

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of the Investigation of **Mast**)
Trucking, Inc., of Copeland, Kansas,)
Regarding the Violation(s) of the Motor Carrier)
Safety Statutes, Rules and Regulations and the) Docket No. 22-TRAM-247-PEN
Commission's Authority to Impose Penalties,)
Sanctions and/or the Revocation of Motor Carrier)
Authority.)

**JOINT MOTION FOR APPROVAL OF
UNANIMOUS SETTLEMENT AGREEMENT**

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), and Mast Trucking, Inc. (Mast Trucking or Carrier), file this Joint Motion requesting the Commission issue an order approving the attached Unanimous Settlement Agreement. In support of its Motion, Staff and Carrier state as follows:

1. From November 15 to December 8, 2021, Staff Special Investigators, Penny Fryback and Erica Pargas, conducted a safety compliance review of the operations of Mast Trucking.
2. On December 21, 2021, the Commission issued a penalty to Mast Trucking, totaling \$6,500 in civil fines comprised of four alleged violations. The four alleged violations included a \$5,000 enhanced fine for allowing or permitting drivers to falsify records of duty status.
3. On December 23, 2021, Mast Trucking filed a request for hearing before the Commission disputing the violation alleging the Carrier allowed or permitted drivers to falsify records of duty status.
4. On June 27, 2022, Staff filed a Motion to Set Prehearing Conference to be scheduled between the parties for setting a procedural schedule and hearing date.
5. On August 2, 2022, a Prehearing Conference was held.

6. On August 11, 2022, the Commission issued an order setting a procedural schedule in this docket.

7. On August 30, 2022 and in subsequent discussions thereafter, Garrett Roe, Attorney for Mast Trucking, and Ahsan Latif, Litigation Counsel for Staff, informally discussed the possibility of a settlement. During the informal discussions, Staff and Carrier were able to reach mutually agreeable terms in anticipated settlement of the issues. It was agreed that Staff would subsequently reduce the terms to writing and forward the draft to Carrier for approval and signature.

8. The resulting signed Unanimous Settlement Agreement is attached hereto and is hereby incorporated by reference. This Agreement resolves all issues in this proceeding between Staff and Carrier. The parties believe that the Agreement represents a reasonable and fair resolution of this matter and that the Commission should approve the Agreement.

9. Should the Commission accept the terms of the attached Unanimous Settlement Agreement, the parties waive their respective rights to cross-examine witnesses and present oral arguments or written briefs to the Commission. The parties also waive their rights to request reconsideration of the Commission order approving the Agreement and waive their rights to seek judicial review of said order.

WHEREFORE, for the reasons set forth herein, Staff and Mast Trucking Inc. request this Joint Motion be granted, and that the attached Unanimous Settlement Agreement be approved.

Respectfully Submitted,

By: /s/ Ahsan A. Latif

Ahsan A. Latif S.Ct. #24709
Litigation Counsel
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027
Phone: 785-271-3118
Fax: 785-271-3124
Email: a.latif@kcc.ks.gov

Attorney for Commission Staff

By: /s/ Garret R. Roe

Garrett R. Roe
Of Counsel
Hinkle Law Firm
8711 Penrose Ln., Suite 400
Lenexa, KS 66219
Phone: 913-338-0717
Fax: 913-345-4382
Email: groe@hinklaw.com

Attorney for Mast Trucking Inc.

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Dwight D. Keen, Chair
 Susan K. Duffy
 Andrew J. French

In the Matter of the Investigation of **Mast**)
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Commission's Authority to Impose Penalties,)
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Authority.)

UNANIMOUS SETTLEMENT AGREEMENT

This Unanimous Settlement Agreement (Agreement) is entered into by and between the Staff of the Corporation Commission of the State of Kansas (Staff and Commission, respectively), and Mast Trucking Inc. (Mast Trucking or Carrier). Its effective date will be the date the Commission enters an order approving or amending the terms of the Agreement.

I. JURISDICTION

1. Pursuant to K.S.A. 66-1,108b, 66-1,111, 66-1,112 and 66-1,114b, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in 49 C.F.R. Part 390.5 and as adopted by K.A.R. 82-4-3f, doing business or procuring business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.

2. Pursuant to K.S.A. Supp. 66-1,129a, 66-1,130 and 66-1,142b, and amendments thereto, the Commission may suspend operations, revoke or amend certificates, and initiate sanctions or fines against every motor carrier and every person who violates any provision of Kansas law in

regard to the regulation of such motor carriers and persons, or who fails to obey any order, decision or regulation of the Commission.

3. The Commission has the authority, pursuant to K.A.R. 82-1-237, to investigate an entity under the Commission's jurisdiction and issue an order on the Commission's own motion when the Commission believes the entity is in violation of the law or any order of the Commission.

II. BACKGROUND

4. From November 15 to December 8, 2021, Staff Special Investigators, Penny Fryback and Erica Pargas, conducted a safety compliance review of the operations of Mast Trucking.

5. On December 21, 2021, the Commission issued a penalty to Mast Trucking, totaling \$6,500 in civil fines comprised of four alleged violations. The four alleged violations included a \$5,000 enhanced fine for allowing or permitting drivers to falsify records of duty status.

6. On December 23, 2021, Mast Trucking filed a request for hearing before the Commission disputing the violation alleging the Carrier allowed or permitted drivers to falsify records of duty status.

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10. On August 30, 2022 and in subsequent discussions thereafter, Garrett Roe, Attorney for Mast Trucking, and Ahsan Latif, Litigation Counsel for Staff, informally discussed the possibility of a settlement. During the informal discussions, Staff and Carrier were able to reach mutually

agreeable terms in anticipated settlement of the issues. It was agreed that Staff would subsequently reduce the terms to writing and forward the draft to Carrier for approval and signature.

III. TERMS OF THE UNANIMOUS SETTLEMENT AGREEMENT

11. The parties agree that the Commission has jurisdiction and authority over this matter.

12. The parties also agree that adoption of this Agreement is in the public interest and that the Commission should approve the stipulations as set forth below.

13. Carrier stipulates to the violations as listed in the Commission's Penalty Order, which are hereby incorporated by reference.

14. Staff agrees to recommend to the Commission that this Agreement be approved. Staff further agrees that upon approval by the Commission this Agreement shall constitute a final resolution of this matter.

15. Pursuant to K.S.A. 77-526, the Commission expressly reserves and maintains the right and authority to enforce the terms of this Agreement.

16. Pursuant to the Kansas Judicial Review Act, K.S.A 77-601 *et seq.*, Carrier waives all rights to a hearing on, or appeal of, this Agreement.

IV. MODIFICATION OF PENALTY ORDER

17. Mast Trucking agrees to Staff's application of the hours of service rules found in 49 C.F.R. Part 395 as adopted by K.A.R. 82-4-3f. This includes, but is not limited to, the Federal Motor Carrier Safety Administration's (FMCSA's) Personal Conveyance Frequently Asked Question's document, which is attached hereto as Exhibit 1 and hereby incorporated by reference. Staff draws specific attention to Questions One and Eight in the document:

"1. May a driver, who drops his or her last load at a receiver's facility use personal conveyance to return to their normal work location (i.e. home or terminal)? No. Returning home or to the terminal from a dispatched trip is a continuation of the trip, and therefore cannot be considered personal conveyance.

....
8. If a driver picks up the commercial motor vehicle from a repair facility once repairs are complete, would the driver be allowed to use personal conveyance to their residence from the repair shop? No, travel for repair and maintenance work is being done in the furtherance of the business and is considered on duty time.”

Mast Trucking also agrees to ensure all drivers properly document the use of co-drivers on their driving logs.

18. In light of Mast Trucking’s agreement to Staff’s application of the hours of service rules, Staff agrees to modify the civil penalty for the violation found in paragraph 10(c) of the December 20, 2021, Penalty Order, alleging Mast Trucking required or permitted its drivers to falsify records of duty status in violation of 49 C.F.R. 395.8(e)(1), adopted by K.A.R. 82-4-3a, and authorized by K.S.A. 66-1,129. Staff agrees to reduce the \$5,000.00 civil fine for this violation to \$2,500.00.

19. Carrier agrees to pay fines totaling \$4,000.00 for the violations alleged in the Penalty Order. Staff agrees to extend the timeline for total payment due until November 1, 2022.

20. Carrier withdraws its Request for Hearing.

21. Carrier shall, when applicable, comply with Kansas law governing the regulation of motor carriers, the Kansas Administrative Regulations and provisions of the Federal Motor Carrier Safety Regulations, as adopted by the Kansas Administrative Regulations.

22. Carrier agrees that it remains obligated under the terms of the December 21, 2021, Penalty Order to allow at least one follow-up safety compliance review that will be conducted within 18 months from the date the Penalty Order was issued. Staff will contact Carrier at a later date to determine an appropriate time for this review.

23. Carrier understands that failure to pay the civil penalty as set out in ¶19 above, could result in the suspension of its authority without further notice.

24. Staff agrees to recommend to the Commission that this Agreement be approved. Staff further agrees that upon approval by the Commission, this Agreement shall constitute a final resolution of this matter.

V. RESERVATIONS

21. This Unanimous Settlement Agreement fully resolves issues specifically addressed between the parties. The terms of this Agreement constitute a fair and reasonable resolution of the issues addressed herein.

A. *Negotiated Settlement*

22. This Agreement represents a negotiated settlement that fully resolves the issues raised in this proceeding. The Signatories represent that the terms of this Agreement constitute a fair and reasonable resolution of the issues addressed herein. Except as specified herein, the Signatories shall not be prejudiced, bound by, or affected in any way by the terms of this Agreement: (1) in any future Commission or court proceeding; (2) in any proceeding currently pending before the Commission under a separate docket; and/or (3) in this proceeding, if the Commission decides not to approve this Agreement in total or in any way conditions its approval of the same. This paragraph is not meant to limit future enforcement of this Agreement, should either party fail to fulfill all terms and provisions

B. *Interdependent Provisions*

23. The terms and provisions of this Agreement have resulted from negotiations between the Signatories and are interdependent. In the event the Commission does not approve the terms of the Agreement in total, or materially changes the Agreement terms, the Agreement shall be voidable and no Signatory Party hereto shall be bound by, prejudiced, or in any way affected by any of the terms or provisions hereof, unless otherwise provided herein.

24 If the Commission approves this Agreement in its entirety and incorporates the same into a final order in this docket, the Parties agree to be bound by its terms and the Commission's order incorporating its terms as to all issues addressed herein, and will not appeal the Commission's order.

25. This Unanimous Settlement Agreement shall be binding on all parties upon signing.

IN WITNESS WHERETO, the parties hereby execute and approve this Unanimous Settlement Agreement by subscribing their signatures below.

By: /s/ Ahsan A. Latif
Ahsan A. Latif S.Ct. #24709
Litigation Counsel
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027
Phone: 785-271-3118
Fax: 785-271-3124
Email: a.latif@kcc.ks.gov

Attorney for Commission Staff

By: /s/ Garrett R. Roe
Garrett R. Roe
Of Counsel
Hinkle Law Firm
8711 Penrose Ln., Suite 400
Lenexa, KS 66219
Phone: 913-338-0717
Fax: 913-345-4382
Email: groe@hinklawn.com

Attorney for Mast Trucking Inc.

EXHIBIT 1

Personal Conveyance

Frequently Asked Questions

1. May a driver, who drops his or her last load at a receiver's facility use personal conveyance to return to their normal work location (i.e. home or terminal)?

No. Returning home or to the terminal from a dispatched trip is a continuation of the trip, and therefore cannot be considered personal conveyance.

2. The guidance allows for "authorized use of a CMV to travel home after working at an offsite location." What is meant by the term "offsite" when used in this context?

The term refers to a location, other than a carrier's terminal or a shipper's or receiver's facility, where a driver works for a temporary period for a particular job. Specifically, this term is intended for construction and utility companies that set up base camps near a major job and operate from there for days or weeks at a time. These remote locations are considered "offsite" locations. Therefore, travel between home and that offsite location is considered commuting time, and qualifies as personal conveyance.

3. Is personal conveyance treated any differently when the driver is hauling hazardous materials?

No. There is no restriction on personal conveyance regarding hazardous materials transportation, provided that the driver complies with provisions of 49 CFR parts 177 and 397.

4. Can a driver who claims the short haul exception use personal conveyance?

Yes, there is no connection between personal conveyance and the short-haul exception. As always, off duty time does not extend the 12-hour duty time limitation.

5. How is personal conveyance time calculated in the hours-of-service rules?

Time spent under personal conveyance is off duty time.

6. May a driver use personal conveyance when they run out of available (driving/on-duty) hours?

No, except for the one exception described in the guidance where a driver who runs out of hours while at a shipper's or receiver's facility may drive from that facility to a nearby, safe location to park, provided that the driver allows adequate time to obtain rest in accordance with daily minimum off-duty periods under the Hours of Service rules before beginning to drive. Personal conveyance is those times where a driver is operating solely for a non-business purpose and cannot be used to extend the duty day.

7. Are there maximum distance time or distance limits for the use of personal conveyance?

No. However, it is important to note that the provision in §392.3 of the FMCSRs, prohibiting the operation of a commercial motor vehicle while fatigued, continues to apply. Therefore, a driver must get adequate rest before returning to driving.



8. If a driver picks up the commercial motor vehicle from a repair facility once repairs are complete, would the driver be allowed to use personal conveyance to their residence from the repair shop?

No, travel for repair and maintenance work is being done in the furtherance of the business and is considered on duty time.

9. Can a loaded vehicle be used as personal conveyance?

Yes. Determining personal conveyance is based on the nature of the movement, not whether the vehicle is laden.

10. Can personal conveyance time be combined with other off-duty time to complete a 10 or 34-hour break?

Yes, since PC is off-duty time. However, it is important to note that the provision in §392.3 of the FMCSRs, prohibiting the operation of a commercial motor vehicle while ill or fatigued continues to apply.

11. Can a driver be inspected during personal conveyance? If so, what is the driver's duty status during the inspection?

Yes. Since the driver is still subject to the FMCSRs, the driver or vehicle can be inspected. The driver's duty status would be "on-duty, not driving" during the inspection.



CERTIFICATE OF SERVICE

22-TRAM-247-PEN

I, the undersigned, certify that a true and correct copy of the above and foregoing Joint Motion for Approval of Unanimous Settlement Agreement was placed in the United States mail, postage prepaid, and via electronic service, this 30th day of September, 2022, to the following:

GARRETT R ROE, ATTORNEY
HINKLE LAW FIRM L.L.C.
LENEXA CITY CENTER PENN 1
8711 PENROSE LANE STE 400
LENEXA, KS 66219
groe@hinklaw.com

DAVID COHEN, ASSISTANT GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
d.cohen@kcc.ks.gov

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
a.latif@kcc.ks.gov

LEROY H. MAST, PRESIDENT
MAST TRUCKING, INC.
31800 2 ROAD
COPELAND, KS 67837
mast_379@hotmail.com



Madeleine E. Hare