

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

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

In the Matter of the General Investigation)
of **Giles & Sons Trucking LLC of Kansas**)
City, Missouri, Pursuant to the Kansas) Docket No. 22-GIMM-116-KHP
Highway Patrol Issuance of a Notice of)
Violation(s) and Invoice for the Violations)
of the Kansas Motor Carrier Safety)
Statutes, Rules and Regulations.)

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. On July 27, 2021, the Kansas Highway Patrol issued a Notice of Violation(s) against Giles & Sons LLC, for an alleged violation found during a July 20, 2021, routine motor carrier stop and inspection conducted by the Kansas Highway Patrol (KHP).
2. As a result of this inspection, Giles was assessed \$150 in civil fines, comprised of a \$150.00 fine for “Inoperative Turn Signal,” citing 393.9TS.
3. On August 1, 2021, Giles submitted a challenge with the KHP.
4. On August 6, 2021, the Kansas Highway Patrol denied Giles’s challenge.
5. On August 13, 2021, Giles requested a hearing before the Commission.
6. On August 31, 2021, Noel Giles, Owner of Giles & Sons LLC, Mike Hoeme, Director of Transportation, Gary Davenport, Deputy Director of Transportation and Ahsan A.

Latif, Litigation Counsel for Staff, informally discussed the possibility of a settlement. During this discussion, Staff and Giles 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 Giles for approval and signature.

7. On November 15, 2021, Staff filed a Joint Motion for Approval of Unanimous Settlement Agreement. The Unanimous Settlement Agreement is attached to this Order as **Attachment A**.

8. In the Unanimous Settlement Agreement, Staff agreed to recommend the Commission the \$150.00 civil fine alleging “Inoperative Turn Signal,” to \$0.00. Staff’s Recommendation for reduction of this civil assessment is based upon the specific circumstances of the alleged violation as well as the Carrier’s efforts to remediate the violation and attempts to ensure compliance.

9. Carrier agreed to withdraw its hearing request. Additionally, Carrier agreed, when applicable, to 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.

II. FINDINGS AND CONCLUSIONS

10. The Commission concludes that pursuant to K.S.A. 66-1,108b, 66-1,111, 66-1,112g, and 66-1,115, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in 49 C.F.R. 390.5, 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.

11. Pursuant to 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.

12. The Commission concludes that settlements are favored by the law. *Bright v. LSI Corp.*, 254 Kan. 853, 869 P.2d 686 (1994). A settlement of issues, all or part, with or without unanimous agreement, will be entertained by the Commission.

10. 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 therefore adopts and incorporates by reference the terms of the Agreement.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Joint Motion for Approval of Unanimous Settlement Agreement entered into between Giles & Sons LLC and Transportation Staff is hereby granted. The terms of the Unanimous Settlement Agreement are approved and are hereby incorporated by reference.

B. The \$150.00 civil fine alleging “Inoperative Turn Signal,” shall be reduced to \$0.00.

C. Giles & Sons LLC’s Request for Hearing is withdrawn. The Carrier shall continue to, 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.

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).¹

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Duffy, Commissioner

Dated: 11/18/2021



Lynn M. Retz
Executive Director

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¹ K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

**BEFORE THE STATE CORPORATION COMMISSION
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UNANIMOUS SETTLEMENT AGREEMENT

This Unanimous Settlement Agreement (Agreement) is entered into by and between the Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), and Giles & Sons LLC (Giles 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, and amendments thereto, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in 49 C.F.R. 390.5 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 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.

4. Pursuant to K.S.A. 66-1,129(a), sanctions imposed against motor carriers must be done in accordance with the Kansas Administrative Procedure Act.

5. Pursuant to K.S.A. 77-505, nothing in the Kansas Administrative Procedure Act shall preclude the informal settlement of matters that may make other proceedings unnecessary.

6. Pursuant to K.S.A. 66-1,142c, a civil penalty may be compromised by the Commission. In determining the amount of the penalty or the amount agreed in compromise, the appropriateness of the penalty to the size of the business, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance shall be considered.

II. BACKGROUND

7. Giles & Sons is a common motor carrier operating under USDOT No. 3427330 that hauls general freight.

8. On July 27, 2021, the Kansas Highway Patrol issued a Notice of Violation(s) against Giles & Sons LLC, for an alleged violation found during a July 20, 2021, routine motor carrier stop and inspection conducted by the Kansas Highway Patrol (KHP).

9. As a result of this inspection, Giles was assessed \$150 in civil fines, comprised of a \$150.00 fine for "Inoperative Turn Signal," citing 393.9TS.

10. On August 1, 2021, Giles submitted a challenge with the KHP.

11. On August 6, 2021, the Kansas Highway Patrol denied Giles's challenge.

12. On August 13, 2021, Giles requested a hearing before the Commission.

13. On August 31, 2021, Noel Giles, Owner of Giles & Sons LLC, Mike Hoeme, Director of Transportation, Gary Davenport, Deputy Director of Transportation and Ahsan A. Latif, Litigation Counsel for Staff, informally discussed the possibility of a settlement. During this discussion, Staff and Giles 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 Giles for approval and signature.

III. TERMS OF THE UNANIMOUS SETTLEMENT AGREEMENT

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

15. 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.

16. Carrier agrees to operate commercial motor vehicles subject to the Commission's jurisdiction in a safe manner.

17. 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.

18. Pursuant to K.S.A. 77-504, the Carrier waives all rights to a hearing on, or appeal of the Invoice, and withdraws its request for a hearing previously filed herein.

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

20. 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 EXAMINATION AND INVOICE

21. Staff agrees to reduce the \$150.00 civil fine alleging “Inoperative Turn Signal,” to \$0.00.

22. Staff’s Recommendation for reduction of this civil assessment is based upon the specific circumstances of the alleged violation as well as the Carrier’s efforts to remediate the violation and attempts to ensure compliance.

23. Carrier agrees to withdraw its Request for Hearing before the Commission.

24. 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.

VI. RESERVATIONS

25. This 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.

26. 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, any party has the option to terminate this Agreement and, if so terminated, none of the signatories hereto shall be bound by, prejudiced, or in any way affected by any of the terms or provisions hereof, unless otherwise provided herein.

27. Unless (and only to the extent) otherwise specified in this Agreement, the signatories to this Agreement 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.

28. Unless (and only to the extent) otherwise specified in this Agreement, this Agreement does not prejudice or waive any party's legal rights, positions, claims, assertions or arguments in any proceedings in this docket, or any other proceeding before the Commission or in any court. 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.

29. This Agreement shall be binding on all parties upon signing.

IN WITNESS WHERETO, Staff and Giles & Sons LLC hereby execute and approve this Unanimous Settlement Agreement by subscribing their signatures below.

/s/ Ahsan Latif

By:

Ahsan A. Latif, KS S. Ct. #24709
Litigation Counsel
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027
Phone: 785-271-3118
Fax: 785-271-3167
Email: a.latif@kcc.ks.gov

Attorney for Commission Staff

By:



Noel Giles
Owner
Giles & Sons LLC
5424 Olive Street
Kansas City, MO 64130
Phone: 816-305-1246

Email: Noelgiles31066@gmail.com

Owner of Giles & Sons LLC

CERTIFICATE OF SERVICE

22-GIMM-116-KHP

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of first class mail and electronic service on 11/18/2021.

Noah Giles, SR., MEMBER
Giles & Son Trucking LLC
5424 Olive St
Kansas City, MO 64130
noelgiles31066@gmail.com

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

/S/ DeeAnn Shupe
DeeAnn Shupe