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ENTERED
Office of Proceedings
July 26, 2012
Part of
Public Record

July 26, 2012

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

DOCKET NO: MCF_20146_0

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

I am writing this letter in response to the letter from Union Pacific:

RE: Professional Transportation, Inc. – Asset Acquisition – CUSA ES, LLC & CUSA CSS,
LLC, Docket No. MCF 21046 (232597)

Union Pacific asks the Surface Transportation Board to “approve the PTI transaction as soon as possible”. Union Pacific makes the following argument:

Reliable crew hauling service is crucial for Union Pacific’s operations. Union Pacific provides freight services to thousands of customers within domestic and global supply chains including steamship lines, vehicle manufacturers, agricultural companies, utilities, intermodal companies, and chemical manufacturers. Union Pacific provides this service to our customers on a vast railroad network, which requires careful staging of resources to provide efficient, reliable, and safe transportation service. Without reliable crew hauling services, Union Pacific could not transport its primary resource – its crews – to and from its trains. Consequently, without its crews, Union Pacific’s railroad operations could not continue and our customers and the economy would suffer.

Union Pacific argues the need for a “reliable crew hauling service”, and a “safe transportation service”. The foundation that makes the crew hauling service reliable and safe, is the FMCSA hours of service regulations. It is being pointed out to Union Pacific that there are cracks in that foundation at the Coach America bus companies.

The purpose of the FMCSA hours of service regulations is to ensure that fatigued drivers do not operate motor vehicles on the public highways. Discriminating against drivers who accurately report their hours on duty defeats the purpose of the hours of service regulations.

Prohibiting the Secretary of Labor from hearing and deciding discrimination cases in regard to accurately reporting hours on duty, in accordance with 49 USC 31105, further defeats the purpose of the hours of service regulations.

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.

Coach America allowed its bus companies to conduct business in a manner that violated the FMCSA hours of service regulations. Coach America then used the bankruptcy code to prohibit the Secretary of Labor from hearing and deciding discrimination cases in regard to accurately reporting hours on duty, in accordance with 49 USC 31105.

Coach America is now seeking approval from the Surface Transportation Board to sell its bus companies; arguing that the FMCSA hours of service violations should have no bearing on the sale of its bus companies. Union Pacific seems to be arguing the same point.

CUSA ES, LLC and CUSA CSS, LLC, both part of the Coach America family of companies, 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, in accordance with 49 USC 31105.

Although the discrimination cases in regard to accurately reporting hours on duty were brought against Midnight Sun Tours, one of the Coach America bus companies, all of the Coach America bus companies were bound by the same Coach America log policies as Midnight Sun Tours. As such, the Surface Transportation Board should disallow the sale of all the Coach America bus companies, until such time as the Secretary of Labor has resolved the FMCSA hours of service violations at Midnight Sun Tours, in accordance with 49 USC 31105.

These are the FMCSA hours of service violations, committed at Midnight Sun Tours, that the Secretary of Labor is being prohibited from hearing and deciding, in accordance with 49 USC 31105.

(1) Midnight Sun Tours eliminated 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. Drivers were expected to log off-duty during their tours of duty only on the basis of Provision 1, 2 and 4 of Question 2 of the Guidance to FMCSR 395.2.

Question 2: What conditions must be met for a CMV driver to record meal and other routine stops made during a tour of duty as off-duty time?

Guidance:

- 1. The driver must have been relieved of all duty and responsibility for the care and custody of the vehicle, its accessories, and any cargo or passengers it may be carrying.*
- 2. The duration of the driver's relief from duty must be a finite period of time which is of sufficient duration to ensure that the accumulated fatigue resulting from operating a CMV will be significantly reduced.*
- 3. If the driver has been relieved from duty, as noted in (1) above, the duration of the relief from duty must have been made known to the driver prior to the driver's departure in written instructions from the employer. There are no record retention requirements for these instructions on board a vehicle or at a motor carrier's principal place of business.*
- 4. During the stop, and for the duration of the stop, the driver must be at liberty to pursue activities of his/her own choosing and to leave the premises where the vehicle is situated.*

In order for a driver to log off-duty during a tour of duty, all four provisions specified in Question 2 of the Guidance to FMCSR 395.2 must be met. If even one of the conditions specified in Question 2 of the Guidance to FMCSR 395.2 is not met, then the driver may not log off-duty during the tour of duty.

Even though a driver may have no responsibility for the bus (Provision 1), may know the duration of the non-driving segment (Provision 2), and may be free to leave the premises where the bus is located (Provision 4), unless the employer provides the written instructions mandated by Provision 3 in Question 2 of the Guidance to FMCSR 395.2, then the driver may not log off-duty during the tour of duty.

On September 10, 2009, Midnight Sun Tours issued a memo that eliminated Provision 3 in Question 2 of the Guidance to FMCSR 395.2 as a necessary condition for logging off-duty during a tour; and Coach America allowed Midnight Sun Tours to do this.

Any log in which a driver logs off-duty during a tour of duty without the written instructions mandated by Provision 3 in Question 2 of the Guidance to FMCSR 395.2 is a false record of duty status. Bus companies should not be accepting false records of duty status from their drivers; but they are.

(2) Midnight Sun Tours required drivers to change their original logs; then shredded the driver's original logs; and then presented the driver's changed logs as the driver's original logs.

(3) Midnight Sun Tours accepted logs from drivers in which the drivers logged off-duty on days that they worked.

(4) Midnight Sun Tours required drivers to log off-duty for periods of time that were greater than the off-duty periods made known to the drivers by the shuttle route schedules; the written instructions mandated by Provision 3 in Question 2 of the Guidance to FMCSR 395.2.

(5) Midnight Sun Tours knowingly dispatched drivers into tours of duty that required the drivers to record 10/15 hours of service violations on their logs; and then wrote the drivers up for actually recording the 10/15 hours of service violations on their logs.

(6) Midnight Sun Tours fired drivers for refusing to log off-duty without the written instructions mandated by Provision 3 in Question 2 of the Guidance to FMCSR 395.2.

(7) Midnight Sun Tours fired drivers moments after they refused to change their logs.

(8) Midnight Sun Tours made drivers sign backdated written notices, moments before they were fired.

Is this the standard of behavior that Union Pacific qualifies as a “reliable crew hauling service” and a “safe transportation service”?

The only way that the FMCSA hours of service violations will be abated at the Coach America bus companies, is if the Secretary of Labor is permitted to hear and decide discrimination cases in regard to accurately reporting hours on duty, in accordance with 49 USC 31105; the Secretary of Labor acknowledges the FMCSA hours of service violations in a written Decision, in accordance with 49 USC 31105; and the Secretary of Labor then issues an Order to abate the FMCSA hours of service violations at the Coach America bus companies, in accordance with 49 USC 31105.

As I have argued before, as long as the Secretary of Labor is prohibited from hearing and deciding discrimination cases in regard to accurately reporting hours on duty, in accordance with 49 USC 31105, then in effect, there are no FMCSA hours of service regulations. The FMCSA hours of service regulations become whatever the Coach America bus companies say they are; and that is not in the public interest.

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, with respect to any of the Coach America bus companies, then the Surface Transportation Board should disallow the sale of all of the Coach America bus companies; and that is in the public interest.

Sincerely,

Michael Yusim 7-26-12

Michael Yusim