

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Penalty Assessment Against TIRAOGO SIMPORE d/b/a TS MOVING SERVICES In the amount of \$5,000	DOCKET TV-190298 <i>(Consolidated)</i> ORDER 01
In the Matter of the Investigation of TIRAOGO SIMPORE d/b/a TS MOVING SERVICES For Compliance with WAC 480-15-560 and WAC 480-15-570	DOCKET TV-190299 <i>(Consolidated)</i> ORDER 01 ORDER OF CONSOLIDATION; ORDER EXTENDING PROVISIONAL CERTIFICATE; ORDER IMPOSING AND SUSPENDING PENALTIES;

BACKGROUND

- 1 On April 30, 2019, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Intent to Cancel Permit as a Household Goods Carrier and Notice of Brief Adjudicative Proceeding; Setting time for Oral Statements In the Matter of the Investigation of Tiraogo Simpure d/b/a TS Moving Services (TS Moving or Company) for Compliance with WAC 480-15-560 and WAC 480-15-570 in Docket TV-190299 (Notice). The Notice set a Brief Adjudicative Proceeding for June 11, 2019, at 9:30 a.m.
- 2 Then on June 4, 2019, the Commission assessed a \$5,000 penalty (Penalty Assessment) in Docket TV-190298 against TS Moving for 79 violations of Commission rules, as follows: 24 violations of WAC 480-15-550 related to cargo insurance; one violation of WAC 480-15-555 related to criminal background checks for prospective employees; 24

violations of WAC 480-15-570, which adopts by reference Title 49 of the Code of Federal Regulations (49 C.F.R.) Part 391 related to using a driver not medically examined and certified, and 30 violations 49 C.F.R. Part 395 related to preparing records of duty status.¹

3 On June 11, 2019, the Commission conducted a brief adjudicative proceeding before Administrative Law Judge Laura Chartoff. The parties agreed that the Commission should address the Penalty Assessment in Docket TV-190298 concurrently with the Company's proposed safety management plan in Docket TV-190299. Accordingly, the Commission consolidated Dockets TV-190298 and TV-190299. Commission staff (Staff) presented testimony from Edward Steiner, Motor Carrier Safety Investigator, and Jason Sharp, Motor Carrier Safety Supervisor. Mr. Steiner testified about the four types of critical safety violations that resulted in Staff's proposed conditional safety rating for TS Moving. Following an April 2019 compliance review, Staff documented the following violations:

- 30 violations of 49 C.F.R. 395.8(a)(1) which requires drivers to prepare a record of duty status using the appropriate method. The Company failed to require its driver to prepare a record of duty status.
- 24 violations of 49 C.F.R. § 391.45(a), which requires drivers to be medically examined and certified. The Company allowed its driver to drive without having been medically examined and certified on 24 occasions.
- One violation of WAC 480-15-555 for failing to acquire a criminal background check for a prospective employee. The Company failed to conduct a criminal background check on one prospective employee.
- 24 violations of WAC 480-15-550, which requires a carrier to maintain a minimum amount of cargo insurance. The Company operated without cargo insurance on 24 occasions.

¹ WAC 480-15-570 adopts by reference section of Title 49 C.F.R. Accordingly, Commission safety regulations with parallel federal provisions are hereinafter referenced by the applicable part of 49 C.F.R.

- 4 Mr. Sharp testified that Mr. Simpure originally submitted a proposed safety management plan that Staff finds unacceptable. However, Mr. Sharp indicated that Staff would continue to assist Mr. Simpure to develop an acceptable plan.
- 5 With respect to the penalty assessed in Docket TV-190299, Mr. Sharp recommended reducing the portion of the penalty related to the cargo insurance violations. Because the Company provided proof of cargo insurance, Staff recommends reducing that portion of the penalty by half, from \$2,400 to \$1,200. Accordingly, Staff recommends reducing the total penalty from \$5,000 to \$3,800. Staff also recommends suspending a \$2,500 portion of the penalty for two years subject to the condition that the Company incurs no repeat critical violations upon re-inspection. In addition, Mr. Sharp indicated that Staff is willing to work with the Company to establish a mutually acceptable payment arrangement.
- 6 Mr. Simpure testified for TS Moving. Mr. Simpure admitted the violations but requested the penalty be mitigated because the violations were unintentional. He testified that he had difficulty understanding Commission regulations because English is his second language. With respect to the cargo insurance violations, he testified he had not understood the difference between cargo and liability insurance and mistakenly thought his liability insurance was sufficient. He further testified that he failed to obtain a background check on his employee because he has known the employee since childhood and knows the employee is not a criminal. Mr. Simpure explained that the investigation and hearing had opened his eyes to the importance of complying with Commission safety rules and requested a second chance to achieve compliance.
- 7 At the hearing, Judge Chartoff instructed the Company to submit a proposed safety management plan no later than June 17, 2019, and instructed Staff to file a written evaluation of the Company's safety management plan in the docket no later than June 18, 2019.
- 8 Following the hearing, the Company sent Staff a safety management plan, and on June 17, 2019, Staff filed in this docket an evaluation of the Company's safety management plan. Staff reviewed the plan and concluded that it is acceptable and meets the requirements of 49 C.F.R. Part 382. Accordingly, Staff recommends that the Commission not cancel the Company's permit, and that the Commission extend the Company's provisional operating authority for good cause until Staff conducts a follow-up review in one year.

- 9 Joe Dallas, Assistant Attorney General, Olympia, Washington, represents Commission staff (Staff). Tiraogo Simpure, Owner, Tacoma, Washington, represents TS Moving Services.

DISCUSSION AND DECISION

1. Docket TV-190299 – Household Goods Carrier Permit

- 10 Washington law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Staff's April 2019 compliance review of TS Moving found 79 critical violations of Commission regulations, which resulted in a proposed conditional safety rating. Violations classified as critical are indicative of a breakdown in a carrier's management controls. Patterns of noncompliance with a critical regulation are quantitatively linked to inadequate safety management controls and usually higher-than-average accident rates.
- 11 On June 14, 2019, the Company submitted its proposed safety management plan. Staff reviewed the safety management plan and found that it addresses each violation, identifies how each violation occurred, describes the steps taken to correct each violation, and describes the controls put in place to ensure compliance going forward.
- 12 Based on the testimony and evidence presented at the hearing and Staff's evaluation of the Company's safety management plan, the Commission finds that the Company has achieved compliance by correcting the violations that led to the proposed conditional safety rating. Accordingly, the Commission agrees with Staff's recommendation to not cancel the Company's household goods permit.
- 13 WAC 480-15-305(1)(b) provides that, prior to a grant of permanent authority, an applicant must complete a provisional period of not less than six months and not more than 18 months unless the Commission determines for good cause that the provisional period should be extended. Good cause may include, among other things, a carrier that has not yet achieved a satisfactory safety rating but is making substantial progress toward a satisfactory rating. Because the Company has submitted a detailed safety management plan demonstrating its willingness and ability to improve its compliance and attain an upgraded safety rating, the Commission finds good cause to extend the Company's provisional period until Staff conducts a follow-up review in approximately one year.

2. Docket TV-190298 – Penalty Assessment

- 14 Violations discovered during safety inspections are subject to penalties of \$100 per violation.² In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.³ Violations defined by federal law as “critical” meet this standard.⁴
- 15 Violations classified as “critical” are indicative of a breakdown in a carrier’s management controls.⁵ Typically, critical violations are subject to penalties of \$100 per violation.⁶
- 16 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.⁷ We address each violation category below.
- 17 **WAC 480-15-550.** The Penalty Assessment includes a \$2,400 penalty for 24 violations of WAC 480-15-550 because TS Moving Company operated without cargo insurance on 24 occasions. Mr. Simpure testified that this violation was unintentional because he mistakenly thought that his liability insurance satisfied Commission rules. Because the Company provided proof of cargo insurance, we agree with Staff’s recommendation to reduce the penalty by half, from \$2,400 to \$1,200.
- 18 **WAC 480-15-555.** The Penalty Assessment includes a \$100 penalty for one violation of WAC 480-15-555, which requires carriers to complete a criminal background check for every person the carrier intends to hire. Mr. Simpure explained that he did not complete a background check on an employee because he has a long-standing personal relationship with the employee in question.

² See RCW 80.40.405.

³ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶¶ 12, 15 (Jan. 7, 2013) (Enforcement Policy).

⁴ 49 C.F.R. § 385, Appendix B.

⁵ *Id.*

⁶ RCW 81.04.530; 49 C.F.R. § 385, Appendix B; *see* RCW 81.04.405.

⁷ Enforcement Policy ¶ 19.

- 19 We decline to mitigate this portion of the penalty. An employee with an unknown criminal history raises serious concerns about personal safety and the security of customer belongings. Carriers may not make exceptions for any respective employee, regardless of their relationship with that individual. Accordingly, we conclude that this penalty is necessary to ensure the Company's future compliance.
- 20 **49 C.F.R § 391.45(a).** The Penalty Assessment includes a \$2,400 penalty for 24 violations of 49 C.F.R § 391.45(a) for using a driver not medically examined and certified on 24 occasions. Here, the Company failed to provide any new information or explain previously unknown circumstances that would justify a lesser penalty.
- 21 We decline to mitigate this portion of the penalty. We find that a “per violation” penalty is appropriate because medical certification is fundamental to safe operations. Drivers who are not medically certified may have an undocumented medical condition that puts the traveling public at risk.
- 22 **49 C.F.R. § 395.8(a)(1).** The Penalty Assessment includes a \$100 “per category” violation for one violation of 49 C.F.R. § 395.8(a)(1) for failing to require the Company's driver to prepare a record of duty status on 30 occasions. Here, the Company failed to provide any new information or explain previously unknown circumstances that would justify a lesser penalty.
- 23 We decline to mitigate this portion of the penalty. The Commission could have assessed a \$3,000 penalty, but, because these are first-time violations, assessed a “per category” rather than “per violation” penalty. Accordingly, we find that no further penalty reduction is warranted.
- 24 **Penalty Suspension.** The Commission considers several factors when determining whether to suspend a portion of a penalty, including whether it is a first-time penalty for the same or similar violations and whether the company can demonstrate other circumstances that convince the Commission to suspend the penalties.⁸ The Commission's goal in any enforcement proceeding is to obtain compliance, not create an insurmountable financial burden for a small company.

⁸ *Id.* at ¶ 20.

25 TS Moving is a small company with gross annual revenues of \$62,301 for 2018. In addition, the Company has submitted a satisfactory proposed safety management plan that details the controls it put in place to prevent repeat violations of Commission safety rules. Accordingly, we agree with Staff's recommendation and suspend a \$2,500 portion of penalty for a period of two years, and then waive it, subject to the following conditions: (1) the Company must not incur any repeat violations of critical regulations; and (2) the Company must pay the \$1,300 portion of the penalty that is not suspended or file jointly with Staff a proposed payment arrangement within 10 days of the effective date of this Order.

26 If the Company fails to comply with either of the above conditions, the suspended penalty amount will become immediately due and payable without further Commission order.

FINDINGS AND CONCLUSIONS

- 27 (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 household goods carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 28 (2) TS Moving is a household goods carrier subject to Commission regulation.
- 29 (3) TS Moving cured the deficiencies that led to its conditional safety rating within 60 days, as required. Accordingly the Company should be allowed to maintain its provisional household goods carrier permit.
- 30 (4) TS Moving violated WAC 480-15-550 by operating without the minimum amount of cargo insurance on 24 occasions.
- 31 (5) The Commission should penalize TS Moving \$1,200 for 24 violations of WAC 480-15-550.
- 32 (6) TS Moving violated WAC 480-15-555 by failing to acquire a criminal background check on one prospective employee.
- 33 (7) The Commission should penalize TS Moving \$100 for one violation of WAC 480-15-555.

- 34 (8) TS Moving violated 49 C.F.R. 391.45(a) by using a driver not having been medically examined and certified on 24 occasions.
- 35 (9) The Commission should penalize TS Moving \$2,400 for 24 violations of 49 C.F.R. § 391.45(a).
- 36 (10) TS Moving violated 49 C.F.R. § 395.8(a)(1) when it failed to require its driver to make a record of duty status on 30 occasions.
- 37 (17) The Commission should penalize TS Moving \$100 for 30 violations of 49 C.F.R. § 395.8(a)(1).
- 38 (18) The Commission should assess a total penalty of \$3,800 for 79 violations of WAC 480-15 and Title 49 C.F.R.
- 39 (19) The Commission should suspend a \$2,500 portion of the penalty for a period of two years and then waive it subject to the conditions set out in paragraph 25, above.

ORDER

THE COMMISSION ORDERS:

- 40 (1) Tiraogo Simpure d/b/a TS Moving's provisional period for its household goods permit authority is extended until such time as the Company achieves a satisfactory safety rating in Staff's follow-up Compliance review.
- 41 (2) The Commission assesses a \$3,800 penalty against Tiraogo Simpure d/b/a TS Moving. The Commission suspends a \$2,500 portion of the penalty for a period of two years and then waives it, subject to the following conditions: (1) Tiraogo Simpure d/b/a TS Moving must not incur any repeat violations of critical regulations; (2) Tiraogo Simpure d/b/a TS Moving must pay the \$1,300 portion of the penalty that is not suspended or file jointly with Staff a proposed payment arrangement within 10 days of the effective date of this Order.
- 42 (3) Commission Staff will conduct a follow-up review of Tiraogo Simpure d/b/a TS Moving operations in approximately one year from the effective date of this Order.

- 43 (4) If Tiraogo Simpire d/b/a TS Moving fails to comply with any condition in paragraph 41 of this Order, or fails to comply with the terms a payment arrangement, if applicable, the entire unpaid portion of the penalty amount and the entire suspended penalty amount will become immediately due and payable without further Commission order.

DATED at Olympia, Washington, and effective June 20, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

LAURA CHARTOFF
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-610(7) provides that any party to this proceeding has twenty-one (21) days after the entry of this Initial Order to file a *Petition for Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-610(7)(b). WAC 480-07-610(7)(c) states that any party may file a *Response* to a Petition for review within seven (7) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).