

APPEARANCE SHEET

ALJ HEARING REPORT

DOCKET NO. A-00108155

CASE NAME Central Transport, Inc.

HEARING LOCATION Philadelphia, PA.

HEARING DATE November 9 & 10, 1988

ALJ Schnierle

CHECK THOSE BLOCKS WHICH APPLY:

Hearing held YES NO

Testimony taken YES NO

Hearing concluded YES NO

Further hearing needed YES NO

Estimated add'l days No estimate yet

RECORD CLOSED YES NO

Briefs to be filed YES NO

BENCH DECISION YES NO

REMARKS: Cancel hearings set for 11/16 + 11/17/88 in Pitt. Do not cancel 11/18 in Pitt. Still need to schedule protestants' case.

11-10-88 cancelled
RECEIVED
 per ALJ Schnierle
 NOV 10 1988
 Office of A.L.J.
 Public Utility Commission
 2-27-88
DOCUMENT FOLDER

NAMES, ADDRESSES AND TELEPHONE NUMBERS OF PARTIES OR COUNSEL OF RECORD
 PLEASE PRINT CLEARLY

INCOMPLETE INFORMATION MAY RESULT IN DELAY OF PROCESS

MAR - 7 1989

NAME and TELEPHONE NUMBER	ADDRESS	APPEARING FOR
McNEES, WARRANCE & DURECK William A. Chevitt Telephone No. 717-232-8000	P.O. Box 1166 City: HB6 State: PA Zip: 17108-1166	APPLICANT Central Transport, Inc.
James W. Patterson Telephone No. (215) 925-8300	1800 Penn Medical Tower City: Phila State: PA Zip: 19106	MATLACK, Inc (Protestant)
HEWLEY M WICK JR Telephone No. (412) 765-1600	1450 TWO CHATHAM CTR City: PITTSBURGH State: PA Zip: 15219	REFINERS TRANSPORT & TERMINAL CORP PROTESTANT

CHECK THIS BOX IF ADDITIONAL PARTIES OR COUNSEL OF RECORD APPEAR ON BACK.

S. Limone
 Reporter



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120

March 30, 1989

IN REPLY PLEASE
REFER TO OUR FILE

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

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APR 3 1989

SECRETARY'S OFFICE
Public Utility Commission

RE: Application of Central Transport, Inc.
Docket No. A-00108155

Dear Mr. Chesnutt:

Please advise me within 15 days of the date of this letter of the status of this case. I would particularly like to know if further hearings are required prior to closing the record, and if no further hearings are necessary, whether a briefing schedule should be set.

Very truly yours,

MICHAEL C. SCHNIERLE
Administrative Law Judge

MCS:mem

cc: All Counsel of Record
✓ New Filing

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APR 05 1989

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RICHARD W. STEVENSON
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MAURICE A. FRATER
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JASON S. SHAPIRO
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OF COUNSEL

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EDWARD C. FIRST, JR.
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JEFFERSON C. BARNHART
SAMUEL A. SCHRECKENGAUST, JR.

April 12, 1989

Mr. Jerry Rich, Secretary
Pennsylvania Public Utility Commission
New Filing Section, Room B-18
North Office Building
P. O. Box 3265
Harrisburg, PA 17120

HAND DELIVERY

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APR 12 1989

SECRETARY'S OFFICE
Public Utility Commission

Re: Application of Central Transport, Inc.
PA PUC Docket No. A.00108155
Our File: 12558-001-9

Dear Secretary Rich:

Enclosed for filing with the Commission are an original and two (2) copies of a Motion For Sanctions Against Protestant Matlack, Inc. on behalf of Applicant Central Transport, Inc. in the above-captioned proceeding.

Copies of this document have also been served on all parties of record as indicated by the attached Certificate of Service. Please date stamp the attached duplicate of this letter of transmittal for return to my office verifying your receipt of these documents.

Respectfully submitted,

MCNEES, WALLACE & NURICK

By



William A. Chesnutt
Counsel for Applicant
Central Transport, Inc.

WAC/law

Enclosure

cc: Attached Certificate of Service
W. David Fesperman (w/enclosure)

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCUMENT
FOLDER

In re:

APPLICATION OF
CENTRAL TRANSPORT, INC.
DOCKET NO. A.108155

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SECRETARY'S OFFICE
Public Utility Commission

DOC 17 555 D
APR 13 1989

MOTION FOR SANCTIONS
AGAINST PROTESTANT MATLACK, INC.

Applicant Central Transport, Inc., by its counsel McNees, Wallace & Nurick, files this Motion For Sanctions Against Protestant Matlack, Inc., in accordance with the provisions of 52 Pa. Code §§5.371 and 372.

(1) The status of this proceeding as it pertains to the subject Motion has been most recently detailed at pp. 1-7 of an Order issued by Presiding Administrative Law Judge Michael C. Schnierle dated February 28, 1989.

(2) Applicant served interrogatories upon protestant Matlack, Inc. on November 25, 1988.

(3) On December 20, 1988, Matlack filed Supplemental Objections to interrogatories 17, 18, 19 and 20, contending that no answers were required of it to those interrogatories.

(4) On January 4, 1989, applicant Central filed a Motion to Dismiss Matlack's objections and to direct answering of those interrogatories. Following correction of a failure to serve Matlack with that pleading, Matlack filed a reply to applicant's motion on January 27, 1989.

(5) By order dated February 2, 1989, Presiding Judge Schnierle directed as follows:

Matlack shall answer Central interrogatories 17, 18, 19 and 20, subject to the understanding that ordinary traffic violations, warnings, parking tickets, and the like need not be involved in its response, within 20 days of the date of this order.

(Order of February 2, 1989, p. 17)

The terms of the Judge's directive required a response by Matlack no later than February 22, 1989.

(6) On February 8, 1989, Matlack filed a Petition For Certification requesting that the Judge certify to the Commission the following question:

Whether information regarding the regulatory fitness of a Protestant is relevant to a motor carrier application proceeding and therefore discoverable under 52 Pa. Code §5.321?

In a brief supporting the Petition for Certification served February 21, 1989, Matlack requested an order "(1.) granting its Petition for Certification and (2.) staying this proceeding pending receipt of a Commission order disposing of the certified question."

(7) In a 17-page order dated February 28, 1989 the Judge denied the Petition for Certification and ordered that the proceeding "not be stayed...." A copy of the final page of that order is attached to this Motion as Appendix "A".

(8) In pertinent part, 52 Pa. Code §5.371(a)(1) provides concerning sanctions that:

(a) The...presiding officer may, on motion, make an appropriate order if...(1) A participant fails to...respond to discovery requests, as required....

As of the date of this Motion, Matlack has failed to comply with the Judge's order of February 2, 1989, and the Judge has declined to stay the effectiveness of that order as shown in Appendix "A" hereto.

(9) In pertinent part, 52 Pa. Code §5.372(a)(3) provides that:

(a) The presiding officer, when acting under Section 5.371 (relating to sanctions -- when applicable) may make one of the following:

* * *

(3) An order striking out pleadings...or entering a judgment against the disobedient participant....

(10) In accordance with the foregoing provisions of the Commission's Rules of Practice and Procedure, applicant Central Transport, Inc. requests that the protest of Matlack, Inc. be stricken, and that the record in this matter be closed.

Respectfully submitted,

MCNEES, WALLACE & NURICK

By 

William A. Chesnutt
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000

Counsel for Applicant
Central Transport, Inc.

Dated: April 12, 1989

THEREFORE,

IT IS ORDERED:

1. That the Petition for Certification filed by Matlack on February 21, 1989, is denied.

2. That this proceeding shall not be stayed pending receipt of a Commission order disposing of the certified question posed in the Petition filed by Matlack on February 21, 1989.


MICHAEL C. SCHNIERLE
Administrative Law Judge

Dated: 2/28/89

CERTIFICATE OF SERVICE

I hereby certify that I have served on all parties of record in this matter on the date indicated below, by first class mail, postage prepaid, unless otherwise indicated, the foregoing document on behalf of Central Transport, Inc.

Ronald W. Malin, Esquire
Key Bank Building Fourth Floor
Jamestown, NY 14701

Henry M. Wick, Jr., Esquire
1450 Two Chatham Center
Pittsburgh, PA 15219

Kenneth A. Olsen, Esquire
P. O. Box 357
Gladstone, NJ 07934-0357

James W. Patterson, Esquire
510 Walnut Street
Philadelphia, PA 19106

Christian V. Graf, Esquire
407 North Front Street
Harrisburg, PA 17101

William J. O'Kane, Esquire
102 Pickering Way
Exton, PA 19341-0200

Honorable Michael C. Schnierle**
Administrative Law Judge
Pennsylvania Public Utility
Commission
P. O. Box 3265
Harrisburg, PA 17120

Dated this 12th day of April, 1989, at Harrisburg, Pennsylvania.



William A. Chesnutt
McNEES, WALLACE & NURICK
P. O. Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000

Counsel for Applicant
Central Transport, Inc.

**Indicates Hand Delivery

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April 21, 1989

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
North Office Building
Harrisburg, PA 17120

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Public Utility Commission

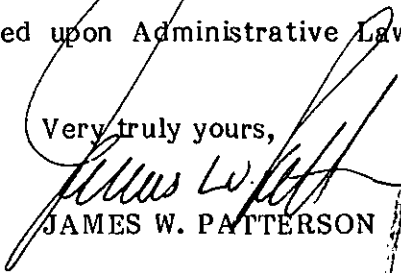
Re: Application of Central Transport, Inc.
Docket No. A-108155

Dear Secretary Rich:

Enclosed please find the original and two copies of the Reply of Matlack, Inc. to Motion for Sanctions filed by Central Transport, Inc. in the above-captioned proceeding.

Copies of the enclosed are being served upon Administrative Law Judge Michael C. Schnierle and upon all parties of record.

Very truly yours,



JAMES W. PATTERSON

DOCS
FILE

JWP:jal
enclosure

cc: Michael C. Schnierle, Administrative Law Judge
Christian V. Graf, Esquire
William J. O'Kane, Esquire
Henry M. Wick, Esquire
Ronald W. Malin, Esquire
Kenneth C. Olsen, Esquire
Martin C. Hynes, Jr., Vice President-Marketing

Certificate of Mailing

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF
CENTRAL TRANSPORT, INC.

:
:

DOCKET NO.
A-108155

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SECRETARY'S OFFICE
Public Utility Commission

REPLY OF MATLACK, INC.
TO MOTION FOR SANCTIONS

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COMES NOW, Matlack, Inc. ("Matlack") through its attorneys and files this Reply to the Motion for Sanctions served by Central Transport, Inc. ("Central") in the above-captioned matter.

Reply to Motion

Matlack concurs in the recitation of the sequence of events outlined in paragraphs (1) through (7) of Central's Motion for Sanctions. However, Matlack vigorously disputes Central's contention that Matlack failed to timely respond to Central's discovery requests and with the capital punishment-like result sought by the Motion - the punishment sought far exceeds even the most critical view of Matlack's conduct.

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, 1989 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.

Despite the vigor with which the parties have advocated their respective positions, this proceeding has been permitted to run its course in an amicable fashion. Both sides have exhibited cooperation throughout, with various deadlines being set through mutual agreement of Counsel rather than through the rigid application of Commission regulations - all with the full blessing of the presiding Administrative Law Judge. Indeed, such cooperation was encouraged by Judge Schnierle in his August 24, 1988 letter to the parties in which he suggested that the parties exchange information on an informal basis and cooperate in discovery.

In light of the spirit of cooperation that has pervaded this proceeding, Counsel for Matlack viewed Judge Schnierle's letter of March 30, 1989 as being directory in nature, amounting to a suggestion to the parties that they arrive at a

mutually-agreeable agenda for the remainder of this proceeding. Only upon receipt of the Motion for Sanctions did Matlack have any indication that Central deemed it to be in violation of the discovery deadline.

The provisions of 52 Pa. Code §§5.371 and 5.372 - the sections relied upon by Central in seeking sanctions against Matlack - are clearly intended to punish a party that has deliberately failed or refused to supply information in response to a discovery request. This is not the situation presented herein. On January 10, 1989 Matlack responded to seventeen (17) of Central's twenty-one (21) interrogatories and has never indicated that it would refuse to answer the remainder. Rather, Matlack objected to supplying the requested information on the basis of irrelevancy and exercised the rights and privileges afforded to it by the procedural regulations of this Commission. Upon receipt of Judge Schnierle's directive to fully respond to the interrogatories, Matlack resigned itself to producing the requested information and is forwarding Further Answers to Interrogatories to Central contemporaneously with the filing of this Reply. Matlack therefore requests that, even if Central's position is deemed meritorious the Motion for Sanctions be denied.

WHEREFORE, Matlack, Inc. requests issuance of an Order denying the Motion for Sanctions of Central Transport, Inc.

Respectfully submitted,

By: 

JAMES W. PATTERSON
EDWARD L. CIEMNIECKI
Attorneys for Matlack, Inc.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Reply of Matlack, Inc. to Motion for Sanctions were served upon the following by postage prepaid, first class mail:

Michael C. Schnierle, Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265, North Office Building
Harrisburg, PA 17120

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

Dated at Philadelphia, Pennsylvania this 21st day of April, 1989.

RUBIN, QUINN, MOSS & HEANEY

By: 

JAMES W. PATTERSON
Attorney for Matlack, Inc.

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April 21, 1989

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APR 24 1989

SECRETARY'S OFFICE
Public Utility Commission

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
North Office Building
Harrisburg, PA 17120

Re: Application of Central Transport, Inc.
Docket No. A-108155

Dear Secretary Rich:

Enclosed please find the Certificate of Service required by 52 Pa. Code 5.342(d).

Very truly yours,

James W. Patterson
JAMES W. PATTERSON

JWP:jal

cc: William A. Chesnutt, Esquire
William J. O'Kane, Esquire
Christian V. Graf, Esquire
Henry M. Wick, Esquire
Ronald W. Malin, Esquire
Kenneth C. Olsen, Esquire

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SECRETARY'S OFFICE
Public Utility Commission

I hereby certify that I have, this day, served on all active counsel of record in this matter, by properly addressed, postage prepaid first-class mail, the Further Answers of Matlack, Inc. to Written Interrogatories propounded by applicant.

Dated this 21st day of April, 1989, at Philadelphia, Pennsylvania.

By: 

JAMES W. PATTERSON

Counsel for Protestant, Matlack, Inc.

A108155

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APR 25 1989

**DOCUMENT
FOLDER**

Of Counsel:

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