

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE ST. PAUL CITY COUNCIL

In the Matter of the Adverse Action
Against the Taxicab Driver's License Held
by Mohamed H. Abi

FINDINGS OF FACT, CONCLUSIONS,
RECOMMENDATION AND
MEMORANDUM

A hearing in this matter was held on January 24, 2005, before Allan W. Klein, Administrative Law Judge, serving as an independent hearing examiner for the St. Paul City Council. The hearing ended in less than a day, and the record closed at the end of the hearing.

Virginia D. Palmer, Assistant St. Paul City Attorney, 400 City Hall, 15 West Kellogg Boulevard, St. Paul, MN 55102, appeared on behalf of the Office of License, Inspections and Environmental Protection.

Mohamed Abi, 1515 Park Avenue South, Apartment 709, Minneapolis, MN 55404, appeared on his own behalf, without benefit of counsel. He was assisted with translation by Ayderus Ali, a Certified Court Interpreter.

NOTICE

This report is a recommendation, not a final decision. The St. Paul City Council will make the final decision after a review of the record. The City Council may adopt, reject, or modify these Findings of Fact, Conclusions, and Recommendation. Pursuant to St. Paul Legislative Code Section 310.05(c-1) the City Council will provide Mr. Abi an opportunity to present oral or written argument to it before it takes final action. Parties should contact Don Luna, City Clerk, 170 City Hall, 15 West Kellogg Blvd., St. Paul, MN 55102 to ascertain the procedure for filing exceptions or presenting argument to the Council.

STATEMENT OF ISSUE

Should disciplinary action be taken against Abi's taxicab driver's license because of unwarranted sexual harassment and touching of a customer?

Based upon all of the files and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Mohamed Abi has lived in Minnesota for approximately five years. He is between 25 and 30 years old, and is of Somali descent. He speaks English only moderately well, but he has held a number of jobs with the Metropolitan Transit Commission and various school bus companies. He has a wife and a child, and lives in Minneapolis. He obtained a provisional taxicab driver's license effective July 12, 2004, and a regular taxicab driver's license on October 16, 2004.^[1] He began driving for Green and White Taxis (which actually operates under a number of different trade names) and was driving a Suburban Taxi on the evening of August 24-25, 2004.

2. At approximately 2:10 a.m. on August 25, 2004, Abi was dispatched to an address on Marshall Avenue to pick up a fare. He was met at the address by Stephanie Lucas, who had with her a two-year-old child. Lucas asked to be taken to an address on Glenridge Avenue on the far east side of St. Paul. The cab proceeded to that address. When they arrived, Lucas asked Abi to wait for a minute. She then delivered the young boy to the house on Glenridge, and returned to the cab, and asked to be taken back to the Marshall address. On the way back from Glenridge to Marshall, Abi and Lucas began talking, and got into a discussion of personal relationships. When they arrived at the Marshall Avenue address, Abi asked Lucas if he could come up to her apartment and use the bathroom. Lucas said he could not. Then Lucas gave Abi a TCF debit card to pay for the cab fare. Abi attempted to charge the fare against the card, but the charge was declined. Lucas then told him to try it for a lower amount, and that attempt was successful. Lucas then volunteered to go up to her apartment to get the remaining balance in cash, but Abi told her to "forget about it." Abi told Lucas she could get it to him the next morning. He wrote his name and telephone number on a receipt and gave it to her. He then turned around (he was in the front seat, she in the back seat, with no partition between them) and touched her thigh. He stated that he wanted to kiss her. Lucas said that she wanted to leave, but needed her debit card back. Abi asked Lucas if she would come with him "somewhere" for five or ten minutes. She said she did not want to do that. Abi then got out of the cab and got into the back seat with her. At approximately that time, a couple walked out of the Marshall Avenue apartment building and walked by the taxicab. Mohamed again asked Lucas if she wanted to go somewhere else where no one could see them, and Lucas got out of the cab and yelled at the couple walking by. They started walking toward the cab, when Abi quickly got into the front seat and drove away.

3. Lucas went up to her apartment, and called her ex-boyfriend (the father of her son, who lived on Glenridge) and told him what had happened. He suggested that she call the police, which she did. At approximately 4:40 a.m., Officer Nicole Rasmussen was dispatched to respond to Lucas' call to the police. Rasmussen went to Lucas' apartment and took a statement from her. Rasmussen observed that Lucas was nervous, distressed and upset, but not particularly angry. Lucas gave Rasmussen a receipt which Lucas had obtained from Abi. Written on the back of the receipt was Abi's name and telephone number.

4. Rasmussen prepared a report of her interview with Lucas, a copy of which was sent to the LIEP office. That office, in consultation with the City Attorney's office, determined that Abi's license should be revoked. On November 24, 2004, the City Attorney's office issued a Notice of Intent to Revoke Taxicab Operator License to Abi.^[2] The Notice set forth the charges against him, and gave him the choice of either proceeding directly to the City Council or, if he disputed the facts set forth, he could have a hearing before an Administrative Law Judge.

5. On December 6, 2004, Abi submitted a two-page letter to the City.^[3] In this letter, he denied any sexual behavior toward the passenger. He stated that the debit card would not pay the full fare, but that it did pay a portion of the fare, and that he put his name and telephone number on the back of the receipt so that Lucas could call him the next morning and they would agree how she could pay him the balance.

6. The Administrative Law Judge finds that Lucas' version of events is more credible than Abi's, and that the events on the early morning of August 25 occurred as set forth in the previous findings.

7. After receiving Abi's request for a hearing, a Notice of Administrative Hearing was issued on December 17, setting the hearing for January 13, 2005.^[4] On that date, both Lucas and Abi appeared at the St. Paul City Hall for the hearing. However, after both the Administrative Law Judge and the Assistant City Attorney attempted to talk with Abi, the Administrative Law Judge decided that an interpreter would be needed. It was not possible to locate one on the spur of the moment, so the hearing was recessed until January 24, 2005, at which time Ms. Lucas returned, as did Mr. Abi and the interpreter, and the hearing went forward.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the St. Paul City Council have jurisdiction in this matter based upon Minn. Stat. § 14.55 and the City's Legislative Code § 310.05.

2. The City gave proper notice of the hearing in this matter, and has fulfilled all relevant substantive and procedural requirements of statute or rule.

3. The City has authority to suspend or revoke a license and to impose penalties for violation of applicable statutes and rules based upon §§ 310.06 and 376.16(j) of the Legislative Code.

4. The City has shown by a preponderance of the evidence that Mohamed Abi's taxicab driver's license should be subject to disciplinary action.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED: That the City Council take disciplinary action against the taxicab driver's license of Mohamed Abi based upon the incident of August 25, 2004.

Dated this 17th day of February 2005.

S/ Allan W. Klein

ALLAN W. KLEIN

Administrative Law Judge

MEMORANDUM

This case turns on a credibility determination between Stephanie Lucas and Mohamed Abi. The Administrative Law Judge believes that Lucas is telling the truth because he cannot find any reason for her to have called the police in the middle of the night to report this incident unless it actually did happen. Even though she still owed Abi money for a part of her fare, and could have been fearful that he would call the police on her, it seems unlikely that she would concoct this story and go on the offensive just to avoid having to pay a few dollars remaining on the fare. The circumstances suggest that it is more likely than not that Abi did engage in sexual harassment, and therefore, he should be subject to discipline.

A.W.K.

[1] Ex. 1.

[2] Ex. 3.

[3] Ex. 4.

[4] Ex. 5.