

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against PACIFIC NORTHWEST TRANSPORTATION SERVICE, INC. d/b/a CAPITAL AEROPORTER in the amount of \$200	DOCKET TE-160332 ORDER 01 ORDER DISMISSING PENALTY; DENYING MITIGATION
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BACKGROUND

- 1 On March 29, 2016, the Washington Utilities and Transportation Commission (Commission) assessed a \$200 penalty (Penalty Assessment) against Pacific Northwest Transportation, Inc. d/b/a Capital Aeroporter (Capital Aeroporter or Company) for two violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference 49 C.F.R. § 391 related to driver qualifications.
- 2 On April 13, 2016, Capital Aeroporter responded to the Penalty Assessment contesting the first category of violations, admitting the second category of violations, and requesting mitigation of the penalty based on the written information provided. The Company's vice president of operations, John Fricke, explained that all three driving record inquiries were in the appropriate driver qualification files and contests those violations. The Company admits that the medical certificates of two employees were misfiled, but explains that they were current at the time of Staff's review. The Company requests the penalty be waived.
- 3 On April 26, 2016, Commission staff (Staff) filed a response recommending the Commission deny the Company's request for mitigation but dismiss a portion of the penalty. The Penalty Assessment includes a \$100 penalty for three violations of 49 C.F.R. § 391.51(b)(2). Staff recommends no mitigation of this penalty because the documentation submitted with the Company's request for mitigation failed to demonstrate that the Company has corrected the violations.
- 4 The Penalty Assessment also includes a \$100 penalty for two violations of 49 C.F.R. § 391.51(b)(7). Because the Company provided proof that the medical certificate for one of

its employees was overlooked during Staff's compliance review, Staff recommends the Commission dismiss the \$100 penalty for these violations.

DISCUSSION AND DECISION

- 5 Washington law requires auto transportation carriers to comply with Federal safety requirements and undergo routine safety inspections. Violations discovered during safety inspections are subject to penalties of \$100 per violation.¹ In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.² Violations defined by federal law as "critical," which are indicative of a breakdown in a carrier's management controls, meet this standard.³
- 6 As a preliminary matter, we deny the Company's contest of the 49 C.F.R. § 391.51(b)(2) violations. Although the Company states in its response that its files are complete and correct, Staff met with the Company following its compliance review and confirmed that the Company's documents do not conform to the rule's requirements. Accordingly, we find that the Company committed three violations of 49 C.F.R. § 391.51(b)(2), and turn now to the issue of mitigation.
- 7 The Commission considers several factors when entertaining a request for mitigation, including whether the company introduces new information that may not have been considered in setting the assessed penalty amount, or explains other circumstances that convince the Commission that a lesser penalty will be equally or more effective in ensuring the company's compliance.⁴
- 8 The Penalty Assessment includes a \$100 penalty for three violations of 49 C.F.R. § 391.51(b)(2) because the Company failed to maintain a driving record inquiry in the driver qualification files for Jeffery Dunlap, Oscar Bailey, and Chris Hoffman. Staff recommends no mitigation of this penalty because the documents the Company presented to rebut the violations fail to meet the requirements of 49 C.F.R. § 391.51(b)(2). We agree with Staff's recommendation. The Company has neither corrected the violations nor presented any new information that would warrant a penalty reduction. Given these

¹ See RCW 81.04.405.

² Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12 (Jan. 7, 2013) (Enforcement Policy).

³ 49 C.F.R. § 385, Appendix B.

⁴ Enforcement Policy ¶19.

circumstances and the critical nature of this violation, we decline to mitigate this portion of the penalty.

9 The Penalty Assessment also includes a \$100 penalty for two violations of 49 C.F.R. § 391.51(b)(2) because the Company failed to maintain medical certificates in the driver qualification files for Paul Vitous and Mr. Hoffman. In its response, the Company acknowledged that Staff did not find the medical certificates in their respective files during the compliance review, but notes that both drivers have, and have had, valid medical certificates in their possession. Copies have since been made and placed in both employees' files, and Mr. Hoffman's original copy was eventually found on the back of his Employment Eligibility Verification form.

10 Staff recommends the Commission dismiss the \$100 penalty assessed for violations of 49 C.F.R. § 391.51(b)(2) because Staff determined both drivers were medically examined and certified at all times. Moreover, Staff overlooked the fact that Mr. Hoffman's certificate was actually in his file on the back of another form. We agree with Staff's recommendation and dismiss the \$100 penalty assessed for violations of 49 C.F.R. § 391.51(b)(2). One instance of a misfiled medical certificate – Mr. Hoffman's, in this case – does not establish a pattern of behavior, and therefore does not qualify as a "critical" violation that warrants a penalty for a first offense.

ORDER

THE COMMISSION ORDERS:

- 11 (1) The \$100 penalty assessed against Pacific Northwest Transportation, Inc. d/b/a Capital Aeroporter for violations 49 C.F.R. § 391.51(b)(2) is **DISMISSED**.
- 12 (2) Pacific Northwest Transportation, Inc. d/b/a Capital Aeroporter's request for mitigation of the \$100 penalty for violations of 49 C.F.R. § 391.51(b)(2) is **DENIED**.
- 13 (3) The \$100 penalty is due and payable no later than May 16, 2016.

- 14 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Olympia, Washington, and effective May 2, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING
Executive Director and Secretary

NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. As authorized in WAC 480-07-904(3), you must file any request for Commission review of this order no later than 14 days after the date the decision is posted on the Commission's website. The Commission will grant a late-filed request for review only on a showing of good cause, including a satisfactory explanation of why the person did not timely file the request A form for late-filed requests is available on the Commission's website.