

Decision No. R04-0771

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04G-266CP

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

TOWN AND COUNTRY TRANSPORTATION SERVICES, INC.,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
WILLIAM J. FRITZEL
ASSESSING CIVIL PENALTY**

Mailed Date: July 14, 2004

Appearances:

Ted M. Barrett, Staff of the Colorado Public Utilities Commission;
and

Rachel Von Riverburgh (*pro se*), owner of Respondent, Town and
Country Transportation Services, Inc.

I. STATEMENT

1. On May 25, 2004, Staff of the Public Utilities Commission (Complainant or Staff) issued Civil Penalty Assessment Notice (CPAN) No. 28601 to Town and Country Transportation Services, Inc. (Respondent).

2. Complainant charged Respondent with 33 violations of 4 *Code of Colorado Regulations* (CCR) 723-15-2.1, that incorporates certain federal carrier safety regulation

violations. The Federal Motor Carrier Safety Regulations are codified in Chapter Three of Title 49 of the Code of Federal Regulations.

3. A hearing was scheduled and held on July 7, 2004. Testimony was received from Ted M. Barrett and Rachel Von Riverburgh, and Exhibit Nos. 1 through 5 were marked for identification and admitted into evidence. At the conclusion of the hearing the matter was taken under advisement.

4. 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

5. Respondent holds authority from this Commission, Certificate of Public Convenience and Necessity PUC No. 53589.

6. The Commission has jurisdiction over this matter.

7. On or about May 19, 2004 (Exhibit No. 4), Respondent was served with CPAN No. 28601, charging Respondent with 33 violations contrary to 4 CCR 723-15-2.1, incorporating parts of the Federal Motor Carrier Safety Regulations.

8. Respondent is charged with the following safety violations:

- A. Twenty five violations of Rule 4 CCR 723-15-2.1, Part 395.8(a), no record of duty status of drivers: R. Argento; E. Stanley; S. Hugel; and J. Miller;
- B. Four violations of Part 396.3(b)(2), Respondent failed to have a preventative maintenance plan on four of its vehicles; and
- C. Four violations of Part 396.11(b), required content missing on DVIR Unit, relating to four of Respondent's vehicles.

All of the violations carry a penalty of \$200 each, for a total penalty of \$6,600.

9. The violations charged by Complainant in CPAN No. 28601 are the result of a safety and compliance review performed by Staff member Ted M. Barrett on May 5, 2004 (Exhibit No. 3). Mr. Barrett testified that he found numerous violations of the safety rules adopted by the Commission as indicated in Exhibit No. 3. Mr. Barrett issued the instant CPAN No. 28601 containing three areas of violations. For example, Mr. Barrett in his compliance review, found 165 violations of Commission Safety Rule 395.8(a). Not all of the violations found by Mr. Barrett resulted in penalty assessment charges.

10. The charged violations of Commission Safety Rules 395.8(a), 396.3(b)(2), and 396.11(b), on the instant CPAN issued on May 25, 2004 are repeat violations. Safety and Compliance Reviews performed by Complainant on February 15, 2001 (Exhibit No. 1) and on February 12, 2002 (Exhibit No. 2) indicates that the same safety rule violations charged in the current CPAN issued in 2004 were found to exist in 2001 and 2002. The 2001 and 2002 compliance reviews contained recommendations for corrective action.

11. The owner of Respondent, Rachel Von Riverburgh testified that she has taken steps to correct the violations of 395.8(a) the record of duty status, 396.3(b)(2) no preventative maintenance plan, and Part 396.11(b) required content missing on DVIR units 112, 114, 115, and 116. (See Exhibit No. 5.) Mrs. Von Riverburgh stated that she has redesigned the driver's manifest to tract total hours worked for every shift. She also testified that although the vehicle maintenance records for each of Respondent's vehicles were not documented, all of the vehicles received preventative maintenance. She indicated that she will enforce the reporting requirements of the Commission's safety rules and correct the deficiencies found by Mr. Barrett.

12. The evidence of record establishes that Respondent violated the rules and regulations charged in CPAN No. 28601. The specific violations charged in the CPAN are repeat

violations found in previous compliance and safety reviews by Staff. These violations were brought to the attention of Respondent by Staff with specific recommendations contained in the transportation safety and compliance reviews for corrective action. The record does not indicate that any significant improvement has been made by Respondent. The Commission has adopted the safety rules for the protection of the public. It is necessary that carriers holding authority from this Commission adhere to these safety rules.

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

III. ORDER

A. The Commission Orders That:

1. Town and Country Transportation Services, Inc., is found to be in violation of the charges contained in Civil Penalty Assessment Notice No. 28601, and is assessed a civil penalty in the amount of \$6,600.

2. Town and Country Transportation Services, Inc., shall remit to the Public Utilities Commission the amount of \$6,600 within 30 days of the effective date of this Recommended Decision.

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