

LOUISIANA PUBLIC SERVICE COMMISSION

ORDER NUMBER T-36232

LOUISIANA PUBLIC SERVICE COMMISSION VERSUS ON-TIME CREW CHANGES, INC.

Docket No. T-36232, In re: Cancellation of Common Carrier Certificate Number 7262 for failure to maintain the required insurance coverage on file with the Commission pursuant to Commission's General Order dated January 12, 1976.

(Decided May 6, 2022)

ORDER

The Louisiana Public Service Commission ("Commission") issued a citation to On-Time Crew Changes, Inc. ("Carrier") on January 5, 2022, directing the Carrier to show cause at a hearing to be held on March 3, 2022 why its Common Carrier Certificate Number 7262 should not be canceled due to the Carrier's failure to maintain proof of required insurance coverage on file with the Commission, as required by the Commission's General Order dated January 12, 1976. At the urging of the Commission Staff, the hearing was continued twice and finally set for May 5, 2022. When the hearing was convened on May 5, 2022, the Commission Staff appeared and presented its case. The Carrier did not appear at the hearing.

Applicable Law

Article IV, Section 21 of the Louisiana Constitution of 1974 mandates that the Commission:

regulate all common carriers and public utilities and have such other regulatory authority as provided by law. It shall adopt and enforce reasonable rules, regulations, and procedures necessary for the discharge of its duties, and shall have other powers and perform other duties as provided by law.

Louisiana statutes more specifically describe the interest of the State and the powers of the Commission over motor carriers operating for hire in the transportation of persons, household goods, and waste over public highways and bridges of the State. The business of operating motor vehicles for hire is a "business affected with a public interest";¹ and "[t]he [C]ommission has the power and authority necessary to supervise, govern, regulate, and control motor carriers...which transport household goods, passengers, or waste intrastate and to fix reasonable and just rates,

¹ Louisiana Revised Statute 45:161.

fares, tolls, or charges for the commodities furnished or services rendered by such motor carriers.”²

Per Louisiana law, “motor carriers” include common carriers which transport passengers.³

Pursuant to its constitutional and statutory authority, the Commission issued a General Order dated January 12, 1976, providing that intrastate motor carriers must maintain proof of the required insurance coverage on file at the Commission through the filing of a Uniform Certificate of Insurance (“Form E”). Louisiana Revised Statute 45:166 provides that a carrier’s permit may be revoked after notice and hearing for failing to comply with applicable law or Commission order.

The Commission’s General Order dated June 7, 2006 authorizes the imposition of a \$25.00 citation fee when a citation is issued to a Commission-jurisdictional motor carrier and that carrier is determined to have violated a Commission order.

The Commission Staff’s Case

The Commission Staff alleges that the Carrier failed to maintain proof of its bodily injury and property damage (“BI & P”) insurance on file with the Commission. In support of this allegation, the Commission Staff presented the testimony of Tanza Clark, an Enforcement Agent with the Commission’s Transportation Division, whose job duties include overseeing insurance filings for regulated motor carriers. Agent Clark testified that the Commission requires regulated carriers to submit a Form E as proof of insurance, and that the Commission is notified of cancellation or expiration of a carrier’s insurance through the receipt of a Form K, Uniform Notice of Cancellation of Motor Carrier Insurance Policies (“Form K”).

According to Agent Clark, the Carrier is a passenger carrier, and on September 14, 2021, the Commission received a Form K from the Carrier’s insurer, Houston Specialty Insurance Company. This Form K provided that the Carrier’s insurance would be canceled effective October 25, 2021. Agent Clark testified that, in response to the Form K notification, she prepared and mailed a notification letter to the Carrier on October 29, 2021. According to Agent Clark, the letter was mailed to the Carrier at the address on file with the Commission, via regular mail, and the letter was not returned to the Commission.

According to Agent Clark, the Carrier did not submit proof of insurance coverage after the issuance of the October 29, 2021 notification letter. Agent Clark then mailed another letter to the

² Louisiana Revised Statute 45:163(A).

³ Louisiana Revised Statute 45:162.

Carrier on November 30, 2021, advising the Carrier that it was tentatively scheduled to appear for a March 3, 2022 hearing. This tentative hearing letter also included a copy of the October 29, 2021 letter. According to Agent Clark, the tentative hearing letter was also mailed to the Carrier at its address on file with the Commission, via regular mail, and was not returned.

Agent Clark testified that, after the mailing of the tentative hearing letter, the Carrier did not submit proof of insurance coverage, and the Commission's Transportation Division issued a citation against the Carrier on January 5, 2022, via regular and certified mail. The citation included the November 30, 2021 and October 29, 2021 letters, and set a hearing for March 3, 2022. According to Ms. Clark, the mailing sent via regular mail was not returned, but the citation sent via certified mail was not claimed and returned to the Commission on January 22, 2022.

Agent Clark testified that she communicated with the owner of the Carrier, Ms. Colleen Chapman. According to Agent Clark, Ms. Chapman wished to close the Carrier's authority and requested a Form T-80⁴ from the Commission Staff. Agent Clark explained that the Commission Staff made an oral motion to continue the March 3, 2022 hearing to April 1, 2022. The Tribunal granted this request and issued a ruling rescheduling the hearing to April 1, 2022. The Commission's Transportation Division mailed the notice rescheduling the hearing to the Carrier, via regular mail. Attached to this mailing was the citation, the November 30, 2021 letter, and October 29, 2021 letter. According to Agent Clark, this mailing was not returned.

Agent Clark spoke with Ms. Chapman on March 16, 2022. According to Agent Clark, Ms. Chapman stated that she was waiting for the Carrier's CPA to complete the Form T-80. Agent Clark testified that the Carrier had not submitted a Form T-80 by April 1, 2022. According to Agent Clark, the Commission Staff requested a continuance of the April 1, 2022 hearing, which was granted by the Tribunal. The Tribunal issued a notice rescheduling the hearing date for May 5, 2022. Agent Clark testified that the Commission's Transportation Division mailed this notice by regular and certified mail to the Carrier's address on file with the Commission. Attached to this notice was the citation, the November 30, 2021 letter, and October 29, 2021 letter. Agent Clark further testified that the regular mailing was not returned, and the Commission Staff received a signed return receipt for the certified mailing, indicating that the mailing was delivered. According to Agent Clark, as of the time of the hearing, the Carrier did not have a Form E on file with the Commission, and it had not filed a Form T-80 to cancel its authority with the Commission.

⁴ Agent Clark explained that a Form T-80 is an affidavit used to close authority with the Commission.

In connection with the testimony of Agent Clark, the Commission Staff submitted the following documents into evidence:

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| Exhibit 1 | A copy of a Form K, Uniform Notice of Cancellation of Motor Carrier Insurance Policies, issued by Houston Specialty Insurance Company, reflecting an effective cancellation date of October 25, 2021, for an insurance policy or policies issued to On-Time Crew Changes, Inc.; |
| Exhibit 2 | A copy of correspondence on Commission Transportation Division letterhead, dated October 29, 2021, bearing the signature of Tammy Burl, Transportation Administrator, Louisiana Public Service Commission, to On-Time Crew Changes, Inc., "Re: CANCELLATION OF INSURANCE FILING WITH THE COMMISSION"; |
| Exhibit 3, <i>in globo</i> | A copy of correspondence on Commission letterhead, dated November 30, 2021, from Tanza Clark, Enforcement Agent, to On-Time Crew Changes, Inc., notifying the Carrier of a tentative hearing date, with an attached copy of the October 29, 2021 letter (Exhibit 2); |
| Exhibit 4, <i>in globo</i> | A copy of the citation issued on January 5, 2022 to On-Time Crew Changes, Inc., in Docket Number T-36232, with attached copies of the November 30, 2021 (Exhibit 3) and October 29, 2021 letters (Exhibit 2); |
| Exhibit 5 | A copy of a printout from the United States Postal Service Tracking website for tracking number 70022030000265715369; |
| Exhibit 6 | Copies of the front of an envelope bearing the return address of the Louisiana Public Service Commission and addressed to On-Time Crew Changes, Inc., marked "Return to Sender," Unclaimed," and "Unable to Forward," bearing tracking number ending in 5369; |
| Exhibit 7, <i>in globo</i> | A copy of the Ruling on Motion to Continue and Notice of Rescheduled Hearing Date, issued on March 3, 2022 by the Administrative Hearings Division of the Louisiana Public Service Commission, with attached copies of the citation (Exhibit 4) and the November 30, 2021 (Exhibit 3) and October 29, 2021 letters (Exhibit 2); |
| Exhibit 8, <i>in globo</i> | A copy of the Ruling on Motion to Continue and Notice of Rescheduled Hearing Date, issued on April 1, 2022 by the Administrative Hearings Division of the Louisiana Public Service Commission, modified with notation "***Mailed on April 01, 2022 by United States Postal Service Certified Mail number 7012 1010 0003 2363 2740", with attached copies of the citation (Exhibit 4) and the November 30, 2021 (Exhibit 3) and October 29, 2021 letters (Exhibit 2); and |
| Exhibit 9 | A copy of the front of the signed certified mail return receipt for the citation issued via certified mail, bearing tracking number ending in 2740. |

The Commission Staff requests, in light of the Carrier's failure to maintain the required insurance coverage, that the Commission cancel the Carrier's Common Carrier Certificate Number 7262, and order the Carrier to pay a \$25.00 citation fee.

Findings of Fact and Conclusions of Law

From the testimony and evidence presented at hearing, we make the following findings of fact and conclusions of law:

Findings of Fact

1. The Carrier currently holds Common Carrier Certificate Number 7262.
2. On September 14, 2021, the Commission received a Form K, Uniform Notice of Cancellation of Motor Carrier Insurance Policies, advising that the Carrier's "BI and P" (bodily injury and property damage) insurance was scheduled for cancellation on October 25, 2021.
3. On October 29, 2021, the Commission's Transportation Division sent a letter to the Carrier, advising the Carrier that the Commission had received a Form K notification that the Carrier's insurance was canceled effective October 25, 2021. The letter further advised the Carrier to provide proof of replacement coverage, effective as of the cancellation date of the previous policy, through the filing of a replacement Form E, and cease operations until proof of replacement coverage is filed. Finally, the letter advised that if a replacement Form E was not filed on the Carrier's behalf, proceedings would be instituted at the Commission for the purpose of canceling the Carrier's intrastate operating authority.
4. On November 30, 2021, after receiving no proof of replacement insurance from the Carrier in response to the October 29, 2021 letter, the Commission's Transportation Division mailed a follow-up letter advising that the Carrier's common carrier certificate had been flagged for failure to maintain the required insurance coverage on file with the Commission, as the Commission had not received a new Form E demonstrating replacement coverage. The letter also advised that if the Carrier did not comply, the Commission's Transportation Division would proceed to issue a citation, and that a hearing on the matter had been tentatively scheduled for March 3, 2022.
5. The Carrier did not file proof of replacement coverage, and on January 5, 2022, the Commission's Transportation Division issued a citation via regular and certified mail and directing the Carrier to appear at a hearing on March 3, 2022. The citation sent via certified mail was returned to the Commission Staff on January 22, 2022 as "Unclaimed". The citation sent via regular mail was not returned.
6. On March 3, 2022, the Commission Staff moved that the March 3, 2022 hearing be rescheduled to April 1, 2022. The Tribunal granted this motion in a Ruling on Motion to Continue and Notice of Rescheduled Hearing Date that was issued on March 3, 2022.
7. The Commission's Transportation Division mailed the March 3, 2022 Ruling on Motion to Continue and Notice of Rescheduled Hearing Date to the Carrier via regular mail; this mailing was not returned.
8. On April 1, 2022, the Commission Staff moved that the April 1, 2022 hearing be rescheduled to May 5, 2022. The Tribunal granted this motion in a Ruling on Motion to Continue and Notice of Rescheduled Hearing Date that was issued on May 5, 2022.
9. The Commission's Transportation Division mailed the April 1, 2022 Ruling on Motion to Continue and Notice of Rescheduled Hearing Date to the Carrier via regular and certified mail. The Commission's Transportation Division received a certified mail return receipt, indicating that a person at the Carrier's address had received the mailing. The citation sent via regular mail was not returned.
10. The Carrier did not appear at the May 5, 2022 hearing, and as of the date of the hearing, the Commission Staff had not received any documentation of replacement insurance coverage for the Carrier, nor had the Carrier filed the appropriate documents to relinquish the authority granted by its common carrier certificate.

Conclusions of Law

1. At the hearing in this matter, the Commission Staff had the burden of proving its allegations against the Carrier. Because the Carrier did not appear at the hearing, the Commission Staff also had the burden of demonstrating that the Carrier was provided fair notice of the hearing and the opportunity to present a defense. Louisiana Revised Statute 45:166 provides that a permit may be revoked “after notice and hearing for failure to comply with any provision of R.S. 45:161 through 45:172, or with any lawful order, rule or regulation of the [Commission.]”
2. Pursuant to its constitutional and statutory authority, the Commission has adopted Rules of Practice and Procedure. Pertinent to this proceeding, Commission Rules 7 and 19 provide for notice of non-criminal proceedings through publication in the Commission’s Official Bulletin, as well as through service by certified mail to “the last known place or address of the person entitled to receive such notice.” In accordance with those Commission rules, the Commission’s Transportation Division issued a citation to the Carrier via regular mail and via certified mail to the address of the Carrier that is on file with the Commission.

Per the testimony of Commission Staff witness Clark, the copy of the citation mailed via regular mail was not returned. The copy of the citation mailed via certified mail was returned to the Commission, with the returned envelope indicating that the mailing was “Unclaimed.” Further, according to the United States Postal Service’s (“USPS”) online tracking system that mailing was “Unclaimed / Being Returned to Sender.” Louisiana courts have repeatedly held that a litigant may not defeat service by failing to claim a certified mailing. *See, e.g. Thomas Organ Co. v. Universal Music Co.*, 261 So. 2d 323 (La. App. 1 Cir. 1972; *Hardy v. The Dowe Company, Inc.*, 674 So. 2d 452 (La. App. 4 Cir. 5/8/96).

When the hearing was rescheduled for May 5, 2022, the Tribunal issued a Motion to Continue and Notice of Rescheduled Hearing Date. The Commission’s Transportation Division sent this document to the Carrier’s address on file with the Commission via regular and certified mail. The Commission Staff received a signed return receipt for the copy of the Motion to Continue and Notice of Rescheduled Hearing Date sent via certified mail, showing that a person at the Carrier’s address received notice of the May 5, 2022 hearing date.

We find that the record, taken as a whole, demonstrates that the Commission Staff provided fair notice to the Carrier of the hearing date, and that the Carrier was provided a fair opportunity to present a defense at the hearing.

3. Pursuant to constitutional and legislative mandate, the Commission has the authority to regulate intrastate motor carriers and to ensure that such companies maintain levels of insurance mandated by statute and by Commission General Orders. The Commission’s General Order dated January 12, 1976 provides that intrastate motor carriers must maintain proof of required insurance coverage on file at the Commission through the filing of a Form E. In this proceeding, the Commission Staff established through testimony and evidence that On-Time Crew Changes, Inc. failed to file proof with the Commission that its insurance coverage had been extended beyond the October 25, 2021 cancellation date stated in the Form K received on September 14, 2021. Thus, we find that the Carrier failed to maintain proof of effective insurance coverage on file with the Commission as required by the Commission’s General Order dated January 12, 1976. Thus, On-Time Crew Changes, Inc. is guilty of violating the Commission’s General Order dated January 12, 1976.
4. Louisiana Revised Statute 45:166 provides that a carrier’s permit may be revoked after notice and hearing for failing to comply with applicable law or Commission order. As On-Time Crew Changes, Inc. violated the Commission’s General Order dated January 12, 1976, we find it appropriate under these circumstances to cancel Common Carrier Certificate Number 7262, pursuant to Louisiana Revised Statute 45:166.

5. The Commission's General Order dated June 7, 2006 authorizes the imposition of a \$25.00 citation fee when a carrier is determined to have violated a Commission order. Accordingly, we further find it appropriate to impose a citation fee in the amount of twenty-five dollars (\$25.00) on On-Time Crew Changes, Inc., pursuant to the Commission's General Order dated June 7, 2006.

Conclusion

In accordance with the findings of fact and conclusions of law stated above:

IT IS HEREBY ORDERED that Common Carrier Certificate Number 7262, currently issued to On-Time Crew Changes, Inc. be, and hereby is, CANCELED due to the failure of On-Time Crew Changes, Inc. to maintain proof of insurance coverage on file with the Commission.

IT IS HEREBY FURTHER ORDERED that On-Time Crew Changes, Inc. shall be required to pay to the Commission a \$25 citation fee.

**BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA
May 9, 2022**



A handwritten signature in blue ink, appearing to read "Brandon M. Frey".

**BRANDON M. FREY
SECRETARY**

/S/ LAMBERT C. BOISSIERE, III
**DISTRICT III
CHAIRMAN LAMBERT C. BOISSIERE, III**

/S/ MIKE FRANCIS
**DISTRICT IV
VICE CHAIRMAN MIKE FRANCIS**

/S/ FOSTER L. CAMPBELL
**DISTRICT V
COMMISSIONER FOSTER L. CAMPBELL**

/S/ ERIC F. SKRMETTA
**DISTRICT I
COMMISSIONER ERIC F. SKRMETTA**

/S/ CRAIG GREENE
**DISTRICT II
COMMISSIONER CRAIG GREENE**