



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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Date: March 31, 2020

To: Samantha Doyle, Administrative Law Judge, Administrative Law Division

From: Mathew Perkinson, Assistant Director, Transportation Safety Division

Re: **TV-200152 and TV-200153 Backbreakers NW, LLC**

Evaluation of Safety Management Plan, Recommendations regarding the company's safety rating, and the cancellation of household goods operating authority (THG068365)

On March 3, 2020, staff completed a routine safety investigation of Backbreakers NW, LLC (Backbreakers or company) which resulted in a proposed *unsatisfactory* safety rating.

Commission rules prohibit motor carriers from operating beginning on the 61st day after the date of the notice of a proposed unsatisfactory rating. A company may request a change in its safety rating based on evidence that it has taken corrective actions to address the identified violations, and that its operations currently meet the safety standard and factors in 49 CFR 385.5 and 385.7. In this case, Backbreakers has until May 3, 2020, to come into compliance with applicable laws and rules by obtaining commission approval of a safety management plan.

The proposed unsatisfactory safety rating was based on five violations of critical regulations – 391.51(b)(2), 395.8(a)(1), 396.3(b), 396.17(a), and WAC 480-15-555.

“**Critical**” regulations are those identified as such where non-compliance relates to management and operational controls. These are indicative of breakdowns in a company's management controls. Patterns of non-compliance with a critical regulation are linked to inadequate safety management controls and higher than average accident rates.

Critical violations discovered during investigation:

1. Five violations of WAC 480-15-555 – Failing to conduct or retain paperwork containing criminal background check for a household goods carrier in the state of Washington as required.
2. Two violations of Title 49 CFR § 391.51(b)(2) – Failing to maintain driving record inquiries in driver qualification file.
3. Ninety violations of Title 49 CFR § 395.8(a)(1) – Failing to require driver to prepare a record of duty status using the appropriate method.

4. Two violations of Title 49 CFR § 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.
5. Two violations of Title 49 CFR § 396.17(a) – Using a commercial motor vehicle not periodically inspected.

In a March 10, 2020, Notice of Intent to Cancel Certificate, the commission instructed the company to submit its proposed safety management plan no later than April 2, 2020.

On March 16, 2020, the commission issued a penalty assessment against Backbreakers in the amount of \$900 as a result of violations discovered during the routine safety investigation.¹ The penalty includes:

1. A \$500 penalty for five violations of WAC 480-15-555 for failing to conduct or retain paperwork containing criminal background check for household goods employees.
2. A \$100 penalty for two violations of 49 CFR § 391.51(b)(2) for failing to maintain driving record inquiries in driver qualification files.
3. A \$100 penalty for 90 violations of 49 CFR § 395.8(a)(1) for failing to require drivers to prepare a record of duty status.
4. A \$100 penalty for two violations of 49 CFR § 396.3(b) for failing to keep minimum records of inspection and vehicle maintenance.
5. A \$100 penalty for two violations of 49 CFR § 396.17(a) for using a commercial motor vehicle not periodically inspected.

On March 18, 2020, Backbreakers filed with the commission its application for mitigation of penalties. In the request for mitigation, Jeff Hansen, owner of Backbreakers, admitted the violations and believed that the penalty should be reduced. Backbreakers asked for a commission decision based solely on the information provided and waived its right to a hearing.

On March 27, 2020, Backbreakers submitted a safety management plan addressing each violation noted during the investigation. Staff only recommends approving a safety management plan that addresses the following seven items:

1. The plan must address each acute, critical, or serious violation discovered during the most recent investigation. It must also include corrective actions that address other violations noted during the investigation.
2. Identify why the violations were permitted to occur.
3. Discuss the actions taken to correct the deficiency or deficiencies that allowed the violations to occur. Include actual documentation of this corrective action.
4. Outline actions taken to ensure that similar violations do not reoccur in the future. The plan must demonstrate that the company's operations currently meet the safety standard and factors specified in 49 CFR § 385.5 and 385.7. To do so, the plan must demonstrate the company now

¹ TV-200152

has adequate safety management controls in place which function effectively to ensure acceptable compliance with applicable safety requirements.

5. If the request includes actions that will be conducted in the near future, such as training, reorganization of departments, purchasing of computer programs, etc., companies must include a detailed description of the activity or training and a schedule of when that activity will commence and when it will be completed.
6. Include any additional documentation relating to motor carrier safety and the prevention of crashes that the company believes supports its request.
7. Include a written statement certifying the company will operate within federal and state regulations and the company's operation currently meets the safety standard and factors specific in 49 CFR § 385.5 and 385.7. A corporate officer, partner, or the owner of the company must sign the statement.

Summary and Recommendations

Staff reviewed Backbreakers' safety management plan and concludes it is acceptable and meets the requirements of 49 CFR § 385. Because of the company's actions, staff recommends the commission upgrade the company's safety rating to conditional and extend Backbreakers provisional period until such a time that the carrier achieves a satisfactory safety rating. Staff further recommends that Dockets TV-200152 and TV-200153 be consolidated.

Staff confirmed with the company that it waives its right to a hearing and is recommending that the brief adjudicative proceeding scheduled for April 16, 2020, be cancelled.

In response to the request for mitigation, the company corrected each violation and took steps to prevent future occurrences. Staff recommends reducing the assessed penalty of \$900 penalty to \$450. Staff further recommends that \$250 of the penalty be suspended for a period of two years before being waived, on the conditions that: (1) staff conducts a follow-up safety investigation at least six months from the date of an Order, (2) the company may not incur any repeat violations of critical regulations, and (3) Backbreakers pays the \$200 portion of the penalty that is not suspended.

The company took all the required steps to bring its safety operations into compliance with commission regulations. Backbreakers submitted a safety management plan that addresses each violation, identifies how the violations occurred, describes the steps taken to correct them, and put controls in place to ensure the company maintains compliance.

Documentation of driver qualifications, hours of service records, vehicle maintenance records and criminal background check information were included in the plan.