

Decision No. R04-1413

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 04G-302EC

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PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

COMPLAINANT,

V.

BUS SERVICE, INC. (THE),

RESPONDENT.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
DALE E. ISLEY  
ASSESSING CIVIL PENALTY PURSUANT  
TO SETTLEMENT AGREEMENT**

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Mailed Date: November 30, 2004

Appearances:

Jean Watson-Weidner, Esq., Assistant Attorney General, for  
Complainant, the Public Utilities Commission of the State of  
Colorado; and

Esther Joan Braddock and Ronald G. Braddock, for Respondent,  
Bus Service, Inc. (The), *pro se*.

**I. STATEMENT, FINDINGS, AND CONCLUSIONS**

1. The captioned proceeding was initiated on June 1, 2004, when the Staff of the Colorado Public Utilities Commission (Staff) issued Civil Penalty Assessment Notice (CPAN) No. 28624 to the Respondent, Bus Service, Inc. (The) (Bus Service).

2. On or about June 15, 2004, Bus Service acknowledged liability for Count Nos. 6, 13, 14, 21, and 22 of CPAN No. 28624 and paid the corresponding total civil penalty assessment of \$500.00. It contested liability for Count Nos. 1 through 5, 7 through 12, 15 through 20, and 23 through 47 of CPAN No. 28624 and requested a hearing in connection with those violations.

3. CPAN No. 28624 alleges that between October 31, 2003 and March 28, 2004, Bus Service violated § 40-16-104, C.R.S. (operating without proper insurance) (Count 1) on one occasion; § 40-16-103, C.R.S. (operating without being registered) (Count 2) on one occasion; and various provisions of the Federal Motor Carrier Safety Regulations that have been incorporated into the Commission's Rules Regulating Safety for Motor Vehicle Carriers and Establishing Civil Penalties by 4 *Code of Colorado Regulations* 723-15 (Safety Rules) on 40 occasions (Counts 3 through 5, 7 through 12, 15 through 20, and 23 through 47). The penalties for these violations total \$20,100.00.

4. This matter was originally set for hearing on August 16, 2004, but it was rescheduled twice, once to November 16, 2004, and again to November 30, 2004. *See*, Decision Nos. R04-0686-I, R04-0901-I, and R04-1030-I. The undersigned Administrative Law Judge (ALJ) called the matter for hearing at the assigned time and place. Staff appeared through its legal counsel. Bus Service appeared through its President, Esther Joan Braddock, and its Vice-President, Ronald G. Braddock.<sup>1</sup>

5. Prior to commencement of the hearing, counsel for Staff and the Bus Service representatives requested an opportunity to discuss the possibility of settling this matter. The

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<sup>1</sup> Bus Service's bookkeeper, Michelle Dye, also attended the hearing.

ALJ provided that opportunity. After a short recess, the parties that they had succeeded in negotiating a settlement and jointly requested that it be approved by the ALJ.

6. Under the terms of the settlement, Staff has agreed to dismiss Counts 4, 5, 8, 11, 12, and 20 of CPAN No. 28624 and Bus Service has agreed to acknowledge liability for Counts 1, through 3, 7, 9, 10, 15 through 19, and 23 through 47 and to pay a total civil penalty of \$2,000.00. Bus Service has agreed to pay this civil penalty within ten days following the date this Order becomes a decision of the Commission. In the event the above penalty is not timely paid, it has agreed to immediately pay the full \$20,100.00 penalty called for by CPAN No. 28624.

7. Mr. Reinhard Wolf, a Commission Compliance Investigator, provided testimony in support of the settlement. A copy of CPAN No. 28624 was marked as Exhibit 1 for identification purposes.

8. Mr. Wolf indicated that Bus Service had produced records demonstrating compliance with the record-keeping violations referred to in Counts 4, 5, 8, 11, 12, and 20 of CPAN No. 28624. This formed the basis for Staff's agreement to dismiss these Counts. Mr. Wolf then described various mitigating factors supporting Staff's request for a reduction of the penalty amounts to be assessed to Bus Service for the remaining Counts of CPAN No. 28624. These include the significant health problems encountered by Mr. Braddock at or near the time of the safety and compliance audit that underlies CPAN No. 28624. These health problems precluded Mr. Braddock from attending to the day-to-day activities of Bus Service so as to ensure compliance with the subject Safety Rules. Mrs. Braddock was overwhelmed and unprepared for these responsibilities. In addition, the relocation of the company's office from Englewood to Commerce City, Colorado, resulted in the discontinuance of employment by

several members of its office staff. This also inhibited the ability of Bus Service to fully comply with many of the record-keeping requirements of the Safety Rules. Mr. Wolf testified that Bus Service has, on its own initiative, taken remedial efforts to cure virtually all the deficiencies noted in CPAN No. 28624. The cost of doing so has been substantial. For example, Mr. Wolf testified that the company spent approximately \$100,000 to restore its insurance coverage.<sup>2</sup> As a result, Staff is satisfied that imposition of the full \$20,100.00 penalty called for by CPAN No. 28624 would not materially deter future Safety Rule violations or further motivate Bus Service to come into compliance with the law.

9. Bus Service's admissions form a factual basis for the settlement agreement described above. Given the mitigating factors described by Mr. Wolf, a \$2,000.00 penalty and the manner of payment are appropriate under the circumstances. Therefore, the parties' request that their settlement agreement be approved will be granted.

10. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following Order.

## **II. ORDER**

### **A. The Commission Orders That:**

1. The settlement agreement between the Staff of the Commission and Bus Service, Inc. (The) described in Section I, Paragraph 6 of this Order is approved.

2. Respondent, Bus Service, Inc. (The), is assessed a total penalty of \$2,000.00 to be paid to the Commission no later than the tenth day after this Order becomes a decision of the Commission. In the event this penalty is timely paid, Count Nos. 1 through 5, 7 through 12, 15 through 20, and 23 through 47 of CPAN No. 28624 shall be dismissed, with prejudice.

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<sup>2</sup> Bus Service had no accidents or claims during the time its insurance coverage was suspended.

3. In the event the above penalty is not timely paid, the acknowledgement of liability for Count Nos. 1 through 5, 7 through 12, 15 through 20, and 23 through 47 of CPAN No. 28624 described in Section I, Paragraph 6 of this Order shall constitute conclusive evidence that such violations occurred and Bus Service, Inc. (The) shall pay the full \$20,100.00 fine for such violations to the Commission immediately.

4. Docket No. 04G-302EC is closed.

5. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

6. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

7. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Administrative Law Judge