



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250

(360) 664-1160 • TTY (360) 586-8203

April 19, 2018

Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P.O. Box 47250
Olympia, Washington 98504-7250

RE: *Washington Utilities and Transportation Commission v. 3Z Movers LLC*
Commission Staff's Response to Application for Mitigation of Penalties
Docket TV-180198

Dear Mr. King:

On Feb. 28, 2018, Motor Carrier Safety Investigator Francine Gagne conducted a routine safety investigation of 3Z Movers LLC (3Z Movers or Company). A safety investigation is an in-depth examination of the motor carrier's compliance with regulations that the Federal Motor Carrier Safety Administration (FMCSA) has identified as "acute" or "critical."¹ Acute regulations are identified where non-compliance is so severe as to require immediate corrective action regardless of the overall safety posture of the motor carrier. Violations of critical regulations are generally indicative of breakdowns in a carrier's management controls.

Non-compliance with acute regulations and patterns of non-compliance with critical regulations are quantitatively linked to inadequate safety management controls and unusually higher than average accident rates.² Ms. Gagne documented 165 violations of critical regulations, all of which were first-time violations, resulting in a conditional safety rating.

The Washington Utilities and Transportation Commission's (Commission) Enforcement Policy provides that some Commission requirements are so essential to safe operations that the Commission may issue penalties for a first-time violation, even if Commission staff (Staff) has not previously provided technical assistance on specific issues. The Commission will assess penalties for any repeat violations of critical regulations, including for each occurrence of a repeat violation.³

¹ Code of Federal Regulations, Appendix B to Part 385—Explanation of safety rating process

² *Id.*

³ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for each violation of Washington Administrative Code (WAC) 480-15-550, WAC 480-15-555, WAC 480-15-560, and WAC 480-15-570. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On March 20, 2018, the Commission issued a penalty assessment under Docket TV-180198 against 3Z Movers in the amount of \$15,200 for 165 critical violations of WAC 480-15-550 Cargo Insurance, WAC 480-15-555 Criminal Background Checks for Prospective Employees, WAC 480-15-560 Equipment Safety Requirements, and WAC 480-15-570 Driver Safety Requirements, which require household goods carriers to comply with Title 49 Code of Federal Regulations (CFR) Part 391 – Qualifications of Drivers; CFR Part 395 – Hours of Service of Drivers; and CFR Part 396 – Inspection, Repair, and Maintenance; as follows:

- **Seventy-two violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** 3Z Movers allowed employee Boubacar Zida to drive on 72 separate occasions without having been medically examined and certified. The violations occurred during a six month period between August 3, 2017, and January 14, 2018.
- **One violation of Title 49 CFR Part 391.51(a) – Failing to maintain a driver qualification file for each driver it employs.** 3Z Movers failed to maintain a driver qualification file for driver Boubacar Zida.
- **Fourteen violations of Title 49 CFR Part 395.8(a)(1) – Failing to require driver to make a record of duty status using the appropriate method.** 3Z Movers allowed employee Boubacar Zida to drive without making a record of duty status using the appropriate method on 14 occasions. The Company's time records failed to meet the requirements for the short haul exemption.
- **One violation of Title 49 CFR Part 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** 3Z Movers failed to maintain a vehicle maintenance file for the carrier's commercial motor vehicle.
- **One violation of Title 49 CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected.** 3Z Movers failed to maintain records of a periodic vehicle inspection.
- **Seventy-two violations of WAC 480-15-550 – Failing to obtain and maintain proper levels of cargo insurance.** 3Z Movers operated a commercial motor vehicle on 72 occasions without evidence of required cargo insurance. The violations occurred during a six month period between August 3, 2017, and January 14, 2018.
- **Four violations of WAC 480-15-555 – Failing to acquire criminal background check of prospective employee.** 3Z Movers failed to obtain a criminal background check for its employees Ramde, Cody, Roy, and Ali.

On April 17, 2018, 3Z Movers filed with the Commission its application for mitigation of penalties. Boubacar Zida, owner of 3Z Movers, admits the violations, offers explanations for the violations that occurred, includes supporting documentation for the corrective action steps taken by the Company, and asks that the penalties be reduced for reasons set out in his response. Staff's response to the mitigation request is below.

- **Mitigation Request: Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** 3Z Movers states that Boubacar Zida was medically examined and certified upon receiving notice of this safety violation. The Company provided a copy of Boubacar Zida's medical examiner's certificate, valid through Feb. 6, 2020.

Staff response: It is 3Z Movers' responsibility to ensure that its drivers have current medical certificates and that the Company not allow its drivers to operate a motor vehicle when medical certification cannot be verified. 3Z Movers acknowledged its responsibility to understand and comply with applicable motor carrier safety regulations on numerous occasions prior to the safety investigation on Feb. 28, 2018.

However, the Company promptly corrected these first-time violations and provided a copy of Boubacar Zida's valid medical certificate to prevent future occurrences of this fundamental safety requirement. Staff is also sensitive to the Company's financial situation and understands the impacts a significant penalty would have on a small business. It is for these reasons that Staff recommends a reduction of this penalty.

The assessed penalty is \$7,200 for 72 occurrences of this violation. Staff recommends the penalty be reduced by half, for a total of \$3,600.

- **Mitigation Request: Title 49 CFR Part 391.51(a) – Failing to maintain a driver qualification file for each driver it employs.** 3Z Movers states that it has compiled a driver qualification file for its driver Boubacar Zida. The Company states that the driver qualification file now includes Mr. Zida's employment history, driving history, insurance history, medical examiner's certificate, and a copy of the driver's license.

Staff response: 3Z Movers promptly corrected this first-time violation to prevent future occurrences of this safety requirement. The assessed penalty is \$100 for one violation of this type. Staff recommends no mitigation of this penalty.

- **Mitigation Request: Title 49 CFR Part 395.8(a)(1) – Failing to require driver to make a record of duty status using the appropriate method.** 3Z Movers states that it would like more information regarding this safety violation for future compliance, as the Company is unaware of the occurrences in which it did not meet the short haul exemption.

Staff response: 3Z Movers failed to document any new procedures that it has implemented to comply with this safety requirement. The assessed penalty is \$100 for one violation of this type. Staff recommends no mitigation of this penalty and will offer the Company further technical assistance regarding this specific violation.

- **Mitigation Request: Title 49 CFR Part 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** 3Z Movers states that it possessed vehicle inspection and maintenance documentation at the time of the routine safety investigation; however, the Company failed to present the file to Staff. The Company states that it is compiling a proper inspection and maintenance file, and will continue to maintain that file moving forward.

Staff response: 3Z Movers is in the process of creating a vehicle inspection and maintenance file; however, the Company failed to provide an example of a file, a list of documents it keeps in such a file, or any supporting evidence.

The assessed penalty is \$100 for one violation of this type. Staff recommends no mitigation of this penalty.

- **Mitigation Request: Title 49 CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected.** 3Z Movers states that its commercial motor vehicle is regularly inspected and maintained. The Company states that the inspection and maintenance includes the brakes, oil, tires, lights, engine, transmission, etc.

Staff response: The Company states that its commercial motor vehicle is regularly inspected and maintained; however, all components of a required Department of Transportation annual vehicle inspection report are not covered during a routine service.

The assessed penalty is \$100 for one violation of this type. Staff recommends no mitigation of this penalty.

- **Mitigation Request: WAC 480-15-550 – Failing to obtain and maintain proper levels of cargo insurance.** 3Z Movers states that it has obtained cargo insurance through the insurance carrier National Indemnity Company. The Company provided a copy of the cargo insurance policy, valid through April 12, 2019.

Staff response: It is 3Z Movers' responsibility to ensure that it has the required cargo insurance to protect all household goods transported under its permit and to not allow its Company to transport household goods when cargo insurance cannot be verified. The Commission can suspend or cancel the permit of any household goods carrier operating without the required cargo insurance coverage. In addition, 3Z Movers acknowledged its responsibility to understand and comply with applicable motor carrier safety regulations on numerous occasions prior to the compliance review on Feb. 28, 2018.

However, the Company promptly corrected these first-time violations and provided a copy of 3Z Movers' active cargo insurance policy to prevent future occurrences of this fundamental safety requirement. Staff is also sensitive to the Company's financial situation and understands the impacts a significant penalty would have on a small business. It is for these reasons that Staff recommends a reduction of this penalty.

The assessed penalty is \$7,200 for 72 occurrences of this violation. Staff recommends the penalty be reduced by half, for a total of \$3,600.

- **Mitigation Request: WAC 480-15-555 – Failing to acquire criminal background check of prospective employee.** 3Z Movers states that one of the violations was for Ali, who maintains his own Commission-permitted household goods company, where that employee was already subject to Staff completing a criminal background check. 3Z Movers states that Cody and Roy are no longer with the Company, and states that 3Z Movers is in the process of acquiring a criminal background check for Ramde.

Staff response: Employees with unknown criminal histories raise serious concerns about the security of the customer's belongings, as well as the customer's personal safety. 3Z Movers states that it is in the process of correcting these first-time violations, but failed to provide Staff with any supporting evidence or documentation. Staff was also unable to verify that Ali was subject to a Commission-completed criminal background check, as the company referenced in 3Z Movers' mitigation request does not name Ali in the application.

The assessed penalty is \$400 for four occurrences of this violation. Staff recommends no mitigation of this penalty.

3Z Movers is a small company with one driver and one commercial motor vehicle. The Company reported \$50,400 in gross revenue and 11,800 miles traveled in 2017.

Staff recommends that the penalty of \$15,200 be reduced to \$8,000. Staff further recommends that \$4,000 of the reduced penalty be suspended for a period of two years before being waived, on the conditions that: 1) the Company not incur any repeat violations of critical regulations, 2) Staff conducts a follow-up safety investigation in two years to review the Company's safety management practices, and 3) 3Z Movers pays the \$4,000 portion of the penalty that is not suspended.

If you have any questions, please contact Jason Hoxit, Compliance Investigator, Consumer Protection, at 360-664-1320, or by e-mail at jason.hoxit@utc.wa.gov.

Sincerely,



Bridgit Feeser
Assistant Director, Consumer Protection