

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 15,288

IN THE MATTER OF:

Served January 6, 2015

WASHINGTON SHUTTLE, INC., Trading)
as SUPERSHUTTLE, WMATC No. 369)
Investigation of Violation of)
Commission Regulation No. 64)

Case No. MP-2011-099

This matter is before the Commission on respondent's response to Order No. 14,945, served July 25, 2014, directing respondent to show cause why the Commission should not assess a civil forfeiture against respondent for violating 49 C.F.R. § 395.8, as adopted by WMATC Regulation No. 64, between October 1, 2013, and December 31, 2013.

I. BACKGROUND

This investigation was initiated on November 28, 2011, in Order No. 13,063 to review respondent's compliance with the Commission's safety regulation, Regulation No. 64. One of respondent's 10-passenger vans had been involved in a fatal crash on the Dulles Access Road on August 15, 2011. The Commission determined that the public interest warranted a comprehensive review of respondent's compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) in Title 49 of the Code of Federal Regulations (C.F.R.s) as adopted by Commission Regulation No. 64.

A comprehensive onsite safety compliance review and evaluation of respondent's records and vehicles was conducted by Consolidated Safety Services (CSS) on behalf of the Commission during the week of February 6, 2012. CSS delivered its report to WMATC on February 14, 2012. Based on the findings, conclusions, and recommendations in the report, respondent was assigned a proposed safety rating of "Unsatisfactory" on March 1, 2012.¹

The violations warranting the Unsatisfactory rating involved failure to comply with 49 C.F.R. §§:

- 391.51(b)(2) -Inquiries into drivers' motor vehicle records
- 391.51(b)(7) - Medical Examiners' Certificates
- 395.8(a) - Driver's Record of Duty Status
- 396.3(b) - Minimum Records of Maintenance and Inspection
- 396.11(a) - Driver's Vehicle Inspection Report

¹ An Unsatisfactory rating indicates that a carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard in 49 C.F.R. 385.5(a) and that a carrier is operating at an unacceptable level of compliance.

Respondent promptly corrected these violations, and its safety rating was upgraded by letter to "Conditional" on April 17, 2012, and by order to "Satisfactory" on February 5, 2013.²

Ultimately, the Commission decided that it would monitor respondent's safety compliance as recommended by CSS. To that end, beginning with the 3-month period ending March 31, 2013, and ending with the 3-month period ending December 31, 2013, respondent was directed to file a quarterly list of drivers and vehicles employed during each period, which Commission staff would use in sampling the critical record types found missing during the February 2012 review: driver motor vehicle records, medical examiner certificates, hours-of-service records, vehicle maintenance records, and driver vehicle inspection reports.

The records produced by respondent for the first three quarters of 2013 raised no substantial issues. The documents produced for the fourth quarter, however, appeared to show a violation of 49 C.F.R. § 395.8(a) - Driver's Record of Duty Status, which provides that: "[e]xcept for a private motor carrier of passengers (nonbusiness), every motor carrier shall require every driver used by the motor carrier to record his/her duty status for each 24 hour period"

The fourth-quarter documents produced by respondent included duty status records for driver Peter Annan covering the period beginning September 30, 2013, and ending January 5, 2014. According to these records, Mr. Annan was on duty for 70 hours over the course of eight consecutive days - a violation of 49 C.F.R. § 395.5(b)(2) - on multiple occasions in the fourth quarter of 2013. Respondent's explanation of this is as follows:

Mr. Annan was a Washington Shuttle franchisee. As you know, all Super Shuttle operators are now required to complete Record of Duty Status Form on a daily basis. Forms are submitted to the Washington Shuttle management at the end of each week. Any operator that fails to submit the previous week's Record of Duty Status Form will have their operator identification [number] disabled which, in turn, makes them unable to work until the completed form is submitted. Beginning in the week ending September 29, 2013, Mr. Annan employed a relief driver, Andrew Andoh. Mr. Andoh failed to submit his duty status form at the end of the week, and as a result, his operator identification number was made inactive. Nevertheless, Mr. Annan continued to permit Mr. Andoh to operate the van using Mr. Annan's operator identification number and recording hours of service for both operators on a single duty status

² WMATC Order No. 13,726 at 3-4 (Feb. 5, 2013).

sheet. In essence, Mr. Andoh was driving shifts by using Mr. Annan's number.

We observed in Order No. 14,945 that for this situation to have persisted for some 14 weeks could only be the result of a failure to adequately monitor driver hours-of-duty records. And although we acknowledged respondent's representation that it had since "instituted several additional levels of review for weekly hours submitted," we concluded that permitting such conduct to occur without consequence would send the wrong message to respondent and other WMATC carriers. Accordingly, Order No. 14,945 gave respondent 30 days to show cause why the Commission should not assess a civil forfeiture against respondent for violating 49 C.F.R. § 395.8.

II. RESPONSE

In its response, respondent describes and documents³ the additional levels of review that respondent implemented after its discovery of Mr. Andoh's failure to record his hours of service under his own name. According to respondent:

Each [vehicle] operator is now given an individual login number. All operators are required to login and logout at the beginning and end of each shift. If an operator intends to use a number which has already been used in the system recently, the system will give an "invalid operator ID" error message and inactivate the ID number.

Respondent further explains that each week, a manager uses the login data to verify the hours reported by each operator on respondent's "DOT Hours of Service" form.

Finally, respondent contends that neither Mr. Annan nor Mr. Andoh exceeded the hours of service limits of 49 C.F.R. § 395.5. Respondent, however, does not contend that Mr. Andoh's failure to record his hours of service under his own name is not a violation of 49 C.F.R. § 395.8.

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.⁴

³ Respondent produced hours-of-service records for the third quarter of 2014 for certain drivers identified for sampling by Commission staff.

⁴ Compact, tit. II, art. XIII, § 6(f).

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁵ The term "willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard whether or not one has the right so to act.⁶

Employee negligence is no defense.⁷ "To hold carriers not liable for penalties where the violations . . . are due to mere indifference, inadvertence, or negligence of employees would defeat the purpose of" the statute.⁸

The purpose of 49 C.F.R. § 395.8 is to facilitate enforcement of the hours of service limitations in 49 C.F.R. § 395.5. Combining the hours of two drivers into the report of one driver defeats that purpose. Moreover, management was culpable in allowing this violation to persist for an extended period of time.

As we observed in Order No. 14,945, management thought that the Peter Annan duty records were being submitted daily for him alone. And yet, his apparent repeated violation of the 70-hours-in-eight-days rule did not register with management for more than three months. Clearly, respondent failed to adequately monitor hours-of-service records for a substantial portion of the fourth quarter of 2013.

We therefore conclude that the record supports assessment of a forfeiture of \$2,000. In calculating the amount of forfeiture, we have taken into account that this is the second time respondent has been found in violation of 49 C.F.R. § 395.8. The Commission assessed a \$1,000 forfeiture in this proceeding for the first violation.⁹ The Commission has doubled forfeiture assessments in the past under similar circumstances.¹⁰

IV. ORDER TO EXTEND MONITORING

The Commission initiated this investigation after one of respondent's 10-passenger vans was involved in a fatal crash on the Dulles Airport Access Road on August 15, 2011. Although the Metropolitan Washington Airports Authority Police Department attributed the crash solely to driver error, the Commission's review of respondent's safety records and inspection of respondent's vehicles revealed serious safety deficiencies, resulting in a proposed safety

⁵ *In re Veolia Transp. On Demand, Inc., & Washington Shuttle, Inc., t/a SuperShuttle*, No. AP-07-006, Order No. 11,580 at 6 (Sept. 18, 2008).

⁶ *Id.* at 6.

⁷ *In re Exec. Tech. Solutions, LLC*, No. MP-10-090, Order No. 13,044 at 4 (Nov. 8, 2011).

⁸ *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 244, 58 S. Ct. 533, 535 (1938).

⁹ WMATC Order No. 14,114 (July 31, 2013).

¹⁰ See *In re Skyhawk Logistics, Inc.*, No. MP-09-044, Order No. 12,101 (July 24, 2009) (doubling forfeiture assessed against recidivist).

rating of Unsatisfactory on March 1, 2012. Respondent promptly corrected the deficiencies, and its safety rating was upgraded to "Conditional" on April 17, 2012. A later follow-up review led to a further upgrade of the safety rating to "Satisfactory" on February 5, 2013, subject to the Commission monitoring respondent's safety recordkeeping system for one year to confirm respondent's ongoing compliance.

Although no substantial issues were discovered during the first three quarters of 2013, and although a sample of respondent's hours-of-service records for the third quarter of 2014 reveal no further hours-of-service violations, the violation of 49 C.F.R. § 395.8 in the fourth quarter of 2013 is serious enough to warrant continued monitoring of respondent's hours-of-service records.

Respondent shall produce such records for the fourth quarter of 2014 and the first quarter of 2015 as directed below.

THEREFORE, IT IS ORDERED:

1. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against respondent in the amount of \$2,000 for knowingly and willfully violating 49 C.F.R. § 395.8(a), as adopted by WMATC Regulation No. 64.

2. That respondent is hereby directed to pay to the Commission within 30 days of the date of this order, by check or money order, the sum of two thousand dollars (\$2,000).

3. That beginning with the 3-month period ending December 31, 2014, and ending with the 3-month period ending March 31, 2015, respondent shall file a quarterly list of drivers employed during each period, which Commission staff shall use in sampling driver hours-of-service records and related documents. The lists shall be produced within 10 days following the end of each period, and sample documents requested by Commission staff shall be produced within 10 days of each request. Each driver list shall identify the period and include the following information for each driver that operated a vehicle under respondent's WMATC authority during that period: full name, date hired, vehicle(s) operated, date terminated (as applicable), and franchisee status.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER AND HOLCOMB:



William S. Morrow, Jr.
Executive Director