

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

ABM ASSOCIATES, INC., D/B/A
SALON MONTE CARLO

in the amount of \$7,300

DOCKET TE-210843

ORDER 01

DENYING MITIGATION; IMPOSING
AND SUSPENDING PENALTY

BACKGROUND

1 On November 23, 2021, the Washington Utilities and Transportation Commission (Commission) assessed a \$7,300 penalty (Penalty Assessment) against ABM Associates, Inc., d/b/a Salon Monte Carlo (ABM or Company) for violations of Washington Administrative Code (WAC) 480-30-191 and WAC 480-30-221, which adopts by reference sections of Title 49 Code of Federal Regulations (C.F.R.).¹ The Penalty Assessment includes:

- a \$3,800 penalty for 38 violations of WAC 480-30-191 for operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage;
- a \$1,500 penalty for one violation of 49 C.F.R. § 382.115(a) for failing to implement an alcohol and/or controlled substances testing program on the date the employer begins commercial motor vehicle (CMV) operations;
- a \$1,800 penalty for 18 violations of 49 C.F.R. § 383.37(a) for knowingly allowing, requiring, permitting, or authorizing an employee to operate a CMV during any period in which the driver does not have a current commercial learner's permit (CLP) or commercial driver's license (CDL) or does not have a CLP or CDL with the proper class or endorsements;
- a \$100 penalty for two violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified.

¹ This Order refers to Commission safety regulations that adopt federal rules only by the applicable section of Title 49 C.F.R.

- 2 On December 3, 2021, ABM filed a response to the Penalty Assessment admitting the violations and requesting mitigation of the penalty amount (Mitigation Request). In its Mitigation Request, the Company stated that it has taken action to correct the violations, including enrolling in an alcohol and controlled substances testing program
- 3 On December 6, 2021, the Company's certificate was canceled for failing to submit acceptable proof of insurance by the deadline.
- 4 On December 8, 2021, Commission staff (Staff) filed a response recommending the Commission deny the Company's Mitigation Request because of the Company's failure to provide sufficient evidence that it remedied the violations, failure to put appropriate safety management controls in place, failure to prioritize availability to Staff during the investigation, and failure to prioritize compliance with applicable safety regulations during the investigation. Because ABM is no longer a permitted passenger transportation company, Staff recommends that the Commission suspend the penalty for a period of two years, and then waive it, subject to the condition that the Company does not: (1) operate as a charter party or excursion service carrier within the state of Washington without first obtaining the required certificate from the Commission; (2) apply for authority using common ownership, common management, common control, or a common familiar relationship to apply for authority with the Commission to operate as a passenger transportation company for the purpose of evading compliance; or (3) apply for a certificate to operate as a passenger transportation company with the Commission.

DISCUSSION AND DECISION

- 5 Washington law requires charter and excursion carriers to comply with federal safety requirements and undergo routine safety inspections. 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 "acute" or "critical" meet this standard.³
- 6 Violations are considered "acute" when non-compliance is so severe that immediate corrective action is required regardless of the overall safety posture of the company. Violations classified as "critical" are indicative of a breakdown in a carrier's management

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.

controls. Acute violations discovered during safety inspections are subject to penalties of \$1,500 per violation,⁴ and critical violations are subject to penalties of \$100 per violation.⁵

7 The Commission considers several factors when entertaining a request for mitigation, including whether a 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 a company's compliance.⁶ We address each violation category below.

8 **WAC 480-30-191.** The Penalty Assessment includes a \$3,800 penalty for 38 violations of WAC 480-30-191 because ABM operated a CMV on 38 occasions without having the required minimum levels of insurance. The Company stated in its response that it is "waiting to obtain a quote" for the required level of insurance coverage.

9 Staff recommends that the Commission deny the Company's request to mitigate this portion of the penalty. We agree with Staff's recommendation. The Company's continued failure to obtain the minimum level of insurance required by WAC 480-30-191 indicates a serious lack of commitment to the safety standards passenger transportation companies must meet in the state of Washington. We deny ABM's request to mitigate the penalty for this acute violation.

10 **49 C.F.R. § 382.115.(a).** The Penalty Assessment includes a \$1,500 penalty for one violation of 49 C.F.R. § 382.115.(a) for failing to implement an alcohol and controlled substances testing program for all its commercial drivers. In its response, the Company states that it has now enrolled in such a program. Staff has stated that this type of violation could have resulted in permitting persons with positive drug test results to drive motor vehicles transporting passengers.

11 We agree with Staff's recommendation. Non-compliance with such critical regulations is quantitatively linked to inadequate safety management controls and usually higher than average accident rates. Impaired drivers imperil the general public as well as the passengers they are transporting. The Company's remedial actions to meet the

⁴ See RCW 81.04.530.

⁵ See RCW 81.04.405.

⁶ Enforcement Policy ¶ 19.

requirements are welcome but they do not support a reduction in the assessed penalty. We deny ABM's request to mitigate the penalty for this acute violation.

- 12 **49 C.F.R. § 383.37(a).** The Penalty Assessment includes a \$1,800 penalty for 18 violations of 49 C.F.R. § 383.37(a) for knowingly allowing, requiring, permitting, or authorizing an employee to operate a CMV during any period in which the driver does not have a current CLP or CDL or does not have a current CLP or CDL with the proper class endorsements. ABM claims that these violations occurred because the Company owner "was not aware that he needed endorsement to drive" a limousine. The Company further states that no drivers currently have such endorsement.
- 13 Staff recommends no mitigation of this penalty. Staff states that the Company's failure to come into compliance with this requirement despite receiving extensive technical assistance shows a serious lack of commitment to safety regulations. These are acute violations requiring immediate corrective action that could allow a driver without the proper license endorsements to operate a commercial motor vehicle carrying passengers. Such violations are quantitatively linked to inadequate safety management controls and usually higher than average accident rates. We agree. ABM's failure to obtain the required license endorsements still shows failure to prioritize compliance with safety regulations. We deny ABM's request to mitigate the penalty for this acute violation.
- 14 **49 C.F.R. § 391.45(a).** The Penalty Assessment includes a \$200 penalty for two violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified. In its Mitigation Request, the Company stated that the owner was "not aware that he needed to be examined," and stated that the owner would no longer be a driver.
- 15 Staff recommends no mitigation of this portion of the penalty. Again, ABM's failure to comply with safety regulation requirements after extensive technical assistance shows a lack of commitment to such regulations. Drivers who are not medically certified may have an undocumented medical condition that puts the traveling public at risk. We decline to mitigate the penalty for this critical violation.
- 16 **Suspension.** Although we conclude that the penalty should not be mitigated, we agree with Staff that suspending the penalty is appropriate in light of the Company's current non-operative status. Our goal here, as in any enforcement proceeding, is to increase compliance, not create a financial burden for a company that is no longer operating. Accordingly, we suspend the \$7,300 penalty for a period of two years and waive it on the condition that the Company does not operate as, or apply for a permit to operate as, a

charter and excursion carrier during that time. If the Company applies for a reinstatement of its permit, the Company must pay the penalty, or work with Staff to establish a mutually agreed payment arrangement, prior to reinstatement. The penalty will become due and payable immediately if the Company either operates as a charter and excursion carrier without a Commission-issued permit or attempts to apply for a permit using common ownership, common management, common control, or a common familial relationship in an attempt to evade compliance.

FINDINGS AND CONCLUSIONS

- 17 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, and practices of public service companies, including passenger transportation companies, and has jurisdiction over the parties and subject matter of this proceeding.
- 18 (2) ABM is a passenger transportation company subject to Commission regulation.
- 19 (3) ABM committed 38 violations of WAC 480-30-191 by operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage.
- 20 (4) The Commission should penalize ABM \$3,800 for 38 violations of WAC 480-30-191.
- 21 (5) ABM committed one violation of 49 C.F.R. § 382.115(a) by failing to implement an alcohol and/or controlled substances testing program on the date the employer began CMV operations.
- 22 (6) The Commission should penalize ABM \$1,500 for one violation of 49 C.F.R. § 382.115(a).
- 23 (7) ABM committed 18 violations of 49 C.F.R. § 383.37(a) by knowingly allowing, requiring, permitting, or authorizing an employee to operate a CMV during any period in which the driver does not have a current CLP or CDL or does not have a CLP or CDL with the proper class endorsements.
- 24 (8) The Commission should penalize ABM \$1,800 for one violation of 49 C.F.R. § 383.37(a).

- 25 (9) ABM committed two violations of 49 C.F.R. § 391.45(a) by using a driver not medically examined and certified on two occasions.
- 26 (10) The Commission should penalize ABM \$200 for two violations of 49 C.F.R. § 391.45(a).
- 27 (11) The Commission should suspend the total assessed penalty for a period of two years, and then waive it if the Company complies with the conditions listed in paragraph 16 above. If ABM fails to comply with any of these conditions, the suspended portion of the penalty should become immediately due and payable.

ORDER

THE COMMISSION ORDERS:

- 28 (1) The Commission denies the request of ABM Associates, Inc., d/b/a Salon Monte Carlo to mitigate the \$7,300 penalty.
- 29 (2) The Commission suspends the penalty for a period of two years and will waive it if ABM Associates, Inc., d/b/a Salon Monte Carlo complies with the conditions described in paragraph 16, above. If ABM Associates, Inc., d/b/a Salon Monte Carlo fails to comply with these conditions, the suspended portion of the penalty will become immediately due and payable.
- 30 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-903(2)(e).

DATED at Olympia, Washington, and effective December 20, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AMANDA MAXWELL
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.