

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Pat Apple, Chairman
Shari Feist Albrecht
Jay Scott Emler

In the Matter of the Investigation of **David**)
Brandyberry, d/b/a B Bar K Tree Service, of)
Lenora, Kansas, Regarding the Violation of)
the Motor Carrier Safety Statutes, Rules and) Docket No. 18-TRAM-069-PEN
Regulations and the Commission's Authority)
to Impose Penalties, Sanctions and/or the)
Revocation of Motor Carrier Authority.)

ORDER AMENDING PENALTY ORDER

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration. Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

I. BACKGROUND

1. Respondent is registered as a motor carrier with the U.S. Department of Transportation (USDOT) and operates under USDOT Number 2476800.
2. On August 17, 2017, the Commission issued Respondent a Penalty Order assessing it an \$850 penalty as a result of two (2) violations of the Kanas Motor Carrier Safety Regulations found during a Compliance Review conducted on July 19, 2017, by Transportation Division Special Investigator Penny Fryback.
3. On August 28, 2017, Staff Filed a Motion to Amend the Penalty Order to remove the previously assessed a penalty of \$750 alleging the carrier failed to conduct periodic (annual) inspections on its commercial motor vehicles is a violation of 49 C.F.R. 396.17(c), adopted by K.A.R. 82-4-3j, and authorized by K.S.A. 2016 Supp. 66-1,129.

4. Staff states in its motion that previously unavailable documentation has been produced which demonstrates that the motor carrier's vehicles were inspected during the period investigated.

II. FINDINGS AND CONCLUSIONS

5. The Commission finds it has jurisdiction over Respondent because it is a motor carrier as defined in K.S.A. 2016 Supp. 66-1,108.

6. Based on the available facts, the Commission finds that Staff's Motion to Amend Penalty Order to remove the penalty assessed prior to the production of previously unavailable documentation.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) The Penalty Order issued on August 17, 2017, to David Brandyberry, d/b/a B Bar K Tree Service, of Lenora, Kansas, is hereby amended to remove the previously assessed a penalty of \$750 alleging the carrier failed to conduct periodic (annual) inspections on its commercial motor vehicles is a violation of 49 C.F.R. 396.17(c), adopted by K.A.R. 82-4-3j, and authorized by K.S.A. 2016 Supp. 66-1,129.

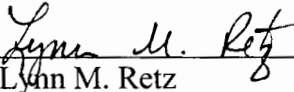
(B) The parties have fifteen (15) days, plus three (3) days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118b; K.S.A. 2016 Supp. 77-529(a)(1).

(C) The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it may deem necessary and proper.

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: AUG 31 2017



Lynn M. Retz
Secretary to the Commission

AAL

Order Mailed Date

SEP 1 2017

CERTIFICATE OF SERVICE

18-TRAM-069-PEN

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail/hand delivered on **AUG 31 2017**.

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/S/ DeeAnn Shupe

DeeAnn Shupe

Order Mailed Date

SEP 1 2017