

[Service date August 5, 2015]

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment) DOCKET TE-150531
Against)
) ORDER 02
BREMERTON-KITSAP AIRPORTER,)
) FINAL ORDER UPHOLDING
in the amount of \$1,000) ORDER 01
.....)

BACKGROUND

- 1 Persons operating as a motor carrier in Washington must comply with federal motor carrier safety regulations concerning controlled substances and alcohol use and testing. Failure to maintain a testing program that complies with these requirements is subject to a penalty of up to \$1,500 and an additional \$500 for each noncompliant motor vehicle driver. RCW 80.04.530.

- 2 On February 26, 2015, Commission staff (Staff) conducted a compliance inspection of Bremerton-Kitsap Airporter (BKA or Company). Staff found 20 violations of the testing program requirements. Two of those violations were critical, specifically using a driver prior to receiving a negative pre-employment controlled substance and alcohol use test result.

- 3 On June 10, 2015, the Commission assessed a penalty of \$1,000 against BKA. The Commission exercised its discretion to impose only a penalty of \$500 for each of the two critical violations.

- 4 On June 15, 2015, BKA responded to the Commission’s penalty assessment, denying the violations and requesting that the penalties be discharged or dismissed based on the documents the Company provided. Staff filed a response on June 24, 2015, opposing the request and providing additional documentation to substantiate the violations.

- 5 On June 30, 2015, the Commission entered Order 01 affirming the penalty assessment. The Secretary on delegated authority found that the records and correspondence provided by both the Company and Staff support the finding that two of the Company’s drivers began driving before BKA received the results of those employees’ drug and alcohol

tests. Order 01 concluded that those are critical safety violations that warrant the maximum statutory penalty.

- 6 On July 1, 2015, BKA requested that the Commission review Order 01. The Company included documents that BKA contends demonstrate that the drivers at issue did not begin driving until after the Company received negative pre-employment controlled substance and alcohol use test results. BKA also argues that the Commission publication, “Your Guide to Achieving a Satisfactory Safety Record,” grants companies “a 30 day grace period before the employee is allowed to perform ‘safety sensitive functions,’” and the cited violations occurred within that 30 day period.
- 7 On July 15, 2015, Staff filed its answer to the request for review. Staff states that the time sheet for one driver that BKA included with its review request makes no reference to when he first drove for the Company, and that BKA’s representation that this drive occurred after the Company received his test results conflicts with its Operations Manager’s email statement. With respect to the other driver, Staff asserts that the time sheet that the Company attaches to its request is an altered document that adds information about the driver’s first drive that was not included on the version BKA originally provided. The additional information, moreover, also is inconsistent with a prior email from the Operations Manager. Finally, Staff points out that the 30-day grace period to which BKA refers applies to current employer requests for previous employer alcohol testing information, not to the pre-employment testing at issue here.

DISCUSSION AND DECISION

- 8 The Commission upholds the penalty assessment and Order 01. The documents and communications on which the penalty assessment and Order 01 relied conclusively demonstrate that BKA committed the two violations at issue.
- 9 The Company has provided no credible evidence to the contrary. The time sheet for one driver does not give any information about when that driver first drove for the Company, and the time sheet for the other driver was altered from the original submitted to Staff to include such information. We give no credence to the later document. We also agree with Staff that there is no 30-day grace period for violations of the pre-employment controlled substance and alcohol use testing requirements. BKA was properly assessed a penalty of \$1,000 for its two violations of those requirements.

ORDER

THE COMMISSION ORDERS:

- 10 (1) Bremerton-Kitsap Airporter's challenge to Order 01 is DENIED.
- 11 (2) Bremerton-Kitsap Airporter must pay the assessed \$1,000 penalty no later than August 17, 2015.

DATED at Olympia, Washington, and effective August 5, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

ANN E. RENDAHL, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. No further Commission review is available. Parties may seek judicial review pursuant to RCW 34.04.542.