**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :

Bureau of Transportation and Safety :

:

v. : C-2010-2092896

:

Keystone Cab Service, Inc. :

**INITIAL DECISION GRANTING MOTION FOR**

**JUDGMENT ON THE PLEADINGS**

Before

Elizabeth H. Barnes

Administrative Law Judge

HISTORY OF THE PROCEEDING

On February 1, 2010, the Bureau of Transportation and Safety[[1]](#footnote-1) (BTS or Complainant) served a Complaint against Keystone Cab Service, Inc. (Keystone or Respondent) alleging that Respondent’s driver, Michael Holmes, received eighty dollars ($80.00), in advance, for service to be rendered to Candace Woods on January 9, 2009 and January 12, 2009, and Respondent did not provide the requested transportation on those dates. Further, BTS claims that on February 10, 2009, Enforcement Officer Timothy Troxell requested Respondent to produce the driver history and log sheets for Michael Holmes and that Respondent could not produce that information. Ten days later, on February 20, 2009, Complainant claims Enforcement Officer Timothy Troxell again requested the information to no avail.

Complainant claims that Respondent, by failing to charge the proper rate in accordance with its tariff on file with the Commission, violated 66 Pa. C.S. § 1303 and 52 Pa. Code § 29.316(a). Complainant further claims that by failing to furnish and maintain adequate, efficient, and reasonable service and facilities for the proper safety of its patrons and public, Respondent violated 66 Pa. C.S. § 1501. Complainant further claims that Respondent, by failing to obtain the driver history, violated 52 Pa. Code § 29.504 and by failing to provide log sheets for Michael Holmes, Respondent violated 52 Pa. Code § 29.313(c). BTS requests the Commission fine Keystone the total sum of $900 and order a refund to Candace Woods in the amount of $80.

On February 22, 2011, Keystone filed its Answer and New Matter denying that Michael Holmes was a driver for Respondent during the time period of January 9, 2009, through January 12, 2009. Keystone filed a Motion for Judgment on the Pleadings on September 1, 2011, requesting judgment be entered in favor of Respondent because Mr. Holmes was not a driver for Respondent during the period in question and was neither a representative nor agent of Respondent with no legal authority to bind Respondent to any contractual arrangement. BTS did not file an Answer to New Matter; however, on September 19, 2011, BTS filed an Answer not opposing Keystone’s Motion for Judgment on the Pleadings. This motion for judgment on the pleadings is ripe for a decision.

FINDINGS OF FACT

1. Complainant is the Pennsylvania Public Utility Commission’s Bureau of Transportation and Safety.

2. Respondent is Keystone Cab Service, Inc., a jurisdictional public utility providing transportation service in the Commonwealth of Pennsylvania.

3. On February 1, 2010, the Bureau of Transportation and Safety (BTS or Complainant) served a Complaint against Keystone Cab Service, Inc. (Keystone or Respondent) alleging that Respondent’s driver, Michael Holmes, received eighty dollars ($80.00), in advance, for service to be rendered to Candace Woods on January 9, 2009 and January 12, 2009, and Respondent did not provide the requested transportation on those dates. Cplt. p. 1.

4. On February 10, 2009, Enforcement Officer Timothy Troxell requested Respondent to produce the driver history and log sheets for Michael Holmes and that Respondent could not produce that information.

5. Ten days later, on February 20, 2009, Complainant’s Enforcement Officer Timothy Troxell again requested the information from Respondent and no information was produced.

6. On February 20, 2009, Mr. Maher Saber, owner of Keystone, informed BTS that Mr. Holmes was neither an employee nor a driver for Respondent during the time period of January 9 – 12, 2009.

7. Respondent received no compensation from Candace Woods.

8. Respondent did not receive a call from Candace Woods requesting the providing of transportation services from Respondent.

9. On or about February 20, 2009, Respondent informed BTS that it had no record of having received any funds, or a call from Candace Woods for the purpose of securing transportation services.

10. As Respondent never received a request from Candace Woods for services, Respondent never had an obligation to provide such services.

DISCUSSION

A Motion for Judgment on the Pleadings is appropriate when the pleadings show that there is no factual dispute and the moving party is entitled to judgment as a matter of law.

#### § 5.102. Motions for summary judgment and judgment on the pleadings.

 (a)  *Generally*. After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for judgment on the pleadings or summary judgment. A motion must contain a notice which states that an answer or other responsive pleading shall be filed within 20 days of service of the motion.

 (b)  *Answers*. An answer to a motion for judgment on the pleadings or summary judgment, including an opposing affidavit or verification to a motion for summary judgment, may be filed within 20 days of the date of service of the motion. The answer to a motion for summary judgment may be supplemented by depositions, answers to interrogatories or further affidavits and admissions.

 (c)  *Motion for summary judgment*. A motion for summary judgment must be based on the pleadings and depositions, answers to interrogatories, admissions and supporting affidavits. Documents not already filed with the Commission shall be filed with the motion.

 (d)  *Decisions on motions*.

   (1)  *Standard for grant or denial on all counts*. The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

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52 Pa. Code § 5.102.

In Keystone’s Answer and New Matter, it denied that Michael Holmes was a driver for Respondent during the time period of January 9, 2009, through January 12, 2009. Respondent stated it is unknown if Mr. Holmes, as an individual and not a representative of Respondent, and Candace Woods entered into an arrangement for transportation. As Mr. Holmes was not an agent of Respondent, he possessed no legal authority to bind Respondent to a contractual arrangement. Respondent avers that to the extent Mr. Holmes may have agreed to transport Ms. Woods, he did so as a private individual and not as a driver for Respondent as he was not employed by Respondent at the time she alleged a contractual arrangement. Respondent claims it could not produce a driver history or log sheet for Mr. Holmes because he was not employed as a driver by Respondent during the time period in question.

In New Matter, Respondent asserted that on February 20, 2009, Mr. Maher Saber, owner of Keystone, informed the Commission that Mr. Holmes was not an employee or driver for Respondent during January 9 – 12, 2009. Respondent further averred it received no compensation from Candace Woods. Further, Respondent received no telephone call from Ms. Woods requesting the transportation services. As no transportation services were requested of Respondent, it contends it had no obligation to provide such services.

Keystone filed a Motion for Judgment on the Pleadings on September 1, 2011, requesting judgment be entered in favor of Respondent because Mr. Holmes was not a driver for Respondent during the period in question and was neither a representative nor agent of Respondent with no legal authority to bind Respondent to any contractual arrangement. Further, Respondent averred in its New Matter that Ms. Woods never called Respondent to request service from Respondent and that Respondent received no compensation from Ms. Woods. BTS did not file an Answer to New Matter; however, on September 19, 2011, BTS filed an Answer not opposing Keystone’s Motion for Judgment on the Pleadings.

Pursuant to 52 Pa.Code § 5.63(a), replies to new matter must be filed with the Commission and served upon the parties within 20 days of the date of service of the answer. As the answer and new matter was filed February 22, 2010, the response to new matter was due March 15, 2010. Since BTS did not respond to the New Matter, pursuant to the provisions of 52 Pa.Code § 5.63(b), it failed to file a timely response, and I shall deem all of the relevant facts in the new matter to be admitted. *See Urbano v. STAT Courier, Inc.* 878 A.2d 58 (Pa.Super 2005); appeal denied 889 A.2d 1217, 586 Pa. 714.

52 Pa. Code § 5.102 permits the filing of a Motion for Judgment on the Pleadings which will be granted upon a showing that there exists no genuine issue as to a material fact and that the movant is entitled to a judgment as a matter of law. 52 Pa. Code § 5.102(a), (d)(1); *Parish v. Horn,* 768 A.2d 1214 (Cmwlth. 2001), affirmed 800 A.2s 294, 569 Pa. 45; *American Federation of State, County and Municipal Employees,* 658 A.2d 865 (Cmwlth. 1995).

As the Motion for Judgment on the Pleadings is unopposed, and the material facts are not in dispute in this case, said motion shall be granted. BTS has admitted that Mr. Holmes, rather than Respondent received money from Candace Woods. BTS has admitted that Mr. Holmes was not an employee or driver for Respondent during the time period in question. BTS has admitted Ms. Woods never contacted Respondent to provide service during the period in question. BTS admitted that Respondent did not receive any compensation from Ms. Woods to provide service. Respondent asserted it did not provide any service since service was not requested of it by Ms. Woods. Respondent further asserted it did not furnish logs to PUC Enforcement Officer Troxell, and that as Mr. Holmes was not a driver for Respondent there was no necessity to maintain logs that did not exist or were required to be kept. Respondent is entitled to judgment as a matter of law. Accordingly, the Motion for Judgment on the Pleadings filed by Keystone will be granted, and the Complaint of BTS will be dismissed.

CONCLUSIONS OF LAW

1. A motion for judgment on the pleadings or a motion for summary judgment will be granted if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law. 52 Pa. Code § 5.102.

2. The Motion for Judgment on the Pleadings is unopposed, and the material facts are neither in dispute in this case nor in support of Complainant’s Complaint.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion for Judgment on the Pleadings filed by Keystone Cab Services, Inc. in the case captioned at PUC Docket No. C-2010-2092896 is granted.

2. That the Complaint filed by the Pennsylvania Public Utility Commission, Bureau of Transportation and Safety against Keystone Cab Service, Inc. at PUC Docket No. C‑2010-2092896 is dismissed.

4. That the Secretary mark this docket closed.

Dated: November 3, 2011 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Elizabeth H. Barnes

Administrative Law Judge

1. The Bureau of Transportation and Safety has recently been renamed The Bureau of Investigation and Enforcement due to reorganization in the Commission. [↑](#footnote-ref-1)