by mailing a copy by certified mail to the respondent at his last address of record with the Commission.
4. This proceeding is instituted to determine if:
 - a. The respondent has violated Vehicle Code Section 1808.1 and G.O. 157, part 5.02;
 - b. Airport rules were violated by the respondent, a violations of G.O. 157, part 3.02;

- c. Individual fares were assessed customers in violations of P.U. Code Section 5401 and Penal Code Section 654.1; and
- d. Respondent solicited customers transportation instead of having it prearranged, in violation of G.O. 157, part 3.01.

4. 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 shall submit that additional evidence and may ask for suspension of the respondent's operating authority pending the final outcome in this proceeding. If violations continue after the respondent is served with this order it will be evidence that the respondent is unlikely to ever operate in compliance with key rules and regulations.

5. Application 96-05-041 is consolidated with this proceeding.

This order is effective today.

Dated September 20, 1996, at San Francisco, California.

P. GREGORY CONLON
President
DANIEL WM. FESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
Commissioners

Commissioner Josiah L. Neeper,
being necessarily absent, did not
participate.

Certified as a True Copy
of the Original
Ken D. Neeper
Asst. Executive Director, Public Utilities Commission
STATE OF CALIFORNIA