

Docket No. TV-220321 - Vol. II

**In the Matter of the Investigation of: Superheroes
Moving and Storage LLC**

July 7, 2022



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the)
Investigation of:) DOCKET TV-220321
)
)
SUPERHEROES MOVING AND)
STORAGE, LLC)
)
For compliance with WAC)
444-44-444 and WAC)
555-55-555)
)

VIRTUAL EVIDENTIARY HEARING - VOLUME II
ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

(All participants appeared remotely via Zoom
videoconference.)

Washington Utilities and Transportation Commission
621 Woodland Square Loop Southeast
Lacey, Washington 98503

DATE: July 7, 2022

REPORTED BY: Ashley Dixon, CCR No. 21035325

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1 LACEY, WASHINGTON
2 JULY 7, 2022
3 9:36 A.M.
4 --oOo--
5 P R O C E E D I N G S
6

7 JUDGE PEARSON: So let's be on the record.
8 This is Docket TV-220321 which is captioned in the
9 matter of the investigation of Superheroes Moving and
10 Storage LLC for compliance with Washington
11 administrative code 480-15.

12 Today is Thursday, July 7th 2022. The time
13 is now 9:36 a.m., and we're here for an evidentiary
14 hearing to address the violations alleged in the notice
15 of hearing which include operating as a household goods
16 carrier without the permit required for such operations
17 and numerous other violations of commission safety
18 rules.

19 My name is Rayne Pearson. I use she/her
20 pronouns, and I'm the administrative law judge presiding
21 over this case. We'll begin by taking appearances
22 beginning with staff.

23 Mr. Roberson, if you want to just enter a
24 short appearance. State your name, spell your last name
25 for the court reporter, and feel free to share your

1 pronouns and then who you represent.

2 MR. ROBERSON: Good morning. My name is
3 Jeff Roberson, R-o-b-e-r-s-o-n. I'm an assistant
4 attorney general representing staff. I use he/him
5 pronouns, and with me at virtual counsel table are
6 staff's investigator Tracy Cobile and the motor carrier
7 safety supervisor, Jason Sharp.

8 JUDGE PEARSON: All right. Thank you. And
9 although there does not appear to be anyone on the line
10 from the company, I will just ask if there is anyone
11 present representing the company? Okay. Hearing
12 nothing, I think what we'll do, Mr. Roberson, is just
13 take a break until 9:45, which gives the company a full
14 15 minutes to appear, so an additional eight minutes.
15 We'll take a recess for eight minutes and then we will
16 come on -- back on the record at 9:45 and I will
17 entertain a motion for default at that time. Does that
18 sound good.

19 MR. ROBERSON: That does.

20 JUDGE PEARSON: Okay. Well, then we are in
21 recess until 9:45.

22 (Short taken from 9:37 a.m. to 9:53 a.m.)

23 JUDGE PEARSON: So we will be back on the
24 record. The time is now 9:53 a.m. Following a recess, a
25 representative for the company is now present at the

1 hearing. So, Mr. Doherty, if you would please state
2 your name, spell your last name, and feel free to share
3 your pronouns and who you represent.

4 MR. DOHERTY: Jesus, this internet connection
5 is garbage.

6 JUDGE PEARSON: We can hear you, Mr. Doherty.

7 MR. DOHERTY: I'm sorry. Can you repeat
8 that?

9 JUDGE PEARSON: Can you please state your
10 full name, spelling your last name, your pronouns, and
11 who you represent.

12 MR. DOHERTY: My name is Ryan Doherty, and
13 I'm the representative of Superheroes Moving and
14 Storage.

15 JUDGE PEARSON: Can you spell your last name,
16 please?

17 MR. DOHERTY: Oh, my gosh. This internet
18 condition is garbage. Aye. Aye. Aye. This is
19 frustrating. Why is our internet being so weird? Now,
20 this lady is all mad at me. She's all --

21 JUDGE PEARSON: Mr. Doherty, I can hear
22 everything you're saying.

23 MR. DOHERTY: I'm sorry. I'm sorry. Your --
24 your screen and your audio keeps freezing on me, so
25 I'm -- I apologize.

1 JUDGE PEARSON: So, again, you were aware
2 that this hearing was happening today and should've
3 gotten yourself to a location where you had a stable
4 internet connection and could participate.

5 MR. DOHERTY: Well, I thought I could just
6 dial in on the phone. I tried to do that and it didn't
7 work.

8 MR. ROBERSON: Judge Pearson, if I may, in
9 the chat, you can see Ryan Smith just announce that he
10 reset the information for Mr. Doherty. He might want to
11 check his email.

12 JUDGE PEARSON: Did you hear that, Mr.
13 Doherty?

14 MR. DOHERTY: Yep. I will try that again.
15 Yeah. I'll try that again here. Let me -- the meeting
16 ID number looks like it's different from the one that I
17 wrote down from earlier, so maybe that was the issue.

18 JUDGE PEARSON: All right. To the court
19 reporter, we can go ahead and be in recess until we
20 straighten this out. You don't need to record
21 everything he's saying.

22 (Short taken from 9:56 a.m. to 9:58 a.m.)

23 JUDGE PEARSON: Let's go ahead and be back on
24 the record. Mr. Doherty, you were going to spell your
25 last name for the court reporter.

1 MR. DOHERTY: It's D-o-h-e-r-t-y.

2 JUDGE PEARSON: Okay. Thank you. So, again,
3 we are here for an investigation hearing to address the
4 violations that were alleged in the notice of hearing in
5 the nonissue of operating as a household goods carrier
6 without the permit required for such operations and
7 numerous violations of commission safety rules. And,
8 again, I am Rayne Pearson, the administrative law judge
9 presiding over this case. Is there anyone else who
10 wishes to enter an appearance today? I hear nothing.

11 MR. DOHERTY: No.

12 JUDGE PEARSON: Yeah. I was not asking you.
13 I was asking for other people and hearing nothing. We
14 did convene a prehearing conference on June 23rd at
15 which time the company had not yet filed a safety
16 management plan. So we will hear from staff first this
17 morning, then we'll hear from the company. Once we hear
18 from the company, I'll check back with staff once more
19 about its recommendation. So, Mr. Roberson, you can
20 begin when you're ready.

21 MR. ROBERSON: Good morning. Staff calls
22 Tracey Cobile to the stand.

23 JUDGE PEARSON: Good morning, Ms. Cobile.
24 Can you please unmute your microphone and raise your
25 right hand?

1 MS. COBILE: Good morning.

2 JUDGE PEARSON: Good morning.

3

4 TRACEY COBILE, witness herein, having been
5 duly sworn by the Certified
6 Court Reporter, testified
7 under oath as follows:

8

9 JUDGE PEARSON: All right. Mr. Roberson, you
10 can proceed when you're ready.

11

12 EXAMINATION

13 BY MR. ROBERSON:

14 Q. Good morning. Would you please state your
15 name and spell your last name for the record?

16 A. It's Tracy Cobile, C-o-b-i-l-e. And I use
17 she/her pronouns.

18 Q. And who employs you?

19 A. The utilities and transportation commission.

20 Q. What position do you hold at the commission?

21 A. I am a special investigator.

22 Q. And what are your duties as a special
23 investigator?

24 A. I conduct compliance investigations on
25 regulated transportation companies which include

1 applicable company records and commercial motor
2 vehicles.

3 Q. Have you received any training or education
4 to allow you to carry out your duties as a special
5 investigator?

6 A. I obtained my investigative safety analysis
7 certification from the Federal Motor Carrier Safety
8 Administration and the United States Department of
9 Transportation. And prior to working for the UTC, I
10 served as a commercial vehicle enforcement officer with
11 the Washington State Patrol for a period of seven years.
12 And four of those years were spent conducting new entry
13 safety audits as a Federal Motor Carrier Safety
14 Administrative -- Administration certified auditor.

15 Q. Are you thus familiar with the state and
16 federal regulations governing the safe operation of
17 household goods carriers?

18 A. Yes.

19 Q. Are you familiar with the company called
20 Superheroes Moving and Storage LLC?

21 A. Yes.

22 Q. How did you become familiar with Superheroes?

23 A. As part of the 2022 work plan, the motor
24 carrier safety work plan, on March 7th, 2022,
25 Superheroes Moving and Storage LLC provisional household

1 goods carrier was assigned to me to conduct a
2 comprehensive compliance review.

3 Q. When you perform that kind of review, do you
4 look at the carrier's history of the commission?

5 A. Yes.

6 Q. Did you do that for Superheroes?

7 A. Yes.

8 Q. Did you notice anything when you looked at
9 its history with the commission?

10 A. Yes. I noticed that they -- they had a
11 canceled permit.

12 Q. That must have been reinstated by the time
13 you were assigned to review them, correct?

14 A. That is correct.

15 Q. What period was the company's permit canceled
16 for?

17 A. It was canceled on July 26th, 2021, and
18 reinstated July -- I'm sorry, reinstated January 5th,
19 2022.

20 Q. Okay. When you review a carrier's operations
21 and compliance with the relevant rules, do you look at
22 its records?

23 A. Yes.

24 Q. What kind of records do you look at?

25 A. I'm looking -- so this is a comprehensive

1 investigation, so I'm looking at driver qualification
2 files. I'm looking at vehicle maintenance files. I'm
3 looking at hours of service. I'm looking at a sample
4 size of those records, DVIRs. I'm inspecting commercial
5 motor vehicles.

6 Q. And did you review all those records when you
7 reviewed Superheroes' compliance?

8 A. Yes.

9 Q. Okay. When you finish a compliance review,
10 do you produce a report of your findings?

11 A. Yes.

12 Q. Do you produce those reports in the ordinary
13 course of business?

14 A. Yes.

15 Q. So just as a matter of policy, as soon as you
16 complete an investigation, you write a report?

17 A. Yes.

18 Q. And that report, do you draft it
19 contemporaneously with the end of your investigation?

20 A. Yes.

21 Q. Is it important that those reports accurately
22 reflect your findings?

23 A. Yes.

24 Q. Why is that?

25 A. When I'm conducting investigations on a

1 company representing the utilities and transportation
2 commission, it is important that my investigation
3 procedures and findings match the report for accuracy
4 and completeness and thoroughness.

5 Q. Okay. Do you produce --

6 THE COURT REPORTER: Mr. Roberson, you froze.

7 MR. ROBERSON: I froze? Am I still frozen?

8 (Interruption in proceedings.)

9 THE COURT REPORTER: Sorry. I got dropped
10 from the call. The last thing I had was "Do you
11 produce".

12 MR. ROBERSON: No worries.

13 Q. (BY MR. ROBERSON) Do you produce these
14 reports in the ordinary course of business?

15 A. Yes.

16 Q. Why do you produce these reports?

17 A. To have a record of the investigation
18 findings.

19 Q. Do you produce your reports contemporaneously
20 with the end of your review?

21 A. Yes.

22 Q. And is it important that your report
23 accurately reflect what you found in the course of your
24 review?

25 A. Yes.

1 Q. Did you produce such a report when you
2 completed your review of Superheroes' operations?

3 A. Yes.

4 Q. Did you make that report in the ordinary
5 course of business and contemporaneously with the end of
6 your review?

7 A. Yes.

8 Q. And did the report that you drafted
9 accurately reflect your findings?

10 A. Yes, it did.

11 Q. And would you please turn to the exhibit
12 marked "TC-1"?

13 A. Yes, sir.

14 Q. Would you please identify that document?

15 A. This is my final comprehensive investigative
16 report and the review date is May 18th, 2022.

17 Q. Is that a true and accurate copy of the
18 report that you produced after completing your review of
19 Superheroes' operations?

20 A. Yes.

21 MR. ROBERSON: Judge Pearson, at this point,
22 Staff would move to admit Exhibit TC-1.

23 JUDGE PEARSON: Thank you. Mr. Doherty, do
24 you have any objection?

25 MR. DOHERTY: No. No, objections.

1 MR. ROBERSON: Okay. Then Exhibit TC-1 is
2 admitted and you may proceed, Mr. Roberson.

3 (Exhibit No. TC-1 was admitted.)

4 Q. (BY MR. ROBERSON) I'd like to talk now about
5 the results of your review. When you reviewed
6 Superheroes' operational records, did you find evidence
7 that it had operated while its permit was canceled?

8 A. Yes, I did.

9 Q. What evidence did you find?

10 A. There were 76 occasions that the company
11 operated without a valid permit within the investigation
12 sample period.

13 Q. And how did you know that the company had
14 operated without a permit?

15 A. The company provided bills of lading or work
16 orders for household goods moves during the time that
17 they did not have a valid permit.

18 Q. And what are "bills of lading" or "work
19 orders"?

20 MR. DOHERTY: Oh, my god -- oh.

21 MS. COBILE: The bill of lading and/or work
22 order is the company record that indicates the
23 household -- the detail of household goods moves that
24 someone has hired them to carry out.

25 Q. Okay. Now, previously you testified that you

1 look at a sample of a carrier's operations. Is that
2 what you did here?

3 A. Yes.

4 Q. Is it possible, given that you're only
5 evaluating a sample of the company's records, that it
6 operated without a permit on other occasions?

7 A. Yes, sir.

8 Q. Okay. Now, did you ever exchange emails with
9 Superheroes about these operations --

10 A. I did.

11 Q. -- during the period which its permit was
12 canceled?

13 A. Yes, I did.

14 Q. And who responded for Superheroes?

15 A. Can you ask that again, sir.

16 Q. I apologize. Who responded on behalf of
17 Superheroes?

18 A. Mr. Doherty. Mr. Ryan Doherty, the owner of
19 Superheroes Moving and Storage LLC.

20 Q. What did you say to Mr. Doherty in that
21 exchange?

22 A. I'm asking Mr. Doherty if he can explain why
23 he conducted the household goods moves despite having a
24 canceled permit.

25 Q. And what was Mr. Doherty's response?

1 A. May I refer to that email, sir?

2 Q. Well, actually, let's just do that then.

3 Would you please turn to the exhibit marked TC-2?

4 A. Yes, sir.

5 Q. Would you please identify that document?

6 A. This is email correspondence between Mr.
7 Doherty and I dated March 21st and 22nd of 2022.

8 Q. Is that a true and accurate copy of your
9 email exchange with Mr. Doherty?

10 A. As far as I can tell, yes.

11 MR. ROBERSON: Judge Pearson, at this point,
12 Staff would like to admit Exhibit TC-2.

13 JUDGE PEARSON: Mr. Doherty, do you have any
14 objection?

15 MR. DOHERTY: No.

16 JUDGE PEARSON: Okay. TC-2 is admitted.
17 Thank you.

18 (Exhibit No. TC-2 was admitted.)

19 Q. (BY MR. ROBERSON) So if you would like to
20 review it, take a second to look at the exhibit, but
21 when you're ready, can you please tell us what Mr.
22 Doherty's response to your question was?

23 A. Yes, sir. May I read from the email his
24 response, or would you just like me to paraphrase?

25 MR. ROBERSON: Judge Pearson? I guess I

1 would prefer to paraphrase but --

2 JUDGE PEARSON: Go ahead and read.

3 MR. ROBERSON: -- go ahead and read.

4 MS. COBILE: Yes, ma'am. Thank you. There
5 isn't much Ryan Doherty's response to me asking him why
6 he operated without a valid permit. His response is
7 "There isn't much to explain. I have debts that have to
8 be paid. If we didn't get jobs or sales, I could not
9 pay them. I would bankrupt the business and myself if
10 we stopped completely. TBH," or to be honest, "I did
11 what I had to do. I had no choice. We all have to
12 survive best we can."

13 Q. Thank you.

14 A. Yes, sir.

15 Q. I'd like to move on to talk about medical
16 certification. When you look at driver records, do you
17 look at driver medical records?

18 A. Yes. I'm looking for their medical examiner
19 certificates that qualifies them physically to drive
20 commercial motor vehicles.

21 Q. Did you look for those records when you
22 reviewed Superheroes' operations?

23 A. Yes, sir, I did.

24 Q. Did you find the necessary medical
25 certificates for all of Superheroes' drivers?

1 A. I did not.

2 Q. And how many drivers operated vehicles
3 without the requisite certificate?

4 A. There were four -- four drivers in violation.

5 Q. And how many trips did those drivers make
6 during the sample period?

7 A. There were 31 occasions.

8 Q. Does the Federal Motor Carrier Safety
9 Administration consider the use of a driver who's not
10 medically examined and certified an acute or critical
11 violation?

12 A. Yes.

13 Q. And is it critical or acute?

14 A. It was critical in this case.

15 Q. Okay. And now let's talk about driver record
16 inquiries. When you review driver records, do you look
17 at whether the carrier has a record of an inquiry about
18 the driver's history with state licensing agencies?

19 A. Yes.

20 Q. Did you look for those record here?

21 A. Yes, I did.

22 Q. Did Superheroes have that record for all of
23 its drivers?

24 A. No.

25 Q. How many drivers lacked a record of the

1 inquiry?

2 A. Four.

3 Q. And is the failure to keep those records
4 considered a critical or acute violation by the FMCSA?

5 A. Critical.

6 Q. Moving on, I'd like to talk about background
7 checks. When you review a carrier, do you look to see
8 if it has performed criminal background checks on each
9 of its employees?

10 A. For household goods carriers, yes.

11 Q. And how do you do that?

12 A. I will request the information from the motor
13 carrier.

14 Q. Did you look for criminal background checks
15 on every employee for Superheroes?

16 A. Yes, I did.

17 Q. And did Superheroes have evidence that it
18 performed criminal background checks for each of its
19 employees?

20 A. No.

21 Q. How many employees did Superheroes lack
22 evidence that they had performed a criminal background
23 check for?

24 A. Fourteen.

25 Q. Fourteen. Okay. I'd like to discuss next,

1 records of duty status. When you review operational
2 records, do you look for records of duty status?

3 A. Yes.

4 Q. And what is a "record of duty status"?

5 A. A record of duty status is the hours of
6 service requirement that is required by drivers of
7 commercial motor vehicles.

8 Q. And how do you audit a carrier's record of
9 duty status?

10 A. I am looking at -- so a motor carrier needs
11 to retain six months of hours of service for all of
12 their drivers that operate commercial motor vehicles and
13 they need to retain those on file. And then when I
14 begin my investigation, I'm asking for a period of time
15 in that six months depending on my findings and my
16 investigation to determine what period of time I need to
17 look at. If there is any driving time. If they were
18 actually employed during that time. If they had time
19 off or, you know, what impacts that sample size that I'm
20 looking for.

21 Q. Okay. And did you audit a sample size for
22 Superheroes when you performed your compliance review?

23 A. I did.

24 Q. And did you find that Superheroes was missing
25 records of duty status?

1 A. Yes.

2 Q. And how many records of duty status were
3 missing in the sample you examined?

4 A. Twenty-six occasions.

5 Q. And does the FMCSA consider the failure to
6 keep records of duty status an acute or critical
7 violation?

8 A. In this case it was critical.

9 Q. I'd next like to discuss driver vehicle
10 inspection reports. When you audit a carrier or when
11 you review its compliance, do you look for driver
12 vehicle inspection reports?

13 A. Yes.

14 Q. And for shorthand, I'm just going to call
15 those DVIRs. What are DVIRs?

16 A. So driver vehicle inspection reports, DVIRs,
17 are a requirement for drivers post inspection of their
18 vehicles at the end of the day that they are required
19 when defects are found to complete -- to complete the
20 document, the DVIR --

21 Q. And is this another case where you're just
22 auditing a sample of records?

23 A. Yes. So in this -- yes. In this case I'm
24 looking at three months' worth of DVIRs.

25 Q. And so you did look for DVIRs here?

1 A. Yes, sir, I did.

2 Q. And did you find that Superheroes was missing
3 DVIRs?

4 A. Yes.

5 Q. And how many DVIRs were missing from the
6 sample that you reviewed?

7 A. Sixteen.

8 Q. And does the FMCSA consider the failure to
9 have or to allow DVIRs a critical or acute violation?

10 A. Yes. In case it was critical.

11 Q. I'd like to next turn to periodic
12 inspections. So when you review a carrier's files, do
13 you look at vehicle maintenance records?

14 A. I do, yes.

15 Q. And do you look to see whether the carrier is
16 using vehicles that are periodically inspected?

17 A. Yes.

18 Q. Did you look to see if Superheroes' vehicles
19 were periodically inspected?

20 A. Yes, I did.

21 Q. And were all of them?

22 A. No, they were not.

23 Q. How many vehicles were not periodically
24 inspected?

25 A. There were three discovered.

1 Q. And does the FMCSA consider the failure to
2 have vehicles periodically inspected a critical or acute
3 violation?

4 A. In this case it was critical.

5 Q. I would next like to discuss employment
6 applications. When you review a carrier's driver files,
7 do you look to ensure that the carrier has completed
8 employment applications for all drivers?

9 A. Yes.

10 Q. And did you do so here?

11 A. Yes, I did.

12 Q. Did Superheroes have completed applications
13 for all of its drivers?

14 A. No.

15 Q. How many drivers did not have complete
16 applications on file?

17 A. There were five.

18 Q. I'd like to turn next to performance history.
19 When you review driver records, do you look to see if a
20 carrier has investigated the performance history of its
21 drivers with USDOT-regulated employers?

22 A. Yes.

23 Q. And what records do you look for to do so?

24 A. I am looking at the application for
25 employment. Previous employment history that indicates

1 the department of transportation regulation indicators
2 that then I would -- would -- then the responsibility
3 for the carrier or the owner or the motor carrier would
4 be to check the driver's previous employment history.

5 Q. And did you look for those records when you
6 reviewed Superheroes' files?

7 A. I did.

8 Q. And did you find that Superheroes had the
9 appropriate number of records?

10 A. No.

11 Q. How many drivers did Superheroes lack the
12 necessary investigation documents for?

13 A. There was one, one violation.

14 Q. I would like to turn next to driver
15 qualification files. When you review driver records, do
16 you look at driver qualification files?

17 A. Yes.

18 Q. And did you look at those files in your
19 review of Superheroes' operations?

20 A. Yes.

21 Q. Did Superheroes have driver qualification
22 files for all of its drivers?

23 A. No.

24 Q. How many current drivers lacked a driver
25 qualification file?

1 A. One.

2 Q. I would like to turn next to road tests.
3 When you review driver records, do you look for a road
4 test certificate or an acceptable alternative for each
5 driver?

6 A. Yes.

7 Q. And did you look for those records here?

8 A. I did.

9 Q. Did you find the necessary records for all of
10 Superheroes' drivers?

11 A. No.

12 Q. How many drivers did Superheroes lack the
13 road test certificate or an acceptable alternative for?

14 A. Four.

15 Q. I would next like to discuss annual record
16 driver inquiries. When you review driver records, do
17 you look to see if the carrier has maintained the
18 responses of state agencies to the annual inquiry the
19 carrier is supposed to make about the driver's
20 performance?

21 A. Yes.

22 Q. And did you look for those records here?

23 A. I did.

24 Q. Did you find them for each driver?

25 A. No, I did not.

1 Q. How many drivers lacked a record of that
2 annual inquiry?

3 A. Two.

4 Q. I would now like to turn to medical examiner
5 notations. Previously, we discussed that you're looking
6 for some medical documents in a driver's files. Do you
7 look for specific medical notations in those files?

8 A. Yes. So the medical examiner certificates
9 qualifying the driver's physically to drive commercial
10 motor vehicles, those cars have to be verified through
11 the national registry, national medical examiner's
12 registry.

13 Q. And did you look for those notations here?

14 A. I did.

15 Q. And did you find the notation for each of the
16 medical certificates?

17 A. I did not.

18 Q. How many driver's records lacked the
19 necessary notation?

20 A. One.

21 Q. One. I would now like to discuss former
22 driver's files. Do carriers need to keep driver
23 qualification files for former drivers after the date
24 the employee is terminated or separates from employment?

25 A. Yes.

1 Q. How long must a carrier keep a driver
2 qualification file for after the employee no longer
3 works for it?

4 A. So it's employment plus three. Three years.

5 Q. And do you normally look for the driver
6 qualification files of former employees when you perform
7 a compliance review?

8 A. Yes.

9 Q. And did you look for those files here when
10 you reviewed Superheroes?

11 A. I did.

12 Q. Did you find all the files that you should
13 have?

14 A. No.

15 Q. How many former drivers did Superheroes lack
16 a driver qualification file for?

17 A. Seven.

18 Q. I would like to turn now to regulatory fees.
19 When you review a carrier's operations, you mentioned
20 that you look at, kind of, its history with the
21 commission. Do you look to see if it's current on the
22 payment of its regulatory fees?

23 A. Yes.

24 Q. Did you look to see if Superheroes was
25 current on its regulatory fees?

1 A. Yes.

2 Q. Was it?

3 A. It wasn't -- they were not.

4 Q. And now I have some questions on vehicle
5 maintenance records. When you review a carrier's
6 operations, do you look to see if it keeps a maintenance
7 record that identifies each of its vehicles including
8 the make, serial number, year, and tire size?

9 A. Yes.

10 Q. Did you look for those records when you
11 reviewed Superheroes operations?

12 A. I did.

13 Q. Was Superheroes missing those maintenance
14 records for any of its vehicles?

15 A. They were -- for this specific question, they
16 were missing the vehicle identifiers.

17 Q. For how many vehicles?

18 A. Five.

19 Q. Five. Do you look to see if the carrier has
20 records indicating the nature and due date of any
21 upcoming inspections and maintenance?

22 A. Yes.

23 Q. Did you do so here?

24 A. Yes.

25 Q. And did you find the records you should have

1 found for all of Superheroes' vehicles?

2 A. No.

3 Q. How many vehicles had no records tracking
4 upcoming inspections or maintenance?

5 A. Five.

6 Q. Five. Do you also look to see if the carrier
7 has a record of the dates and nature of previous vehicle
8 inspections, repairs, and maintenance?

9 A. Yes.

10 Q. And did you look for those records here?

11 A. Yes.

12 Q. Did you find them for all of Superheroes'
13 vehicles?

14 A. No, I did not.

15 Q. How many vehicles lacked the necessary
16 records of inspections, repairs, or maintenance?

17 A. Five.

18 Q. So to this point, we've just discussed your
19 review of records. Do you actually inspect vehicles
20 when you go out and review a carrier's compliance?

21 A. Yes. Depending on the number of vehicles the
22 carriers has, it will -- I will then look at a specific
23 sample size. And in this case, the sample size was
24 three vehicles.

25 Q. Okay. Do you record the results of your

1 inspections in a report when you finish?

2 A. Yes.

3 Q. Do you make that report contemporaneously
4 with the end of your inspection?

5 A. Yes.

6 Q. And do you make that report in the ordinary
7 course of business? It's just --

8 A. Yes.

9 Q. -- something you do automatically?

10 A. Excuse me. Yes, sir.

11 Q. Is it important that that report be accurate?

12 A. Yes.

13 Q. Okay. Did you inspect Superheroes' vehicles?
14 I believe you just said three?

15 A. Yes, sir, I did.

16 Q. Okay. And did you record the results of your
17 inspection in your report?

18 A. Yes.

19 Q. Would you please turn to TC-3?
20 (Exhibit No. TC-3 introduced.)

21 A. Yes, sir.

22 Q. Can you identify that document?

23 A. These are the vehicle inspection reports on
24 the vehicles that I inspected that were provided to the
25 carrier upon completion of the inspections themselves.

1 Q. Is that a true and accurate copy of your
2 report?

3 A. Yes.

4 Q. And so when you inspected the three vehicles,
5 did you find regulatory violations?

6 A. I did.

7 Q. And could you summarize those or just explain
8 what you found for each vehicle?

9 A. Sure. So there were, again, three vehicles
10 inspected, and two of the three vehicles were placed out
11 of service based on out-of-service conditions found at
12 the time of the inspection.

13 Q. Could you just briefly state what the
14 out-of-service conditions were?

15 A. Yes, sir, I'd be happy to. The -- I'm
16 looking at inspection report number WAU013000127 dated
17 March 15th, 2022. This is on equipment -- the motor
18 carrier's equipment number two. And then ending in
19 771575, there were both headlamps -- low-beam headlamps
20 were inoperative and the high beam worked only on the
21 right side, so having both low-beam lamps inoperative
22 resulted in an out-of-service condition. There was left
23 side, inside tire was flat. There was no reading at the
24 time I showed Ryan Doherty that you could actually shake
25 the tire on the rim and it was completely flat. That's

1 an out-of-service condition. And then the truck failed
2 the air loss rate test. And reservoir two, it lost
3 pressure and would not maintain or build pressure. So
4 those are the out-of-service conditions on that
5 particular inspection report. And the out-of-service
6 conditions on the next report -- this is report number
7 WAU013000128 dated March 15th. -- I need my glasses --
8 the 15th. This is on equipment number one then ending
9 in 15598. The out-of-service conditions were axle one
10 left side brake lining was cracked, exceeding the one
11 and a half inches in length that this then is
12 categorized as an out-of-service condition based on the
13 exceeding measurement. And then axle one left front
14 brake, applied air leak from brake hose. The leak was
15 at other than a proper connection, therefore, that was
16 also an out-of-service condition --

17 MR. ROBERSON: Thank you. I have no further
18 questions, Judge Pearson.

19 JUDGE PEARSON: Thank you. Mr. Doherty, do
20 you have any questions for Ms. Cobile?

21 MR. DOHERTY: No. I don't have any
22 questions.

23 JUDGE PEARSON: Okay. Thank you. So at this
24 time, Mr. Doherty, you will have a chance to respond to
25 what Staff said, tell kind of your version of what

1 happened, respond to the violations, and et cetera. So
2 if you could please raise your right hand, I will swear
3 you in.

4

5 RYAN DOHERTY, witness herein, having been
6 duly sworn by the Certified
7 Court Reporter, testified
8 under oath as follows:

9

10 JUDGE PEARSON: All right. So you can go
11 ahead when you're ready.

12 MR. DOHERTY: I mean, I'm ready. There's --
13 I don't really know what to say. You guys stated all
14 the violations that were found so there's really not
15 anything to -- there's not anything I have to counter
16 that.

17 JUDGE PEARSON: Okay. So you're stipulating
18 to the violations?

19 MR. DOHERTY: Yeah.

20 JUDGE PEARSON: Okay. And is there anything
21 that you want to speak to to explain your circumstances
22 as to why the violations occurred, what you've done to
23 fix them, how you're going to prevent them going
24 forward?

25 MR. DOHERTY: Well, I did provide a safety

1 measurement plan that, you know, was mostly all
2 completed. There was maybe just a couple of items that
3 still needed to be addressed. I did fix nearly
4 everything that was found in Tracey's report.

5 That being said, I didn't continue finishing
6 it off because I made the decision to just close down my
7 operations completely and get out of this business
8 because it -- I kind of went into it blindly. I did not
9 come from transportation or moving industry before I
10 started this moving company. I didn't have a knowledge
11 or of all -- the level of, I guess, regulations that
12 need to be abided by and things. I mean, I did take the
13 course at Olympia two years ago or two and a half, three
14 years ago but it wasn't nearly sufficient enough to
15 equip someone who's not from the industry.

16 Had I maybe already worked in the moving or
17 trucking industry for a few years, I probably would have
18 been able to know how to do all of those things. But
19 considering I didn't come from it and it was kind of
20 hard to know all those things, and on top of that, just
21 where I was starting the business with very little cash,
22 I sort of did it on a whim as a desperation move just to
23 get out of -- just to try something new. So I was just
24 trying to make ends meet, just trying to make it by and
25 do the best I could, and just kind of fix things as I

1 go. But, obviously, I didn't do things exactly the
2 right way. I'm aware of that. I got nothing to argue
3 with about that. I would just only state that, you
4 know, if someone's going to come into this industry
5 without prior working -- without prior working in this
6 truck or transportation industry, I don't think anyone's
7 going to be able to, you know, properly abide by all the
8 regulations because it's -- it's almost impossible to
9 know all of them. And if you do them, how to do it
10 right, how to do certain things the correct way and file
11 things the correct way and keep the correct type of
12 records that are necessary.

13 So, I mean, I understand. It is what it is
14 and there's a reason for them. And I'm sure it's just
15 built up over the last hundred years of trucks going
16 down the highways. I understand that. But at this
17 point, after doing this for over two years, I don't
18 see -- I don't see anything for me and this company
19 moving forward, so I've already started to list my
20 trucks for sale and getting into a totally different
21 industry. But, yeah, I mean, I do understand everything
22 that's been stated, you know, where the violations were.
23 I understand why they're important to the commission. I
24 understand that. So it's a pretty tough industry. You
25 know, labor alone, you can't find any labor in this type

1 of industry unless you charge customers more than
2 they're willing to pay. It's a pretty tough industry.
3 I don't know how a lot of these companies are making it
4 by, to be honest, but -- so that's all I can really say
5 to it all.

6 JUDGE PEARSON: Okay. So you are saying that
7 you have now ceased all operations?

8 MR. DOHERTY: Yeah. Yes. We have the
9 trucks listed for sale. We're trying to -- we still
10 have some storage tenants. We're trying to move out of
11 our storage, so we're pretty much a hundred percent shut
12 down, it's just kind of finishing off some loose ends
13 but yeah.

14 JUDGE PEARSON: Are you still performing
15 moves?

16 MR. DOHERTY: Well, we are, but just until
17 we get the trucks sold.

18 JUDGE PEARSON: So you're continuing to
19 operate without a permit, or do you have a permit right
20 now? I guess I'm unclear about that.

21 MR. DOHERTY: Well, as far as I know, we
22 still have a permit and we still have everything. But I
23 don't know if, you know, if the commission wants to pull
24 the permit again. It's -- I mean, if it happens, I
25 mean, by the time that happens, we should be -- we

1 should have stopped all operations by that point anyway
2 but --

3 JUDGE PEARSON: Okay. Thank you.

4 MR. DOHERTY: -- so that's just kind of where
5 things are at.

6 JUDGE PEARSON: Mr. Roberson, do you have any
7 questions for Mr. Doherty?

8 MR. ROBERSON: No. I think, actually, your
9 question covers what I was going to ask so, no, I have
10 no questions.

11 JUDGE PEARSON: Okay. And at this time would
12 Staff like to make a recommendation?

13 MR. ROBERSON: Yes. Staff would like to
14 call Jason Sharp to the stand.

15 JUDGE PEARSON: Good morning, Mr. Sharp.

16 MR. SHARP: Good morning.

17 JUDGE PEARSON: If you could rise your right
18 hand, I'll swear you in.

19

20 JASON SHARP, witness herein, having been
21 duly sworn by the Certified
22 Court Reporter, testified
23 under oath as follows:
24

25 JUDGE PEARSON: Mr. Roberson, you may

1 proceed.

2

3

EXAMINATION

4 BY MR. ROBERSON:

5 Q. God morning. Would you please state your
6 name and spell your last name for the record?

7 A. -- yes. My name is Jason Sharp, S-h-a-r-p,
8 and I use he/him pronouns.

9 Q. Who employs you?

10 A. The Washington Utilities and Transportation
11 Commission.

12 Q. What is your position with the Commission?

13 A. I am the motor carrier safety supervisor.

14 Q. And what are your duties as the motor carrier
15 safety supervisor?

16 A. I supervise our compliance investigation
17 staff. I assign motor carrier comprehensive safety
18 investigations. I review the investigative reports and
19 provide recommendations based on the findings.

20 Q. And have you had any training to help you
21 carry out your duties as the supervisor?

22 A. Yes. So I've been the supervisor for about
23 four and a half years. And prior to that, I was a
24 safety investigator like Investigator Cobile, and I
25 received similar training as she testified to earlier

1 through the Federal Motor Carrier Safety Administration
2 and the Commercial Vehicle Safety Alliance.

3 Q. So like Special Investigator Cobile, it's
4 fair to say that you are familiar with the state and
5 federal rules governing the safe operations of household
6 goods carriers?

7 A. Yes, I am.

8 Q. You heard Mr. Doherty's testimony that he
9 just offered. Given that testimony and that he's not
10 contesting the violations, do you have any
11 recommendation as to what the commission should do with
12 Superheroes' permit?

13 A. Yes. So consistent with the federal
14 regulations in part 385, we adopt the safety rating
15 methodology and without an approved safety management
16 plan from the company, the company will be canceled on
17 the 61st day from the notice of that unsatisfactory --
18 or proposed unsatisfactory rating which was May 18th.
19 And so the company has chosen not to continue to work on
20 its safety management plan. Staff's recommendation is
21 that the Commission continue forward with the
22 cancellation of the permit.

23 Q. And do you also have a recommendation as to
24 the appropriate penalty for the violations that
25 Investigator Cobile discovered?

1 A. Yes, I do. So the penalty is kind of broken
2 up here and the penalties for operating without a valid
3 permit allowed for up to \$5,000 per occurrence, which
4 there were 76 discovered within that sample period. So
5 if we were to take those 76 occurrences and apply \$5,000
6 to each occurrence, that would total \$380,000. So with
7 that, I'm going to separate that from the safety
8 violations that were discovered as part of the
9 comprehensive investigation and approaching this
10 consistently with how we would do any other motor
11 carrier in a similar situation based on the commission's
12 enforcement policy, the safety violations would total up
13 to \$5,400. Okay? And if you would like, I can break
14 those down how that calculates, if that's helpful.

15 Q. Sure.

16 A. Okay. So for the 31 violations of 39145A,
17 which is for operating a commercial motor vehicle
18 without a valid medical certificate, Staff would
19 recommend a \$100 penalty per occurrence, which would
20 total \$3,100.

21 For the four occurrences of the 39151B2
22 violations for failing to obtain initial motor vehicle
23 records on drivers, Staff would recommend a \$100 per
24 category penalty for that.

25 For the 26 occurrences of the 395.8A1

1 violations for failing to require a commercial driver to
2 create a record of duty status, Staff would recommend a
3 \$100 per category penalty.

4 For the 16 occurrences of 39611A for failing
5 to create a driver vehicle inspection report, Staff
6 would recommend a \$100 per category penalty.

7 For the three occurrences of 39617A for
8 failing to have the commercial vehicles periodically
9 inspected, Staff would also recommend a \$100 per
10 category penalty.

11 And then there were five out-of-service
12 violations codified as 393.9A, 393.47A, 339.45D,
13 393.75A3, and 396.3A1. Staff would recommend a \$100
14 penalty for each of those occurrences consistent with
15 the enforcement policy for \$500. And so when you total
16 those safety violations, they total 5,400. So with that
17 said, the overall penalty between the safety violations
18 and for operating without a permit totalled \$385,400.
19 With the company closing its business and taking into
20 consideration, you know, that cooperativeness up to this
21 point as well, Staff would recommend that the Commission
22 impose the \$385,400 penalty making 5,000 of that payable
23 of a one violation of RCW 81800751 and suspending
24 \$380,400 for a period of two years and then waiving it
25 on the condition that the company cease and desist

1 operations as a household goods moving company without
2 first obtaining a permit from the Commission. And
3 should the company apply to be reinstated within that
4 period of time, the company would need to have an
5 approved safety management plan from Staff and pay the
6 \$5,400 related to the safety violations discovered
7 during this safety investigation. And then should the
8 company continue to perform regulated household goods
9 moves within the two-year suspended period, Staff would
10 recommend that the entire 380,400 be imposed.

11 Our intent is to discourage the company from
12 making those business decisions that violate commission
13 rules. That's why we support that heavy suspended
14 penalty.

15 Q. And with that, I have no further questions,
16 Judge Pearson.

17 JUDGE PEARSON: Okay. Mr. Sharp, can I get a
18 summary of everything that you just said in writing? I
19 could not possibly keep up with that.

20 MR. SHARP: Absolutely, Judge.

21 JUDGE PEARSON: If you want to just circulate
22 it by email to me and copy the Company, that would work.

23 MR. SHARP: Absolutely.

24 JUDGE PEARSON: Mr. Doherty, do you have any
25 questions for Mr. Sharp?

1 MR. DOHERTY: No, I do not.

2 JUDGE PEARSON: Okay. Is there anything else
3 that we need to address here today? You're muted,
4 Mr. Roberson.

5 MR. ROBERSON: Always happens. Not from
6 Staff.

7 JUDGE PEARSON: All right. So I will issue
8 an order reflecting the Commission's decision based on
9 the testimony and evidence that was presented today.
10 And if there is nothing further from you, Mr. Doherty,
11 just checking in with you one last time?

12 MR. DOHERTY: No. I have nothing further to
13 say.

14 JUDGE PEARSON: All right. Then we are
15 adjourned. Thank you, all.

16 (Hearing adjourned at 10:46 a.m.)

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STATE OF WASHINGTON
COUNTY OF THURSTON

I, Ashley Dixon, a Certified Shorthand Reporter
in and for the State of Washington, do hereby certify
that the foregoing transcript is true and accurate to
the best of my knowledge, skill and ability.



Ashley Dixon, RSR, CCR #5325