

**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY**  
**SFMTA HEARING SECTION**

**SAN FRANCISCO MUNICIPAL  
TRANSPORTATION AGENCY,**

**vs.**

**STATEMENT OF DECISION**

**MICHAEL MCNAIR,**  
Respondent

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**I. INTRODUCTION**

This case came on for administrative hearing pursuant to a Complaint issued by the San Francisco Municipal Transportation Agency (SFMTA) after a 'Notice of Violation and Administrative Fine' was sent or otherwise provided to the respondent, Mr. McNair, on or about April 21, 2022. The SFMTA's Complaint and its earlier Notice alleges that after viewing security video footage from February 8, 2022, to February 25, 2022, Mr. McNair was observed not wearing his face mask covering his nose and mouth during each passenger ride during a fourteen shift period and working excessive hours without waiting for eight consecutive hours to elapse on four shift occasions. According to the allegations, two 311 passenger complaints were filed against Mr. McNair, the first complaint on February 16, 2022, for "rude and discourteous behavior" and the second complaint on February 24, 2022, for "rude and discourteous behavior" and not wearing a face mask. The Complaint alleges that when the SFMTA had attempted to locate the two 311 incidents on the security video footage the SFMTA Investigator observed the respondent in violation of not wearing a face mask and excessive hours.

Apparently based upon the subsequent 311 complaints and the security video footage, a 'Notice of Violation and Administrative Fine' was issued to the respondent on or about March 4, 2022, pursuant to TC 1105(a)(6), primarily noting that the respondent did not comply with the provisions of this article.

## II. THE COMPLAINT

The formal Complaint filed by the Taxi Division of the SFMTA relies upon several exhibits: the Declaration of Eric Richholt Taxi Division Investigations and Enforcement officer (Exh. A), Two 311 Passenger complaints 02/16/2022 and 02/24/2022 (Exh. B), Face Covering Requirement in Response to COVID-19 04/17/2020 (Exh. C), Memos to Taxi Industry regarding Mask Mandate 06/30/2021, 03/17/2022, 04/14/2022 (Exh. D), Two Video Chip Disks National Cab P491 (Exh. E), 311 Complaint 12/04/2021 (Exh F), Notice of Violation and Administrative Fine 03/04/2022 (Exh G) and the Electronic Trip Data from National Cab 491 starting 02/01/22 to 03/03/2022 (Exh H). The exhibits offered by the Taxi Division are sought to establish that the respondent was in violation for not wearing a face mask and excessive hours. Each of the exhibits offered by the parties is admitted.

Mr. Richholt declaration indicates that he was assigned to investigate the two 311 passenger complaints against the respondent on 02/17/2022 and 02/25/2022. On 02/17/2022, Mr. Richholt was assigned to the 311 complaints dated 02/16/2022 against the respondent for “rude and discourteous behavior” by a female passenger at 1750 Fulton St. Mr. Richholt stated that as a routine procedure investigation practice, he requested the video disk from National Cab 491. On February 25, 2022, Mr. Richholt was assigned the 311 complaint dated 02/24/2022 against the respondent for “rude and discourteous behavior” and not wearing a face mask. Mr. Richholt again requested the video disk from National Cab 491. When attempting to find the reported incidents, Mr. Richholt observed the respondent not wearing the face mask over his nose and mouth but resting on his chin while transporting passengers in the taxi. Mr. Richholt noted that this was a violation of local and federal mask mandates. Mr. Richholt stated that the SFMTA routinely updated the San Francisco taxi industry and the respondent of these mask mandates by email. Mr. Richholt learned that the respondent had been previously admonished for not wearing a face mask while operating a taxicab in December 2021. After watching both video disks, Mr. Richholt determined that the respondent was in violation for not wearing a face mask while transporting passengers a total of fourteen shifts. Mr. Richholt stated that the fine was less punitive by shift rather than each passenger ride. Also, during the video disks watching, Mr. Richholt observed the respondent work excessive hours without an eight hour elapse on four occasions; he noted a safety hazard. A total aggregate of \$2,700 in fines (Exh. 1.).

And it was these violations and committed offenses that was specifically identified in the 'Notice of Violation and Administrative Fine' that Mr. Richholt issued to the respondent.

### **III. APPLICABLE LAW**

#### **TC Section 1.3: Applicability of the Vehicle Code**

(a) The provisions of the San Francisco Transportation Code shall be construed in a manner consistent with the Vehicle Code.

#### **TC Section 1102: Definitions**

"Citation" shall mean a notice informing an individual or entity who is a member of the public or a Permit Holder that he or she has violated any statute, ordinance or regulation governing the operation or licensing of Motor Vehicles for Hire.

#### **TC Section 1105 (a)(6): Compliance with Laws and Regulations**

Every Permit Holder shall comply with, and shall ensure that their affiliated vehicles, employees, Permit Holders, lessees, Dispatch Service and Color Scheme shall comply with the provisions of this Article....

#### **TC Section 1114(e)(8): Security Camera Data**

Permit Holders are required to provide the SFPD or SFMTA, upon demand, with any data captured by the security camera in a vehicle.

#### **TC Section 1120: Administrative Hearings**

A Citation issued [under various Sections of Article 1100] shall include:

(4) The provision(s) of this Article 1100 upon which the discipline or action is based, including, where applicable, the date and the address or location of the violation, the signature of the individual who issued the Citation, Notice of Nonrenewal, Notice of Inactive Status, or Notice of Summary Suspension, and ....(5)

#### **California Vehicle Code Section 21702(a)**

(a) No person shall drive upon any highway any vehicle designed or used for transporting persons for compensation for more than 10 consecutive hours nor for more than 10 hours spread over a total of 15 consecutive hours. Thereafter, such person shall not drive any such vehicle until eight consecutive hours have elapsed. Regardless of aggregate driving time, no driver shall drive for more than 10 hours in any 24-hour period unless eight consecutive hours off duty have elapsed.

## **IV. TESTIMONY**

### **Eric Richholt:**

Mr. Richholt testified that he has been employed by the SFMTA's Taxi Division for eleven years, apparently as an investigator for most of that time. Relying upon the 311 complaints from the two passengers and the obtained security video footage from National Cab 491, Mr. Richholt stated that he contacted Mr. McNair by telephone on March 2, 2022, about these incident findings and that Mr. McNair stated that he was not aware of the mask mandates were still in place for taxi drivers. Mr. Richholt stated that McNair acknowledged that he wore his face mask on his chin but was unaware of working excessive hours. Mr. Richholt completed a 'Notice of Violation and Administrative Fine,' which was dated March 4, 2022. When asked about the 311 complaints against the respondent during the hearing, Mr. Richholt stated that the “rude and discourteous” complaints were unfounded due to no audio on the video disk, but the footage did confirm the no mask complaint of February 24, 2022.

### **Michael McNair:**

The respondent, Mr. McNair, testified that he has been a San Francisco taxi operator for eight years. He stated that he was unaware that the mask mandates were still in place for the taxi drivers. He disputed working excessive hours stating that the cab would go “red” or inactive for many hours during his taxi shift and considered those hours as work breaks.

Mr. McNair expressed that he understood the public safety hazard of working excessive hours of driving. He stated that he watched many training and educational workplace programs regarding excessive hours driving and would not put himself or the public in jeopardy.

Mr. McNair disputed and defended himself against the 311 complaints. He stated on the February 16<sup>th</sup> incident, he suggested calling another taxi vehicle because the female passenger had a difficult time getting into his sport utility taxi vehicle. On the February 24<sup>th</sup> incident, the male passenger banged on partition separator and yelled at Mr. McNair to roll down the passenger’s window.

He considered himself a good taxi driver and believed the fines to be excessive and unfair. Mr. McNair requested community service or a financial assistance payment plan if the hearing was not found in his favor. Mr. McNair stated his difficulties with SFMTA Taxi Division personnel leading up to this hearing and the viewing information accessibility for security video footage which he had not seen and was only told by a telephone conversation on March 2, 2022, with Mr. Richholt.

Finally, Mr. McNair asked if his current taxi driving suspension was part of this hearing.

#### **IV. FINDINGS**

##### **1. Procedural Due Process Impediment As To Notice**

A review of the 'Notice of Violation and Administrative Fine' issued to the respondent by Mr. Richholt for the face mask violation reveals that the notice prominently lists the date range from February 8<sup>th</sup> to the 17<sup>th</sup> and February 22<sup>nd</sup> to the 25<sup>th</sup> and refers to the violations occurring *every day* and not listed by each date of the violation after video observation and review of the electronic trip data.

The rest of the generally accepted requirements for 'Notice of Violation and Administrative Fine' are present: this notice lists the name and address of the cited party, it identified his vehicle and the Color Scheme, the nature of the violation, the provision of the Transportation Code alleged to be violated, and the fine amount is listed, along with the signature of the issuer, in this instance Mr. Richholt.

The reliance of the face mask violation from February 8<sup>th</sup> to the 17<sup>th</sup> was solely from security video footage as the February 16<sup>th</sup> 311 complaint did not mention a face mask allegation by the female passenger. Yet in the 'Notice of Violation and Administrative Fine,' Mr. Richholt stated that the face mask allegation of February 16<sup>th</sup> was part of the 311 complaint.

The 311 complaint on February 24<sup>th</sup> from the fare passenger alleges “rude and discourteous” behavior and no face mask against the respondent. Security video footage captured the respondent not wearing his face mask covering his nose and mouth.

Mr. Richholt stated that the security video footage can be made available upon request however not stated in the notice to the respondent. Had the process of viewing the security video been more transparent and accessible, the respondent might have been adequately prepared for the hearing and sought use of other legal resources or counsel.

Due process as to notice relying on video violation requires that a Citation, whether issued under the provisions of the Vehicle Code or under Section 1100 of the Transportation Code, provide transparent accessibility to viewing or photo documentation. Because the Notice provided to Mr. McNair does not contain supporting photo documentation with the violation and does not list the dates individually, it is procedurally defective and cannot be enforced against respondent McNair except for the February 24<sup>th</sup> incident.

## **2. The Substantive Violation**

Assuming that the respondent's conduct from February 8<sup>th</sup> to February 25<sup>th</sup>, is sufficiently described by good cause under TC 1105 (a)(6), it is quite clear that without any procedural irregularities in this case, the respondent would be in clear violation of his duties as required by the Transportation Code. Face mask mandates and excessive hours are public safety priorities. However the infractions of the face mask violation becomes unwarranted by the procedural issues that arise from the defective lack of accompanying photo evidence except for the February 24<sup>th</sup> incident that was supported by the 311 complaint.

As for the excessive hours' violation, the respondent's conduct from February 22<sup>nd</sup> to February 25<sup>th</sup>, is sufficiently described by good cause under TC 1105 (a)(6), the respondent was in clear violation of his duties as required by the Transportation Code and the California Vehicle Code 21702(a). The excessive hours' violation was supported by electronic trip data and other supporting trip data not dependent on video timestamped documentation. Finally, each date of violation and time range was listed on the notice.

## **3. Taxi Division's Exhibit B:**

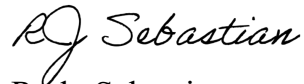
The undersigned notes, Exhibit B to this proceeding (identified as a 311 complaint [#14990636] dated February 16, 2022) adds nothing to help implicate the respondent of the face mask violation. The respondent's alleged "rude and discourteous" was unfounded due to no audio on the disk and there was no mention of not wearing of face mask on the February 16, 2022, 311 complaint. The other document in Exhibit B (identified as a 311 complaint [#15023984] dated February 24, 2022), exposed the respondent to the face mask violation.

## **V. ORDER**

Under the circumstances of this case, and on the basis of the foregoing findings, the undersigned hearing officer holds that there has been an enforceable violation of TC 1105 (a)(6) as charged for one incident of the face mask violation and the excessive hours on four shift occasions.

As a result of this decision, Mr. McNair should incur a violation record with the SFMTA's Taxi Division for \$750.

Dated this 1st day of June 2022



Rudy Sebastian  
Neutral Hearing Officer  
Supervisor  
SFMTA Hearing Section

### **RIGHT TO JUDICIAL REVIEW**

Under Section 1119 of the San Francisco Transportation Code, a decision of a hearing officer is a final administrative decision. Any party or entity adversely affected by this decision may seek judicial review of the decision by filing a Petition for Review in accordance with the provisions and timeline set forth in California Government Code section 53069.4.