

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Penalty Assessment Against  
SEATAC MOTOR COACHES, LLC, in the  
amount of \$2,900

DOCKET NO. TE-060868

DECLARATION OF  
THOMAS R. MCVAUGH

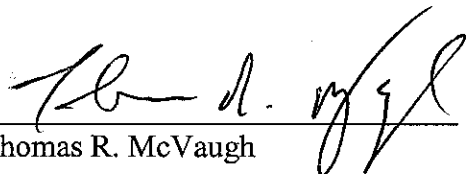
THOMAS R. MCVAUGH, under penalty of perjury under the laws of the state of Washington, declares as follows:

1. I am over 18 years of age, a citizen of the United States, a resident of the state of Washington, and competent to be a witness.
2. I am employed by the Washington Utilities and Transportation Commission (Commission) as Motor Carrier Law Enforcement (MCLE) Special Investigator in the Motor Carrier Safety Section. I have been employed at the Commission for over 22 years, holding various positions. As an MCLE Special Investigator, my responsibilities include performing safety inspections, economic investigations, and other related motor carrier activities in a Commission program which regulates transportation activities.
3. On April 28, 2006, I was contacted by an unidentified caller who stated that management at SeaTac Motor Coaches, LLC (SeaTac) was requiring drivers to violate the hours of service rules administered by the Commission. Specifically, the caller stated that John Brehmer, safety and training manager for SeaTac, was ordering drivers to exceed the maximum driving and on-duty limits governed by the Code of Federal Regulations Part 395. In addition, the caller stated that Mr. Brehmer was requiring drivers for SeaTac to falsify their records of duty status in order to cover up these violations. I later identified this anonymous caller as Ms. Ruthann Bacon.
4. On May 2 and 8, 2006, I contacted Mr. Brehmer at SeaTac's office and terminal located at 5104 – 85<sup>th</sup> Avenue East, Puyallup, Washington, 98371. I advised Mr. Brehmer of the complaint and the purpose for my visit. I inspected the carrier's records for the period covering March and April, 2006. I reviewed drivers' daily records of duty status (log books), payroll records, driver work orders and fuel receipts. I focused my investigation on three drivers mentioned by Ms. Bacon in her April 28 phone call. These three drivers were identified as Ms. Bacon, Paul Fanson, and John Alford.

5. Upon completion of my investigation, I determined that SeaTac was in violation of Commission rules regarding drivers' hours of service. These violations included all of the following:
  - Seven violations of requiring or permitting a passenger commercial motor vehicle driver to drive more than 10 hours following eight consecutive hours off duty.
  - Five violations of requiring or permitting a passenger commercial motor vehicle driver to drive after 15 hours on duty following eight consecutive hours off duty.
  - Seventeen violations of requiring or permitting a driver to make false reports of records of duty status.
6. On July 27, 2006, the Commission issued Penalty Assessment No. TE-060868 to SeaTac for these violations. SeaTac was required to respond within 15 days to the penalty.
7. On August 31, 2006, Ms. Bacon contacted me and stated Mr. Brehmer was terminated as an employee with SeaTac and she was appointed as his replacement. In the course of reviewing paperwork on Mr. Brehmer's desk, she noticed the penalty assessment issued by the Commission and immediately called me for advice on how to respond. Specifically, she asked if the Commission would entertain a mitigation plea at this late date, and if not, if the Commission would allow SeaTac to make payments on the penalty.
8. After consulting with my supervisor, Kathy Hunter, Transportation Safety Compliance Manager, I advised Ms. Bacon that SeaTac should respond, in writing, and explain the circumstances surrounding SeaTac's failure to file a timely mitigation plea. I also advised Ms. Bacon that I was unable to comment on the Commission's decision regarding this mitigation plea.
9. The Commission received SeaTac's response on September 5, 2006.
10. The request for mitigation was signed by Ms. Bacon, a driver of the company and now, apparently, its safety and training manager. Ms. Bacon states that she violated the hours of service rules because the former manager, Mr. Brehmer, told her how to complete her log books. She states that Mr. Brehmer instructed her to record only one shift in her log book when she actually worked a double shift. In the mitigation request, Ms. Bacon states, "I didn't think it sounded right ..."
11. SeaTac must ensure that its employees are knowledgeable of, and adhere to, applicable safety regulations. This is a requirement of the federal government, appearing in Title 49 of the Code of Federal Regulations, Part 390.3(e)(1), which states that every employer shall be knowledgeable of and comply with all regulations contained in the federal rules applicable to them.

12. Ms. Bacon's explanation does not justify mitigating the penalty. Ms. Bacon made no attempt to contact anyone at the Commission or higher up in her own company to determine if the practice was legal. In addition, it simply defies common sense that any driver would record only half the time he or she drove in a log book designed specifically to track the number of hours driven. Ms. Bacon requested technical assistance in completing log books as well as an explanation on the legal hours of service that charter bus drivers may operate under. This request came during our conversation regarding her discovery of the penalty assessment. I advised Ms. Bacon that I would attend their next drivers' meeting and conduct a training class on hours of service. This training class is tentatively set for October 2006.
13. In conducting my investigation, I found that in addition to Ms. Bacon, both Mr. Fanson and John Alford falsified their log books. It is clear that the practice of falsifying log books was a pervasive practice throughout the company.
14. I recommend that the Commission deny the company's request for mitigation in full. SeaTac is responsible for ensuring its employees follow the rules, yet it chose to either require or allow the company's drivers to violate them. Ms. Bacon's explanation that she did not know the rules does not justify her violations or excuse the company from requiring or allowing her to violate the rules.
15. I recommend that the Commission approve the company's request that it be allowed to make payments over time on this penalty. This would allow the company to continue operations without experiencing an undue economic burden. Consistent with other payment plans the Commission has approved, I recommend the Commission allow the company to pay its penalty over a one-year period, in twelve equal monthly installments.

Dated this 20th day of September 2006 at Olympia, Washington.

  
Thomas R. McVaugh