U.S. Department of Labor

Occupational Safety and Health Administration
Two Pershing Square
2300 Main Street, Suite 1010
Kansas City, Missouri 64108
Phone: (816) 283-8745
Fax: (816) 283-0547

March 31, 2017

Ms. Jill Grass
c/o Truckers Justice Center
Attn: Paul Taylor
900 West 128th Street, Suite 100
Burnsville, MN 55337

Re: Hartwig Transit, Inc.; Mr. Gerald Hartwig/Grass/Case File No.: 7-2260-16-001

Dear Mr. Taylor:

The U.S. Department of Labor has completed its investigation of the above-referenced complaint filed under the whistleblower provisions of the Surface Transportation Assistance Act ("STAA"), 49 U.S.C. § 31105.

A copy of the Secretary's Findings letter and Preliminary Order is enclosed for your records. Please note that Respondents have 30 days from receipt of the Secretary's Findings letter and Preliminary Order to request a hearing on the merits before an Administrative Law Judge.

Sincerely,

Kevin Crain
Assistant Regional Administrator

U.S. Department of Labor

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2300 Main Street, Suite 1010
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March 31, 2017

Hartwig Transit, Inc. & Mr. Gerald Hartwig
c/o Ms. Nancy Lee Carlson
Attorney at Law
926 Braeburn Road
Inverness, IL 60067

Re: Hartwig Transit, Inc.; Mr. Gerald Hartwig/Grass/7-2260-16-001

Dear Ms. Carlson:

This is to advise you that we have completed our investigation of the above-referenced complaint filed by Jill Grass ("Complainant") against Hartwig Transit, Inc. ("the Company") and Mr. Gerald Hartwig (collectively "Respondents") under the Surface Transportation Assistance Act ("STAA"), 49 U.S.C. § 31105. In brief, Complainant alleges that Respondents issued her two warning letters, denied her a driving assignment, indefinitely suspended her and ultimately terminated her employment in retaliation for her efforts to address safety concerns concerning the commercial motor vehicles she was assigned to operate.

Following an investigation by a duly-authorized investigator, the Acting Secretary of Labor, acting through his agent, the Regional Administrator for the Occupational Safety and Health Administration ("OSHA"), Region VII, finds there is reasonable cause to believe that Respondents violated STAA and issues the following findings:

Secretary's Findings

Timeliness:

On September 28, 2015, Complainant received a letter of warning. On October 5, 2015, Complainant filed a complaint with the Secretary of Labor alleging that Respondents retaliated against her in violation of STAA; therefore, as the complaint was filed within 180 days of the adverse action, it is timely. Complainant subsequently filed amendments on October 18, 2015 (denial of trip), November 5, 2015 (second letter of warning and indefinite suspension), and August 29, 2016 (termination of employment). The amendments are deemed valid.

Coverage:

Respondents are persons within the meaning of 1 U.S.C. § 1 and 49 U.S.C. § 31105. They are also a commercial motor carrier within the meaning of 49 U.S.C. § 31101. The Company is a contractor of the U.S. Postal Service, engaged in transporting mail on highways via commercial motor vehicles with a gross vehicle weight rating of 10,001 pounds or more.

Mr. Hartwig is the president of the Company.

Complainant is an employee within the meaning of 49 U.S.C. § 31101. In the course of her employment with the Company, she directly affected commercial motor vehicle safety, in that she drove the Company's trucks over highways in commerce to deliver U.S. mail. She worked out of the Company's terminal in Des Moines, IA.

Complainant and Respondents are, therefore, covered by STAA.

Analysis:

Under STAA, Complainant must show that (1) she engaged in protected activity, (2) Respondents knew or suspected that she engaged in protected activity, (3) she experienced an adverse action, and (4) her protected activity was a contributing factor in the adverse action. If Complainant makes this showing, Respondents, to avoid liability, must show, by clear and convincing evidence, that they would have taken the same adverse action even in the absence of the protected activity.

Protected Activity/Employer Knowledge:

Complainant engaged in protected activity on September 27 and October 31, 2015.

On September 27, 2015, Complainant let the Company know that her trailer was missing up-to-date inspection and registration material. She eventually placed it out of service.

On October 31, 2015, Complainant let the Company know that the first-axel wheel hub on her trailer was damaged. In a text message, with a picture of the part attached, she wrote, "2 bolts missing and quarter of plate gone," and "I believe this is out of service and need fix before take it." In another text message, with more pictures attached, she wrote, "Service please. I just looked under I have oil on plate and brake pads."[1]

Respondents do not dispute that they had direct knowledge of the protected activity.

Adverse Action(s):

Complainant experienced adverse actions when Respondents issued her letters of warning on September 28 and October 31, 2015. On November 1, 2015, she experienced another adverse action when Respondents suspended her pending the outcome of an internal investigation into alleged misconduct on her part stemming from the events of October 31. In the meantime, Respondents offered Complainant employment at Habitat for Humanity while she waited for Respondents' investigation to conclude.

She started her assignment at Habitat on November 17, 2015. She received her normal rate of pay from Respondents. Her assignment involved manual labor and did not last long, as she suffered an injury to her shoulder on November 23, 2015, while hanging rugs above her head.

[1] 49 C.F.R. 393.205 (Wheels) requires that "wheels and rims shall not be cracked or broken," and that "nuts or bolts shall not be missing or loose."

She has not worked again for Respondents.[2] She experienced her final adverse action on August 26, 2016, when Respondents, following a meeting and vote of its Safety Board, which was chaired by Mr. Hartwig, terminated her employment.

Contributing Factor:

Complainant's protected activity was a contributing factor in the adverse actions. The protected activity and the events that formed the basis of the adverse actions are intertwined. Both warning letters, for example, reference the protected activity – the second of which gave rise to the suspension and termination of employment.

Respondents' Defense:

Respondents claim that Complainant disobeyed a direct order on September 27, 2015. In addition, they claim that she caused a slow-down in work and *willfully* damaged company equipment on October 31, 2015.

The evidence, however, suggests that the reasons given for the adverse actions are rooted in pretext.

The evidence shows that Complainant did not disobey a direct order on September 27, 2015. Respondents claim that after she voiced her concerns about the inspection and registration material, she was instructed to stay put until the matter could get resolved and to not drive back to Des Moines. Respondents claim that because it was a Sunday, there was no one available to address her concerns until the following morning.

Complainant, however, communicated with only her dispatcher during the time period in question, and he stated that she was never instructed to stay put – rather, she was given the option of staying put *or* driving back to Des Moines and having her concerns addressed there. Complainant chose the latter, concluding that because the unit had recently undergone repairs, it could be operated in a safe manner, despite her concerns about the inspection and registration material. Upon arrival in Des Moines, she placed the unit out of service. Therefore, based on the dispatcher's recollection of events, Complainant did not disobey a direct order when she drove the unit back to Des Moines on September 27.

Respondents' claim that Complainant caused a slow-down in work is also not supported by the evidence, given that the slow-down directly resulted from her safety concerns and request for assistance in the field. It is evidence of animus toward the protected activity for Respondents to accuse Complainant of causing a slow-down in work after voicing safety concerns.

The record also does not support Respondents' claim that Complainant *willfully* damaged company equipment. The claim that Complainant willfully damaged company equipment is the sole reason Respondents have given for terminating her employment.

[2] Complainant filed a workers' compensation claim on January 22, 2016. According to Complainant, she was released to return to work without restrictions on or about August 18, 2016.

According to Complainant, after forwarding pictures of the damaged first-axel wheel hub to the Company's officials, including Mr. Hartwig, she started to clean off the cap that goes on the wheel hub. She stated that she wanted to be helpful and find out what the underlying problem was. She stated that she was cold and wet from the rain that morning, and that while in the process of cleaning the cap, she slipped while bending down and "accidentally" broke it. She stated that the cap was already "partially out" and was "hot and crackled." Complainant has not once wavered from her position that she accidentally broke the cap, adamantly denying the charge that she intentionally damaged the Company's equipment. She maintains that what happened with the cap was simply an accident. In the end, Complainant's explanation is both believable and reasonable.

As a result, Respondents have failed to show, by clear and convincing evidence, that they would have taken the same adverse actions even in the absence of the protected activity.

PRELIMINARY ORDER

(1) Upon receipt of these Findings and Preliminary Order, Respondents shall immediately reinstate Complainant to her former position with all the pay, benefits, and rights she had before the termination of her employment.

(2) Respondents shall pay Complainant back wages in the amount of $21,753.24, representing the pay period from August 18, 2016, through April 1, 2017. After April 1, 2017, Respondents shall continue to pay Complainant $482.86 weekly until Respondents make Complainant a bona fide offer of reinstatement.

(3) Respondents shall pay Complainant $292.52, representing interest accumulated on back wages from August 18, 2016, through April 1, 2017. After April 1, 2017, Respondents shall continue to pay interest on back wages, computed by compounding daily the IRS interest rate for the underpayment of taxes.

(4) Respondents shall pay Complainant compensatory damages in the amount of $5,000.00 for pain and suffering. Complainant, who was credible when describing the emotional toll caused by the retaliation, has experienced the classic symptoms of emotional distress, including, but not limited to: anxiety and depression and humiliation. She sought and received professional help as a result. She also noted that because of financial distress, she was not able to make timely house payments and had to borrow money to avoid foreclosure.

(5) Respondents shall pay Complainant punitive damages in the amount of $10,000.00. Respondents, for one, were parties to a prior STAA complaint, which means they were aware of STAA's prohibition against retaliation when they retaliated against Complainant for voicing safety concerns in good faith. This makes their actions toward Complainant even more egregious. Their actions toward Complainant could also dissuade other employees from engaging in protected activity out of fear that they, too, will experience retaliation.

(6) Respondents shall pay reasonable attorney's fees in the amount of at least $6,227.45.

(7) Respondents shall refrain from retaliating or discriminating against Complainant in any manner for exercising her rights under STAA.

(8) Respondents shall provide to all employees a copy of the STAA FactSheet included with this Preliminary Order.

(9) Respondents shall post for 60 consecutive days the Notice to Employees included with this Order in all areas where employee notices are customarily posted.

(10) Respondents shall remove from Complainant's employment records any reference to the exercise of her rights under STAA and expunge her employment records of the letters of warning, dated September 28 and October 31, 2015; the suspension that went into effect on or about November 1, 2015; and the termination of employment on August 26, 2016.

Respondents and Complainant have thirty (30) days from the receipt of these Findings to file objections and to request a hearing before an Administrative Law Judge ("ALJ"). If no objections are filed, these Findings will become final and not subject to court review. Objections must be filed in writing with:

Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Department of Labor
800 K Street NW, Suite 400 North
Washington, D.C. 20001-8002
Telephone: (202) 693-7300; Facsimile: (202) 693-7365

With copies to:

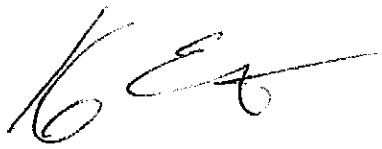
Kimberly Stille
Regional Administrator
U.S. Department of Labor-OSHA
Two Pershing Square Building
2300 Main Street, Suite 1010
Kansas City, MO 64108

Jill Grass
c/o Truckers Justice Center
Attn: Paul Taylor
900 West 128th Street, Suite 100
Burnsville, MN 55337

In addition, please be advised that the U.S. Department of Labor does not represent any party in the hearing; rather, each party presents his or her own case. The hearing is an adversarial proceeding before an ALJ in which the parties are allowed an opportunity to present their evidence for the record. The ALJ who conducts the hearing will issue a decision based on the evidence and arguments presented by the parties. Review of the ALJ's decision may be sought from the Administrative Review Board ("ARB"), to which the Secretary of Labor has delegated responsibility for issuing final agency decisions under STAA. A copy of this letter has been sent to the Chief Administrative Law Judge along with a copy of the complaint.

The rules and procedures for the handling of STAA cases can be found in Title 29, Code of Federal Regulations Part 1978 and may be obtained at www.whistleblowers.gov.

Sincerely,



For: Kimberly Stille
Regional Administrator

cc: Complainant's Attorney
USDOL/OALJ-Chief Administrative Law Judge
Federal Motor Carrier Safety Administration

Enclosures: (2)

NOTICE TO EMPLOYEES

PURSUANT TO AN ORDER BY THE U.S. DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION:

Hartwig Transit, Inc. and Mr. Gerald Hartwig ("Respondents") have been ordered to make whole an employee who was found to have been retaliated against for exercising her rights under the Surface Transportation Assistance Act ("STAA"), 49 U.S.C. § 31105. Respondents have also taken affirmative steps to ensure the rights of its employees under STAA.

PURSUANT TO THAT ORDER, RESPONDENTS AGREE THAT THEY WILL NOT:

1. Discharge any employee or discriminate against any employee with respect to his/her compensation, terms, conditions, or privileges of employment because of the employee (or person acting pursuant to a request of the employee):

    a. Filing a complaint, beginning a proceeding or testifying or being about to testify in a proceeding related to a violation of commercial motor vehicle safety or security regulation, standard, or order;

    b. Being perceived to have filed or to about to file a complaint or to have begun or to be about to begin a proceeding related to a violation of a commercial motor vehicle safety or security regulation, standard, or order;

    c. Refusing to operate a vehicle because the operation violates a regulation, standard, or order of the United States related to commercial motor vehicle safety, health, or security;

    d. Cooperating, or being perceived as cooperating or being about to cooperate, with a safety or security investigation by the Secretary of Transportation, the Secretary of Homeland Security, or the National Transportation Safety Board;

    e. Refusing to operate a vehicle because the employee has a reasonable apprehension of serious injury to the employee or to the public because of the vehicle's hazardous safety or security condition;

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE. THIS NOTICE MUST REMAIN POSTED AND MUST BE NOT ALTERED, DEFACED, OR COVERED BY OTHER MATERIAL.

OSHA Occupational Safety and Health Administration

www.osha.gov

f. Reporting accurate hours on duty pursuant to chapter 315 of Title 49 of the United States Code; and

g. Furnishing, or being perceived to have furnished or be about to furnish, information to the Secretary of Transportation, the Secretary of Homeland Security, the National Transportation Safety Board, or any Federal, State, or local regulatory or law enforcement agency as to the facts relating to any accident or incident resulting in injury or death to an individual or damage to property occurring in connecting with commercial motor vehicle transportation.

Respondents Date

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE. THIS NOTICE MUST REMAIN POSTED AND MUST BE NOT ALTERED, DEFACED, OR COVERED BY OTHER MATERIAL.

OSHA® FactSheet

Whistleblower Protection for Commercial Motor Carrier Workers

Truck drivers and other individuals working for commercial motor carriers are protected from retaliation for reporting or engaging in activities related to certain commercial motor vehicle safety, health or security conditions.

On August 3, 2007, the *Surface Transportation Assistance Act* (STAA), 49 U.S.C. §31105, was amended by *The Implementing Recommendations of the 9/11 Commission Act* (Public Law 110-53) to include new rights, remedies and procedures.

Covered Employees

In general, STAA covers private sector drivers (including independent contractors while personally operating a commercial motor vehicle) and other employees of commercial motor carriers (including mechanics and freight handlers). To qualify for coverage, employees must be involved in activities directly affecting commercial motor vehicle safety or security. A commercial motor vehicle covered by STAA is defined as any self-propelled or towed vehicle used on the highway in commerce principally to transport cargo or passengers. To qualify for coverage, such a vehicle must also:

- *Have a vehicle weight rating or gross vehicle weight of at least 10,001 pounds (whichever is greater); or,*
- *Be designed to transport more than 10 passengers, including the driver; or,*
- *Transport materials deemed hazardous by the Secretary of Transportation in a quantity requiring placarding (posting) under applicable regulations.*

Protected Activity

If you are covered under STAA, your employer may not discharge you or in any manner retaliate against you for:

- filing a complaint or initiating or participating in a proceeding related to the violation of a commercial motor vehicle safety or security rule; or
- cooperating with certain federal safety or security investigations; or
- providing information in an investigation by a federal, state or local regulatory or law enforcement agency relating to any accident or incident resulting in injury or death or property damage that occurred in connection with commercial motor vehicle transportation.

In addition, under STAA, your employer may not discharge you or in any manner retaliate against you for refusing to operate a vehicle because to do so would violate a federal commercial motor vehicle rule related to safety, health, or security or because you had a reasonable apprehension of serious injury to yourself or to the public related to a vehicle's safety or security condition. STAA also prohibits your employer from discharging or otherwise retaliating against you for accurately reporting hours of service (HOS). (For more detail about federal HOS requirements, please visit the Federal Motor Carrier Safety Administration's website, www.fmcsa.dot.gov). You may also be covered if you were perceived as having engaged in the activities described above.

Adverse Actions

Your employer may be found to have violated STAA if your protected activity was a contributing factor in its decision to take adverse action against you. Such actions may include:

- Firing or laying off
- Blacklisting
- Demoting
- Denying overtime or promotion
- Disciplining
- Denying benefits
- Failing to hire or rehire
- Intimidation
- Making threats
- Reassignment affecting promotion prospects
- Reducing pay or hours

Deadline for Filing a Complaint

Complaints must be filed within 180 days after the alleged adverse action occurred.

How to File a Complaint

A worker, or representative of a worker, who believes that he or she has been retaliated against in violation of this statute may file a complaint with OSHA. The complaint should be filed with the OSHA office responsible for enforcement activities in the geographic area where the worker lives or was employed, but may be filed with any OSHA officer or employee. For more information, call your nearest OSHA Regional Office:

- *Boston* *(617) 565-9860*
- *New York* *(212) 337-2378*
- *Philadelphia* *(215) 861-4900*
- *Atlanta* *(404) 562-2300*
- *Chicago* *(312) 353-2220*
- *Dallas* *(972) 850-4145*
- *Kansas City* *(816) 283-8745*
- *Denver* *(720) 264-6550*
- *San Francisco* *(415) 625-2547*
- *Seattle* *(206) 553-5930*

Addresses, fax numbers and other contact information for these offices can be found on the Whistleblower Protection Program's website, www.whistleblowers.gov, and in local directories. Complaints may be filed orally or in writing, by mail (we recommend certified mail), e-mail, fax, or hand-delivery during business hours. The date of postmark, delivery to a third party carrier, fax, e-mail, phone call or hand-delivery is considered the date filed. If the worker or his or her representative is unable to file the complaint in English, OSHA will accept the complaint in any language.

Results of the Investigation

If the evidence supports your claim of retaliation and a settlement cannot be reached, OSHA will issue a preliminary order requiring the appropriate relief to make you whole. Ordered relief may include:

- Reinstatement with the same seniority and benefits.
- Payment of backpay with interest.
- Compensatory damages, including compensation for special damages, expert witness fees and reasonable attorney's fees.
- Punitive damages of up to $250,000.

OSHA's findings and preliminary order become a final order of the Secretary of Labor, unless a party objects within 30 days.

Hearings and Review

After OSHA issues its findings and preliminary order, either party may request a hearing before an administrative law judge of the U.S. Department of Labor. A party may seek review of the administrative law judge's decision and order before the Department's Administrative Review Board. Under STAA, if there is no final order issued by the Secretary of Labor within 210 days after the filing of the complaint, then you may be able to file a civil action in the appropriate U.S. district court.

To Get Further Information

For a copy of the statutes, the regulations and other whistleblower information, go to www.whistleblowers.gov. For information on the Office of Administrative Law Judges procedures, decisions and research materials, go to www.oalj.dol.gov and click on the link for "Whistleblower."

This is one in a series of informational fact sheets highlighting OSHA programs, policies or standards. It does not impose any new compliance requirements. For a comprehensive list of compliance requirements of OSHA standards or regulations, refer to Title 29 of the Code of Federal Regulations. This information will be made available to sensory impaired individuals upon request. The voice phone is (202) 693-1999; teletypewriter (TTY) number: (877) 889-5627.

For more complete information:

OSHA® Occupational Safety and Health Administration

U.S. Department of Labor

www.osha.gov

(800) 321-OSHA

DEP 8/2010