

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

IN THE MATTER OF

PROFESSIONAL TRANSPORTATION, INC.

232726

—ASSET ACQUISITION—

ENTERED

CUSA ES, LLC AND CUSA CSS, LLC

Office of Proceedings

August 13, 2012

STB DOCKET NO. MC-F-21046

Part of

Public Record

**REPLY OF APPLICANT TO PROTEST
OF WILLIAM W. SHARPE**

Professional Transportation, Inc. (“PTI,” or the “Applicant”) and CUSA ES, LLC (“CUSA ES”) and CUSA CSS, LLC (“CUSA CSS” and together with CUSA ES, the “Sellers”) initiated the proceeding under this docket number on May 31, 2012, by filing their Application under 49 U.S.C. §14303(a) for Approval of the Acquisition of Assets (the “Application”). By way of the Application, PTI and the Sellers seek approval of this Board for the acquisition of substantially all of the assets of the Sellers, each a motor carrier of passengers, by PTI, also a motor carrier of passengers.

On August 9, 2012, William W. Sharpe (“Mr. Sharpe”) filed a protest letter (the “Protest”) in this proceeding. In the Protest, Mr. Sharpe, who is a former employee of the Applicant, makes certain claims relating to the conduct of the Applicant. The purpose of this reply is to respond to the unfounded allegations and implications of Mr. Sharpe. While Mr. Sharpe’s unfounded allegations and implications cover a wide range of issues, the Applicant has grouped them into the following three categories: (i) allegations of unfair employment practices,

(ii) allegations of illegal conduct, and (iii) allegations of unsafe operations. The Applicant will address each category of allegations in turn below.

Allegations of Unfair Employment Practices

In 2012, PTI will employ more than 3,400 people (not including any new employees as a result of the acquisition contemplated by the Application) and will issue in excess of 90,000 individual paychecks. As a result, PTI will from time-to-time be involved in, or may in the future become involved in, routine litigation, claims, disputes, proceedings and investigations in the ordinary course of business. Mr. Sharpe, however, cites five incidents occurring over the last decade and suggests that PTI routinely and deliberately engages in unfair labor practices and that these cases typify the conduct of PTI. This is misleading.

In support of his allegations, Mr. Sharpe cites the cases of (i) *Gregory A. Matthews and Author L. Hickenbottom Jr. v. PTI and Ronald D. Romain*, (ii) *Vickie Miller and Roxana Pettit v. PTI and Ronald D. Romain*, (iii) *Elaine L. Chao, Secretary of Labor v. Professional Transportation, Inc.*, (iv) *Ronald C. Tinsley v. Professional Transportation, Inc. and Billy (last name unknown) Supervisor*, and (v) *Robbie Pickett Evans and George R. Booth v. Professional Transportation, Inc.* The status of each case is set forth below.

Gregory A. Matthews and Author L. Hickenbottom Jr. v. PTI and Ronald D. Romain.

In the Protest, Mr. Sharpe states that he is “very opposed to any action that would allow PTI to obtain new operating authorities until such time when the charges specified in exhibit A [*Gregory A. Matthews and Author L. Hickenbottom Jr. v. PTI and Ronald D. Romain*], can be addressed and settled in court.” For business reasons, PTI is currently engaging in the mediation process with the plaintiffs in this case. PTI anticipates that the case will be resolved without the need for further litigation. Notwithstanding any action PTI may take with respect to this case

based on such factors as PTI and its counsel deem appropriate under the circumstances, PTI believes that this proceeding is wholly unrelated to the matters addressed in the Application and should have no bearing on the decision of the Board to approve the Application.

Vickie Miller and Roxana Pettit v. PTI and Ronald D. Romain.

For business reasons, PTI settled this case with the plaintiffs without admitting any wrongdoing, liability, or damages, and all claims were dismissed with prejudice by order of the court on June 24, 2011. Notwithstanding the resolution of this case for business reasons, PTI believes that this proceeding is wholly unrelated to the matters addressed in the Application and should have no bearing on the decision of the Board to approve the Application.

Elaine L. Chao, Secretary of Labor v. Professional Transportation, Inc.

For business reasons, PTI settled this case with the plaintiffs without admitting any wrongdoing, liability, or damages. Notwithstanding the resolution of this case for business reasons, PTI believes that this proceeding is wholly unrelated to the matters addressed in the Application and should have no bearing on the decision of the Board to approve the Application.

Ronald C. Tinsley v. Professional Transportation, Inc. and Billy (last name unknown) Supervisor.

This case involved a driver who worked for PTI for only two days and took only two trips. This matter has been fully resolved and dismissed, and PTI denies any wrongdoing, liability, or damages. Notwithstanding the resolution of this case for business reasons, PTI believes that this proceeding is wholly unrelated to the matters addressed in the Application and should have no bearing on the decision of the Board to approve the Application.

Robbie Pickett Evans and George R. Booth v. Professional Transportation, Inc.

This matter is currently pending. PTI maintains that the allegations made by the plaintiffs in this case are factually unfounded and legally without merit. PTI is vigorously defending this matter. Notwithstanding any action that PTI may take with respect to this case, PTI does not believe that these proceedings are relevant in any way to the matters pending before the Board and should have no bearing on the decision of the Board to approve the Application.

Allegations of Illegal Conduct

Georgia Public Service Commission

Mr. Sharpe references correspondence between the Georgia Public Service Commission and PTI on June 30, 2010. The letter was sent to PTI in response to an allegation that PTI was operating without proper licensing. The correspondence was delivered to PTI via “certified mail” and included a statement to the effect that “If you are presently conducting operations you are doing so illegally, (O.C.G.A. §46-7-85.3), and must **CEASE AND DESIST** from conducting such operations until a certificate has been granted by the Commission.” The correspondence did not in any manner indicate that the Georgia Public Service Commission had found that PTI had violated any applicable statute or rule. Mr. Sharpe’s categorization of this correspondence as “certified correspondence” and an “official order for PTI to cease and desist operations” is false and misleading, and should not be considered in connection with the Board’s review of the Application.

West Virginia Public Service Commission

Mr. Sharpe is referring to a matter which occurred over a decade ago in the late 1990’s. This matter has been fully resolved. Since such time, PTI has continued to operate under proper

authority in the State of West Virginia on an interstate basis through 2010 when it obtained authority to operate on an intrastate basis in certain counties in West Virginia.

Allegations of Unsafe Operations

PTI believes that an excellent safety record is a prerequisite to any contract with the railroads for crew transportation services. Without PTI's record for safety, its driver training programs and its stringent policies and procedures, PTI believes it would not have achieved the rate of growth and success that it has over the years.

In the Protest, Mr. Sharpe states, "If PTI was as concerned about safety as they often claim, then we would be able to see some evidence of that in how they conduct their affairs." In response, PTI offers the following as evidence of how PTI conducts its affairs: (i) PTI actively monitors compliance with the myriad government and railroad regulations that seek to ensure the safety of railroad personnel and automobile passengers, (ii) PTI's Safety Department monitors compliance with all applicable laws and regulations, and (iii) PTI management views the Safety Department as more than a compliance arm, because PTI believes safety is the most-critical element of crew-transportation services for customers in the railroad industry.

The PTI Safety Department has identified the following nine key areas of focus and continuous improvement so that PTI may go beyond mere regulatory and legal compliance to make safety a key differentiator of PTI's service offering:

- Management Commitment to Safety. Commitment to safety begins at the top, and senior management sees that PTI continually invests in programs designed to further improve its reputation as a safety leader in the industry.

- Driver Qualifications and Training. PTI maintains strict requirements for new drivers, including e-Railsafe background checks, reviews of motor-vehicle records, drug testing, and a probationary period for new drivers.

- Zero-Tolerance Policies. PTI does not tolerate unsafe behavior. GPS systems allow PTI to monitor driver behavior and take decisive action if a driver behaves unsafely.

- Compliance. PTI diligently maintains records of driver compliance with the Department of Transportation.

- Fleet Inspection and Maintenance. Vehicles utilized by PTI are inspected regularly, and maintenance issues are not deferred for any reason. As described in more detail below, PTI is investing in remote diagnostic monitoring systems that will further enhance its ability to proactively address maintenance issues.

- Data Gathering, Analysis, and Problem Identification. PTI's systems-focused approach provides access to significant amounts of data that can be analyzed to improve vehicle mechanics, driver behavior, and other activities that have an impact on passenger safety.

- Accident (Loss) Investigation. By conducting thorough accident investigations, PTI is able to determine what factors are contributing to negative outcomes and to proactively address them.

- Ongoing Review of Driver Qualifications and Performance Monitoring. PTI continuously evaluates its driver-qualification and performance-monitoring regime to ensure that its processes remain consistent with industry best practices. PTI has recently made a

commitment to install a DriveCam system in every vehicle in its fleet. The DriveCam system will include a video event recorder which will continuously monitor and capture driving behavior and provide real-time feedback to the driver. In addition, the system will upload exception-based video and data to PTI via cellular connection so that it will be immediately aware of any driver safety issues.

- Accountability. PTI designs its management goals and business-plan objectives to promote safety, identify key performance indicators, and structure driver compensation to reward strong safety performance. Economic incentives to achieve safety goals are not only part of managers' compensation arrangements, they also are part of PTI's contracts with many of its customers.

Safety Department

PTI's highly structured Safety Department consists of Field Safety Officers ("FSOs") who interact on a regular basis with PTI's drivers and customers. Each FSO is assigned to a specific geographic territory. FSOs are the core of PTI's Safety Program and are responsible for implementing, administering, and executing PTI's occupational health and safety programs at the operations level. Following detailed procedural guidelines, FSOs conduct safety inspections of vehicles and operating areas such as rail yards and routes across PTI's operating territory. FSOs are also responsible for the classroom education of all PTI drivers and field managers in various required courses. FSOs are trained and certified in drug-screening procedures and perform pre-employment, random, and post-accident drug testing. FSOs collect and maintain appropriate accident and injury statistics including regulatory documentation, training attendance records, and other data required by PTI. FSOs, along with outside experts as required, perform post-

accident and incident investigations. The objective of the investigations is to determine the root cause of each accident and incident. Once all data is gathered and analyzed, the results are used to prepare corrective action plans and become an integral part of the development of new safety programs and education modules used in PTI's continuing education process.

Driver Training Programs

PTI uses the National Safety Council's Defensive Driving Course – 4 (“DDC-4”) defensive driving course as its basic safety training program for drivers. All PTI drivers are required to complete DDC-4 within 30 days of being hired. The course is administered in a variety of formats including online, video based, self paced, and instructor based. Each PTI driver receives 12 hours of classroom training and four hours of in-vehicle skills training annually. All of the FSOs are certified to teach the DDC-4 defensive driving course.

Miles Driven Per Accident

From January 1, 2012 through June 30, 2012, PTI drivers have driven, in the aggregate, in excess of 52 million miles. As a result, the drivers have from time-to-time been involved in accidents, and may again in the future be involved in accidents. However, over the course of time, PTI has improved its miles driven per accident due to several important factors. These factors include an improved skill set among FSOs gained through the following improved hiring practices: (i) established selective hiring criteria, (ii) focused training with emphasis on the aforementioned DDC-4 certification training early in each driver's employment, (iii) mandatory weekly safety calls with field operations management teams, (iv) detailed accident investigations revealing behavioral trends to address through training programs, and (v) a Safety Hotline call system that allows the public to report erratic driving behavior by PTI drivers, which results in detailed investigation by field management.

General Statements

In addition to the matters addressed above, Mr. Sharpe makes a number of unfounded and inappropriate allegations concerning PTI and Mr. Romain. Without listing each instance, such remarks include statements such as the following:

“Over the years, PTI has discovered that the financial reward for ignoring the law far exceeds any of the potential risks or penalties that may be imposed for non-compliance. It is this absolute arrogance and contemptuous behavior of PTI's owner, Ronald D. Romain that completely dominates the daily business culture at Professional Transportation Incorporated.”

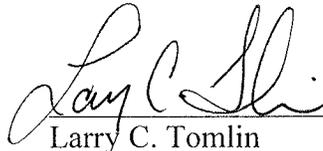
“For a moment let us consider how PTI has profited from failing to pay their employees a fair wage. This matter is directly associated with the case outlined in exhibit A First of all, by keeping the wages of their drivers artificially low or not paying them what they've already earned, PTI has situated itself in a much better position to gain market share. They have prospered greatly from an unfair advantage over other competitors. By withholding wages or basically taking money directly out of the pockets of their drivers, PTI has been able to consistently offer much lower service rates to railroad carriers.”

“Their devious plan to suppress wages has allowed railroad carriers to save millions of dollars annually. In return, these same carriers have remained noticeably lenient with respect to vehicle maintenance issues. The railroad companies know that if PTI is forced to uphold higher standards, the costs for achieving those elevated standards will be passed along to them. They're not going to let this happen any time soon.”

Without addressing each statement individually, PTI responds that these statements have no basis whatsoever in fact or in law and should be disregarded by the Board.

In summary, the information provided by Mr. Sharpe in the Protest is unfounded, misleading and bears no relevance to the matters which are the subject of the Application. For this and the other reasons described above, the Applicant respectfully requests that the Board deny Mr. Sharpe's Protest and move expeditiously to approve the Application.

SIGNATURE PAGE FOLLOWS



Larry C. Tomlin
Krieg DeVault LLP
One Indiana Square
Suite 2800
Indianapolis, IN 46204
(317) 238-6289

Counsel for Professional Transportation, Inc.

Certificate of Service

I hereby certify that I have on this day served copies of the foregoing document upon all parties of record in this proceeding, by first class U.S. mail, postage prepaid, as well as the following parties by the same method of service:

Chief, Licensing and Insurance Division
U.S. Department of Transportation
Federal Motor Carrier Safety Admin.
1200 New Jersey Ave., S.E.
Washington, D.C. 20590

Andrew K. Light
Gregory A. Ostendorf
Scopelitis Garvin Light Hanson & Feary
10 W. Market Street, Suite 1500
Indianapolis, IN 46204

Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Indiana Department of Revenue
Motor Carrier Services Division
5252 Decatur Blvd., Suite R
Indianapolis, IN 46241

Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, CO 80202

Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604-4027

Washington Utilities and Transportation Comm.
P.O. Box 47250
Olympia, WA 98504-7250

Nebraska Public Service Commission
P.O. Box 94927
Lincoln, NE 68509-4927

City of Bismarck
221 N. Fifth St., Fourth Floor
Bismarck, ND 58501

City of Minot
P.O. Box 5006
Minot, ND 58702

BNSF Railway
Attn: Richard E. Weicher
547 W. Jackson Blvd., Suite 1509
Chicago, IL 60661

William Sharpe
3736 Union Ave. #5
Steger, IL 60475

Michael Yusim
7499 Eagle Point Drive
Delray Beach, Florida 33446

Union Pacific Railroad Company
Attention Stephen A. Kessler
1400 Douglas Street
Stop 0750
Omaha NE 68102

Date: August 13, 2012