

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

**ROBILLARD TRUCKING, INC.,

Respondent.**

**Docket No. FMCSA-2009-0335¹
(Eastern Service Center)**

ORDER ON BINDING ARBITRATION

1. Background

On September 23, 2009, the Maine Division Administrator for the Federal Motor Carrier Safety Administration (FMCSA) issued a Notice of Claim for \$2,000 to Respondent, Robillard Trucking, Inc., charging it with one violation of 49 CFR 382.115(a), for failing to implement an alcohol and/or controlled substance testing program.²

By letter dated October 1, 2009, Respondent replied to the Notice of Claim, requesting binding arbitration.³ Although Respondent did not admit the violations, which is a requirement for a matter to be assigned for binding arbitration,⁴ its silence as to the violation is considered an admission.⁵ Admission of the violations while seeking a lower

¹ The prior case number of this matter was ME-2009-0091-US0754.

² See Attachment 2 to Field Administrator's letter of November 19, 2009 (Claimant's consent).

³ See Attachment 1 to Claimant's consent.

⁴ See 49 CFR 386.14(b)(3).

⁵ See *In the Matter of Executive Express Trucking, Inc.*, Docket No. FMCSA-1997-2499, Final Order, September 14, 1999, at 6.

civil penalty meets the requirements of the binding arbitration program.⁶ By letter dated November 19, 2009, Claimant, the Field Administrator for FMCSA's Eastern Service Center, stated that he did not object to the request for binding arbitration. Accordingly, Respondent's request is granted.

2. Procedures

The arbitration process will be conducted pursuant to FMCSA's published guidance on this subject.⁷ The parties will work together to select an arbitrator and establish procedures that will govern the binding arbitration. A representative of FMCSA will contact Respondent to answer any questions it may have about the binding arbitration process, including the choosing of an arbitrator.

a. Options in Choosing the Arbitrator

The parties may choose an arbitrator from the following sources:

1. Civilian Board of Contract Appeals Judges or representatives from other government agencies who have been trained in arbitration;
2. Uncompensated neutral parties from local communities; or
3. Compensated neutral parties from outside the government, whose costs are to be shared by agreement of the parties.

The selected arbitrator will assist the parties in developing procedures and preparing an Arbitration Agreement.

⁶ See *Guidance for the Use of Binding Arbitration under the Administrative Dispute Resolution Act of 1996*, Docket No. FMCSA-2003-14794, 69 Fed. Reg. 10288, March 4, 2004.

⁷ *Id.*

b. Arbitration Format

Respondent may have attorney or non-attorney representation, or it may appear *pro se*; that is, it may represent itself in the arbitration proceedings. With the consent of both parties, the arbitrator may conduct hearings in person or by telephone, video conferencing, or computer.

Each party will present evidence supporting the penalty and terms of payment it considers appropriate. The evidence may not contest whether or not the violation occurred because Respondent has conceded the violation as a condition of arbitration. Neither written submissions nor oral argument may contain any reference to the amount of the civil penalty proposed by the party. At a time specified by the arbitrator, each party will present to the arbitrator and to the opposing party a sealed envelope containing the amount of its total proposed civil penalty and a proposed payment plan. Before opening the envelopes, the arbitrator will determine the appropriate civil penalty and payment plan based upon the evidence presented during the proceeding. The arbitrator will provide his or her determinations in writing to the parties. The arbitrator will then open the envelopes and select the civil penalty and payment plan that is closer to the arbitrator's determinations. The arbitrator has the discretion to select one party's proposed total civil penalty and the other party's proposed payment plan.

c. Maximum and Minimum Penalty Amounts

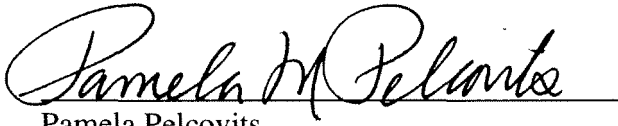
The parties may not propose an amount higher than the amount assessed in the Notice of Claim. There is no minimum statutory penalty for the violation.

d. Limited Appeals

The arbitration award is binding on the parties. Appeals from arbitration awards

are generally limited to fraud or misconduct in the proceedings. *See* Federal Arbitration Act, 9 U.S.C. § 10.

It Is So Ordered.



Pamela Pelcovits
Agency Decisionmaker (by designation)
Federal Motor Carrier Safety Administration

3/31/11
Date

CERTIFICATE OF SERVICE

This is to certify that on this 1 day of April, 2011, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Jane Robillard, President
Robillard Trucking, Inc.
103 Bog Road
Albion, ME 04910

One Copy
U.S. Mail

John C. Bell, Esq.
Trial Attorney
Office of Chief Counsel (MC-CCE)
Federal Motor Carrier Safety Administration
Eastern Service Center
802 Cromwell Park Drive, Suite N
Glen Burnie, MD 21061

One Copy
U.S. 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

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