

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Mark J. Breiner	)	MOTOR CARRIER COMPLAINT
Director of the Motor	)	NO. MCC-3176
Transportation Department of the	)	
Nebraska Public Service	)	
Commission,	)	
	)	
Complainant,	)	
	)	ORDER SUSTAINING
v.	)	COMPLAINT
	)	
DonMark Inc., d/b/a Cornhusker	)	
Cab, Omaha, Nebraska,	)	
	)	
Defendant.	)	FILED: DECEMBER 7, 2010

APPEARANCES:

For DonMark, Inc.:

Commission Staff:

Patrick Sullivan
3717 Harney Street
Papillion NE 68131

Mark Breiner
1200 N Street
Suite 300, The Atrium
Lincoln, NE 68508

BY THE COMMISSION:

This matter came before the Commission upon the filing of a formal complaint against DonMark, Inc., d/b/a Cornhusker Cab, Omaha, Nebraska, filed on May 17, 2010. Notice of this hearing was sent to all parties of record on September 28, 2010, and a hearing was held on the matter on October 21, 2010.

Robert Harrison was called to testify. Mr. Harrison is an investigator for the Commission and has been in that position for twenty-one years. As part of his duties, he inspects taxicabs throughout the state, including Omaha. Included in the inspections performed is an examination and testing of taximeters.

Mr. Harrison listed the certificated taxicab carriers in the Omaha area. They include Happy Cab, Checker Cab, Yellow Cab, Valor Transportation and DonMark, Inc., d/b/a Cornhusker Cab. All of the listed entities are regulated by the Commission.

In April of 2010, Mr. Harrison caused to be conducted an examination of the taxicabs in Omaha. At a meter test, many factors regarding taxicabs are inspected. The cabs are examined for tire wear, body integrity, signal lights, heater and air conditioners being operable, and that seat belts are in good working condition. Two other items that are inspected are a photo identification card that is to be displayed in the taxi and a test of the accuracy of the taximeter and whether or not the meter is properly sealed.

The inspection discovered that a number of meters were in an unsealed condition. Mr. Harrison kept track of meters that were unsealed. He also discovered that a number of drivers did not have the photo identification properly displayed. The defendant was found to have 24 meters that were unsealed. The Defendant was also found to have 15 drivers that did not have their photo identification card properly displayed.

A second spot inspection performed by Mr. Harrison on April 30, 2010, in the cab line at Eppley Airfield. The spot inspection found in 11 out of 25 cabs checked the defendant's drivers did not have the photo identification cards properly displayed.

After the inspections in April, Mr. Harrison testified that a process was established to address the situation regarding the taximeters and the display of the photo identification cards to ensure compliance with Commission rules and regulations. Every week the driver coordinator makes contact with Mr. Harrison with a list of taxis that need to have the meters inspected and sealed. The process began on about May 20, 2010. Since that time, a total number of 117 cabs were inspected and sealed in this manner between May 20 and October 15, 2010.

Mr. Harrison testified that he has continued to perform spot inspections of the taxis since the development of the weekly process. He inspects them in the cab line at the airport as well as those that are sometimes found at local hotels and the bus depot downtown. Mr. Harrison stated that the situation has improved and that he rarely finds any problems during these spot inspections. Any issues that have been found involve the lack of the photo identification card.

On cross-examination by Mr. Sullivan, Mr. Harrison said that compliance by the drivers and the company has improved since the inception of the process to check for the sealed meters and the photo identification cards. Mr. Harrison said that he is not able to determine whether there was any tampering with the unsealed meters.

On examination by Commissioner Boyle, Mr. Harrison stated that the meter tests are preformed at least annually. He said that there have been some problems with some unsealed meters in the past, but that there were not so many unsealed meters prior to this year that created a need to track that number.

Mr. John Davis was called by the defendants. He is the Director of Operations for all of the defendants in this matter. His duties involve the day-to-day operations of the companies. After detailing how a meter works, Mr. Davis stated that the winter of 2009-2010 was an unusual year for the companies. The snow and other winter conditions contributed to an estimated 100 percent increase in the number of transmission failures that the company experienced. The changing of transmission is just one factor that can effect the use of the meters, according to Mr. Davis.

Mr. Davis stated that his companies worked to get the meters sealed and work with the Commission to set up a process so that this situation would never occur again. The company contacts an investigator for the Commission with the new vehicles that need to be sealed prior to their deployment on the streets.

The companies also sent out a notice to all drivers informing the drivers that the companies had been cited for violations of rules regarding the meters and the photo identification cards. This was done in an effort to get the drivers to be more compliant with the rules regarding the photo identification and its display in the vehicle. The companies perform checks for sealed meters and the proper display of the photo identification cards at least once per month.

On examination by Commissioner Vap, Mr. Davis admitted that unsealed meters have been an issue in the past. On

examination by Commissioner Boyle, Mr. Davis said that the companies should have been more diligent in contacting the Commission regarding the number of unsealed meters that the companies had from the testing date of October of 2009 to the last test in April of 2010.

On examination by Commissioner Schram, Mr. Davis estimated that fifty cabs had transmission work performed on them during the winter of 2009-2010. Mr. Davis also reviewed disciplinary steps that would be taken by the companies upon the discovery of violations by the drivers. A driver that was found to be unsealing and tampering with the meter would most likely be terminated. A violation of the photo identification card display rules would result in a warning being issued for a first offence, with a second occurrence resulting in termination. Mr. Davis said that there were a "handful" of first warnings issued for the photo identification violation, but to date no one had been terminated for any further violations.

OPINION AND FINDINGS

This matter is before the Commission on the basis of the discovery, during an annual taximeter test, of a significant number of unsealed meters being operated by the defendant in violation of Commission Rules and Regulations, as well as the failure in many instances of the drivers of the defendant to display a photo identification card as required by said rules and regulations.

The applicable rules are as follows:

Rule 011.01F1 states "No taximeter shall be operated without first having been inspected, tested, approved and sealed by a representative of the Commission or a duly authorized representative of the taxicab company."

Rule 011.01H states "Each operator shall be identified by a card, displayed in full view of the passengers, bearing the operator's name and photograph and the taxicab carrier's address; and be further identified by some distinguishing article of uniform. Such uniform design is left to the discretion of the carrier."

The defendant involved has been shown to be in violation of these rules regarding the operation of taxis without the meters being sealed as required and without the photo identification being properly displayed. The failure of the meters to be sealed could result in a situation where the riding public is placed in a position of paying more than is authorized for the services being provided. While the company appears to be following a process that will eliminate the issue, it must continue to do so as future failure to be in compliance with these rules will carry a more significant penalty for any further violations.

The Commission finds that the defendant did violate Commission Rules and Regulations regarding the unsealed meters and the failure to ensure that drivers were properly displaying the photo identification cards as required by rules and regulations. After consideration of the matter, the Commission finds that a civil penalty of \$20 per unsealed meter violation and \$5 per photo identification card violation is warranted. The Commission notes that this is the first time that this issue has been considered by the Commission. Any future violations of these rules brought to the Commission and proven in a civil proceeding before it will be dealt with more severely.

O R D E R

IT IS, THEREFORE, ORDERED by the Nebraska Public Service Commission that Motor Carrier Complaint No. 3176 filed against DonMark, Inc., d/b/a Cornhusker Cab, Omaha, Nebraska, be, and it is hereby, sustained.

IT IS FINALLY ORDERED that DonMark, Inc., d/b/a Cornhusker Cab, be, and is hereby assessed a civil penalty in the amount of Four hundred eighty dollars (\$480.00) for violations of Nebraska Public Service Commission Rules 011.01F1 and Seventy-five dollars (\$75.00) for violation of Rule 011.01H.

MADE AND ENTERED at Lincoln, Nebraska, this 7th day of
December, 2010.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

MCC-3176

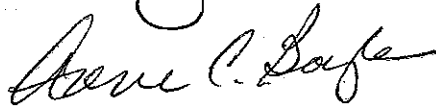
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//s// Frank E. Landis
//s// Tim Schram
//s// Gerald L. Vap

ATTEST:

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SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

MCC-3176

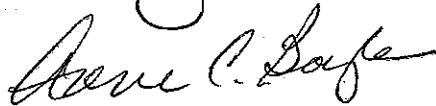
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