

Portland Airport Limousine Co., Inc.,

d/b/a PALCO AIR CARGO

v.

STAR INSURANCE COMPANY

Docket NO. INS-03-415

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DECISION AND ORDER

This adjudicatory proceeding arises out of a petition filed with the Superintendent by Portland Airport Limousine Co., Inc., *d/b/a* Palco Air Cargo, pursuant to 24 A M.R.S.A. §§ 229 and 2320(3), requesting that the Superintendent order Palco's former workers' compensation insurer, Star Insurance Company, to lower its workers' compensation premium for the policy covering Palco from August 20 until November 1, 2002. Based on the evidence adduced at the hearing held today¹, the petition is granted on the ground that Star has waived its right to impose the rate increase at issue.

Palco describes its core business as "picking up and delivering packages from the airport," mostly within Maine and New Hampshire. Its largest customer is L.L. Bean. Historically, its business has been classified for workers' compensation rating purposes in Code 7231 (Trucking – Mail or Parcel Delivery) in the uniform classification system for workers' compensation insurance rating.²

Palco first obtained insurance with Star Insurance Company for the 2001–02 policy period. Initially, this coverage was rated, like Palco's prior coverage, as Mail or Parcel Delivery. However, Star conducted a site visit in the fall of 2001, after the policy was in force, and learned that Palco hauls packages in large quantities using tractor-trailers, occasionally as far as New York and New Jersey, and that its activities for L.L. Bean include picking up containers at the Auburn freight terminal and hauling them to an L.L. Bean distribution facility.

The coverage was placed through Ernie Jordan of the Chalmers Agency. Neither Mr. Jordan nor the Chalmers Agency is a party to this proceeding, and Mr. Jordan was not called as a witness by either party. Each party has offered credible and consistent testimony regarding its dealings with Mr. Jordan. Based upon this testimony, I find that Star decided that it would not be appropriate to change the rate midterm because Star competed for the Palco account quoting the rates for Mail or Parcel Delivery, but that Palco would be reclassified for the following year as Code 7229 (Trucking – Long Distance Hauling), at a substantially higher manual rate. Star promptly communicated that decision to Mr. Jordan, but he did not warn Palco. The following July, Star sent Mr. Jordan a renewal quote for Palco, which Mr. Jordan did not forward for at least three weeks. According to Palco, the first notice of the rate increase was received on August 15, only four days before the last day of coverage. According to Star, Mr. Jordan recently advised them that he recalls having sent notice on August

5. Even if this is accurate, however, it is undisputed that Mr. Jordan delayed forwarding the notice until well after the deadline established by the Maine Insurance Code, 24 A M.R.S.A. § 2908(4).

The statutory remedy for this violation is the right to replace the coverage with another insurer, without penalty, and to obtain a 30-day interim extension of coverage at the lower rate with the prior insurer, subject only to such general rate adjustments as are applicable to the entire class of business. However, after consultation with Mr. Jordan, Palco requested additional time to shop the account, and obtained replacement coverage (rated as Mail or Parcel Delivery) effective November 1, 2002, which was 78 days after Palco claims to have first received notice. It was Palco's understanding, based on its communications with Mr. Jordan, that this would not be a problem and that Star would continue to cover Palco as Mail or Parcel Delivery during this period. Unfortunately, Mr. Jordan did not communicate the request to Star, which had it know would have denied the request.

Mr. Jordan was acting as Star's agent in this matter. 24-A M.R.S.A. §§ 1445(1)(D) & 2422(2). Accordingly, he had the power to extend the 30-day deadline on Star's behalf for a reasonable period of time, and I find that he did so.

Order and Notice of Appeal Rights

It is therefore *ORDERED*:

1. The Petition is *GRANTED*.
2. Star shall bill Palco for the 2002-03 policy on a pro rata basis for the period of coverage, using the rates in force on August 20, 2003 but applying Code 7231 (Trucking - Mail or Parcel Delivery) together with any applicable exceptions in a manner consistent with the prior policy.

This Decision and Order is a final agency action of the Superintendent of Insurance within the meaning of the Maine Administrative Procedure Act. It is appealable to the Superior Court in the manner provided in 24-A M.R.S.A. § 236 (2000) and M.R. Civ. P. 80C. Any party to the hearing may initiate an appeal within thirty days after receiving this notice. Any aggrieved non-party whose interests are substantially and directly affected by this Decision and Order may initiate an appeal on or before August 6, 2003. There is no automatic stay pending appeal; application for stay may be made in the manner provided in 5 M.R.S.A. § 11004.

¹ Pursuant to 24-A M.R.S.A. § 210, the Superintendent has appointed Bureau of Insurance Attorney Robert Alan Wake to serve as hearing officer, with full decisionmaking authority.

² Pursuant to 24-A M.R.S.A. § 2382-B, workers' compensation insurers must adhere to a uniform classification system approved by the Superintendent and administered by the designated workers' compensation advisory organization, which is the National Council on Compensation Insurance ("NCCI").

PER ORDER OF THE SUPERINTENDENT OF INSURANCE

JUNE 27, 2003

ROBERT ALAN WAKE
DESIGNATED HEARING OFFICER