

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

**RON'S AUTO SALES, INC.,
(U.S. DOT No. 242860)**

Respondent.

**Docket No. FMCSA-2009-0045¹
(Midwestern Service Center)**

FINAL ORDER

1. Background

On November 12, 2008, the Wisconsin Division Administrator, Federal Motor Carrier Safety Administration (FMCSA), issued a Notice of Claim (NOC) to Ron's Auto Sales, Inc. (Respondent), proposing a civil penalty of \$2,000. The NOC, which was based on an April 22, 2008 compliance review, charged Respondent with one violation of 49 CFR 382.115(a), failing to implement an alcohol and/or controlled substances testing program.²

On December 10, 2008, Respondent served a timely reply to the NOC (Reply) in which it denied the alleged violation and provided Notice of Intent to Submit Evidence and Argument without Hearing. Respondent claimed it is not subject to 49 CFR Part 382 because it is a private carrier operating one vehicle of less than 26,001 pounds.

On February 13, 2009, the Field Administrator for FMCSA's Midwestern Service Center (Claimant) submitted his evidence and moved for a Final Order. Claimant argued that because

¹ The prior case number was WI-2009-00003-WI5005.

² See Exhibit B to Response to Notice of Intent to Submit Evidence Without Hearing and Motion for Entry of Final Order (Motion for Final Order).

the truck and trailer combination operated by Respondent on April 14, 2008 exceeded 26,000 pounds, Respondent was subject to Part 382 and required to implement an alcohol/controlled substances testing program. Claimant further argued that the proposed civil penalty was calculated in accordance with applicable statutory requirements. Respondent did not reply to the Motion for Final Order.

2. Decision

When a respondent contests alleged violations through submission of evidence and argument without a hearing, the claimant has the burden to demonstrate by a preponderance of the evidence that the respondent violated the regulations as charged.³ To establish by a preponderance of the evidence means that something is more likely so than not.⁴

A. The Violation

Section 382.115(a) requires domestic-domiciled employers to implement the requirements of Part 382 on the date the employer begins commercial motor vehicle operations. The requirements of Part 382 apply to every person and to all employers of such persons who operate a commercial motor vehicle (CMV) in commerce in any State and is subject to the commercial driver's license (CDL) requirements of 49 CFR part 383.⁵ The CDL requirements of Part 383 apply to every person who operates a CMV in interstate, foreign, or intrastate

³ See *In the Matter of R & R Express, Inc. dba KDK Transport, Inc.*, Docket No. FHWA-97-2425, Final Order: Decision on Review, Sept, 23, 1997, note 5, at 9, citing *United States v. Steadman*, 450 U.S. 91, at 95-104 (1981), *reh. denied*, 451 U.S. 933 (1981).

⁴ See *In the Matter of Commodity Carriers, Inc.*, Docket No. FMCSA-2001-8676, Final Order: Decision on Petition for Safety Rating Review, June 30, 2004, note 23, at 11, citing *Blossom v. CSX Transp. Inc.*, 13 F.3d 1477, 1482 (11th Cir. 1994).

⁵ See 49 CFR 382.103(a)(1).

commerce, to all employers of such persons, and to all States.⁶ Section 383.5 defines CMV, insofar as it affects the issues in this case, to include a motor vehicle *or combination of motor vehicles* used in commerce to transport property if the motor vehicle has a gross combination weight rating or gross combination weight of 26,001 pounds or more, whichever is greater, *inclusive of towed unit(s)* with a gross vehicle weight rating (GVWR) or gross vehicle weight of more than 10,000 pounds, whichever is greater.

Inasmuch as Respondent did not deny failing to implement an alcohol/controlled substances testing program, the issue in this case is whether it was required to do so. The violation cited in the NOC involved operation of a combination motor vehicle in commerce by Respondent's driver Richard Groboski from Ironwood, Michigan to Eagle River, Wisconsin on April 14, 2008. Mr. Groboski was driving a Dodge truck that was pulling a semi-trailer carrying two Jeeps and a Chrysler. Richard Hablewitz, an investigator with the Wisconsin State Patrol, attested that he determined that the Dodge truck had a GVWR of 11,500 pounds, and provided photographic evidence of a plate on the vehicle stating the GVWR.⁷ Official records obtained from the State of Wisconsin indicate that Respondent, in registering the trailer with the State, represented the gross weight to be 16,000 pounds.⁸ This weight figure was provided to the State by Respondent. However, a "Certificate of Origin" obtained from Country Side Motors, Inc., the dealer that sold the trailer to its original owner, shows the trailer's GVWR as 21,600 pounds.⁹

⁶ See 49 CFR 383.3(a). Respondent's claim that it is a private carrier, therefore, is irrelevant because private carriers are subject to the CDL requirements of Part 383.

⁷ See Exhibit D-4 to Motion for Final Order.

⁸ See Exhibits D-5 and F to Motion for Final Order.

⁹ See Exhibit G to Motion for Final Order. The document was obtained by Bud Coxhead of the Wisconsin State Patrol.

Using either figure, the total GVWR of the truck and towed trailer driven by Mr. Groboski on April 14, 2008 exceeded 26,001 pounds. I find, therefore, that Claimant established, by a preponderance of the evidence, that Respondent was subject to the requirements of Part 382 and violated 49 CFR 382.115(a) by failing to implement an alcohol/controlled substances testing program.

B. The Civil Penalty

Claimant contended that the proposed penalty was calculated to induce further compliance while taking into account the factors required by 49 U.S.C. § 521(b)(2)(D)¹⁰ and attached a copy of the Uniform Fine Assessment (UFA) worksheet that was used to calculate the penalty.¹¹ The UFA is software designed to implement a uniform and fair application of penalties by devising a formula for determining the penalty based on consideration of the specific statutory factors referenced in 49 U.S.C. § 521(b)(2)(D). The correct use of UFA algorithms is presumed to meet statutory requirements.¹²

The UFA worksheet contains a gross revenue cap of \$50. In *Pioneer Drum & Bugle Corps & Color Guard, Inc.*, I noted that the gross revenue cap in the UFA calculation is intended to take into account the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), and that this cap moderates fines for small carriers through the first and second civil

¹⁰ These factors include the nature, circumstances, extent and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require.

¹¹ See Exhibit I to Motion for Final Order.

¹² See *In the Matter of Alfred Chew & Martha Chew, and Alfred & Martha Chew d/b/a Alfred & Martha Chew Trucking*, Docket No. FHWA-1996-5323, Final Order, Feb. 7, 1996.

penalties.¹³ In essence, the gross revenue cap directly relates to the Agency's obligation to consider the effect of a civil penalty on the ability of a carrier to remain in business in accordance with § 521(b)(2)(D). I recently stated that although the Agency's current policy is to propose a penalty that is equal to the UFA-calculated penalty in cases where the gross revenue cap is \$2,000 or less,¹⁴ the policy is effective only for Notices of Claim issued on or after November 17, 2011.¹⁵ The Notice of Claim in the instant matter was issued on November 12, 2008; thus the new policy does not apply. Consequently, I am reducing the civil penalty to \$50, consistent with the gross revenue cap.

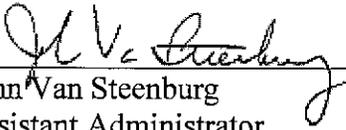
THEREFORE, *It is Hereby Ordered That* Respondent pay to the Field Administrator for the Midwestern Service Center, within 30 days of the service date of this Final Order, a total civil penalty of \$50 for one violation of the Federal Motor Carrier Safety Regulations. Payment may be made electronically through the Federal Motor Carrier Safety Administration's registration site at <http://safersys.org/> by selecting "Online Fine Payment" under the "FMCSA Services" category. In the alternative, payment by cashier's check, certified check, or money order should be remitted to the Midwestern Field Administrator at the address shown in the

¹³ See *Pioneer Drum & Bugle Corps & Color Guard, Inc.*, Docket No. FMCSA-2008-0012, Final Order, Oct. 3, 2011, citing *In the Matter of Paul Michels*, Docket No. FMCSA-2000-7960, Final Order on Reconsideration, Jan. 10, 2002, at 2. The UFA worksheet states that Respondent employs one driver, operates one power unit, and had gross revenues of \$22,750, which clearly indicates that it is a small carrier.

¹⁴ See *Civil Penalty Calculation Methodology*, 76 Fed. Reg. 71431 (Nov. 17, 2011).

¹⁵ See *In the Matter of Tacede Express*, Docket No. FMCSA-2008-0365, Final Order as to Civil Penalty, June 5, 2013.

Certificate of Service.¹⁶



John Van Steenburg
Assistant Administrator
Federal Motor Carrier Safety Administration

2/3/14

Date

¹⁶ Pursuant to 49 CFR 386.64, a petition for reconsideration may be submitted within 20 days of the issuance of this Final Order.

CERTIFICATE OF SERVICE

This is to certify that on this 3rd day of February, 2014, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Richard A. Groboski, Vice President
Ron's Auto Sales, Inc.
4816 Illinois Road
Eagle River, WI 54521-8961

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Senior Trial Attorney
Office of Chief Counsel (MC-CCE)
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