

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

JOHN KAMAU
dba KAMWAY SERVICES
USDOT NO. 2509225

)
) Order No.: MA-2017-5000-IMH
)
) Service Date: _____
)
) Service Time: _____
)

IMMINENT HAZARD
OPERATIONS OUT-OF-SERVICE ORDER

This is an Imminent Hazard Operations Out-of-Service Order ("Order") issued by the Secretary of the United States Department of Transportation ("the Secretary") pursuant to 49 U.S.C. § 521(b)(5)(A), 49 U.S.C. § 13905(f), 49 U.S.C. § 31144(c)(1) and (5), 49 U.S.C. § 31133(a)(10), 49 U.S.C. § 31134, and 49 C.F.R. § 386.72(b)(1), and pursuant to a delegation of authority to the Regional Field Administrator, Eastern Service Center, Federal Motor Carrier Safety Administration ("FMCSA"), United States Department of Transportation ("USDOT"). This Order applies to **JOHN KAMAU dba KAMWAY SERVICES (USDOT No. 2509225), a motor carrier, and its officers, agents, and employees** (hereinafter collectively referred to as "you," "your," "it," and/or "KAMWAY"),¹ and to all commercial motor vehicles owned or operated by or on behalf of

¹ The commercial motor vehicle operation assigned USDOT number 2509225 appears to be an unincorporated sole proprietorship operated by an individual named John Kamau and doing business as Kamway Services. Mr. Kamau also appears to be the only driver employed by this sole proprietorship. For ease of reference, the business entity will be referred to herein as "you," "your," "it," and/or "KAMWAY," and Mr. Kamau in his individual capacity as a driver will be referred to as "Mr. Kamau."

KAMWAY, including without limitation a 2008 Hino, MA Registration MA R59903, VIN 5PNVJ8JT882S51486.

The Secretary and the FMCSA find your operations and continued operation of any commercial motor vehicle (hereinafter referred to as “commercial motor vehicle,” “vehicle,” and/or “motor coach”) in the United States constitute an **imminent hazard**. This finding means that based upon your present state of unacceptable safety compliance, your operation of any commercial motor vehicle poses an **imminent hazard** to public safety.

**EFFECTIVE IMMEDIATELY YOU MUST CEASE ALL COMMERCIAL
MOTOR VEHICLE OPERATIONS INCLUDING ALL INTERSTATE AND
INTRASTATE TRANSPORTATION OF PROPERTY.**

Your vehicles and their drivers now in interstate or intrastate commerce may proceed to their next immediate destination. *See* 49 C.F.R. § 386.72(b)(4) and (5).

**YOU MAY NOT LOAD OR TRANSPORT ANY ADDITIONAL FREIGHT OR
PROPERTY, NOR MAY YOU OPERATE ANY COMMERCIAL MOTOR
VEHICLE(S) IN INTERSTATE OR INTRASTATE COMMERCE WHILE THIS
ORDER IS IN EFFECT.**

“Operate” or “Operating” includes without limitation all interstate and intrastate transportation by drivers from all dispatching locations or terminals. KAMWAY’s commercial motor vehicle(s) may not be operated in interstate or intrastate commerce by any other motor carrier or any driver, even without freight. Any movement of KAMWAY’s commercial motor vehicle(s) to any storage, repair, or other location for repair, sale, storage, or final destination must be accomplished only by towing, such that the commercial motor vehicle is not driven or operated. Your commercial motor

vehicle(s) may be moved, including by tow, only upon the prior written approval of the Regional Field Administrator for FMCSA's Eastern Service Center.

Within eight hours of your receipt of this Order, you must submit to the Regional Field Administrator in writing by facsimile the location of each commercial motor vehicle under your control. You must identify the vehicle by year, make, model and vehicle identification number (VIN). You must include a copy of the current registration. You must also identify the street address, city and state of the location of each vehicle, and you must identify the driver last operating the vehicle. Your submission must be faxed to the Regional Field Administrator at 443-703-2253.

You cannot avoid this Order by continuing operations under the name of another person or company. If you intend to sell, lease, loan or otherwise transfer or allow the use of any commercial motor vehicle to any other person, motor carrier, or business, you must provide written notice to the Regional Field Administrator no less than five business days before any such sale, lease, loan, transfer or use.

I. JURISDICTION

KAMWAY is a motor carrier engaged in interstate commerce using commercial motor vehicles² and is, therefore, subject to the Federal Motor Carrier Safety Regulations ("FMCSRs"), 49 C.F.R. Parts 350-399, as well as the Orders of the USDOT and FMCSA. See 49 U.S.C. §§ 506, 507, 13501, 31133 and 31136, and 31144. You are

² The term "commercial motor vehicle" includes any self-propelled motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle has a gross vehicle weight rating or gross vehicle weight of 10,001 pounds or more. See 49 C.F.R. § 390.5. KAMWAY's 2008 Hino is a commercial motor vehicle and subject to this Order.

required to comply, and to ensure your driver(s) comply, with the FMCSRs and Orders of the USDOT and FMCSA. 49 C.F.R. § 390.11.

This Order has the force and effect of any other Order issued by FMCSA and is binding upon KAMWAY as well as any and all of its owners, officers, members, directors, successors, assigns, and closely affiliated companies. This Order applies to all motor carrier operations and all vehicles owned, leased, rented or otherwise operated by you.

II. BASIS FOR ORDER

The basis for determining that KAMWAY's motor carrier operations pose an imminent hazard to the public is KAMWAY's widespread and serious noncompliance with Federal safety regulations, including the FMCSRs. KAMWAY does not have any safety management controls in place to ensure drivers are qualified to operate its commercial motor vehicle, does not maintain driver qualification files essential to ensuring its use of qualified drivers, and repeatedly used a physically unqualified driver to drive a commercial motor vehicle. KAMWAY also does not ensure its drivers prepare and submit records of duty status and comply with maximum hours of service limitations. Further, KAMWAY does not have a systematic vehicle inspection, repair, and maintenance program to prevent the operation of unsafe motor vehicles.

Individually and cumulatively, these violations and conditions of operation substantially increased the likelihood of serious injury or death to KAMWAY's drivers and/or the motoring public. The specific identified deficiencies which substantially increase the likelihood of serious injury or death are outlined in the Background portion of this Order, which is incorporated by reference herein.

III. BACKGROUND

On November 18, 2016, a KAMWAY vehicle being operated in interstate commerce³ and driven by Mr. Kamau struck from behind a passenger vehicle that had slowed down due to traffic. The impact pushed the passenger vehicle into a commercial motor vehicle in front of it, killing both occupants of the passenger vehicle.

Following the crash, FMCSA initiated a compliance investigation of KAMWAY's motor carrier operations.⁴ The investigation found KAMWAY does not have any safety management controls in place to ensure drivers are qualified to operate its commercial motor vehicles, drivers operate its commercial motor vehicles safely, and commercial motor vehicles are properly inspected, repaired, and maintained.

KAMWAY is not complying with FMCSA driver qualification requirements to ensure drivers are qualified to operate its commercial motor vehicles. During the compliance investigation, KAMWAY's management official stated that it maintained no records, and it could not or would not produce any driver qualification file, including a driver qualification file for Mr. Kamau, with the requisite employment application, medical certificate, driver road test certificate, state motor vehicle record of driver, prior employer inquiry, or record of violations.⁵ KAMWAY could not produce any document or other information showing it

³ At the time of the November 18 crash, KAMWAY had not registered as an Interstate Carrier with FMCSA. Instead, KAMWAY had registered as an Intrastate Non-Hazmat Carrier and an Interstate Hazmat Shipper. By not registering as an Interstate Carrier, KAMWAY avoided being placed by FMCSA in the New Entrant Safety Assurance Program and being subjected to a New Entrant Safety Audit. 49 C.F.R. Part 385, Subpart D.

⁴ The compliance investigation is ongoing due to KAMWAY's refusal or inability to produce any records related to its motor carrier operations.

⁵ See 49 C.F.R. § 391.51.

made the required inquiries of Mr. Kamau's qualifications before allowing him to operate its commercial motor vehicle.⁶

(b)(6)

KAMWAY does not have any safety management controls in place to ensure compliance with records of duty status⁷ and maximum hours of service limitations.⁸ During the compliance investigation, KAMWAY's management official stated that it maintained no records related to hours of service compliance, and KAMWAY's management official did not produce any records of duty status or supporting documents,⁹ including such documents for Mr. Kamau. KAMWAY's management official produced no documents showing when its commercial motor vehicles are being operated, the origin and

⁶ See 49 C.F.R. §§ 391.11; 391.23; 391.25; 391.27; 391.31 & 391.53. There is no exception to compliance with these regulations for a motor carrier owned by its only driver.

⁷ See 49 C.F.R. § 395.8(a).

⁸ See 49 C.F.R. § 395.5.

⁹ See 49 C.F.R. § 395.8(k)(1) .

destination of trips, or the numbers of hours driven by its driver. KAMWAY's management official produced no evidence to show that it collects and maintains trip documents.

KAMWAY produced no records to show that it has a systematic vehicle inspection, repair, and maintenance program in place to prevent the operation of unsafe motor vehicles¹⁰ and was unable to produce the required maintenance records identifying the date and nature of inspection, repairs, and maintenance conducted.¹¹ KAMWAY was also unable to produce any evidence that it retains periodic inspection reports,¹² or that it requires its driver to complete driver vehicle inspection reports which would identify defects affecting the safety of operation of the vehicle or result in its mechanical breakdown.¹³ KAMWAY's inadequate maintenance program substantially increases the risk of serious injury or death and is an imminently hazardous and potentially deadly condition for KAMWAY's drivers, passengers, and the motoring public.

KAMWAY's complete and utter lack of compliance with the FMCSRs, as set forth above, substantially increases the likelihood of serious injury or death for its drivers, passengers, and the motoring public if the operations of KAMWAY are not discontinued immediately. This imminent hazard to safety may only be abated by the cessation of KAMWAY's entire operations.

¹⁰ See 49 C.F.R. § 396.3(a).

¹¹ See 49 C.F.R. § 396.3(b).

¹² 49 C.F.R. § 396.21(b).

¹³ See 49 C.F.R. § 396.11.

IV. REMEDIAL ACTION

To eliminate this imminent hazard, and before KAMWAY will be permitted to resume operations placed out of service by this Order, you must take specific steps to ensure and demonstrate compliance with the FMCSRs, including the following:

1. You must establish safety management controls and procedures that ensure that your drivers operate vehicles safely and in accordance with 49 C.F.R. Part 392.

2. You must establish safety management controls and procedures to ensure that your driver(s) comply with HOS requirements as set forth in 49 C.F.R. Part 395. Your safety management system must ensure that your driver(s) comply with HOS requirements and do not exceed maximum driving times. You must establish safety management controls and procedures to require drivers to prepare and submit records of duty status and associated supporting documents as required, ensure that drivers' records of duty status are checked, ensure that your drivers are not violating HOS requirements, ensure drivers do not falsify records of duty status, and ensure that each driver accurately completes his or her records of duty status in the form and manner required under 49 C.F.R. Part 395.

3. You must establish safety management controls and procedures to ensure that you allow only qualified drivers to operate your commercial motor vehicle(s). Your safety management system must ensure that your drivers are physically qualified and hold the proper class of license and any endorsements required to operate the vehicle they are assigned.

4. You must demonstrate that you maintain driver qualification files, as required by 49 C.F.R. Part 391. You must demonstrate that every driver you use has completed and furnished an employment application. You must investigate each driver's background within 30 days of employment and must maintain a copy of the response from each State agency in the driver's qualification file. You must demonstrate that you obtain from each driver an annual list of traffic violations and an annual Motor Vehicle Record, and that you perform an annual review of each driver's driving record. You must demonstrate that you perform a three-year previous employment check on your drivers before operating a commercial motor vehicle, in accordance with 49 C.F.R. § 391.23. You must demonstrate that you have ensured that each driver possesses the requisite driver's license and DOT medical examiner's certificate as well as ensured that a copy of each driver's license and medical examiner's certificate is maintained in the driver's qualification file.

5. You must demonstrate that each and every commercial motor vehicle you operate or intend to operate, whether owned, rented, leased or otherwise used, is in a safe operating condition and full compliance with 49 C.F.R. Part 393 (Parts and

Accessories Necessary for Safe Operation) and Part 396 (Inspection, Repair and Maintenance), and that all defects and deficiencies are corrected and repaired.

6. You must establish safety management controls and procedures that ensure that each and every commercial motor vehicle you operate or intend to operate, whether owned, rented, leased or otherwise used, is systematically and properly inspected, maintained and repaired as required by 49 C.F.R. Part 396, and that documentation of inspections, maintenance and repair are obtained and maintained as required.

7. You must ensure that each commercial motor vehicle you operate or intend to operate, whether owned, rented, leased or otherwise used, has been and is periodically inspected as required by 49 C.F.R. Part 396 and Appendix G to Subchapter B of Chapter III, and that qualified inspectors conduct such periodic inspections.

8. You must ensure that employees, contractors and/or agents used to inspect and maintain each commercial motor vehicle you operate and/or intend to operate are trained and qualified to conduct such inspections, maintenance, and repairs, and documentation of training and qualifications is maintained in accordance with 49 C.F.R. Part 396.

9. You must require drivers to conduct pre-trip and post-trip commercial motor vehicle inspections, and must require drivers to prepare Driver Vehicle Inspection Reports in accordance with 49 C.F.R. § 396.11 at the end of each day and establish procedures to ensure that reported safety defects and/or discrepancies are corrected before the vehicle is again operated as required by 49 C.F.R. Part 396.

10. You must establish safety management controls and procedures to ensure that defects and deficiencies discovered during inspections of your commercial motor vehicles are repaired before the vehicle being operated. You must ensure that no commercial motor vehicle that fails, or has failed, a safety inspection is used before necessary repairs being made and the vehicle passing an appropriate safety inspection.

11. You must contact FMCSA's Massachusetts Division and arrange for inspection of each of your commercial motor vehicles by an FMCSA inspector or an inspector designated by FMCSA.

12. You must ensure that all drivers are adequately trained in the requirements of the FMCSRs and that they can conduct motor carrier operations consistent with those regulations.

13. You must comply with all Orders issued by FMCSA.

V. RESCISSION OF ORDER

KAMWAY's motor carrier operations are subject to this Order unless and until this Order is rescinded in writing by FMCSA. Unless and until this Order is rescinded, and until such time as you have a valid and active USDOT number and operating authority registration (if applicable), you are prohibited from operating any commercial motor vehicle in interstate and/or intrastate commerce. This Order will not be rescinded until the Regional Field Administrator for FMCSA's Eastern Service Center has determined that the Remedial Action requirements specified in Paragraph IV of this Order have been fully satisfied and acceptable documentation submitted.

Before this Order will be rescinded, you must comply with the provisions of this Order, eliminate the problems constituting the imminent hazard that your operations pose, and adequately demonstrate to the Regional Field Administrator for the FMCSA's Eastern Service Center the actions taken to eliminate the safety problems. You cannot avoid this Order by continuing operations under the name of another person or company.

Any sale, lease, or other agreements involving your commercial motor vehicle(s) or motor carrier operations require five business days written notice to the Regional Field Administrator. Any such action taken in anticipation of this Order must cease immediately.

Before rescission of the Order, KAMWAY will be required to:

1. Identify the cause for its noncompliance.
2. Develop a detailed Safety Management Plan of action that addresses each area of non-compliance, the steps it intends to take to overcome its noncompliance and a timetable for these steps.

3. Execute the Safety Management Plan and provide certification by all owners and officers.

Any request to rescind this Order and documentation demonstrating satisfaction of the Remedial Action requirements must be directed to the Regional Field Administrator, Eastern Service Center, with a copy to the Division Administrator, Massachusetts Division, at the following addresses:

Regional Field Administrator
Eastern Service Center
Federal Motor Carrier Safety Administration
802 Cromwell Park Drive
Suite N
Glen Burnie, MD 21061

Division Administrator
Massachusetts Division
Federal Motor Carrier Safety Administration
50 Mall Road
Suite 212
Burlington, MA 01803

Rescission of this Order does not constitute a reinstatement of your USDOT Number or operating authority registration. In order for KAMWAY to resume motor carrier operations in interstate or intrastate commerce, KAMWAY will be required to apply to reactivate its USDOT number registration, and if its operations require Federal operating authority, apply for new operating authority registration and demonstrate that it is fit and willing and able to comply with: 1) the statutory and regulatory registration requirements; 2) applicable safety regulations including the FMCSRs; 3) the commercial motor vehicle safety requirements of employers and employees set forth in 49 U.S.C. § 31135; 4) the safety fitness requirements set forth in 49 U.S.C. § 31144; and 5) minimum financial responsibility requirements established under 49 U.S.C. §§ 13906 and 31138.

VI. ENFORCEMENT OF ORDER

This Order, issued pursuant to 49 U.S.C. § 521(b)(5)(A), 49 U.S.C. § 13905(f), 49 U.S.C. § 31144(c)(1) and (5), 49 U.S.C. § 31133, 49 U.S.C. §§ 31134, and 49 C.F.R. § 386.72(b)(1), is an Order of, and enforceable by, the Secretary. Violation of this Order may subject KAMWAY to civil penalties and may also result in an action in the United States District Court for equitable relief and punitive damages. KAMWAY may be assessed civil penalties of up to \$25,705 for each violation of this Order. 49 U.S.C. §§ 507, 521(b)(2)(F) and 521(b)(4) and 49 C.F.R. Part 386 App. A. § IV(g). KAMWAY may also be assessed civil penalties of not less than \$10,282 for providing transportation requiring registration, including operating a commercial motor vehicle in interstate commerce, without operating authority registration and up to \$14,502 for operating a commercial motor vehicle in interstate commerce without a USDOT number registration. *See* 49 U.S.C. §§ 14901, 14702-03, 507, 521(b)(2)(F) and 31134. If violations are determined to be willful, criminal penalties may be imposed, including a fine of up to \$25,000 and imprisonment for a term not to exceed one year. 49 U.S.C. § 521(b)(6)(A).

VII. PENALTIES FOR VIOLATIONS OF FEDERAL REQUIREMENTS

Any motor carrier or driver that violates Federal requirements, including the FMCSRs, and/or permits its employee(s) to violate Federal requirements is subject to civil and/or criminal penalty provisions. Penalty provisions for violations of Federal statutes and regulations are separate and distinct from this Order. Penalties may be assessed for the violations of Federal requirements, including the FMCSRs and Orders of the FMCSA, previously discovered, discovered after the service of this Order, and/or discovered during subsequent investigations.

VIII. RIGHT TO REVIEW

You have the right to administrative review under 5 U.S.C. § 554 and 49 C.F.R. § 386.72(b)(4). If requested, administrative review must commence within ten days after the petition for review is filed and must be concluded as expeditiously as practicable but may run longer than ten days from the date of issuance of such Order or the filing of the petition for review. *See* 49 U.S.C. § 521(b)(5) and 49 C.F.R. § 386.72(b)(4)). A request for review must be addressed to the Assistant Administrator, United States Department of Transportation, Federal Motor Carrier Safety Administration, and should be sent to the attention of Adjudications Counsel by facsimile or electronic mail as follows:

By Fax:

Adjudications Counsel (MC-CCA)
(202) 366-3602

or electronic mail:

FMCSA.Adjudication@dot.gov

with a copy mailed or sent by commercial delivery service to the Assistant Administrator and Adjudications Counsel at the following address:

Adjudications Counsel (MC-CCA)
Federal Motor Carrier Safety Administration
Office of Chief Counsel
1200 New Jersey Avenue, S.E.
Washington, DC 20590

A copy of any request for administrative review must also be sent to the Regional Field Administrator by mail and/or facsimile as follows:

Regional Field Administrator
Eastern Service Center
Federal Motor Carrier Safety Administration
802 Cromwell Park Drive
Suite N
Glen Burnie, MD 21061
Fax: (443) 703-2253

The request must state the material facts at issue which you believe dispute or contradict the finding that your operations constitute an “**imminent hazard**” to the public.

A REQUEST FOR ADMINISTRATIVE REVIEW DOES NOT IN ANY WAY DELAY YOUR DUTY TO COMPLY WITH THIS ORDER

IMMEDIATELY. This Order is separate and independent from all other orders or actions that may be issued by FMCSA, and does not amend or modify any other such orders or actions. Any request for administrative review of this Order does not attach to or apply to any other order or action.

Date: December 9, 2016


Curtis L. Thomas
Regional Field Administrator
United States Department of Transportation
Federal Motor Carrier Safety Administration
Eastern Service Center