

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

**ORIGINAL**

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 :  
Pennsylvania Public Utility :  
Commission, Bureau of Transportation :  
and Safety v. Gary C. Walk, Jr., t/a : Docket No.  
Walk's Moving (Various violations) : A-00116497C0601  
 :  
 (Initial Hearing) :  
 :  
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Pages 1 through 28

Hearing Room 2  
Commonwealth Keystone Building  
Harrisburg, Pennsylvania

Tuesday, December 12, 2006

Met, pursuant to notice, at 10:18 a.m.

BEFORE:

LOUIS G. COCHERES, Administrative Law Judge

APPEARANCES:

R. K. SMITH, Assistant Counsel  
Pennsylvania Public Utility Commission  
Post Office Box 3265  
Harrisburg, Pennsylvania 17105-3265  
(Counsel for Complainant)

*G.M.*

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WITNESS INDEX

WITNESSES                      DIRECT    CROSS    REDIRECT    RECROSS

David Johnston

(By Mr. Smith)

6            --            --            --

FORM 2

EXHIBIT INDEX

2	<u>NUMBER</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
3	<u>BTS</u>		
4	1 ✓ (Certificate of Public Convenience)	9	23
5	2 ✓ (Answer)	13	23
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P R O C E E D I N G S

ADMINISTRATIVE LAW JUDGE LOUIS G. COCHERES:

Good morning, gentlemen. As you know by now, my name is Louis Cocheres and I'm the Administrative Law Judge assigned to hear the matter of the Pennsylvania Public Utility Commission, Bureau of Transportation and Safety versus Gary C. Walk, Jr., trading as Walk's Moving at Commission docket number A-00116497C0601.

We're a little late getting started today. It's approximately 20 minutes after 10:00. Although counsel for the Bureau of Transportation is here, no one is here representing the Respondent. So I allowed extra time, and I did actually leave the courtroom just a moment ago and looked out in the atrium of our building and I saw no one there that appeared to be somewhat dismayed and looking for a hearing room. So, at this point, I have no reason to conclude anything other than the fact that Mr. Walk has intentionally failed to appear at today's hearing.

Mr. Smith.

MR. SMITH: Yes, Your Honor.

JUDGE COCHERES: What do you want to do today?

MR. SMITH: Good morning, Your Honor. Like I say, I'm here, R. K. Smith, Jr., Assistant Counsel for the Law Bureau representing our client Bureau, the Commission's

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1 Bureau of Transportation and Safety. With me today is the  
2 gentleman to my -- at the same table is Enforcement Officer  
3 David Johnston, the PUC Enforcement Officer from the  
4 Bureau's District Office. He will be testifying.

5                   The Bureau will be presenting three  
6 exhibits, Your Honor, in addition to the testimony from  
7 Officer Johnston to establish a prima facie case that the  
8 carrier that holds PUC property authority performed a move  
9 that he did not have authority for. He did not have  
10 household goods authority. He provided them for  
11 compensation, and the trip did not fall within the  
12 warehouseman's exemption that I'll save for the end in  
13 closing arguments.

14                   So we're ready to put Officer Johnston on  
15 the stand wherever you want -- wherever you're comfortable  
16 having him testify.

17                   JUDGE COCHERES: Well, he can testify from  
18 his seat.

19                   Sir, would you raise your right hand?  
20 Whereupon,

21                   DAVID JOHNSTON,  
22 having been duly sworn, testified as follows:

23                   JUDGE COCHERES: Thank you, sir. Please be  
24 seated and good morning to you.

25                   THE WITNESS: Good morning, sir.

1 JUDGE COCHERES: Counsellor.

2 MR. SMITH: Yes. Before calling Officer  
3 Johnston, the Bureau's complaint, there's just one count,  
4 Your Honor. The count is identified at paragraph number 3  
5 of the Bureau's complaint stating that Respondent on October  
6 3rd, 2005, moved household goods for a Mr. Richard MacDonald  
7 from his prior residence at 361 Teal, T-E-A-L, Drive,  
8 Holidaysburg, Pennsylvania, to his new residence at 1612  
9 Timberline Drive, Altoona, Pennsylvania, for \$175  
10 compensation. And the Bureau alleged that, at the time of  
11 the move, Respondent did not have household goods in use  
12 authority to cover the move lawfully.

13 The Respondent filed an answer to the  
14 Bureau's complaint pro se, a one-page answer that we will be  
15 introducing as an exhibit in our proceeding. But, first of  
16 all, I would -- so we're going to establish three things:  
17 that we had a move performed; that the move was compensated;  
18 and that the trip performed did not come within the  
19 carrier's Certificate of Public Convenience, which is a  
20 strict property authority.

21 So I will turn to my witness.

22 DIRECT EXAMINATION

23 BY MR. SMITH:

24 Q. Mr. Johnston, can you give us your full name, please.

25 A. David Johnston, Enforcement Officer Supervisor with

1 the Altoona District of the Public Utility Commission.

2 Q. Okay. And, Officer Johnston, how long have you been  
3 with the Pennsylvania Public Utility Commission's Bureau  
4 doing enforcement?

5 A. Twenty-one years.

6 Q. Okay. And can you just briefly describe for the  
7 Commission what your duties and responsibilities are?

8 A. In addition to supervisory duties, I also conduct  
9 investigations into consumer complaints and complaints from  
10 other certified carriers or uncertified carriers to conduct  
11 safety inspections.

12 Q. Okay. Officer Johnston, did you receive an  
13 assignment to investigate the activities of the carrier in  
14 this case, Mr. Gary Walk, trading as Walk's Moving?

15 A. Yes, sir.

16 Q. Where was that -- was that complaint from a consumer  
17 or was that from a competing carrier?

18 A. It was from the consumer. I was working the Altoona  
19 District Office that day; and the complainant, Mr. Richard  
20 MacDonald, contacted us by phone wishing to make a  
21 complaint. And I took the original phone complaint also.

22 Q. Okay. Now, did the complaint that was received from  
23 Mr. MacDonald -- what was the nature of that complaint?

24 A. Mr. MacDonald originally was making a complaint about  
25 damage done to hardwood floors at 361 Teal Avenue,

1 Holidaysburg, by a mover, Gary Walk, of Altoona, PA.

2 Q. Now, does the Commission have jurisdiction when it  
3 gets into damages that occur as a result of a household  
4 goods move?

5 A. Yes, sir, we do. We try to settle the dispute or at  
6 least give the people information on what to do.

7 Q. Okay. But, I mean, it's limited to that extent. We  
8 can't actually award damages?

9 A. That's correct.

10 Q. Okay. But we have jurisdiction over other parts of  
11 the move, correct?

12 A. Yes, sir.

13 Q. What other concerns did Mr. MacDonald have?

14 A. Mr. MacDonald at the time he was making the complaint  
15 told me that he had talked to Mr. Walk and that Mr. Walk was  
16 a certified carrier, and he wanted to make a complaint about  
17 the damage and wanted our help in that. From previous  
18 experience, I had known that Mr. Walk did not have household  
19 goods authority, that he had property authority only. And I  
20 advised Mr. MacDonald that Mr. Walk did not have household  
21 goods authority.

22 MR. SMITH: Okay. At this point, Your  
23 Honor, I want to mark for identification purposes only  
24 BTS-1. BTS-1, Your Honor, this is the certification from  
25 the Commission's Secretary, James J. McNulty, certifying

1 that they're true and correct copies of the Certificate of  
2 Public Convenience at Application A-00116497, Folder 0002.  
3 And let the record show I'm handing the reporter the  
4 original and one and Your Honor one copy of BTS Number 1.

5 JUDGE COCHERES: So marked.

6 (Whereupon, the document was marked  
7 as BTS Exhibit Number 1 for  
8 identification.)

9 MR. SMITH: Let the record also show I gave  
10 Officer Johnston a copy of BTS Number 1.

11 BY MR. SMITH:

12 Q. What's the nature of that Application, Officer?

13 A. It's -- the Application itself is the Application for  
14 motor common carrier of property.

15 Q. Okay. And do you have personal knowledge as to what  
16 you can transport under a property authority?

17 A. Yes, sir. Under the property authority, he could  
18 transport anything except passengers or household goods in  
19 use.

20 Q. How difficult is it to get a property authority from  
21 the agency since 1995?

22 A. It's an automatic. You need to need to file the  
23 applicable filing fee and proof of insurance and you're  
24 given the authority.

25 Q. So it's pretty much getting a license. It's not

1 subject to being protested, things of that nature, is it?

2 A. That's correct.

3 Q. There's no question that Mr. Walk does have a  
4 property authority?

5 A. Yes, sir.

6 Q. Okay. Now, after talking to the shipper, did you  
7 discuss this movement at any time, the trip in question  
8 before the Commission, with the carrier, Mr. Walk?

9 A. Yes, sir, I did. On November 7th of 2005, I  
10 travelled to Mr. Walk's's residence at 5812 Avondale Avenue,  
11 Altoona, and attempted to make contact with him in person.  
12 There was no one at the residence. After that I returned  
13 back to my office and tried the phone number that I had for  
14 him and left a message for him to please contact me  
15 regarding the complaint that we were investigating.

16 Q. Did you identify your position, what agency you were  
17 representing --

18 A. Yes, sir.

19 Q. -- with any correspondence with this gentleman?

20 A. Yes, sir. I left a message. I informed him of my  
21 name and my position, that I was supervisor of Public  
22 Utility Commission in the Altoona Office and requested that  
23 he call me at the Public Utility Commission office in  
24 Altoona and left him that phone number.

25 Q. Okay. Did you ever receive a telephone call, a

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1 return call back from Mr. Walk?

2 A. Yes, sir. Mr. Walk did return my call, and I  
3 explained the complaint to him.

4 Q. When did he return the call?

5 A. It was later that same day as I recall, sir.

6 Q. Okay. And you were in the Altoona Office at the  
7 time?

8 A. Yes, sir.

9 Q. Okay. When you began the conversation, did Mr. Walk  
10 identify himself as such in the conversation?

11 A. Yes, sir. He informed me that he was Gary Walk  
12 returning my call.

13 Q. Okay. Briefly tell the Court -- summarize your  
14 telephone conversation with Mr. Walk.

15 A. First of all, I informed Mr. Walk of the original  
16 complaint, that we had received a complaint about him  
17 damaging -- him and the crew damaging some hardwood floors  
18 at the residence while he was moving a piano to a different  
19 residence. I also mentioned to Mr. Walk that the piano was  
20 household goods in use and that his authority was only for  
21 property. It did not cover household goods in use. At that  
22 time Mr. Walk advised me that he did not have household  
23 goods authority, but he believed he didn't need it for this  
24 move.

25 Q. Did he state to you his reasons for forming that

1 opinion?

2 A. Yes, sir. He told me that he was moving the piano  
3 from the old residence, which would have been 361 Teal  
4 Drive, Holidaysburg, to 1612 Timberline Drive, Altoona, PA.

5 Q. Okay. Officer Johnston, is that -- I've already read  
6 -- identified the addresses in the move in paragraph number  
7 3 of the complaint. Is that basically where he admitted he  
8 took the piano from Teal Drive, Holidaysburg, to 1612  
9 Timberline Drive, Altoona?

10 A. Yes, sir. That's what he had told me when I talked  
11 to him.

12 Q. Did Mr. Walk at any time state that he took this  
13 piano, whether it was assembled, disassembled, to any  
14 warehouse for storage?

15 A. No, sir. He stated that he took it to the 1612  
16 Timberline Drive address directly.

17 Q. But did you know what was going on -- what was the  
18 situation of moving from the one residence to the other?  
19 Was this a new construction? What was -- was the house an  
20 existing property when the piano was moved to your  
21 knowledge?

22 A. Yes, sir. According to Mr. Walk and also the  
23 complainant, the 1612 Timberline Drive address was under  
24 construction; and Mr. Walk moved the piano to the garage of  
25 1612 Timberline Drive because the house was not completed

1 enough for him to take it into the house.

2 Q. But it was moved from one residence to a residence  
3 then being constructed?

4 A. Yes, sir.

5 MR. SMITH: At this point, Your Honor, I  
6 want to make it as an exhibit, BTS Number 2. This is the  
7 answer that Mr. Walk filed with the Commission's Secretary's  
8 Office. They're all copies because the original is in the  
9 official file. BTS Number 2 is a one-page answer filed pro  
10 se by Mr. Walk.

11 (Whereupon, the document was marked  
12 as BTS Exhibit Number 2 for  
13 identification.)

14 MR. SMITH: Let the record show I'm handing  
15 a copy of what's been marked and identified as BTS Number 2  
16 to Officer Johnston.

17 BY MR. SMITH:

18 Q. Would you just read into the record the very last  
19 sentence of Mr. Walk's answer?

20 A. The piano was not in use when I moved it. It was  
21 disabled and stored.

22 Q. Do you understand what he's claiming as to being  
23 disabled?

24 A. Yes, sir. Mr. Walk, when I talked to him, told me  
25 that the piano was partially disassembled to move it and

1 that, when he put it in the garage, the intent was to leave  
2 it in the garage until the house was ready for it to be  
3 placed; and it was left in the partially disassembled  
4 condition waiting until he could move it into the house to  
5 set it up.

6 Q. Basically he took it apart and would reattach those  
7 pieces when it was ready to be used in the new residence?

8 A. Yes, sir, that's correct.

9 Q. It's not your understanding at all that there was  
10 anything wrong or damaged with the piano, it was just a  
11 question it was for ease of convenience of moving to take it  
12 apart?

13 A. Yes, sir. They had to take it apart to move it and  
14 then get it from the garage into the house where they had to  
15 get it through the door.

16 Q. Is it your opinion -- is that often the way in your  
17 experience with movers through the years that you would move  
18 a piano, to partially disassemble it for ease of  
19 convenience?

20 A. Yes, sir. Normally to get them through regular doors  
21 you have to take them apart some in order to get them moved.

22 Q. Based on your years of experience, that seems to be  
23 the way that most moving companies would approach moving a  
24 piano when it comes to moving it from one residence to  
25 another?

1 A. Yes, sir.

2 MR. SMITH: Next, Your Honor --

3 BY MR. SMITH:

4 Q. Next question will be, at any time did you receive  
5 any evidence of compensation that Mr. Walk was compensated  
6 for the trip?

7 A. Yes. I contacted Mr. Richard MacDonald, the  
8 complainant, and asked him if he could obtain for me a copy  
9 of the cancelled check that he used to pay Mr. Walk.

10 Q. All right. When you say the complainant, you mean  
11 the shipper or the gentleman whose goods were actually moved  
12 by the carrier?

13 A. Yes, sir.

14 MR. SMITH: At this point, I want to mark as  
15 BTS Number 3. This is a two-page document. This is a check  
16 made out to Walk's Moving for a hundred and --

17 Is that \$125?

18 THE WITNESS: That's \$175.

19 MR. SMITH: \$175.

20 JUDGE COCHERES: So marked.

21 (Whereupon, the document was marked  
22 as BTS Exhibit Number 3 for  
23 identification.)

24 BY MR. SMITH:

25 Q. Officer Johnston, I've identified for the record BTS

1 Number 3, a two-page check, a copy of a check. Is this the  
2 document you received from the shipper in this case, one of  
3 the two shippers in this case, Richard W. MacDonald?

4 A. Yes, sir.

5 Q. Okay. And could you just identify, if you can, the  
6 handwriting and what the purpose is in section for, what the  
7 check represents?

8 A. Well, as you said, sir, the check is made out to  
9 Walk's Moving for \$175. Under for, the notation for why it  
10 was issued, it indicates piano moving.

11 Q. Okay. Officer Johnston, do you know whether this --  
12 did Mr. Walk -- only if you know the answer to the question  
13 -- did another company move most of the personal furnishings  
14 of the shippers in this move or did Mr. Walk perform just  
15 moving of the piano? I'm not quite sure.

16 A. My understanding from when I spoke to the shipper was  
17 that he had another moving company move his other household  
18 property.

19 Q. Okay.

20 A. Mr. Walk only moved the piano.

21 Q. Okay. I'm just referring to the answer at BTS Number  
22 2. He mentions another carrier, E. L. Dinges, I believe,  
23 Mayflower Moving and Storage.

24 A. Yes, sir. They're a certified carrier in the Altoona  
25 area.

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1 Q. Okay. And he's claiming that they also moved the  
2 piano from where it was being stored?

3 A. Yes, sir. He indicates that they moved the piano  
4 from where it was being stored at 1612 Timberline Drive to  
5 the appropriate spot and then reassembled.

6 Q. Okay. But that's not according to the rest of your  
7 investigation, true?

8 A. Yes, sir, that would be true. He's indicating that  
9 the piano was being stored at 1612 Timberline Drive and  
10 moved to the appropriate spot, which to me would indicate  
11 that it was moved from the garage into the house.

12 Q. Okay. So it's your understanding then that this  
13 other company that moved the majority of the household goods  
14 in use from the one residence to the other physically  
15 probably took the piano from the garage to the interior of  
16 the house and assembled it?

17 A. Yes, sir.

18 Q. Okay. Officer Johnston, you've been in the Altoona  
19 Office how many years assigned?

20 A. Twenty-one, sir.

21 Q. Have you had any other case or occasions to  
22 investigate any of the operations of this carrier, Mr. Gary  
23 Walk?

24 A. In the course of my duties as Altoona Supervisor, I  
25 have assigned other complaints to officers in Altoona to

1 investigate regarding alleged moves by Mr. Walk, household  
2 moves, yes, sir.

3 Q. Do you recall what the culmination of those  
4 investigations was, meaning what resulted from those  
5 investigations?

6 A. The latest one I can recall, it was an older woman.  
7 And, when the investigating officer talked to her, she  
8 indicated that Mr. Walk had moved her furniture; but he had  
9 done it because he was a friend of the family.

10 Q. Okay. I am -- one little bit of extra testimony,  
11 Officer Johnston. I don't see a bill of lading in the  
12 results of your investigation. Was there any formal  
13 documents prepared by Mr. Walk provided to Mr. MacDonald to  
14 discuss this issue?

15 A. Yes, sir. When I talked to Mr. MacDonald when he  
16 made the original complaint, I asked him to forward me any  
17 and all documentation regarding this move so that I could  
18 have it as part of the file. And he said the only thing he  
19 had was a copy of a letter that he had sent to Mr. Walk  
20 making a complaint about the damage. There was no shipping  
21 papers of any type issued by Mr. Walk.

22 Q. Is this consistent with other investigations  
23 involving Mr. Walk, if you have personal knowledge --

24 A. Yes, sir.

25 Q. -- that he doesn't provide written papers for the

1 shippers in those cases?

2 A. Yes, sir. We've never had a shipping paper prepared  
3 by him in any of the complaints that we've investigated.

4 Q. Okay. Anything further you want to add on this from  
5 your investigation?

6 A. The only other thing was when I was talking to Mr.  
7 Walk he stated that he didn't believe he needed household  
8 goods mover authority for this move due to the fact that the  
9 piano was being stored at the shipper's residence for the  
10 three-month period. He thought he fell outside the scope of  
11 needing the authority since it was being stored at the  
12 residence.

13 Q. There's nothing else?

14 A. That's it, sir.

15 MR. SMITH: Okay. I have nothing further  
16 from Officer Johnston.

17 JUDGE COCHERES: Mr. Johnston, would you  
18 take a look at the handwritten note that's BTS Exhibit 2?

19 THE WITNESS: Did you say 2, sir?

20 JUDGE COCHERES: Yes, the handwritten note,  
21 the handwritten answer, the letter.

22 THE WITNESS: Okay.

23 JUDGE COCHERES: All right. Do you have  
24 that?

25 THE WITNESS: Yes, sir.

1 JUDGE COCHERES: Do you have any idea what  
2 he was talking about when he said that Mr. MacDonald wanted  
3 to rent his equipment and he wanted him to leave it there  
4 and would call him to come and get it and he did?

5 THE WITNESS: Yes, sir.

6 JUDGE COCHERES: What's that about?

7 THE WITNESS: Mr. MacDonald had told me  
8 that, during the course of this, Mr. Walk had some heavy  
9 dollies that the piano was moved on and that he was leaving  
10 them. He left the dollies in the garage with them in order  
11 to move the piano into the house when it was ready to be  
12 moved.

13 JUDGE COCHERES: All right. Look at the  
14 check for a moment.

15 THE WITNESS: Yes, sir.

16 JUDGE COCHERES: Just hold up the check so I  
17 can see it.

18 THE WITNESS: (Indicating.)

19 JUDGE COCHERES: Okay. Good. In the upper  
20 right-hand corner, there appears to be a note.

21 THE WITNESS: Yes, sir.

22 JUDGE COCHERES: Okay. Now, all I'm really  
23 concerned about is that I don't want to create a record that  
24 contains personal information from Mr. MacDonald, most  
25 particularly his bank account number. Now, I have no

1 problem that that little note up there looks like something  
2 that would be a stick-em and that's fine.

3 THE WITNESS: Yes, sir. That's what it  
4 looks like.

5 JUDGE COCHERES: Does it obscure enough of  
6 the account number or do we have to obliterate it in two  
7 places on that page, one, underneath the words piano moving  
8 and, two, above the date?

9 THE WITNESS: The account number is listed  
10 across the bottom, sir. What it's obscuring is the actual  
11 check number.

12 JUDGE COCHERES: And above the date, there,  
13 that is not the account number, is it?

14 THE WITNESS: I don't believe so, sir. I  
15 believe the account number is across the bottom.

16 JUDGE COCHERES: Right. So let's look at  
17 the account number across the bottom. It happens, for the  
18 record, my wife and I have our accounts locally at M and T  
19 Bank as well. It's been a while since I've been allowed to  
20 look at that checkbook, so I have to remember which one of  
21 these two sets of numbers starting at the left margin at the  
22 bottom are the account number.

23 MR. SMITH: Your Honor, to intercede?

24 JUDGE COCHERES: You can help with that.

25 MR. SMITH: I believe the routing numbers

1 would be the numbers, the first set that appear. Those are  
2 the nine numbers I believe that are under the word for.

3 JUDGE COCHERES: Okay.

4 MR. SMITH: I believe the numbers that start  
5 with the number three all the way over to the last set of  
6 numbers ending with four is the actual account number.

7 JUDGE COCHERES: Okay.

8 MR. SMITH: What the rest -- I know that's  
9 from my account. I deal with Wachovia, but it's pretty  
10 much, I believe, always --

11 JUDGE COCHERES: Standard.

12 MR. SMITH: -- standard that the preprinted  
13 numbers in the center of the bottom portion of this copy of  
14 the check are the actual account numbers.

15 JUDGE COCHERES: All right. Well, I'm going  
16 to just simply obliterate those from the record because I  
17 just don't want his personal information in there.

18 So, Mr. Smith, do you want to move your  
19 exhibits?

20 MR. SMITH: Yes, Your Honor. If it please  
21 the Court, I would respectfully request that BTS exhibits  
22 identified as BTS 1 through BTS 3 be admitted into the  
23 record.

24 JUDGE COCHERES: They are admitted without  
25 objection.

1 (Whereupon, the documents marked as  
2 BTS Exhibits Numbers 1 through 3  
3 were received in evidence.)

4 MR. SMITH: Thank you. I don't have any  
5 further questions for Officer Johnston. I'd just make a  
6 couple brief statements to conclude our presentation.

7 JUDGE COCHERES: I think Officer Johnston  
8 can be excused from the witness stand.

9 (Witness excused.)

10 JUDGE COCHERES: Mr. Smith.

11 MR. SMITH: Yes, Your Honor. The evidence  
12 provided, presented before you this morning, both through  
13 the testimony of the Enforcement Officer David Johnston as  
14 well as three exhibits that are now accepted into the  
15 record, BTS 1 through BTS 3, establish a prima facie case.

16 In order to establish a prima facie case,  
17 it's incumbent for the Bureau to establish that there were a  
18 movement of regulated items between two points in the  
19 Commonwealth of Pennsylvania. The cancelled check at BTS  
20 Number 3 as well as the answer made by the carrier, BTS  
21 Number 2, as well as the admissions which are binding and  
22 were even if provided on the telephone constitute admissions  
23 that Mr. Walk performed the trip from 361 Teal Drive,  
24 Holidaysburg, to his new residence at 1612 Timberline  
25 Avenue, Altoona. So that's the first leg to establish that

1 there was a trip between two points in Pennsylvania.

2           The second point is that it must be for  
3 compensation. The check that we had just discussed about  
4 eliminating the account number out of the Richard W.  
5 MacDonald check from M and T Bank to Mr. Walk, paid to the  
6 order of Walk's Moving \$175, that is the second part of the  
7 requirement for the prima facie case that this trip was  
8 performed not out of the goodness of Mr. Walk's heart, but  
9 it was, in fact, performed for compensation in this case  
10 \$175.

11           The record is clear both with the answer and  
12 from the testimony of Officer Johnston that another carrier  
13 regulated -- that has authority to make household goods  
14 moves, E. L. Dinges Mayflower Moving and Storage, moved the  
15 bulk of the household goods in use from the prior residence  
16 in Holidaysburg to the new residence in construction in  
17 Altoona, Timberline Drive.

18           The last part is, is this a regulated move  
19 or an unregulated move? Well, Mr. Walk has claimed that  
20 this is exempt from PUC jurisdiction because it didn't  
21 constitute household goods in use, that it was somehow in  
22 storage. Well, there's an old Superior Court case, Your  
23 Honor, that's still very much good law. I'll state into the  
24 record it's Haugh, H-A-U-G-H versus Keenan, K-E-E-N-A-N,  
25 Storage and Transfer Company, a reported decision at 135 Pa.

1 Superior Court 175, also reported at 2 Atlantic 2d 548, a  
2 1938 case which goes into the principle that, if an item is  
3 taken to a warehouseman's warehouse for storage for 90 days  
4 or more, the property becomes -- it loses its status as a  
5 household goods in use and it comes under this  
6 warehouseman's exemption.

7                   The record is crystal clear, Your Honor,  
8 that the move in this case went from one residence to a new  
9 residence and was only being stored there; but that storage  
10 isn't the type of storage contemplated by the warehouseman's  
11 exemption. So we do have a regulated move. That would be  
12 the last prong that Mr. Walk's authority at BTS Number 1 is  
13 only property authority. So the Commission's -- we have a  
14 prima facie case.

15                   The only thing I would say in all fairness  
16 to Mr. Walk, he may have a good-faith -- he may have  
17 actually believed -- he's not here. But I am saying that  
18 apparently he believed this was an exempt move. We clearly  
19 believe this was not. This is still a move that would  
20 require a Certificate of Public Convenience for household  
21 goods authority.

22                   So that's basically it. We believe the  
23 Bureau's complaint should be sustained. The penalty  
24 requested here, Your Honor, in the Bureau's complaint is for  
25 \$250 for providing service of a different nature than that

1 approved in the Certificate of Public Convenience. That is  
2 in paragraph number 4 of the complaint.

3 But anyways, Your Honor, I think it's  
4 important that this carrier be advised that this is not  
5 permissible. If he wants to seek household goods authority,  
6 we're here willing to accept applications. But this is a  
7 regulated move; and we believe that the fine should be  
8 imposed, the complaint sustained, and I believe that's our  
9 position on this case, Your Honor.

10 JUDGE COCHERES: Counsellor, would you look  
11 at BTS Exhibit 1, please.

12 MR. SMITH: BTS-1, yes, that's the  
13 certification of the authority.

14 JUDGE COCHERES: All right. Now, the second  
15 page is the actual Certificate of Public Convenience, right?

16 MR. SMITH: The Certificate of Public  
17 Convenience is actually the first page.

18 JUDGE COCHERES: No. The first page is the  
19 certification.

20 MR. SMITH: The second page is the  
21 Certificate. The application is the third.

22 JUDGE COCHERES: No. I want you to look at  
23 the Certificate of Public Convenience.

24 MR. SMITH: Right. Okay.

25 JUDGE COCHERES: Now, how can I tell looking

1 at the Certificate, particularly at the end of the first  
2 paragraph, what limitations are placed on Mr. Walk?

3 MR. SMITH: One has to read. This is the  
4 form certification sent out by the Secretary's Office when  
5 you have a property authority where we also attach the  
6 companion application for motor carrier authority. The  
7 pages are -- one, two, three -- a four-page application.

8 JUDGE COCHERES: Okay. And what in the  
9 Application tells me it's a general property authority?

10 MR. SMITH: It says in big, bold letters in  
11 large font, Your Honor, before the Pennsylvania Public  
12 Utility Commission, Application Motor Carrier of Property.

13 JUDGE COCHERES: Thank you. That is exactly  
14 what I missed. All right. Do you have anything else for  
15 me, counsellor?

16 MR. SMITH: No, that's all, Your Honor.

17 JUDGE COCHERES: BTS Exhibits Numbers 1, 2,  
18 and 3 are admitted in case I didn't say so previously.

19 Mr. Smith, did you provide two copies of  
20 each exhibit to the court reporter?

21 MR. SMITH: I believe I did.

22 Judy, if you want to check.

23 THE REPORTER: You did.

24 JUDGE COCHERES: Fine.

25 If you have nothing further, we are

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adjourned.

(Whereupon, at 10:48 a.m., the hearing was adjourned.)

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C E R T I F I C A T E

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me and thereafter reduced to typewriting by me, or under my direction, and that this transcript is a true and accurate record to the best of my ability.

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By: Judith E. Shuller  
Judith E. Shuller, CSR

FORM 2