



## II. FINDINGS OF FACT

1.

SRTA formerly operated a toll facility on Georgia Highway 400. Prior to the closure of the facility in November 2013, drivers were required to pay a toll of \$ 0.50 each time they passed through the toll checkpoint. (Testimony of Nicole Crawford.)

2.

The Georgia Highway 400 toll facility offered an optional cruise lane to drivers utilizing a "Peach Pass." A Peach Pass is a small, thin, electronic transponder that is attached to a vehicle's windshield. When the driver of a Peach Pass-registered vehicle travels through a toll, the amount of the toll is automatically deducted from the vehicle's Peach Pass account. (Testimony of Ms. Crawford.)

3.

To obtain a Peach Pass, a driver completes an application and provides SRTA with his or her name, address, and telephone number, as well as the license plate number and description of the vehicle(s) associated with the account. The driver then executes a Customer Agreement with SRTA and opens a prepaid Peach Pass account, funded by an initial payment of \$20.00. The driver may also choose to supply SRTA with a credit or debit card number to be used for future transactions. (Testimony of Ms. Crawford.)

4.

Account information may be updated online at any time. Account holders also have the option of contacting SRTA by telephone, email, or fax to provide updated information. (Testimony of Ms. Crawford.)

5.

SRTA is unable to deduct tolls from an account if the vehicle's license plate number is not listed on the account. When a vehicle with a license plate that is not registered to a Peach Pass account travels through a toll facility, an image of the license plate is transmitted to SRTA. SRTA then attempts to locate the vehicle's owner through records of the Motor Vehicle Division of the Georgia Department of Revenue. (Testimony of Ms. Crawford.)

6.

Between July 12, 2013 and August 24, 2013, the Respondent failed to pay the toll on Georgia Highway 400 on twenty-one occasions. The violations resulted when the Respondent obtained a new vehicle, failed to register the vehicle's license plate number to his Peach Pass account, and continued to travel in the cruise lane at the Georgia Highway 400 toll facility. (Testimony of Ms. Crawford and Respondent; Exhibit P-1.)

7.

The Respondent has been the registered owner of the vehicle in question, a 2004 Dodge Durango with the license plate LAWLEZZ, since February 18, 2013. He did not provide SRTA with the vehicle's license plate information until November 3, 2013. (Testimony of Ms. Crawford and Respondent; Exhibits P-2, P-3.)

8.

On September 5, 2013 and October 4, 2013, SRTA mailed initial notices of the toll violations to the Respondent at the address it obtained from the Motor Vehicle Division of the Georgia Department of Revenue: 1317 Arbor Gates Drive, NE, Atlanta, Georgia 30324-5607. In addition, because SRTA noted that the LAWLEZZ vehicle was registered to an individual with the same name and address as one of its Peach Pass account holders, a representative placed

courtesy calls to the Respondent on both dates.<sup>2</sup> However, SRTA was not authorized to deduct tolls incurred by the vehicle because it was not registered to the Respondent's Peach Pass account. (Testimony of Ms. Crawford; Exhibit R-1.)

9.

On November 1, 2013, SRTA mailed the Respondent a Final Notice of the LAWLEZZ vehicle's alleged toll violations. The Final Notice listed the date and time of the violations and informed the Respondent that in each instance, he owed \$0.50 for the toll plus a \$25.00 administrative fee. The Final Notice further advised him that he was required to pay the resulting total of \$535.50 on or before December 1, 2013. (Testimony of Ms. Crawford and Respondent; Exhibit P-1.)

10.

The Respondent has received the Final Notice but has not made any payments to SRTA. On August 20, 2014, SRTA filed the present action seeking an order for the Respondent to pay a total of \$2,005.50, or \$95.50 for each of the twenty-one alleged toll violations (\$0.50 for the toll plus a \$25.00 administrative fee and a \$70.00 civil penalty). (Testimony of Ms. Crawford and Respondent; Exhibit P-1.)

11.

At the hearing, the Respondent did not dispute that the LAWLEZZ vehicle had traveled through the Georgia Highway 400 cruise lane on the dates listed in the Final Notice. Rather, he testified that the incurred tolls should have been deducted from his Peach Pass account because he had registered the LAWLEZZ vehicle to his account by telephone on June 24, 2013. This testimony of the Respondent was not reliable, however, as it was not supported by the evidence

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<sup>2</sup> The representative was unable to reach the Respondent on either occasion but left a message for him on September 5, 2013. The Respondent did not contact SRTA in response to the message. (Testimony of Ms. Crawford; Exhibit R-1.)

of record.<sup>3</sup> Instead, the evidence shows that on June 24, 2013, the Respondent added a vehicle with the license plate GODLESS to his Peach Pass account.<sup>4</sup> There is no evidence to corroborate his testimony that he also added the LAWLEZZ vehicle to his account on that date. In addition, he contacted SRTA by telephone on October 11, 2013 to deposit \$40.00 and remove his credit card number from his account. There is no evidence to corroborate his testimony that he paid the toll violations incurred by the LAWLEZZ vehicle during that telephone call.<sup>5</sup> (Testimony of Ms. Crawford and Respondent; Exhibits R-1, R-2, R-3, R-4, R-5, R-7.)

### III. CONCLUSIONS OF LAW

1.

SRTA bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

When a contested case is referred to OSAH, the administrative law judge assigned to the case "has all the powers of the referring agency . . . ." O.C.G.A. § 50-13-41(b); see Ga. Comp. R. & Regs. 616-1-2-.21(1). The evidentiary hearing is *de novo*, and the administrative law judge

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<sup>3</sup> Although this testimony of the Respondent was unreliable, the undersigned is persuaded that even as of the date of the hearing, he genuinely believed that he had updated his vehicle information in a timely manner. His confusion was caused in part by the frequency of changes to his account, to which five vehicles are presently registered, and in part by SRTA's inability to provide him with itemized receipts that tied his prior payments to a particular vehicle. (Testimony of Ms. Crawford and Respondent; Exhibits R-3, R-4.)

<sup>4</sup> The Respondent already owned this vehicle, but its license plate had changed from DL17E21 to GODLESS. (Testimony of Ms. Crawford; Exhibit P-4.)

<sup>5</sup> During the call, the Respondent paid tolls that had been incurred by two other vehicles, one with the license plate PNT7344 (violation identification number 1-323816) and the other with the license plate BGV0154 (violation identification number 10022721). Neither of these matched the LAWLEZZ license plate or the violation identification number associated with that vehicle, 10330350. Further, although the Respondent presented credible evidence that he contacted SRTA by telephone on April 24, 2013 to verify that all violations to that point had been resolved, this evidence is immaterial to the present case, which involves toll violations that occurred nearly three months after that date. (Testimony of Ms. Crawford and Respondent; Exhibits R-3, R-4, R-6.)

“shall make an independent determination on the basis of the competent evidence presented at the hearing.” Ga. Comp. R. & Regs. 616-1-2-.21(a); see also Longleaf Energy Assocs., LLC v. Friends of the Chattahoochee, 298 Ga. App. 753, 768 (2009) (the administrative law judge is required “to consider the applicable facts and law anew, without according deference or presumption of correctness to the [agency]’s decision, and to render an independent decision”).

3.

Prior to the closure of the toll facility, SRTA was authorized to collect tolls on Georgia Highway 400. O.C.G.A. § 32-10-64(a); see O.C.G.A. § 32-10-60(5) (defining “project”). All vehicles passing through the Georgia 400 toll facility were required to pay the toll. O.C.G.A. § 32-10-64(c)(1). “In the event of nonpayment of the proper toll, as evidenced by video or electronic recording, the registered owner of such vehicle shall be liable to make prompt payment to SRTA of the proper toll and an administrative fee of \$25.00 per violation to recover the cost of collecting the toll.” Id.

4.

At the hearing, SRTA proved, by a preponderance of the evidence and as detailed in the Findings of Fact, above, that the Respondent is the registered owner of a vehicle that passed through the Georgia Highway 400 toll facility on twenty-one occasions without paying the required toll. Therefore, the Respondent owes SRTA \$535.50 in outstanding unpaid tolls and statutory administrative fees. The only issue that remains for determination, then, is whether the Respondent should be subject to additional civil penalties as provided in O.C.G.A. § 32-10-64(c)(1).

5.

Upon "multiple failures by a registered owner of a vehicle to pay the proper toll and administrative fee after notice thereof and within the time designated in such notice," SRTA may elect to refer the matter to OSAH for a hearing. Id. The scope of the hearing is limited, by statute, to evidence regarding "whether the registered owner has failed to pay, after notice thereof and within the time designated in such notice, the proper toll and administrative fee."<sup>6</sup> Id. If multiple violations are proven at the hearing, the administrative law judge is authorized to impose a civil penalty of up to \$70.00 per violation, in addition to the amount owed for unpaid tolls and administrative fees. Id.

6.

At the hearing, SRTA proved, by a preponderance of the evidence and as detailed in the Findings of Fact, above, that the Respondent has failed to pay multiple tolls and administrative fees after proper notice and within the time designated, in violation of O.C.G.A. § 32-10-64(c)(1). Accordingly, the Respondent is subject to an additional civil penalty of not more than \$70.00 per violation, or up to a total of \$1,470.00 for the twenty-one violations.

7.

In accessing the appropriate amount of civil penalties, courts have considered the following factors: (1) the party's financial ability to pay; (2) the willfulness of the violation, or the degree of good faith or bad faith; (3) the degree of harm caused to the public; (4) the benefits received by the violator; and (5) the deterrent effect of the penalty. See, e.g., United States v. Mac's Muffler Shop, Inc., No. C85-138R, 1986 U.S. Dist. LEXIS 18108, at \*22-24 (N.D. Ga. Nov. 4, 1986) (reducing a fine from \$2,500 per violation to \$1,500 for violations of the Clean

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<sup>6</sup> The only authorized affirmative defense is "theft of the vehicle, as evidenced by presentation at the hearing of a copy of a police report showing that the vehicle has been reported to the police as stolen prior to the time of the alleged violation." O.C.G.A. § 32-10-64(c)(1). The Respondent did not present such evidence at the hearing.

Air Act); United States v. Papercraft Corp., 426 F. Supp. 916, 918 (W.D. Pa. 1977); FTC v. Conso. Foods Corp., 396 F. Supp. 1353, 1356-57 (S.D.N.Y. 1975); United States v. Beatrice Foods Co., 351 F. Supp. 969, 970-72 (D. Minn. 1972), aff'd, 493 F.2d 1259 (8th Cir. 1974).

8.

In this case, several mitigating factors are present. First, although the Respondent is culpable for the violations based on his failure to register the LAWLEZZ license plate to his account, he genuinely (albeit incorrectly) believed that he had provided the license plate information to SRTA prior to the date that the first violation occurred. Additionally, the degree of harm to the public and the benefits received by the Respondent are minimal. Finally, imposition of the full civil penalty is not necessary to provide a deterrent effect.

9.

After consideration of the mitigating factors present in this case, the undersigned finds that a civil penalty of \$20.00 per violation, or \$420.00 in total, should be imposed against the Respondent.



**IV. DECISION**

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Respondent is **ORDERED** to pay the sum of **\$955.50** to SRTA, as follows:

- (1) \$10.50 in unpaid tolls;
- (2) \$525.00 in statutory administrative fees; and
- (3) \$420.00 in civil penalties.

Said payment shall be due within **thirty days** of the date of entry of this Final Decision. If the Respondent should fail to make the required payment, the Respondent's vehicle registration shall be immediately suspended by operation of law, as provided in O.C.G.A. § 32-10-64(c)(1).

**SO ORDERED**, this 2nd day of February, 2015.



**KRISTIN L. MILLER**  
**Administrative Law Judge**