

Decision No. R04-0436

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04G-060CP

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

RDS TRANSPORTATION, LTD., D/B/A YELLOW CAB COMPANY OF COLORADO
SPRINGS,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
WILLIAM J. FRITZEL
DISMISSING FOUR VIOLATIONS
AND DENYING MOTION FOR
RECONSIDERATION OF CIVIL
PENALTY ASSESSMENT**

Mailed Date: April 27, 2004

Appearances:

Paul Hoffman, Staff of the Colorado Public Utilities Commission;
and

Duane H. Kamins, Esq. for RDS Transportation, Ltd., doing
business as Yellow Cab Company of Colorado Springs.

I. STATEMENT

1. On February 5, 2004, Staff of the Colorado Public Utilities Commission (Complainant) issued Civil Penalty Assessment Notice (CPAN) No. 28464 charging RDS Transportation, Ltd., doing business as Yellow Cab of Colorado Springs (Respondent) with

86 violations of 4 *Code of Colorado Regulations* (CCR) 723-15, including various alleged violations of Federal Motor Carrier Safety Regulations incorporated by 4 CCR 723-15-2.1.

2. On February 17, 2004, a letter was filed by Respondent dated February 12, 2004 indicating that Respondent acknowledged liability on the following violation numbers of CPAN No. 28464:

1-54, 56, 58, 59, 60, 61, 63-70, 72-86

Respondent also advised the Commission that it contests violation nos. 55, 57, 62, and 71. Respondent requested that a hearing be set on the alleged violations.

3. Respondent elected to pay a reduced penalty. On February 17, 2004, Respondent paid a reduced penalty in the amount of \$12,100 to the Public Utilities Commission, a 50 percent reduction from the total assessed amount of the charges that Respondent acknowledged liability.

4. A hearing was scheduled for April 12, 2004 in Colorado Springs, Colorado.

5. On March 18, 2004, Respondent filed a Motion for Reconsideration of Civil Penalty Assessment imposed upon the admission of violation nos. 17, 20, 23, 26, 30, 33, 36, and 40 through 54, all violations pertaining to hours of taxicab driver, Deborah Ross. Respondent requested that a ruling on the motion be deferred until after the hearing of April 12, 2004 in order that Respondent may orally argue and present testimony relating to the motion.

6. The hearing was held on April 12, 2004 on the four contested violations, nos. 55, 57, 62, and 71, and Respondent's Motion for Reconsideration of Civil Penalty Assessment.

7. Testimony was received from witnesses and Exhibit No.1 was marked for identification and admitted into evidence. At the conclusion of the hearing, the matter was taken under advisement.

8. Pursuant to § 40-6-109, C.R.S., the record and exhibits of the proceeding together with a written recommended decision are transmitted to the Commission.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. The Contested Violations

9. Respondent holds Certificate of Public Convenience and Necessity No. 109 from the Colorado Public Utilities Commission.

10. The Commission has jurisdiction over this matter.

11. On February 5, 2004, Complainant issued CPAN No. 28464 charging Respondent with 86 violations contrary to 4 CCR 723-15 alleging rule violations, including violations of the Federal Motor Carrier Safety Regulations, adopted and incorporated into the Commission's Rules Regulating Safety for Motor Carriers and Establishing Civil Penalties, 4 CCR 723-15.

12. On February 17, 2004, Respondent filed a letter with the Commission acknowledging liability of violation nos. 1 through 54, 56, 58, 59, 60, 61, 63 through 70, 72 through 86, and paid a reduced penalty of \$12,100 to the Commission. Respondent in the letter contested liability on the remaining alleged violations, 55, 57, 62, and 71.

13. Staff's witness, Paul Hoffman testified that Respondent did acknowledge liability and pay a civil penalty violation of 50 percent to the Commission totaling \$12,100. Mr. Hoffman stated that the remaining four contested charges relate to Respondent driver Tooley.

The specific charges concerning driver Tooley are alleged violations of 4 CCR 723-15-2.1; Part 395.8(a).

14. Complainant moved to amend CPAN No. 28464 to change the date of the alleged violation nos. 55, 57, 62, 71 from November 1, 2003 to December 1, 2003. Mr. Hoffman stated that he first became aware of the mistaken date just prior to the hearing of the matter.

15. Respondent objected to the amendment and moved to dismiss the four charges since it would be prejudicial to Respondent in its defense. The motion to dismiss violation Nos. 55, 57, 62, and 71 was orally granted at the hearing.

B. The Motion for Reconsideration of Civil Penalty Assessment

16. As indicated in paragraph No. 2 of the Statement portion of this recommended decision, Respondent acknowledged liability on most of the cited violations namely 1 through 54, 56, 58, 59, 60, 61, 63 through 70, and 72 through 86, and paid a 50 percent reduction in penalty of \$12,100. The Motion to Reconsider concerns violation nos. 17, 20, 23, 26, 30, 33, 36, and 40 through 54, all relating to violations of driver, Deborah Ross,¹ wherein Ms. Ross violated 4 CCR 723-15-7.3.1.2, (driving after being on duty 80 hours). Respondent states in the Motion that the total assessed civil penalty relating to driver Ross amounted to \$8,800, however, the civil penalty relating to these charges was reduced 50 percent to a total of \$4,400 since Respondent elected to pay within ten days of the receipt of the CPAN. Respondent requests reconsideration of the amount assessed and paid by Respondent relating to driver Ross. Under the terms of Ms. Ross' independent contractor agreement with Respondent (Exhibit 1), Ms. Ross agreed to comply with all laws, ordinances, rules, and regulations of the City of Colorado Springs and the

¹ Violation no. 40 of CPAN no. 28464 charges driver Eskeldson with violating 4CCR 723-15-7.3.1.2, not Ms. Ross.

Public Utilities Commission of the State of Colorado and other relevant laws, and that Ms. Ross agreed to indemnify and hold Respondent harmless concerning the violations. Under the terms of the independent contractor's agreement, Ms. Ross is obligated to pay back to Respondent the \$4,400 amount paid by Respondent. Respondent believes that repayment of the amount will create a severe financial hardship on Ms. Ross.

17. Respondent's general manager, Fred Hair, testified that under the terms of the independent contractor agreement, Section 14, Deborah Ross agreed to indemnify Complainant. Thus, Ms. Ross must repay Respondent the amount of \$4,400. Mr. Hair testified that Ms. Ross is currently making monthly payments towards the \$4,400. He also testified that all drivers of Respondent must undergo considerable training. He indicated that before the issuance of the CPAN, Ms. Ross did not have violations. He stated that she generally is a safe driver. He believes that Ms. Ross is now aware of the rule concerning hours and will not violate it in the future.

18. Deborah Ross, a taxicab driver with Respondent, testified that she is an independent contractor and agreed to the terms of the independent contractor agreement (Exhibit 1). She acknowledged that under the terms of the agreement, pursuant to Section 4(b), she agreed to comply with all relevant laws and regulations. She also acknowledged that pursuant to Section 14 of the agreement, she agreed to indemnify and hold Respondent harmless. Ms. Ross stated that she has received training by Respondent with respect to her duties and obligations as a taxi driver and training on all of the relevant Commission rules.

19. Ms. Ross testified that with respect to the violation of hours, she misunderstood the requirements of the rules and believed that she was in compliance. She now is aware of the

correct number of hours to drive and stated she will not violate this rule or other rules in the future.

20. Ms. Ross stated that she agreed under the independent contractor agreement that she would repay Respondent the \$4,400 that Respondent paid to the Commission reflecting her violations. She stated that currently she is paying Respondent \$50 a week. She stated that this payment creates a severe financial hardship since as a single mother of two daughters living with her, her only source of income is driving a taxicab. Ms. Ross states that if the Motion for Reconsideration is granted and the total amount is reduced from the \$4,400 paid to the Commission, Respondent has agreed to reduce the amount of weekly payment, which would ease the financial hardship on Ms. Ross.

C. Discussion

21. Having considered the arguments of the parties, the testimony of witnesses and the overall evidence of record, it is found that the Motion for Reconsideration of Civil Penalty Assessment should be denied. While it is understandable that the indemnification provision of the independent contractor's agreement creates a financial hardship on Ms. Ross, it is important for the Investigative Staff of the Commission to enforce the Commission's rules particularly with respect to the public safety. The driver hours contained in the Commission's rules are necessary for the public safety, and violations of these rules are properly enforced by Investigative Staff.

22. The record establishes that the Commission by its policy has already accepted a 50 percent reduction in the total penalty relating to Ms. Ross by reducing the total assessed penalty of \$8,800 to \$4,400. A further reduction is unwarranted.

23. Pursuant to § 40-6-109(2), C.R.S., it is recommended that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. Violation nos. 55, 57, 62, and 71 contained in Civil Penalty Assessment Notice No. 28464 are dismissed.

2. The Motion for Reconsideration of Civil Penalty Assessment filed on March 18, 2004 by RDS Transportation, Ltd., doing business as Yellow Cab Company of Colorado Springs is denied.

3. 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.

4. 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.

5. 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

Administrative Law Judge