

ORIGINAL

RECEIVED

MAY 8 1989

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION SECRETARY'S OFFICE
Public Utility Commission

Application of Central Transport, Inc. :

A-00108155

MAY 10 1989

ORDER

DOCUMENT FOLDER

Before me for resolution is a motion for sanctions filed by Central Transport, Inc. (Central), against Matlack, Inc. (Matlack), in this proceeding.

On May 26, 1988, Central filed an application for a certificate of public convenience to transport, as a common carrier, property, in bulk, in tank and hopper-type vehicles, between points in Pennsylvania. The application was protested and hearings have been held in the matter. Further hearings are not yet scheduled. At this point, there are six protestants remaining in the case, including Matlack. On December 9, 1988, Matlack filed objections to interrogatories served by Central upon it on November 25, 1988. On December 20, 1988, Matlack filed supplemental objections to several of the interrogatories stating further reasons why it objected to answering those interrogatories. On January 4, 1989, Central filed a Motion to Dismiss an Objection and to Direct Answering of Interrogatories ("motion to compel"). At that time, a copy of Central's motion was not served on Matlack. On January 17, 1989, unaware that Central had failed to serve its motion on Matlack, I issued an

order directing that Matlack produce the requested information subject to a condition which somewhat limited the scope of the interrogatories. Following issuance of my January 17, 1989, order, it was brought to my attention that Central inadvertently had failed to serve its motion on Matlack. Upon agreement of counsel, I rescinded my January 17, 1989, order to afford Matlack an opportunity to reply to Central's motion. On January 27, 1989, Matlack filed its reply to the motion. By order dated February 2, 1989, I again directed that Matlack produce the information requested by Central's interrogatories subject to the same condition imposed by my earlier order. On February 10, 1989, Matlack filed a Petition for Certification of a Material Question, seeking, essentially, certification of my decision granting Central's motion to compel. Matlack also sought a stay of the proceedings pending Commission determination of the question for which certification was requested. By order dated February 28, 1989, I denied the Petition for Certification as well as the request for stay.

On April 12, 1989, Central filed a Motion for Sanctions against Matlack. In its motion, Central averred that Matlack failed to answer the interrogatories in question as directed by my order of February 2, 1989. In that order, I had directed that Matlack answer the interrogatories within twenty days "of the date of this order." Central requested that I impose the

sanction of dismissal of Matlack's protest for Matlack's failure to comply with my order.

On April 24, 1989, Matlack filed an answer to Central's Motion for Sanctions. In its answer, Matlack proffered the following excuse for failure to supply answers to the interrogatories at issue:

Central's Motion for Sanctions focuses on two Orders entered by Administrative Law Judge Schnierle. The first, dated February 2, 1989, dismisses Matlack's Objections to Interrogatories and directs Matlack to answer the four (4) disputed Central interrogatories "within 20 days of the date of this Order"; i.e., no later than February 22, 1989. The second Order denies the Petition for Certification filed by Matlack and directs that this proceeding not be stayed. The second Order, dated February 28, 1989, was not received by counsel for Matlack until March 3, 1989.

It is Central's position that the directive in the second Order - that this proceeding not be stayed - revives all of the provisions of the February 2, 1989 Order, including the February 22, 1989 discovery deadline. This argument is fatally flawed.

Adopting Central's argument would result in the February 28, 1989 Order having an ex post facto effect; immediately upon the entry of the Order Matlack was in violation of a deadline that expired six (6) days earlier. Allowing an Order to have a retroactive impact of this nature is fundamentally unfair and contrary to accepted principles of Administrative practice and procedure.

The February 28, 189 Order - the most recent Order entered in this proceeding - does not impose any deadline upon Matlack for answering Central's interrogatories; it merely provides that the proceeding not be stayed. Matlack interpreted

this directive as requiring that a further hearing be scheduled in order to allow this proceeding to continue to its natural conclusion. Matlack assumed that, although no formal deadline had been set, discovery would be completed in sufficient time to allow Central to prepare for the final day of hearing.

Matlack also averred that contemporaneously with the filing of its answer it forwarded answers to the interrogatories in question to Central.


Matlack is correct in its observation that my order of February 28, 1989, in which I denied certification, did not specifically impose a new deadline upon Matlack for answering the interrogatories; however, I am not entirely convinced that it was reasonable for Matlack, in the absence of such a deadline, to assume that there was no formal deadline for its response to the interrogatories. Because the order by which the motion to compel was granted imposed a deadline of twenty days of the date of that order, Matlack should have responded to the interrogatories within 20 days of the date of the order denying certification (February 28, 1989). Nevertheless, in view of the fact that Matlack has now answered the interrogatories, and because the additional delay in answering them has been short, and because Matlack has otherwise cooperated in resolving discovery issues in a reasonable fashion, I am persuaded to deny the Motion for Sanctions.

THEREFORE,

IT IS ORDERED:

1. That the Motion for Sanctions filed by Central Transport on April 24, 1989, in this proceeding is denied.

2. That the Office of Administrative Law Judge Scheduling Staff set this matter for further hearing as soon as possible, taking into account my availability and that of the parties.



MICHAEL C. SCHNIERLE
Administrative Law Judge

Dated: May 5, 1989

A-108155 - Parties of Record:

William A. Chesnutt, Esquire
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108

Central Transportation, Inc.
Uwharrie Road
P.O. Box 7007
High Point, NC 27264

J. Bruce Walter, Esquire
Rhoads & Sinon
410 North Third Street
P.O. Box 1146
Harrisburg, PA 17108

Peter G. Loftus, Esquire
Suite 300
240 Penn Avenue
Scranton, PA 18503

Christian V. Graf, Esquire
David H. Radcliff, Esquire
Graf, Andrews & Radcliff, P.C.
407 North Front Street
Harrisburg, PA 17101

John A. Pillar, Esquire
Pillar & Mulroy
Suite 700
312 Boulevard of The Allies
Pittsburgh, PA 15222

Joseph A. Bubba, Esquire
Butz, Hudders, Tallman, Stevens & Johnson
740 Hamilton Mall
Allentown, PA 18101-2488

Henry M. Wick, Jr., Esquire
Wick, Streiff, Meyer, Metz & O'Boyle
1450 Two Chatham Center
Pittsburgh, PA 15219

Kenneth A. Olsen, Esquire
P.O. Box 357
Gladstone, NJ 07934

Dwight L. Koerber, Jr., Esquire
Kriner, Koerber & Kirk
110 North Second Street
P.O. Box 1320
Clearfield, PA 16830

Ronald W. Malin, Esquire
Johnson, Peterson, Tener & Anderson
Key Bank Building, Fourth Floor
Jamestown, NY 14701

Raymond A. Thistle, Jr., Esquire
206B Benson East
100 Old York Road
Jenkintown, PA 19046

Louis J. Carter, Esquire
7300 City Line Avenue
Suite 120
Philadelphia, PA 19151-2291

James W. Patterson, Esquire
Rubin, Quinn & Moss
1800 Penn Mutual Tower
510 Walnut Street
Philadelphia, PA 19106

Alan Kahn, Esquire
Abrahams and Loewenstein
14th Floor
United Engineers Building
30 South 17th Street
Philadelphia, PA 19103-4096

John E. Fullerton, Esquire
Graf, Andrews & Radcliff, P.C.
407 North Front Street
Harrisburg, PA 17101

William J. Lavelle, Esquire
Vuono, Lavelle & Gray
2310 Grant Building
Pittsburgh, PA 15219

William J. O'Kane, Esquire
Chemical Leaman Tank Lines, Inc.
102 Pickering Way
Exton, PA 19341-0200

cc: New Filing
Mr. Bramson
Chief ALJ/Pappas/Scheduler