

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,375

IN THE MATTER OF:

Served May 23, 2008

OSWIN ROSE, Investigation of Failure)
to Produce Manifests and Order to)
Show Cause)

Case No. MP-2007-246

This matter is before the Commission on respondent's response to Order No. 10,926, served November 20, 2007.

I. BACKGROUND

The Commission has jurisdiction over "the rates, charges, regulations, and minimum insurance requirements for taxicabs and other vehicles that perform a taxicab service, where the taxicab or other vehicle (i) has a seating capacity of 9 persons or less, including the driver; and (ii) provides transportation from one signatory to another within the Metropolitan District."¹

On August 17, 2007, the Commission received a complaint against Oswin Rose, District of Columbia Hack License No. 71616, alleging that Mr. Rose overcharged for a taxicab trip on that day from Washington, D.C., to Silver Spring, Maryland.

Commission staff calculated the appropriate fare for the trip alleged in the complaint, and determined that the complaint made out a *prima facie* case of an overcharge on an interstate trip. Staff then contacted the District of Columbia Taxicab Commission to confirm the identity of the driver and obtain contact information.

Commission staff subsequently sent a letter to Mr. Rose, notifying him to appear at the Commission on September 26 with his passenger manifests for the period beginning August 1, 2007, and ending August 31, 2007.

Mr. Rose appeared at the appointed time but produced only two days' worth of manifests. According to Mr. Rose, the manifests from the period in question had become waterlogged when beverages stored in the trunk of Mr. Rose's taxicab leaked from their containers. Mr. Rose apparently was only able to partially reconstruct two manifests.

Under Commission Order No. 91, which was in effect at the time of the trip in question, Mr. Rose's duty to keep and preserve daily trip manifests was described as follows:

¹ Compact, Title II, Article XI, Section 1(b).

1. (a). Records

The driver of each taxicab, whether owner or employee, shall keep a daily manifest dated and signed by the driver upon which he shall enter for each engagement the points of origin and destination, odometer reading at origin and destination, the fare collected and the number of passengers. The manifests shall be preserved and be available for examination by the Commission for a period of one year.

Order No. 10,926 accordingly directed Mr. Rose to show cause why he should not be assessed a civil forfeiture for violating Commission Order No. 91 by not preserving his daily manifests and making them available for examination by the Commission. The order also gave Mr. Rose fifteen days to file a written request for oral hearing, specifying the grounds for the request, describing the evidence to be adduced and explaining why such evidence cannot be adduced without an oral hearing.

II. RESPONSE

Mr. Rose filed a written response on December 12, 2007, that is in part denominated a "request for Oral Hearing." The request, however, is untimely and does not specify any grounds. It neither describes the evidence to be adduced nor explains why such evidence cannot be adduced without an oral hearing.

As for Mr. Rose's failure to produce the original manifests, the response adds the following: "[A] reasonable man would not expect that the Commission would have expected waterlogged, mildewed and disintegrated manifests with an unpleasant odor to be taken to their office. That apart, attempting to enter the building with decayed matter would have raised security concerns."

III. ASSESSMENT OF FORFEITURE

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement, or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.²

"Knowingly" means with perception of the underlying facts, not that such facts establish a violation.³ "Willfully" describes conduct marked by careless disregard.⁴ Employee negligence is no defense.⁵

² Compact, tit. II, art. XIII, § 6(f).

³ *In re Jimmie Lee Davenport & James L. Hughes*, No. MP-04-164, Order No. 9851 (Aug. 18, 2006).

⁴ *Id.*

⁵ *Id.* To hold carriers not liable for violations due to mere indifference, inadvertence, or negligence of employees would defeat the purpose of civil

By his own testimony, it is clear Mr. Rose failed to make a reasonable effort to preserve his manifests. The Commission does not regard storing business records in the trunk of a taxicab as a reasonable method for preserving such documents for one year. On the contrary, the constant loading and unloading of the trunk is highly conducive to exactly the sort of mishap alleged by Mr. Rose. It is more reasonably calculated to destroy documents than to preserve them.

Further, it not only seems incredible that an "Arizona Ice Tea Leak" could "waterlog" an entire month of manifests, but they would have to have been neglected for a considerable period of time in order to "mildew" and "disintegrate". This is precisely the sort of careless disregard contemplated by the civil forfeiture provision of the Compact.

We therefore find that Mr. Rose violated Commission Order No. 91 and that the violation was knowing and willful. Consequently, we find that respondent has failed to show cause why the Commission should not assess a civil forfeiture of \$250.⁶

THEREFORE, IT IS ORDERED:

1. That the request for oral hearing is denied.

2. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against respondent in the amount of \$250 for knowingly and willfully violating Commission Order No. 91.

3. That respondent is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of two hundred fifty dollars (\$250).

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.
Executive Director

penalties. *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

⁶ See *Fon Pius Nde t/a Piusmed World Transport*, No. MP-07-187, Order No. 11,362 (May 15, 2008) (assessing \$250 in part for failing to produce business records).