

**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**)
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.)

ORDER APPROVING UNANIMOUS SETTLEMENT AGREEMENT

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

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. On September 30, 2022, Staff filed a Joint Motion for Approval of Unanimous Settlement Agreement. The Unanimous Settlement Agreement is attached to this Order as **Attachment A.**
9. In the Unanimous Settlement Agreement, the parties agreed to the following:
 - a. Carrier agreed 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. Additionally, Carrier agreed to ensure all drivers properly document the use of co-drivers on their driving logs.
 - b. Staff agreed 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 agreed to reduce the \$5,000.00 civil fine for this violation to \$2,500.00.

- c. Carrier agreed 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.
- d. Carrier agreed it remained 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.
- e. Carrier agreed to withdraw its Request for Hearing.

II. FINDINGS AND CONCLUSIONS

10. The Commission concludes that 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. 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. The Commission may fine, sanction, suspend, cancel or revoke a carrier's authority in accordance with K.S.A 66-1,129a, 66-1,130 and 66-1,142b. Further, the Commission has the authority to investigate a party in accordance with K.A.R. 82-1-237.

11. Kansas law favors settlements.¹

12. The Commission has reviewed the Unanimous Settlement Agreement attached to the Joint Motion for Approval of Unanimous Settlement Agreement of the parties and concludes that the terms and provisions therein are an appropriate and reasonable disposition of this matter. The Commission adopts and incorporates by reference the terms of the Agreement.

¹ *Bright v. LSI Corp.*, 254 Kan. 853, 869 (1994).

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Joint Motion for Approval of Unanimous Settlement Agreement entered into between Mast Trucking, Inc., and Staff is granted.

B. The terms of the Unanimous Settlement Agreement are approved and incorporated by reference.

C. The civil penalties assessed to Mast Trucking, Inc., in the Commission's December 21, 2021 Penalty Order are modified in accordance with the attached Unanimous Settlement Agreement and the total civil penalty is reduced to \$4,000.

D. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).²

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Duffy, Commissioner; French, Commissioner

Dated: 10/25/2022 _____



Lynn M. Retz
Executive Director

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² K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

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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.

7. 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.

8. On August 2, 2022, a Prehearing Conference was held.

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

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@hinklaw.com

Attorney for Mast Trucking Inc.

CERTIFICATE OF SERVICE

22-TRAM-247-PEN

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of
electronic service on 10/25/2022.

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

/S/ KCC Docket Room
KCC Docket Room