

SERVICE DATE

OCT 27 1998

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Penalty Assessment No. 96187)	DOCKET NO. TV-980725
)	
STARVING STUDENTS OF)	COMMISSION ORDER AND
SEATTLE, INC.,)	DECISION CLARIFYING AND
Respondent.)	AFFIRMING INITIAL ORDER
.....)	MITIGATING PENALTY

SUMMARY

NATURE OF PROCEEDING: A Brief Adjudicative Proceeding was conducted pursuant to an application by Starving Students of Seattle, Inc. (Starving Students), a motor carrier doing business in the State of Washington, to determine whether penalties in the amount of \$12,300.00 assessed by the Washington Utilities and Transportation Commission (Commission) should be mitigated in whole or in part.

INITIAL ORDER: An Initial Order, entered on August 14, 1998, by Administrative Law Judge Lawrence J. Berg, conditionally mitigates penalties by seventy-five percent for rate and safety record keeping violations.

ADMINISTRATIVE REVIEW: Commission Staff and Starving Students support the conditional mitigation of penalties in the Initial Order; however, Commission Staff requests that the Commission clarify its interpretation of two safety rules, WAC 480-2-180(6) and WAC 480-12-190. Starving Students responds to Commission Staff's request for clarification.

APPEARANCES: Starving Students was represented at the hearing by Steven K. Levan, President, and by Michael Kadish, General Counsel, on review. Ann Rendahl, Assistant Attorney General, Olympia, WA, represents Commission Staff.

PROCEDURAL BACKGROUND

This matter began as a Commission field investigation on November 12, 1997. The purpose of the investigation was to conduct a safety compliance review, an economic records check, and to explain any deficiencies or practices not in compliance with Commission rules or regulations. Robert Johnston, Commission Special Investigator, reviewed all records of household goods moves performed by Starving Students from its Bellevue and Seattle terminals between October 1, 1997, and October 15, 1997. Fifty-seven moves contained one or more rule and/or tariff violations.

On May 1, 1998, the Commission served notice of Penalty Assessment No. 96187 upon Starving Students, alleging 55 violations of RCW 81.80.220 and WAC 480-12-330 for assessing rates and/or charges different from those contained in lawfully published tariffs, 17 violations of WAC 480-12-180(6) for failing to maintain a driver qualification file on each driver employed, and 51 violations of WAC 480-12-190 for failing to maintain hours of service records on each driver employed. A \$100.00 penalty was assessed under RCW 81.80.230 for each rate violation and RCW 81.04.405 for each safety record keeping violation for a total penalty assessment of \$12,300.00.

On May 15, 1998, Respondent applied for mitigation of the penalty. Commission procedures provide for Brief Adjudicative Proceedings under WAC 480-09-500 in penalty assessment mitigation matters. A duly noticed Brief Adjudicative Proceeding was held in Olympia, Washington, on August 4, 1998.

The August 14, 1998, Initial Order concluded that Starving Students charged rates below tariff in violation of RCW 81.80.220 and WAC 480-12-330, and failed to maintain safety records in violation of WAC 480-12-180(6) and WAC 480-12-190. Mitigating factors were cited, conditions for mitigation were ordered, rate violation penalties were partially suspended from \$5,500 to \$1,375, and safety record keeping violation penalties were partially suspended from \$6,800 to \$3,075.

MEMORANDUM

A. Clarification of WAC 480-12-180(6); Driver Qualification Files

WAC 480-12-180(6) adopts rules and regulations governing qualifications of drivers prescribed by the United States Department of Transportation in Title 49, Code of Federal Regulations, part 382, Part 383, and part 391. The Initial Order concluded that carriers operating exclusively in intrastate commerce were except from the requirements in WAC 480-12-180(6), including subsections (a) through (g).

Commission Staff states that it has consistently interpreted this rule to provide specific exceptions for intrastate carriers (as stated in (a) through (g)), and not a blanket exception from WAC 480-12-180(6). Commission Staff argues that subsections (a) through (g) would be unnecessary as interpreted by the Initial Order and contends that section 180(6) is intended as an introduction to exceptions that apply to intrastate carriers. Starving Students argues that subsections (a) through (g) apply to carriers operating in interstate commerce, and carriers operating exclusively in intrastate commerce are exempt from all requirements.

The Initial Order does not render subsections (a) through (g) purposeless; however, WAC 480-12-180(6) is ambiguous. The Commission agrees with Commission Staff and interprets subsections (a) through (g) as setting forth requirements for carriers operating exclusively in intrastate commerce. If this were not the case, there would be no age limit for intrastate drivers as provided in subsection (a). Age limits for drivers in intrastate commerce is clearly in the public interest and supports the consistent application of the other subsections.

B. Clarification of WAC 480-12-190; Driver Hours of Service

WAC 480-12-190 adopts the federal rules and regulations governing driver hours of service in 49 C.F.R., part 395. WAC 480-12-190(3) provides an alternative to the duty time record keeping requirement in part 395.8. Staff requests clarification that discussion regarding the exception in WAC 480-12-190(3) applies to 49 C.F.R., part 395.8, and not part 395 in its entirety. Discussion of alternative duty time and driving time record keeping in the initial Order applies to part 395.8.

C. Conclusion

Neither party disputes findings of fact or conclusions of law and both parties support the decision in the Initial Order. In accordance with RCW 34.05.464 and WAC 480-09-780(6), the Commission accepts the findings of fact and conclusions of law, and adopts the initial Order, as clarified, as its own for purposes of this proceeding.

O R D E R

IT IS ORDERED That:

1. A suspension period of 12 months is imposed upon Starving Students of Seattle, Inc. (Starving Students).
2. Commission Staff may conduct two audits of Starving Students business operations during the suspension period.
3. Starving Students key personnel must attend Commission tariff and safety training sessions during the suspension period.

4. The penalties assessed by the Commission are mitigated conditionally, by 75% partial suspension, as follows:

Violation	Assessed	Suspended	Balance
Rate Violations: RCW 81.80.220/WAC 480-12-330	\$5,500	\$4,125	\$1,375
Safety Record Keeping Violations: WAC 480-12-180(6)/WAC 480-12-190	\$6,800	\$5,100	\$1,700
Totals	\$12,300	\$9,225	\$3,075

5. Mitigation via suspension of \$4,125 of the \$5,500 penalty assessment for rate violations and \$5,100 of the \$6,800 penalty assessment for safety record keeping violations is conditioned on Starving Students continued cooperation with Commission personnel in taking steps necessary to fully comply with all regulations.

6. If the Commission determines that Starving Students commits any similar rate or safety record keeping violation within the suspension period, the entire respective suspended penalty assessment will become immediately due and payable and the Commission will initiate a show cause proceeding. This is a zero tolerance policy.

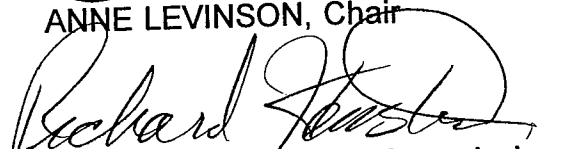
7. Within fifteen (15) days after service of this Order, Starving Students must pay penalties in the amount of \$3,075.

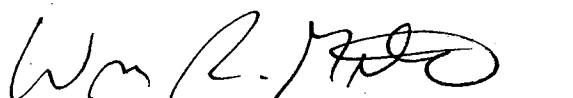
8. The Commission retains jurisdiction over this matter to effect the provisions of this Order. This matter should not be considered closed and the penalties finally mitigated until Commission Staff reports the results of audits demonstrating compliance as noted in this Order.

DATED at Olympia, Washington and effective this 27th day of October 1998.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION


ANNE LEVINSON, Chair


RICHARD HEMSTAD, Commissioner


WILLIAM R. GILLIS, Commissioner