



**WASHINGTON STATE
LEGISLATIVE BOARD**

UNITED TRANSPORTATION UNION



Records
Washington Utilities & Transportation Commission
Richard Hemstad Building
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250

May 17, 2016

2016 MAY 17 PM 2:25

STATE OF WA
UTIL. AND TRANSP.
COMMISSION

RECEIVED
GENERAL MANAGER

RE: Comments: TE 160231

To Whom It May Concern:

This joint letter, on behalf of over 2800 railroad operating craft personnel working in the State of Washington as Conductors and Locomotive Engineers, is to provide general context in the above referenced proceeding against Professional Transportation Inc., an Indiana corporation.

BACKGROUND

Railroad operations require continuous, ongoing transportation of crew personnel, to and from trains and in "deadhead" transportation between railroad terminals by way of contract crew transportation vehicles. These highway "rubber tire" transportation services operate on a continuous, 24/7/365 basis, traveling both short and long distances, in all weather and road conditions, and in both hours of daylight and darkness. Railroad crew personnel are required, as a condition of their employment, to ride as passengers in these contract crew transportation vehicles as part of their job assignment. Railroad employees do not have a choice or even meaningful input as to the qualifications or abilities of contract crew transportation drivers nor the safety of vehicles they are obligated to ride in. An employee who refuses to obey a railroad company directive to be transported by PTI can result in disciplinary action up to and including dismissal.

As part of their job duties PTI drivers often must locate train crews onboard trains occupying the "mainline" who are required to stop their trains between rail terminals due to the expiration of their "Hours of Service" per Federal Law. Frequently these "mainline" stops between rail terminals are in remote rural areas that are difficult to access. This may require the drivers to travel on unpaved roads or even directly adjacent to the railroad right-of-way on primitive access paths. The most common rail routes in Washington State for crew transportation are between Seattle-Wenatchee, Wenatchee - Spokane, Pasco -Spokane, Pasco - Vancouver/Portland, Portland/Vancouver - Seattle, Seattle-Vancouver BC Canada, and Auburn -Pasco. When train crews reach the Hours of Service limits such "dead in hours" crews must be relieved and then "towed-in" to their destination terminal by PTI operators. Frequently this involves off-highway driving, at night, during adverse weather, to locate and transport the expired train crew.

In 1977, the Washington legislature determined there were legitimate safety concerns and subsequently passed legislation directing the Utilities and Transportation Commission (UTC) to regulate the operational safety of vehicles owned and operated by railroad companies used in railroad employee transportation. Unfortunately, this legislation did *not* envision the later establishment of railroad contract crew transportation companies to perform these tasks. The safety concerns to be addressed by that legislation then shifted from the railroad carriers to contract crew transportation

companies - to whom the 1977 law did not apply. Today there are at least the minimal statutory protections as identified in your agencies complaint filed against PTI in Docket TE-160231. Other than these minimal statutory standards, railroad contract crew transportation companies remain largely unregulated.

SAFETY CONSEQUENCES

Today, many Locomotive Engineers and Conductors can attest to the fact the most dangerous aspect of their railroad jobs is riding as a passenger in railroad contract crew transportation vehicles. There have been numerous incidents, accidents, and injuries over the years involving these vehicles and they continue today:

- **March 23, 2011** – Three were killed and one permanently disabled when a railroad contract crew transportation vehicle was struck by a train on a private crossing owned by BNSF Railway company near Kelso, WA.
- **Since 2013**, there have been three (3) additional extremely serious injury accidents involving Washington State based railroad crews riding in railroad contract crew transportation vehicles operated by PTI.
- **High Driver Turnover** – Poor vehicle standards, mediocre training standards, and very low wages/benefits results in subpar drivers; add to this an extremely high turnover rate among drivers and PTI has created an abysmally dangerous operation.

RAILROAD COMPLICITY

We must point out the railroads have played a role in declining crew transportation safety by outsourcing this work to third party contractors including PTI. The two primary reasons for railroad outsourcing of crew transportation services are:

- 1) Liability Avoidance and,
- 2) Cost Savings.

The railroads are well aware state laws require them to comply with reasonable safety standards when providing crew transportation services to their employees in-house. So they willingly outsource employee crew transportation to out-of-state contractor(s), based mainly in right-to-work states, who operate with substandard safety equipment, drivers, training, and operating practices.

A glaring example of this rail carrier practice can be found in *Kenny vs. BNSF – Summary Judgment – 25 June, 2012. Page 5 - subheading B. CUSA’s Negligence Predicated on a Violation of a Safety Statute*. See all of page 6 and the first paragraph of page 7. (*Attached document provided for reference.)

The portion of interest in this case is the contracted transportation operator’s ability to sidestep the Revised Code of Washington’s definition of a “commercial motor vehicle” or a “private carrier bus”, under RCW 46.61.350. Whereas such code is defined as follows:

(4) For the purposes of this section, “commercial motor vehicle” means: Any vehicle with a manufacture’s seating capacity for eight or more passengers, including the driver, that transports passengers for hire...

The vehicle in question, a Chevy Suburban, with a seating capacity of seven (7) passengers, under RCW 46.61.350, is in fact not a "commercial motor vehicle" or "private carrier bus", which in the final outcome of this case, was one of the two determining factors, of Coach USA not being liable under state law due to negligence.

However, within the last year, all of the crew transport vehicle's owned and operated by the current contracted carrier, Professional Transportation Inc., PTI, that fit the definition of a "commercial motor vehicle" under the state law, which accounted for 80% of their fleet's inventory, have been replaced. As information, these vehicles were previously owned by CUSA, prior to their filing bankruptcy, which were used in the transport of train crews locally and statewide, until such time previously mentioned.

The newly acquired vehicles have less than eight (8) or more seating capacity. With this understanding, one can foresee in any and all-future cases that involve the accusation of negligence in part of the contracted carrier will be overturned, as well.

Together our two organizations have diligently attempted to close the safety gaps being exploited by unscrupulous railroad companies and PTI with more comprehensive legislation covering contract crew transportation companies. PTI and the railroads with their high paid lobbyist lead opposition. This year is the fourth consecutive legislative session that the Railroads Carriers and PTI have obstructed passage of comprehensive contract crew transportation safety legislation in Washington State.


The railroads are well aware that it costs money, to maintain a safe and competent, crew transportation service. Yet they knowingly continue to choose to increase their obscene profits by willfully and knowingly risking employee safety by outsourcing to disreputable low budget operators including PTI. No one, especially a multi-billion dollar railroad corporation, should be allowed such a regulatory loophole; this conduct undermines safety as well as financial accountability to both employees and the general public who share the road with these vehicles. In this case, strict accountability must be enforced in the interest of railroad employees who are responsible for ensuring the safe and efficient movement of our nation's freight. We stand to suffer the highest of consequences due to willful disregard of the most basic necessities of safety by PTI operating under the authority of railroad carriers.

RECOMMENDATIONS

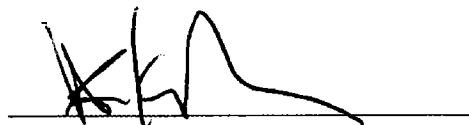
The maximum penalty allowable under the law should be imposed on PTI. WUTC already afforded PTI an opportunity to correct deficiencies to receive a lower fine for prior violations. How did PTI respond? By the commission of substantially more regulatory violations that includes intentional deceit and fraud. Based on the information contained in the WUTC complaint, we believe that PTI's violations rise to a level warranting the filing of a criminal complaint.

As for the railroad carriers themselves; while it may not be possible to directly link them to PTI's misconduct and fraud, there clearly is complicity. The State Attorney General should consider consulting with the U.S. Attorney to determine if there are any applicable federal statues under which the railroad can be held accountable for the willful disregard for safety regulations by their agent PTI.

Sincerely,



Shahraim C. Allen, Chairman
BLET WA State Legislative Board
517 S. 45th Street
Tacoma, WA. 98418



Herb Krohn, Director
SMART-TD WA State Legislative Board
11225 Roosevelt Way N.E.
Seattle, WA. 98125