

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TH-190073
RENZENBERGER, INC., d/b/a HALLCON	ORDER 01
in the amount of \$200	UPHOLDING PENALTY ASSESSMENT

BACKGROUND

- 1 On March 13, 2019, the Washington Utilities and Transportation Commission (Commission) assessed a \$200 penalty (Penalty Assessment) against Renzenberger, Inc., d/b/a Hallcon (Hallcon or Company) for violations of Washington Administrative Code (WAC) 480-62-278, which adopts by reference Title 49 Code of Federal Regulations (C.F.R.) Part 395, related to driver service hours.¹
- 2 Specifically, the Penalty Assessment documented 30 violations of 49 C.F.R. § 395.8(a) (2018), requiring records of a driver’s duty status for each 24-hour period, and 17 violations of 49 C.F.R. § 395.5(b)(2), prohibiting the use of a driver’s services after the driver had been on duty 70 hours in any period of eight consecutive days, regardless of the number of motor carriers using the driver’s services. Commission staff’s (Staff) safety investigation showed that Hallcon allowed its driver Lue Gene Florence to drive without making a record of duty status on 30 occasions between July 18, 2018, and August 16, 2018; Hallcon also allowed Mr. Florence to drive in violation of the 70-hour rule on 17 occasions between July 25, 2018, and August 16, 2018, while he was also working for another employer. Because these are first-time violations, the Commission assessed \$100 per each violation type.
- 3 On March 26, 2019, Hallcon responded to the Penalty Assessment to contest the violations based on written information that the Company provided. As its response, the Company provided a table of Department of Transportation hours recorded for Lue Gene

¹ WAC 480-62-278 adopts by reference sections of Title 49 C.F.R. Accordingly, Commission safety regulations with parallel federal rules are hereinafter referenced only by the applicable provision of 49 C.F.R.

Florence between July 21, 2018, and August 16, 2018. The table indicates that Mr. Florence did not work more than 70 hours in any eight-day period between July 21, 2018, and August 16, 2018.

- 4 On April 3, 2019, Staff filed a response recommending that the Commission uphold the penalty assessment. Staff notes that Hallcon did not provide evidence of Mr. Florence's hours worked for another employer, which caused him to exceed the 70-hour rule found in 49 C.F.R. 395.5(b)(2). Staff also states that Hallcon failed to address the violation of 49 C.F.R. § 395.8(a) by not providing records of Mr. Florence's duty status for each 24-hour period between July 18, 2018, and August 16, 2018.
- 5 On April 9, 2019, the Commission issued a notice requesting Staff to provide documentation showing that Mr. Florence was also driving for another motor carrier between July 18, 2018, and August 16, 2018. Staff responded on April 12, 2019, stating that 49 C.F.R. 395.5(b)(2) requires only that Mr. Florence was on-duty working for another employer. Staff calculated on-duty time for Mr. Florence using an email from the Corporate Safety Manager for Hallcon, which stated that Mr. Florence worked from 11:00 p.m. to 7:00 a.m. Sunday through Friday for Hallcon, and 3:30 p.m. through 10:00 p.m. Monday, Tuesday, Thursday, and Friday for another employer, for whom he also worked a three-hour shift on Wednesdays.² The email confirms that multiple violations of the 70-hour rule had occurred, and states: "going forward we will be asking each current employee in the state of Washington to disclose any other employment outside of Hallcon. New hires will be asked to fill out a form with all other paperwork disclosing other employment. Both of these items will be in place immediately."

DISCUSSION AND DECISION

- 6 Washington law requires railroad companies to comply with federal safety requirements and undergo routine safety inspections. Violations discovered during safety inspections are subject to penalties of \$100 per violation.³ In some cases, Commission requirements

² Staff response at Attachment A.

³ See RCW 81.04.405.

are so fundamental to safe operations that the Commission will issue penalties for first-time violations.⁴

7 The Penalty Assessment assessed a \$200 penalty for 30 violations of 49 C.F.R. § 395.8(a) because Hallcon allowed a driver to drive without making a record of duty status on 30 occasions, and for 17 violations of 49 C.F.R. § 395.5(b)(2), because Hallcon allowed a driver to drive in violation of the 70-hour rule on 17 occasions between July 25, 2018, and August 16, 2018, while also driving for another employer.

8 We find that Hallcon violated 49 C.F.R. § 395.8(a) by failing to provide records in its response of Lue Gene Florence's duty status for each 24-hour period between July 18, 2018, and August 16, 2018. We also find that Hallcon violated 49 C.F.R. § 395.5(b)(2) by allowing Mr. Florence to drive on multiple occasions between July 25, 2018, and August 16, 2018, after Mr. Florence had been on duty 70 hours in the previous eight days. Despite the fact that Hallcon provided a table of Mr. Florence's hours between July 25 and August 16, the rule specifically contemplates awareness of the number of employers using the driver's services and limits driving hours based on total on-duty hours for all of a driver's employers.

FINDINGS AND CONCLUSIONS

9 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate the safety of the operations of railroad crew transportation carrier companies, and has jurisdiction over the parties and subject matter of this proceeding.

10 (2) Hallcon is a railroad crew transportation carrier company subject to Commission regulation.

11 (3) Hallcon violated 49 C.F.R. § 395.8(a) when it allowed a driver to drive without making a record of duty status on 30 occasions.

12 (4) Hallcon should be penalized \$100 for 30 violations of 49 C.F.R. § 395.8(a).

⁴ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶ 12 (Jan. 7, 2013) (Enforcement Policy).

- 13 (5) Hallcon violated 49 C.F.R. § 395.5(b)(2) when it allowed a driver to drive after having been on duty for 70 hours during eight consecutive days on 17 occasions between July 25, 2018, and August 16, 2018.
- 14 (6) Hallcon should be penalized \$100 for 17 violations of 49 C.F.R. § 395.5(b)(2).

ORDER

THE COMMISSION ORDERS:

- 15 (1) Renzenberger, Inc., d/b/a Hallcon's contest of the \$200 penalty is DENIED and the penalty assessment is upheld.
- 16 (2) The penalty is due and payable by April 30, 2019.
- 17 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-904(1).

DATED at Olympia, Washington, and effective April 16, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK L. JOHNSON
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.