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232565

Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

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PROFESSIONAL TRANSPORTATION, INC., ASSET ACQUISITION--CUSA ES, LLC AND
CUSA CSS, LLC

I am writing this letter in response to:

RE: MCF-21046, Professional Transportation Inc., Asset Acquisition, - CUSA ES, LLC and
CUSA CSS, LLC (232557)

Counsel for BNSF is asking the Surface Transportation Board to “grant the approvals sought by
PTI in an expeditious a manner as possible”. Counsel for BNSF makes the argument that:

*Because of the specialized nature of railroad crew hauling, and the need for widespread service
areas over sometimes thinly populated regions in a safety-critical environment, there is no
immediately available alternate provider that BNSF can turn to at the 11th hour, or combination
of providers, that can provide the nearly 500 vehicles or the average of nearly 682 daily trips for
approximately 1500 crew members.*

The “safety-critical environment” to which Counsel for BNSF refers to in regard to the crew
transports is made possible by the FMCSA hours of service regulations. The purpose of the
FMCSA hours of service regulations is to ensure that fatigued drivers are not operating motor
vehicle on the public highways. Discriminating against drivers who accurately report their hours
on duty defeats the purpose of the FMCSA hours of service regulations.

Prohibiting the Secretary of Labor from hearing and deciding discrimination cases in regard to
accurately reporting hours on duty also defeats the purpose of the hours of service regulations.
The only protection bus drivers have in regard to accurately reporting hours on duty are the
protections afforded by 49 USC 31105.

49 USC § 31105. EMPLOYEE PROTECTIONS

*(a) Prohibitions.—(1) A person may not discharge an employee, or discipline or discriminate
against an employee regarding pay, terms, or privileges of employment, because—(C) the
employee accurately reports hours on duty pursuant to chapter 315;*

49 USC § 31105. EMPLOYEE PROTECTIONS

(b) Filing Complaints and Procedures.—(3)(A) If the Secretary of Labor decides, on the basis of a complaint, a person violated subsection (a) of this section, the Secretary of Labor shall order the person to—

(i) take affirmative action to abate the violation;

(ii) reinstate the complainant to the former position with the same pay and terms and privileges of employment; and

(iii) pay compensatory damages, including backpay with interest and compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

There are currently two cases before the Secretary of Labor, in which it is alleged that Midnight Sun Tours, a Coach America bus company, discriminated against drivers who accurately reported their hours on duty. Both cases have been stayed by 11 USC 362.

CUSA ES, LLC and CUSA CSS, LLC are Debtors in a bankruptcy proceeding in which the Secretary of Labor has been prohibited from hearing and deciding discrimination cases in regard to accurately reporting hours on duty. The drivers for CUSA ES, LLC and CUSA CSS, LLC, have in effect, been stripped of their protections under 49 USC 31105.

CUSA ES, LLC and CUSA CSS, LLC are now free to disregard Provision 3 in Question 2 of the Guidance to FMCSR 395.2 as a necessary condition for logging off-duty during a tour of duty; as was done at Midnight Sun Tours.

CUSA ES, LLC and CUSA CSS, LLC are now free to require drivers to change their original logs; to shred the original logs; and then to present the changed logs as the original logs; as was done at Midnight Sun Tours.

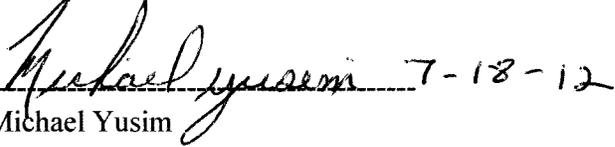
CUSA ES, LLC and CUSA CSS, LLC are now free to accept logs from drivers who logged off-duty on days that they worked; as was done at Midnight Sun Tours.

CUSA ES, LLC and CUSA CSS, LLC are now free to knowingly dispatch drivers into tours of duty that will require the drivers to record 10/15 hours of service violations on their logs, and then to write the drivers up for actually recording the 10/15 hours of service violations on their logs; as was done at Midnight Sun Tours.

Unless the Secretary of Labor is permitted to hear and decide discrimination cases in regard to accurately recording hours on duty, in accordance with 49 USC 31105, then there are no hours of service regulations. The hours of service regulations become whatever CUSA ES, LLC, CUSA CSS, LLC, and the other Coach America bus companies say they are; as was the case at Midnight Sun Tours. At that point, the “safety-critical environment” in regard to the crew transports to which Counsel for BNSF refers to becomes a fiction.

I therefore ask, in the public interest, and in the interest of the safety of the people on the crew transports, that the sale of CUSA ES, LLC and CUSA CSS, LLC be disallowed, until such time as the Secretary of Labor is no longer prohibited from hearing and deciding discrimination cases in regard to accurately reporting hours on duty, in accordance with 49 USC 31105.

Sincerely,

 7-18-12

Michael Yusim

cc:

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