

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of a Penalty Assessment
Against

GUS & JACK MOVING COMPANY, LLC

in the amount of \$1,900.

DOCKET TV-143199

COMMISSION STAFF'S ANSWER
TO GUS & JACK MOVING
COMPANY, LLC'S PETITION
FOR ADMINISTRATIVE REVIEW

I. BACKGROUND

- 1 On September 10, 2014, the Washington Utilities and Transportation Commission
(Commission) assessed a penalty of \$1,900 against Gus & Jack Moving Company, LLC
(Company) for serious safety and equipment violations.
- 2 On September 17, 2014, the Company filed a request for hearing, contesting the violations.
- 3 On November 6, 2014, the Commission conducted a brief adjudicative proceeding before
Administrative Law Judge Rayne Pearson. Following the hearing, the Commission entered
initial Order 01 denying the Company's mitigation request. The Commission ordered the
Company to pay the full \$1,900 penalty.
- 4 On November 25, 2014, Company owner Gus Mansour wrote a letter to Commission
executive director Steve King requesting a reduction in the penalty amount.
- 5 Staff interprets the Company's November 25 letter as a timely petition for administrative
review pursuant to WAC 480-07-825.

II. ANSWER TO PETITION

- 6 At the hearing, the Company presented no documentary evidence and ultimately admitted all
violations. The Company now requests mitigation on grounds already rejected by Judge
Pearson after reviewing Staff's evidence and carefully evaluating the demeanor and
credibility of the Company's sole witness, owner Gus Mansour. Because Mr. Mansour

presents no new information and cites no legal authority,¹ Staff requests that the Commission adopt the initial order in full.

7 Staff submits the following brief responses to the Company's claims.

8 ***"This order will put a further burden on me to meet my obligation to keep my company running and my trucks safe." "I appeal to you to reduce this fine" "This penalty will jeopardize my ability to keep my company running and pay for mechanics and insurance." "I have complied with all you have demanded, now I need to survive and I request a reduction of the penalty."***

9 The \$1,900 penalty imposed by the Commission was reasonable. The un rebutted evidence established that the Company committed serious safety and equipment violations despite having received relevant technical assistance on at least two occasions prior to Staff's compliance review.

10 If the Commission upholds the penalty on review, Staff remains willing to consider a payment plan proposed by the Company.²

11 ***"You are asking me to pay a penalty for violation I did not commit willingly, that has nothing to do with the safety of my Trucks or me."***

12 The Company admittedly (1) failed to complete the required vehicle inspection reports at the conclusion of each trip, (2) failed to document periodic inspection of its vehicles by a qualified mechanic as required, and (3) failed to ensure that its driver obtained the necessary medical examiner's certificate. Staff presented evidence that each of these violations impaired the Company's safety record and placed the traveling public at risk of harm. Staff also presented evidence that all violations were classified as "critical" according to federal standards. As Judge Pearson noted in Order 01, "critical" violations indicate a breakdown in the carrier's management controls.

13 ***"I have inspected my trucks every day I have ever used them. I had a mechanic look at my trucks all the time"***

14 The Commission alleged that the Company violated 49 C.F.R. 396.17(a) by failing to have its vehicles inspected annually by a certified mechanic. At the hearing, Staff presented

¹ Under the Commission's procedural rules, the petitioner must cite the record when challenging findings of fact and cite legal authority when challenging conclusions of law. WAC 480-07-825(3). The petitioner must also propose new findings and conclusions for the Commission's consideration. *Id.*

² Order 01 states at page 5, "Gus & Jack Moving Company, LLC must either pay the penalty or file jointly with Staff a proposed payment plan no later than November 26, 2014." Staff contends that the Company's failure to propose a payment plan by the November 26 deadline should not be deemed a waiver of that option. The option should remain viable while the Company exhausts its remedies.

evidence that the Company provided no proof of compliance during the relevant time frame. Mr. Mansour admitted on the record, “Yes, I am—I have neglected to fill the forms because I didn’t even know I had to fill them.”³ Under the circumstances of this case, confusion regarding Commission requirements is not a mitigating factor. The Company bears the burden to ensure knowledge of and compliance with applicable laws.

15 ***“I sent you the inspection of my trucks by professional Mechanic on the form Mr. Dixon [Staff investigator Alan Dickson] provided me.” “I have given you the forms signed by a license Mechanic which confirmed that my trucks are safe to drive.”***

16 The Company claims it completed some type of inspection after learning of the Commission’s periodic inspection requirement through this proceeding. Because the Company presented no documentary evidence at the hearing, the record contains no reliable proof of this assertion. In any event, the Company cannot retroactively remedy its violation.

17 ***“I have visited my Doctor at least once a year for the last 25 years”***

18 The Commission alleged that the Company violated 49 C.F.R. 391.45(a) by allowing its driver (Gus Mansour) to operate his vehicle on 17 occasions without a medical examiner’s certificate. Mr. Mansour admitted at the hearing, “Yes, this is—I—I’m guilty at that, that I did not have a DOT physical, but I have a physical once a year.”⁴ Staff presented evidence that a valid medical examiner’s certificate must be issued by a certified doctor listed in a national registry. Mr. Mansour presented no evidence that his yearly “physical” satisfied this requirement.

19 ***“I have given you my DOT physical, it confirms that I am good to drive.”***

20 The Company claims Mr. Mansour obtained a valid medical examiner’s certificate after learning of the certification requirement through this proceeding. Again, because the Company presented no documentary evidence at the hearing, the record contains no reliable proof of this assertion. Additionally, the Company cannot retroactively remedy its violation.

21 ***“The only violations I have committed are, not understanding the importance of keeping record for forms I could not understand all these forms.” “The representative who came here explained to me what the commission expects and it is very hard to keep all these forms in order and to know which one need to be filled all the time. It is very hard to keep all these form organized; I am a one person company and trying so hard to afford a staff to help me through these forms.”***

³ Transcript (Nov. 4, 2014) (Tr.) 28.

⁴ Tr. 33.

22 Staff presented evidence that Mr. Mansour received an onsite technical assistance visit in 2012 and personally attended a Commission-sponsored household goods carrier training in 2013. On both occasions Mr. Mansour received a guide that explained applicable recordkeeping requirements in plain language. In addition, Staff provided advance notice of the Company's July 2014 compliance review. Staff presented evidence that Mr. Mansour could have contacted the investigator if he had questions about the scope of the review.

23 *"I had most of the information needed but on an organized file to show the commission at the time."*

24 The Company presented no documentary evidence at the hearing. The "organized file" to which it refers is not part of the record.

25 *"English is a second language to me but I took responsibility for not keeping file on the order the commission need to see."*


26 Judge Pearson evaluated Mr. Mansour's demeanor and credibility at the hearing and determined that, notwithstanding any language barrier, the Company's mitigation request should be denied.

III. CONCLUSION

27 The Company offers no persuasive basis on which to reject or modify the initial order in this docket. Staff requests that the Commission adopt the initial order in full.

DATED December 5, 2014.

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