

**BEFORE THE  
UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

**In the Matter of:**

**MARIA D. LOPEZ DBA LOPEZ  
TRUCKING,  
(U.S. DOT No. 1079320)**

**Respondent.**

**Docket No. FMCSA-2009-0078<sup>1</sup>  
(Western Service Center)**

**INTERIM ORDER**

**1. Background**

On December 15, 2008, the Field Administrator for the Western Service Center, Federal Motor Carrier Safety Administration (FMCSA) (Claimant) issued a Notice of Claim (NOC) against Maria D. Lopez dba Lopez Trucking (Respondent).<sup>2</sup> The NOC, which was based on a November 25, 2008 compliance review, proposed a civil penalty of \$131,000, charging Respondent with: (1) eleven violations of 49 CFR 395.3(b)(2), requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 8 consecutive days, with a proposed civil penalty of \$11,000 per count; and (2) ten violations of 49 CFR 395.8(k)(1), failing to preserve drivers' records of duty status for 6 months, with a proposed penalty of \$1,000 per count. The NOC indicated that the proposed penalties represented the maximum statutory penalties for these violations in accordance with § 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA).<sup>3</sup>

---

<sup>1</sup> The prior case number of this matter was CA-2009-0107-US1054.

<sup>2</sup> See Attachment A to Field Administrator's Submission of Evidence Pursuant to 49 CFR 386.16(a), Motion for Final Order and Memorandum in Support (Motion for Final Order).

<sup>3</sup> See Pub. L. 106-159, 113 Stat. 1769 (Dec.9, 1999), codified at 49 U.S.C. § 521, note.

Respondent filed a timely reply to the NOC (Reply).<sup>4</sup> In her Reply, Respondent admitted the violations and requested a payment plan, reduction of the civil penalty, or suspension of the penalty due to financial hardship. She set forth several corrective actions taken to come into compliance and attached documents relating to her claim of financial hardship.

Claimant, noting that Respondent did not request a particular form of administrative adjudication, contended that Respondent waived her right to a formal hearing and served his written evidence and Motion for Final Order on March 20, 2009. Respondent did not respond to the Motion for Final Order.

## ***2. Decision***

Respondent did not contest the claim; therefore, she was not required to request administrative adjudication. Her options were to either pay the proposed penalty in full or request binding arbitration in accordance with the Agency's arbitration program.<sup>5</sup> Although Respondent did not request binding arbitration, she requested precisely what is necessary for binding arbitration—a reduction in the civil penalty and/or a payment plan.

Claimant, in his Motion for Final Order, presented evidence of two previous enforcement cases against Respondent that resulted in Settlement Agreements in which Respondent admitted the violations alleged in the NOC. In the first case, CA-2004-0123-US0876, Respondent signed a Settlement Agreement on December 12, 2004, in which she admitted violating 49 CFR 395.3(b)(2), the same regulation she admitted violating in the instant proceeding, and 49 CFR 395.8(e).<sup>6</sup> On May 23, 2006, Respondent signed a Settlement Agreement resolving Case No.

---

<sup>4</sup> See Attachment D to Motion for Final Order.

<sup>5</sup> See 49 CFR 386.14(b).

<sup>6</sup> See Attachment E to Motion for Final Order, Exhibit 3.

CA-2006-0256-US-0975.<sup>7</sup> In this Settlement Agreement, Respondent admitted violating 49 CFR 395.8(i) and 49 CFR 395.8(k)(1). Sections 395.3(b)(2), 395.8(e), 395.8(i), and 395.8(k)(1) are all considered critical violations for purposes of determining a motor carrier's safety rating.<sup>8</sup>

Under the Agency's policy for implementing § 222 of MCSIA that was in effect when the NOC was issued, the Agency will impose the maximum statutory penalty for a violation when there are three enforcement cases within six years involving violations of critical or acute violations in the same Part of Title 49, Code of Federal Regulations. The first two cases must have been closed through: (a) an explicit adjudicatory finding of the violation by the Agency decisionmaker, (b) an express admission of liability in a reply to the NOC or in a Settlement Agreement, or (c) a Final Agency Order issued under 49 CFR 386.14(e), based on respondent's failure to reply to the NOC.<sup>9</sup>

Claimant's evidence established that the application of § 222 of MCSIA is appropriate in this proceeding. Although the Agency's arbitration program does not permit reduction of civil penalties in § 222 cases, it does permit an arbitrator to determine the length of time in which to pay the penalty.<sup>10</sup> While it is not necessary for Respondent to use the words "binding arbitration" to request binding arbitration it is necessary for Respondent, as well as Claimant, to

---

<sup>7</sup> See Attachment E to Motion for Final Order, Exhibit 4.

<sup>8</sup> See Appendix B to 49 CFR Part 385, section VII.

<sup>9</sup> See 69 Fed. Reg. 77828 (Dec. 28, 2004). The Agency's policy regarding assessment of maximum penalties under § 22 of MCSIA was revised in March 2009. See 74 Fed. Reg. 14184 (Mar. 30, 2009).

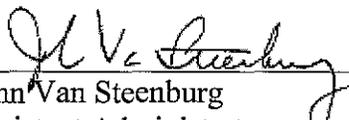
<sup>10</sup> See *Notice of Final Revision to Guidance for the Use of Binding Arbitration Under the Administrative Dispute Resolution Act of 1996*, 77 Fed. Reg. 34249, 34252 (June 11, 2012). The 2012 revision did not change the initial Guidance with respect to the arbitration of § 222 cases.

consent to the arbitration process.<sup>11</sup> Because she failed to specify whether she was requesting binding arbitration, Respondent has not yet consented to binding arbitration. Neither has Claimant. Therefore, this matter will not be sent to binding arbitration without Respondent's assurance that she will participate in the proceedings and Claimant's agreement to arbitration.

Accordingly, it is ORDERED that

The parties have 15 days from the service date of this Order to serve their consent to binding arbitration. Under the Agency's Guidance for the use of arbitration, the arbitrator will be limited to determining the length of time over which Respondent must pay the penalty. If the parties timely consent to binding arbitration, I will issue an order setting forth the binding arbitration procedures.

If Respondent fails to serve her consent to binding arbitration in accordance with this Order, she will have defaulted and the Notice of Claim will become the final agency order in these proceedings on the 20<sup>th</sup> day following the service date of this Order.<sup>12</sup>

  
\_\_\_\_\_  
John Van Steenburg  
Assistant Administrator  
Federal Motor Carrier Safety Administration

1/23/14  
Date

<sup>11</sup> See *In the Matter of Rimrock Stages, Inc.*, FMCSA-2013-0401, Interim Order, Dec. 31, 2013.

<sup>12</sup> *Id.*

**CERTIFICATE OF SERVICE**

This is to certify that on this 24 day of January, 2014, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Nancy Jackson  
Office of Chief Counsel  
Enforcement and Litigation Division  
Federal Motor Carrier Safety Administration  
Western Service Center  
12600 West Colfax Avenue, Suite B-300  
Lakewood, CO 80215

One Copy  
First Class Mail

Maria D. Lopez, Owner.  
Lopez Trucking  
8471 Red Mesa Drive  
Riverside, CA 92509

One Copy  
First Class Mail

U.S. Department of Transportation  
Docket Operations, M-30  
West Building Ground Floor  
Room W12-140  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

Original  
Personal Delivery

William R. Paden  
Field Administrator  
Federal Motor Carrier Safety Administration  
Western Service Center  
12600 West Colfax Avenue, Suite B-300  
Lakewood, CO 80215

One Copy  
First Class Mail

  
\_\_\_\_\_