

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Scott Luellen	:	
	:	
v.	:	C-2016-2539599
	:	
Maroadi Transfer & Storage, Inc.	:	

INITIAL DECISION
GRANTING MOTION FOR SUMMARY JUDGMENT
AND DISMISSING COMPLAINT

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

This initial decision grants the Respondent’s motion for summary judgment and dismisses a formal complaint filed by the Complainant against the Respondent, a household goods moving company, because the trip at issue originated in Pennsylvania and terminated in Massachusetts, thereby making it interstate transportation over which the Pennsylvania Public Utility Commission (Commission) has no jurisdiction.

HISTORY OF PROCEEDING

On May 3, 2016, Scott Luellen (Mr. Luellen or Complainant) filed an amended formal complaint (complaint) against Maroadi Transfer & Storage, Inc. (Maroadi or Respondent) with the Commission. Mr. Luellen raised in his amended complaint, *inter alia*, certain safety and insurance-related allegations against the Respondent associated with a household goods move that occurred in December of 2014.

On May 24, 2016, Maroadi filed an answer, new matter, and preliminary objections (POs) in response to the complaint. In its answer, the Respondent generally denied the material allegations in the amended complaint. In its new matter, Maroadi alleges (1) that since the move occurred between Pittsburgh, Pennsylvania and Belmont, Massachusetts, it is an interstate shipment subject to the jurisdiction of the Federal Motor Carrier Safety Administration and not the Commission; (2) that the Complainant was not a party to the transportation contract between Ms. Drago and the Respondent; and (3) that the complaint involves alleged injuries and a claim for damages, and that personal injury claims are not within the Commission's jurisdiction.

In its POs, Maroadi argues that (1) the Complainant was not the party to any transportation contract and, therefore, lacks standing to complain to the Commission on the basis of a contract between Ms. Drago and the moving company; (2) the complaint shows that the Respondent was only a booking agent and was not involved in the loading or transporting of the shipment; (3) the Complainant filed no liability claim with the Respondent; and (4) that the only allegation by the Complainant that could constitute a possible claim, if one had been filed, alleges a personal injury to the Complainant, for which recovery would be beyond the Commission's jurisdiction.

On June 10, 2016, the Complainant filed a response to the Respondent's answer and new matter. The Complainant disputed the factual averments set forth in the Respondent's answer and new matter.

By order dated June 30, 2016, I denied, in part, Respondent's POs and directed that a hearing be scheduled. I noted that the formal complaint form did not identify a termination point for the trip. I further noted that, in his response to the Respondent's answer and new matter, the Complainant did not admit that an interstate transaction took place. I therefore denied the POs on the jurisdictional issue but cautioned the Complainant that if, in fact, the move originated in Pennsylvania and terminated in another state, the complaint would be dismissed since interstate transportation does not fall within the Commission's jurisdiction.

The Complainant subsequently filed a number of motions requesting various forms of relief requiring action by the undersigned Administrative Law Judge. It became apparent during my review of certain documents filed in this proceeding following my denial of the Respondent's POs that the trip at issue here may, in fact, have been an interstate, rather than an intrastate, move thereby calling into question the Commission's jurisdiction over this complaint.

In light of the numerous motions filed by the Complainant, requiring action by both the Respondent and the Commission, I determined that it would be in the best interest of the parties and the Commission for the question of jurisdiction to be resolved as expeditiously as possible. Therefore, I directed, by order dated August 16, 2016, that further action in this proceeding, including consideration of the Complainant's outstanding motions, be held in abeyance pending the scheduling and conduct of a prehearing conference for the purpose of clarifying whether the Commission has jurisdiction over this complaint. I indicated that the Complainant could renew his motions if it were ultimately determined that the Commission had jurisdiction over the complaint.

By notice dated September 15, 2016, the Commission scheduled a telephonic prehearing conference in this matter for Wednesday, October 5, 2016, for the purpose of addressing the jurisdictional issue. The prehearing conference was held as scheduled. The Complainant, Scott Luellen, appeared on behalf of himself. The Respondent was represented by Alex K. Yoder, Esquire.¹ Mr. Luellen acknowledged during the prehearing conference, in response to my questions, that the trip at issue in this proceeding was, in fact, an interstate trip, having originated in the Pittsburgh, Pennsylvania area and terminated in Belmont, Massachusetts.

Following a brief discussion, it was agreed that the parties would prepare and file cross motions for summary judgment since, in light of the Complainant's acknowledgment that

¹ On July 15, 2016, Respondent's original legal counsel, John A. Pillar, Esquire, filed a Notice of Withdrawal of Counsel. On August 23, 2016, Alex K. Yoder, Esquire, filed a Notice of Entry of Appearance on behalf of the Respondent.

the trip at issue was an interstate trip, resolution of the jurisdictional issue is a purely legal question, namely, whether the Commission has jurisdiction over interstate transportation.

On or about October 25, 2016, the Respondent filed its motion for summary judgment. On or about November 14, 2016, the Complainant filed an amended motion for summary judgment. Both parties filed responses to the other party's motions. The 15-page transcript of the October 5, 2016 prehearing conference was received by me on October 12, 2016. The record in this proceeding closed on December 2, 2016, upon my receipt of the answers to the motions. The cross motions for summary judgment are ready for decision.

FINDINGS OF FACT

1. The Complainant in this proceeding is Scott Luellen.
2. The Respondent in this proceeding is Maroadi Transfer & Storage, Inc. (Maroadi).
3. On May 3, 2016, Mr. Luellen filed an amended formal complaint against the Respondent in which he raised certain safety and insurance-related allegations associated with a trip that occurred in December of 2014.
4. The Complainant did not identify a termination point for the trip at issue in his formal complaint form.
5. On May 24, 2016, Maroadi filed an answer, new matter, and preliminary objections in response to the complaint.
6. By order dated June 30, 2016, I denied, in part, Respondent's preliminary objections and directed that a hearing be scheduled.
7. Subsequent to my order on Maroadi's POs, the Complainant filed a number of discovery-related motions requesting various forms of relief.

8. A telephonic prehearing conference was held on Wednesday, October 5, 2016, for the purpose of further addressing the jurisdictional issue.

9. The trip at issue in this proceeding originated in the Pittsburgh, Pennsylvania area and terminated in Belmont, Massachusetts. (Tr. pp. 5-6).

DISCUSSION

As noted, a prehearing conference was held in this proceeding for the purpose of determining whether the trip at issue was an intrastate trip or an interstate trip. Mr. Luellen stated during the conference that the trip originated in the Pittsburgh, Pennsylvania area and terminated in Belmont, Massachusetts. (Tr. pp. 5-6). Having acknowledged that the trip was interstate in nature, the parties were directed to file cross motions for summary judgment on the issue of whether the Commission has jurisdiction over interstate transportation. If so, a hearing may be warranted. If not, then the Commission does not have jurisdiction to hear this matter and the complaint must be dismissed.

The Commission, as a creation of the General Assembly, has only those powers and authority granted to it by the General Assembly as set forth in the Public Utility Code. *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008). It is well-settled that the Commission must act within and cannot exceed its jurisdiction. *Behrend v. Bell Telephone Co.*, 363 A.2d 1152 (Pa. Super 1976). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 427 Pa. 581, 235 A.2d 602 (1967). Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992) *alloc. Denied*, 637 A.2d 293 (Pa. 1993).

In order for the Complainant to prevail ultimately, there must be a statute, regulation or order which the Commission is authorized to enforce. The Complaint must set forth anything done or omitted to be done by the Respondent in violation of any law which the Commission has jurisdiction to administer. 66 Pa. C.S. § 701; 52 Pa. Code § 5.21(a).

The Pennsylvania Public Utility Code at 66 Pa. C.S. §104 provides:

The provisions of this part, except when specifically so provided, shall not apply, or be construed to apply, to commerce with foreign nations, or among the several states, except insofar as the same may be permitted under the provisions of the Constitution of the United States and the acts of Congress.

The Revised Interstate Commerce Act, 49 U.S.C. §10521, establishes the Interstate Commerce Commission's jurisdiction over the transportation of property or passengers by motor carriers between points from one state to another state.

§ 10521. General Jurisdiction

- (a) Subject to this chapter and other law, the Interstate Commerce Commission has jurisdiction over transportation by motor carrier and the procurement of that transportation, except by a freight forwarder (other than a household goods freight forwarder) to the extent that passengers, property, or both are transported by motor carrier –
 - (1) Between a place in –
 - (A) A State and a place in another State:

....

Therefore, if the trip at issue was, in fact, an interstate trip, the Commission lacks jurisdiction and the complaint must be dismissed. See *Rita Dalinka v. A. Mastrocco Jr. Moving and Storage*, Docket No. C-2015-2509071 (Final Order entered October 4, 2016); *Pa. P.U.C. v Simon's Express, Inc.*, Docket No. A-00105544C882, 70 Pa. P.U.C. 96 (May 25, 1989).

As noted, the parties filed cross motions for summary judgment on this threshold jurisdictional issue. The respective motions will be discussed below.

The Commission's regulation at 52 Pa. Code §5.102 governs motions for summary judgment. The Commission's regulation at 52 Pa. Code §5.102(a) permits any party to move for summary judgment. The presiding officer will grant a motion for summary judgment if

there is no genuine issue as to a material fact and the moving party is entitled to judgment as a matter of law. 52 Pa. Code §5.102(d)(1).

The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to a judgment as a matter of law. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. First Mortgage Co. of Pennsylvania v. McCall, 459 A.2d 406 (Pa. Super. 1983); Mertz v. Lakatos, 381 A.2d 497 (Pa. Cmwlth. 1976). Summary judgment will be granted only where the right is clear and free from doubt.

The provision at 52 Pa. Code §5.102(c) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa. C.S. §703(a); *Lehigh Valley Power Committee v. Pennsylvania Pub. Util. Comm'n.*, 563 A.2d 557 (Pa. Cmwlth. 1989); *Lehigh Valley Power Committee v. Pennsylvania Pub. Util. Comm'n.*, 563 A.2d 548 (Pa. Cmwlth. 1989); *S.M.E. Bessemer Cement, Inc. v. Pennsylvania Pub. Util. Comm'n.*, 540 A.2d 1006 (Pa. Cmwlth. 1988); *White Oak Borough Authority v. Pennsylvania Pub. Util. Comm'n.*, 103 A.2d 502 (Pa. Super.1954).

The Complainant himself admitted during the prehearing conference that the trip at issue originated in Pennsylvania and terminated in Massachusetts. (Tr. pp. 5-6). In response to my questions, Mr. Luellen acknowledged that the trip originated at 7105 Schoyer Avenue, Pittsburgh, Pennsylvania and terminated in Belmont, Massachusetts at 14 Marlboro Street. (Tr. pp. 5-6). There is no dispute, therefore, as to this material fact on the jurisdiction issue. The transportation at issue here constitutes interstate transportation.

In its motion for summary judgment, the Respondent correctly cites to 66 Pa. C.S. § 104 in support of its position that the Commission does not have jurisdiction over transactions involving interstate commerce. (Respondent's Motion, p. 3). Further, as noted above, the Revised Interstate Commerce Act at 49 U.S.C. §10521 states that jurisdiction over interstate transportation resides with the federal government.

In his amended motion for summary judgment, the Complainant argues that the Respondent failed to respond to a number of requests for admissions related to the location where the Complainant's household goods were packed and loaded onto the truck and the Respondent's transportation authority. He suggests that the answers to those requests bear on the issue of whether the transaction constituted interstate or intrastate transportation. The Complainant appears to be attempting to separate and compartmentalize various parts of the overall transaction and then analyze each part separately in determining whether an interstate transaction occurred.

I disagree with the Complainant's argument. The issue is whether the transaction as a whole constitutes interstate or intrastate transportation. The fact that the household goods at issue were packed and loaded onto a truck in one location does not render that piece of the overall transaction intrastate, where the overall move is between two states. Under the Complainant's argument, the packing and loading portions of every move would always necessarily have to constitute intrastate transactions, since they would occur in one state - the trip's origination point - even where the ultimate termination point of the move is in another state. The Complainant has cited to no relevant authority for this proposition, and I am unaware of any authority that would support this position. If the move originates in one state and terminates in another state, the entire transaction is interstate transportation and, under the provisions of the Revised Interstate Commerce Act, the Pennsylvania Public Utility Code and relevant case law cited above, is beyond the jurisdiction of the Commission.

Having determined that the transaction at issue was interstate in nature and beyond the jurisdiction of the Commission, the Complainant's allegations about the Respondent's failure to respond to discovery requests are rendered moot. As noted above, jurisdiction may not be conferred where none exists. *Roberts*. Since the transaction constitutes interstate transportation, no part of the transaction falls under the Commission's jurisdiction. Therefore, the discovery dispute raised by the Complainant may not be addressed by the Commission.

Since it is clear that the Commission does not have jurisdiction over this matter, a hearing is not necessary and the Respondent's motion for summary judgment will be granted.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.

2. The Commission, as a creation of the General Assembly, has only those powers and authority granted to it by the General Assembly as set forth in the Public Utility Code. *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008).

3. The Commission must act within and cannot exceed its jurisdiction. *Behrend v. Bell Telephone Co.*, 363 A.2d 1152 (Pa. Super 1976).

4. Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 427 Pa. 581, 235 A.2d 602 (1967).

5. The Commission lacks jurisdiction over interstate transportation. 49 U.S.C. §10521; 66 Pa. C.S. §104; *Rita Dalinka v. A. Mastrocco Jr. Moving and Storage*, Docket No. C-2015-2509071 (Final Order entered October 4, 2016); *Pa. P.U.C. v Simon's Express, Inc.*, Docket No. A-00105544C882, 70 Pa. P.U.C. 96 (May 25, 1989).

6. The presiding officer may grant a motion for summary judgment if there is no genuine issue as to a material fact and the moving party is entitled to judgment as a matter of law. 52 Pa. Code §5.102(d)(1).

7. No genuine issue of material fact exists for hearing in this proceeding.

8. Maroadi Transfer and Storage, Inc. is entitled to judgment as a matter of law.

