

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF TRANSPORTATION

In the Matter of the Petition of  
Renzenberger, Inc. for  
Charter Carrier Permit Authority

**FINDINGS OF FACT,  
CONCLUSIONS, AND  
RECOMMENDATION**

The above-entitled matter came on for hearing before Richard C. Luis, Administrative Law Judge, on July 16, 1997 at the Office of Administrative Hearings, 100 Washington Avenue South, Minneapolis, Minnesota.

Appearing for the Petitioner, Renzenberger, Inc., was Robert D. Gisvold, Kalina, Wills, Gisvold & Clark, P.L.L.P., 941 Hillwind Road Northeast, Suite 200, Minneapolis, Minnesota 55432-5964. Appearing for the remaining Protestant in this matter, Brown's Crew Car of Wyoming, Inc., d/b/a Armadillo Express, was Dawn M. Parsons, 5200 West 73rd Street, Edina, Minnesota 55439. A Motion to Intervene on behalf of D-V Hauling, Inc. was filed by Samuel Rubenstein, Practitioner, Rubenstein Logistics Services, Inc. P.O. Box 5, Minneapolis, Minnesota 55440. An appearance was made at the hearing also by Rochester Transportation Systems, Inc., d/b/a Rochester Cab, which attempted orally to intervene at the hearing. Both motions to intervene were denied for lack of proper notice. D-V Hauling was granted leave to file further written argument.

The record closed on August 4, 1997, upon receipt of the final post-hearing submission.

Notice is hereby given that, pursuant to Minn. Stat. § 14.61 and the Rules of the Office of Administrative Hearings and the Transportation Regulation Board applicable to the Department of Transportation, exceptions to this Report, if any, by any party adversely affected must be filed within 20 days of the mailing date hereof with James N. Denn, Commissioner of Transportation, 395 John Ireland Boulevard, St. Paul, Minnesota 55155. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. If desired, a reply to exceptions may be filed and served within ten days after the service of the exceptions to which reply is made. Oral argument before the Commissioner may be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply.

The Commissioner of Transportation will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Commissioner may exercise his discretion to accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Commissioner as his final order.

### **STATEMENT OF ISSUES**

1. Is Petitioner fit and able to conduct the operations for which authority is sought?
2. Has Protestant demonstrated that existing permitted carriers can fully meet the needs demonstrated on the record?
3. Should D-V Hauling be permitted to intervene in this matter?

### **INTERVENTION RULING**

By letters dated July 7, 1997 and July 22, 1997, D-V Hauling moved for intervention in this matter as a party. The Administrative Law Judge denied the motion at the hearing but granted D-V Hauling's practitioner leave to file further written argument (the July 22 filing). The only reason given for not filing a timely protest is that the Burlington Northern Santa Fe Railroad (BNSF) was not identified as a witness. The movant serves the BNSF in Kandiyohi County (Willmar, Minnesota) in the manner for which authority is sought in this matter and the movant has an interest in demonstrating that there is no current need for additional carriers with similar authority. The authority requested by Renzenberger is state-wide and not limited to any particular railroad. There is the potential for detrimental competition between Renzenberger and D-V Hauling. Since the authority requested is not limited, D-V Hauling received adequate notice of this proceeding. There is no demonstrated legal basis for setting aside the protest deadline to allow D-V Hauling to intervene. Therefore, the motion for intervention is denied.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

#### The Petitioner

1. Renzenberger, Inc. is a Kansas corporation which maintains a passenger transportation business operating in twenty-five states. Renzenberger transports railroad crews between terminals and trains. William Smith is the President of

Renzenberger, whose corporate headquarters are located in Shawnee, Kansas. The Petitioner is a subsidiary of Peterson Manufacturing Co. of Grandview, Missouri.

2. Renzenberger holds intrastate authority in Iowa, Wisconsin, and South Dakota. It holds no Minnesota intrastate operating authority. Renzenberger holds common carrier passenger authority from the Federal Highway Administration under Permit No. MC 170517 to conduct transportation services between points in the 48 contiguous states in the United States.

3. Renzenberger has total assets of \$14,630,837 and total liabilities of \$7,433,817. Revenues in the last fiscal year exceeded \$38 million. The business operates 830 vans throughout the country. Renzenberger's equipment is properly maintained, and is in good operating condition. The corporation maintains appropriate insurance.

4. Renzenberger stations company-owned equipment at the homes of its employees and contracts with local vendors to ensure proper maintenance. Dispatching is done by pager from the central dispatch office in Mission, Kansas.

5. Renzenberger anticipates providing transportation services in Minnesota for the BNSF, the Dakota, Minnesota & Eastern railroad (DM&E), and I & M Rail Link, L.L.C. (I&M). At the current time, Renzenberger provides passenger service to approximately ten railroads. Almost all of Renzenberger's business is the transportation of railroad crews.

#### Procedural History and Scope of Authority Sought

6. On April 11, 1997, the Department received an application for charter carrier permit authority from William Smith, acting on behalf of Renzenberger. The petition requested authority as follows:

Passengers and baggage between points in Minnesota restricted to railroad crews in vehicles with a maximum capacity of 15 passengers and driver.

The petition was accompanied by a letter of support, dated March 28, 1997, from Vernon Colbert, Chief Transportation Officer of DM&E.

7. On April 18, 1997, the Department published notice of the Petition in its calendar, describing the authority sought as follows:

Petition for charter carrier permit authority to transport passengers and baggage under charter between points in Minnesota, restricted to railroad crews in vehicles with a maximum of capacity of 15 passengers and the driver.

The Notice set a protest date of May 8, 1997.

8. On April 22, 1997, the Department received a Protest from Brown's Crew Car of Wyoming, d/b/a Armadillo Express (Armadillo).

#### Relationship of Carriers to Railroads

9. The Federal Hours of Service Act sets a twelve hour time limit on the length of time a crew can operate a train without eight consecutive hours of rest. 49 U.S.C. § 21103. Once a crew has reached its time limit, the train must stop and the crew must be removed. When possible, the railroads schedule their trains to reach terminals within the time limit and change crews as part of each train's regular operating schedule. When delays, equipment failure, weather, or other hazards prevent a train from reaching a terminal within the twelve-hour limit, the train simply stops. Whenever possible, the train is parked on a siding. At this point, transportation is required to bring a "fresh" crew to the train and remove the "dead" crew. The practice is known in the business as "dogcatching."

10. Any carrier that engages in dogcatching must obtain authority to carry passengers and baggage to and from the points along the rail line where the trains stop and to and from terminals operated by the railroads. Because of the lucrative nature of the business, cab companies and other carriers offer this service to railroads. Dogcatching is service that may be required on a round the clock basis. Due to the efficiency of integrated communications and standardized practices a small number of businesses, including both Renzenberger and Armadillo, have specialized in providing this service to railroads.

11. Renzenberger provides dedicated terminal service that moves rail crews from terminals to local lodging or nearby cities. In addition, Renzenberger provides crew transportation between cities to allow rail employees to return home, which constitutes the majority of Petitioner's business. The other service provided by Renzenberger to railroads is dogcatching.

#### Individual Railroads.

12. I&M came into existence in April, 1997 to provide freight service in Minnesota, Iowa, Missouri, Wisconsin, and Illinois. Most of its trackage in Minnesota was used formerly by the old Soo Line, and purchased by I&M from CP, Inc., the Soo Line's successor. Exhibit 2. Renzenberger is beginning its relationship with I&M for interstate transport between Iowa and Minnesota. I&M has inquired of Renzenberger to provide crew transportation out of Minneapolis to points in Minnesota. The primary area traveled by I&M is between Davenport, Iowa and Chicago, Illinois. I&M maintains trackage in Minnesota running from the southern border of the state along the Mississippi River to Minneapolis. Other trackage runs north from Mason City, Iowa, to Northfield, Minnesota. A western spur runs off of that line at Ramsey Junction and terminates in Jackson, Minnesota. A short spur runs northwest off the western spur from Wells to Minnesota Lake. The terminals maintained by I&M in Minnesota are located in Minneapolis, Jackson, Wells, and Austin.

13. A crew for I&M consists normally of two persons, three if a trainee is aboard. On the main line for the railroad, running between St. Paul, Minnesota and Davenport, Iowa, I&M runs eight trains a day (four each way). I&M anticipates doubling its number of runs and expects to need dogcatching services due to crews running out of service time due to track congestion. I&M is considering locating a crew in Minneapolis to reduce to the need for crew transportation services.

14. In southern Minnesota, I&M operates three trains shuttling grain from the terminal in Jackson and points along that line.

15. Up to the date of the hearing, I&M contracted with Rail Communications and Lodgings (RC&L), headquartered in Ottumwa, Iowa. RC&L is a broker that subcontracted with Armadillo to provide crew transportation services. I&M has experienced billing problems with that relationship. I&M has decided not to continue to use RC&L for services. Armadillo contacted RC&L two days prior to the hearing and offered to continue providing any service needed by I&M for crew transportation in Minnesota. I&M has used a number of cab companies and crew carriers, some hired by RC&L on I&M's behalf.

16. I&M did not experience any problems with the service provided by Armadillo. The only reason for wanting to change crew transportation providers is to have a single provider of those services. I&M experiences frustration by not having a single telephone number to arrange for dogcatching in Iowa, Missouri, Illinois, Wisconsin, and Minnesota.

17. DM&E is a railroad based in Brookings, South Dakota. It maintains a terminal in Waseca, Minnesota and DM&E's trackage (purchased from the Chicago and Northwestern Railroad) runs from Wyoming, across South Dakota, and across Minnesota from the western border to Winona, Minnesota. A branch line runs south from Waseca to Mason City, Iowa. Crews operate between Waseca and Tracy, Minnesota, and Waseca and Winona, Minnesota. The crews operating for DM&E consist of two persons. The only formal point in Minnesota for basing DM&E crews is Waseca. Crews for DM&E normally change also at Tracy, Albert Lea, Rochester, and Winona. DM&E began using Renzenberger (for operations outside of Minnesota) in early 1997.

18. DM&E uses Renzenberger to transport crews between South Dakota and Minnesota. DM&E expressed a need for transportation around its rail yard in Waseca, between its depot and the rail yard, and between the ends of town and its depot. Dogcatching is occasionally needed, typically while the train is in South Dakota. DM&E contracts with a motel in Marshall, Minnesota to provide lodging for crews. Other than the trips to Marshall, all the trips required by DM&E are along the railroad's trackage. Crew transportation vendors to DM&E include R and R Shuttle Service (R&R) of Waseca, taxicabs from various towns, and Cimmaron Coaches. R&R has provided service for DM&E for seven years. R&R has a radio for communicating with the DM&E dispatcher. Crew changes in Rochester have been performed by Rochester Cab.

19. The radio used by R&R does not have the capability of contacting trains directly. When a train does not reach the anticipated point before the crew "dies," the dispatcher must pass on the location of the train to R&R. Rochester Cab does not have a radio to contact the dispatcher or the train. Communications problems have resulted when dogcatching DM&E trains with Rochester Cab.

20. As part of its service to Wyoming, DM&E is seeking to transport coal from the Powder River Valley. DM&E anticipates that, if it is successful, its needs for crew transportation services will grow, because its number of trains run will quadruple. At

present, DM&E does not have any contracts to haul coal from Wyoming or own trackage that extends to the source of that coal.

21. As a matter of convenience and efficiency, DM&E would prefer to contact one company to provide all its crew transportation needs, both in and out of Minnesota.

22. BNSF has indicated to Renzenberger that BNSF's crew transportation needs are being met by existing carriers. The only use BNSF would make of Renzenberger's service is as a back-up to those carriers.

23. Outsource Administrators, Inc. contracts with BNSF to broker some of its crew transportation services. D-V Hauling and Armadillo are among the providers currently used by Outsource to meet BNSF's needs for crew transportation. On one occasion, Outsource requested that Armadillo transport a train crew between two BNSF terminals and that move was not completed.

#### The Protestant

24. Brown's Crew Car of Wyoming, Inc., d/b/a Armadillo Express (Armadillo), has been in business in one form or another since 1974. It was incorporated in 1980, and its President is Joe C. Brown, Jr. Armadillo is based in Cheyenne, Wyoming. Ninety-nine percent of Armadillo's business is railroad crew transportation. Armadillo holds common carrier passenger authority from the Federal Highway Administration under Permit No. MC 168832. It holds intrastate authority in Minnesota, Iowa, Nebraska, Colorado, Wyoming, Utah, Nevada, and California. Canadian Pacific, Union Pacific, BNSF, and I&M are railroads served by Armadillo.

25. Armadillo first obtained Minnesota authority in 1989. This was done at the request of Burlington Northern (predecessor of BNSF). Although Armadillo initially sought statewide authority, it ended up with limited authority to transport Burlington Northern (BN) railroad crews between points in Minnesota, restricted against origins in the northwestern corner of the state. Return trips coming out of that restricted area were not prohibited. Armadillo was also prohibited against trips to and from the Minneapolis/St. Paul International Airport, as well as trips originating in Kandiyohi County.

26. The limitation against Armadillo originating trips out of Kandiyohi is due to protests by existing carriers that the need of BN out of Willmar was being satisfied, primarily by D-V Hauling. Armadillo and D-V Hauling have an arrangement to meet and transfer crews if both companies are experiencing unusual demand. That arrangement is rarely used.

27. In 1994, Armadillo sought and received expanded authority to provide its specialized crew transportation service to other railroads. Notice of Protest (Attached Transportation Regulation Board Order, dated August 24, 1994).

28. Armadillo has twenty-seven vehicles stationed in Minnesota. The cities in which these vehicles are located are St. James, St. Paul, Fridley (Minneapolis), Staples, and Dilworth. Excluding Armadillo's three yard vans, these vehicles are idle approximately one-quarter to one-third of the time. The twenty-four vehicles not dedicated to yard service are not being used to their full capacity.

29. Armadillo has served the BN/BNSF since receiving Minnesota authority and no complaints regarding service have been received by Armadillo from BNSF. Approximately ninety percent of the BNSF calls for service come from the railroad itself. Ten percent of the service calls for BNSF come from Outsource Administrators. On one occasion, Outsource placed a call for service where the Armadillo dispatcher reversed the pick-up and drop-off points. A vehicle was sent to pick up the train crew, but to the wrong location. Armadillo has changed its dispatching system in response to this error.

30. Armadillo has provided crew transportation services to I&M since its inception. The arrangement was brokered by RC&L. Armadillo understood the relationship to be directly with I&M. Under that arrangement, Armadillo submitted bills directly to I&M. Upon discovering that I&M was brokering its business through RC&L, Armadillo terminated the relationship with RC&L due to a perceived conflict of interest. After terminating its contract with RC&L, Armadillo contacted I&M directly and offered to continue providing crew transportation services directly for the indefinite future.

31. Armadillo contacted a vice-president of DM&E in November of 1996 to solicit that railroad's business for meeting crew transportation needs. The sales presentation included a ride in an Armadillo van in Nebraska. That corporate officer indicated that DM&E had no immediate need for transportation services.

Based upon foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Minnesota Department of Transportation has jurisdiction over the subject matter of the hearing.

2. Proper notice of the hearing was timely given, and all relevant substantive and procedural requirements of law or rule have been fulfilled and, therefore, the matter is properly before the Administrative Law Judge.

3. Any of the foregoing Findings of Fact more properly termed Conclusions are hereby adopted as such.

4. From Petitioner's experience, successful history of providing transportation services, and financial condition, the Judge concludes that Petitioner is fit and able within the meaning of Minn. Rule 7800.0100, subp. 4.

5. Petitioner's vehicles, being regularly maintained and free from defects, are within the safety requirements prescribed by the Department.

6. Burlington Northern Santa Fe does have a need for intrastate transportation of crews in Minnesota.

7. Armadillo has demonstrated that it and other permit carriers offer sufficient transportation services to meet BNSF's needs fully and adequately.

8. I&M does have a need for intrastate transportation of crews to and from trains on its trackage and its terminals.

9. Armadillo has demonstrated that it offers sufficient transportation services to meet I&M's needs fully and adequately.

10. DM&E does have a need for intrastate transportation of crews to and from trains on its trackage and its terminals.

11. Armadillo has demonstrated that it offers sufficient transportation services to meet DM&E's needs fully and adequately.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE COMMISSIONER OF TRANSPORTATION WILL ISSUE THE ORDER OF AUTHORITY WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATIONS.

Based upon the foregoing, the Administrative Law Judge recommends to the Commissioner that he issue the following:

### **ORDER**

That the Petition of Renzenberger, Inc., for charter carrier permit authority to transport passengers and baggage under charter between points in Minnesota, restricted to railroad crews in vehicles with a maximum capacity of 15 passengers and the driver, be DENIED.

Dated this 3rd day of September, 1997

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RICHARD C. LUIS  
Administrative Law Judge

Reported: Tape recorded (no transcript).

### **NOTICE**

Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

## MEMORANDUM

Renzenberger has successfully operated a transportation service for railroads for many years. This constitutes a *prima facie* showing that the business is fit and able to provide transportation services under the authority sought by this proceeding. Since Protestant has not challenged the Petition on that ground, the Judge has concluded Renzenberger has demonstrated those issues for the purposes of this proceeding.

Protestant has limited its objection to the demonstration of need for the proposed service and whether that need is currently being met. The showing of need and the degree to which that need is met for each railroad will be examined individually.

BNSF has an ongoing relationship with Armadillo and D-V Hauling. The only testimony in support of a need by BNSF for additional service came from a broker (Outsource) that contacts transport services to arrange for railroad crew movements. That broker related that BNSF would only use Renzenberger as a "back-up" to its current transport services. It is noted that the authority sought is state-wide and contains no limitation as to the secondary position of Renzenberger to existing carriers.

There is only one incident identified by Outsource where Armadillo failed to make a move requested on behalf of BN. In that instance the Armadillo dispatcher reversed the points of origin and destination and sent a van and driver to the wrong location. Equipment was available for that move. The incident does not demonstrate that Armadillo is incapable of meeting the existing need of BNSF for crew transportation services.

I&M and DM&E have demonstrated a need for crew transportation services. Their trackage, terminal locations, and hours of service require occasional crew transportation to comply with federal law. Their current needs are being met by Armadillo and other carriers. The restrictions on Armadillo's authority do not interfere with Armadillo's ability to provide full and adequate service to either I&M or DM&E.

Both I&M and DM&E maintain that their need for service is not being met by existing carriers because no single carrier with intrastate authority can meet their needs in all the states in which each railroad operates. The ability to arrange crew transportation with one carrier across the entire rail system and receive one periodic bill for service is asserted to be essential to efficient rail operation.

There are two halves to the need analysis in permits for authority. First, a need must be shown to exist to justify the type of service to be provided by the applicant. Second, existing carriers have the opportunity to show that the need is being met. The purpose behind showing that the need is currently met is to prevent destructive competition between carriers when insufficient business exists to support more competitors. Where such destructive competition exists, carriers become financially unable to maintain sufficient equipment to meet the needs of customers. Adequacy and quality of service eventually suffer.

Renzenberger argues that the ability to make one call for arranging crew transportation is a need that Armadillo cannot meet. The ability to reduce administrative overhead is certainly convenient, but that ability does not rise to the level of need within the meaning of Minn. Stat. § 221.121, subd. 1. To hold otherwise would render

meaningless the regulatory system of approving limited authority to meet demonstrated need. Railroading is a business that involves management of a number of schedules, stops, cars, and tracks. Requiring the railroad to call an additional existing carrier with centralized dispatch for rail crew transport within Minnesota has not been shown to be unduly burdensome. The additional administrative work required to audit a second bill for crew transportation likewise has not been shown to be an undue burden to the railroads.

In Minnesota, it has been held that shipper testimony demonstrating preference based on convenience does not constitute a demonstration of need for additional transportation services. See *Petition of Arrowood Trucking, Inc.*, TRB CC 55701/A-86-363. In *Arrowood*, the supporting shippers desired to consolidate the number of transportation service providers in as few carriers as possible, a situation analogous to the desires of DM&E and I&M to handle billing through one carrier only in this matter. The Administrative Law Judge and the Transportation Regulation Board (TRB) relied upon an earlier Board decision, *American Freight Systems Inc.*, Docket RRCC 696/A-83-519, which held “a desire for shippers to concentrate their transportation services in as few carriers as possible did not constitute need for purposes of granting additional authority.”

In *Petition of Burnham Service Corp.*, 392 N.W.2d 294 (Minn.App. 1986), the Court of Appeals upheld the decision of the TRB to deny authority to a carrier which established a need for its services where such services were identical to those provided by an existing certificated carrier. In that case, Burnham had entered a contract with IBM to provide services within Minnesota, just as DM&E and I&M have done in this matter with Renzenberger. Under the analysis in *Burnham*, the fact that the supporting shippers may have entered into a contract with Renzenberger is not sufficient to establish need. Despite the problems that may be caused by having a preexisting contract as two of the supporting railroads have with Renzenberger, the same reasoning as that employed by the Court of Appeals, in affirming the denial to Burnham should apply here. That is, the problems did not “establish need and were created by [IBM’s] knowing grant of a contract to a carrier without intrastate authority.”

The TRB’s conclusion in *American Freight* was affirmed on appeal to the Minnesota Court of Appeals. In its decision, the Court of Appeals held:

The Board has the latitude to determine that convenience and necessity do not encompass those needs present solely because of the inherent nature of the regulatory scheme. See *Quinn*, 288 Minn. at 451, 181 N.W.2d at 701. Similarly, it has the latitude to determine that the benefits which exist solely because of the problems inherent in the regulatory scheme are not benefits under *G.W.N.C.O. [In the Matter of G.W.N.C.O. Transport Inc.]*, PC 113/A-81-1107 (Oct. 26, 1982)] Since American Freight did not demonstrate any other needs, the Board’s determination that American Freight has not shown that public convenience and necessity warrant granting its petition is supported by substantial evidence.

***Petition of American Freight Systems, Inc.***, 380 N.W.2d 192, 197 (Minn.App. 1986).

In this case, the problems and/or perceived benefits arise because of the regulating scheme - Minnesota requires separate intrastate authority based on a showing of need, and denies it if existing permit carriers can meet the need(s). As was noted in ***American Freight***, the Commissioner has the discretion to decide whether alleviating problems caused by the regulatory structure itself meet a real need or make operation more convenient. The Administrative Law Judge believes the service proposed would make things convenient but does not address a need within the meaning of the statute.

Renzenberger maintains that Armadillo is attempting to avoid competition in the competitive field of rail crew transportation. Armadillo has demonstrated that competition already exists for this business in Minnesota and that all existing customers' needs are being met. Renzenberger is attempting to use the existence of its business in states other than Minnesota to demonstrate a need for its intrastate service here. The ability to arrange intrastate moves in states other than Minnesota through Renzenberger is immaterial to demonstrating whether particular intrastate authority should be granted to Renzenberger in Minnesota.

Both I&M and DM&E anticipate dramatic growth in their rail traffic, and reason that their need for crew transportation will increase accordingly. The evidence to support this growth is, at this time, speculative. I&M expects to win the business of transporting the output of a new manufacturing plant. DM&E anticipates hauling coal over trackage that has not yet been laid to serve a need not yet developed. The projections of these two railroads do not constitute a showing of need beyond the ability of existing carriers to provide.

Under the statutory system of permit authority, once a need has been shown, the burden shifts to the Protestant to show that existing permitted carriers can meet the need. Armadillo has met that burden, so it is appropriate to deny a grant of this Petition.

R.C.L.