

**Before the
Federal Trade Commission
Washington, DC 20580**

In the Matter of)
)
H&M International Transportation, Inc)
Quality Transportation Services, Inc)
Rail Terminal Services, LLC)
Renzenberger, Inc.)
)
)
_____)

**Complaint and Request for Investigation,
Injunction and Other Relief**

Summary

1. Since 2001, everyday workers in certain transportation sectors such as rail and dock workers that have unsupervised access to ports or hazardous materials have come under closer scrutiny. Part of that scrutiny has been the introduction of criminal background checks on some categories of transportation workers. The railways and their subcontractors have obtained criminal background information from a number of consumer reporting agencies. A number of contractors, including Rail Terminal Services, LLC, H&M International Transportation, Inc, Renzenberger, Inc and Quality Transportation Services, Inc are particular consumers of criminal background information. The use of this information to make adverse employment decisions places the companies involved under the jurisdiction of the Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.) and places requirements upon the above-named contractors, by virtue of their use of the provided information. The petitioners have been informed of a large number of cases in which these requirements may not have been met, and believes that there may be others. Therefore, petitioners urge the Commission to investigate Rail Terminal Services, LLC, H&M International Transportation, Inc, Renzenberger, Inc, and Quality Transportation Services, Inc, and bring complaints against these or any other parties that the Commission discovers are not following the FCRA, either on the grounds of an individual case, or in response to a pattern or practice that continues to violate the FCRA and Title 5 of the FTC Act.

Parties

The Center for Democracy and Technology

2. The Center for Democracy and Technology (CDT) is a non-profit, public interest organization incorporated in the District of Columbia and operating as a tax-exempt

organization. CDT is dedicated to preserving privacy, civil liberties and democratic values on the Internet. CDT pursues its mission through public education, grass roots organizing, litigation, and coalition building.

3. Since its founding in 1995, CDT has always been concerned with the threats against consumer privacy and the proper handling of consumer data that has been shared by a consumer. CDT has filed a number of complaints in front of the FTC over the past five years surrounding issues of consumer privacy and has emerged as the leading public interest advocate on privacy issues.

International Brotherhood of Teamsters

4. The International Brotherhood of Teamsters is a labor union representing the interests of 1.4 million members nationwide. As such, it has taken a keen interest in protecting the rights of workers, who are subject to criminal history record checks, a practice that has grown exponentially since 9/11. The Teamsters Union has been in the forefront in developing and implementing federal legislation and regulations that protect worker's privacy, limit look-back periods for disqualifying offenses, and provide for wavier and appeal processes. The Union has testified before Congress and has submitted comments to federal regulations that have influenced worker criminal background checks across the transportation industry, including for drivers of hazardous materials, the Transportation Worker Identification Credential (TWIC) in the ports and recently, the abuses that have occurred to rail terminal workers under the Fair Credit Reporting Act

The Legal Action Center

5. The Legal Action Center (LAC) is a non-profit law firm based in New York City, with offices in Washington, D.C. LAC does legal and policy work to fight discrimination against individuals with criminal records, histories of alcoholism or drug addiction, and/or HIV/AIDS. In the past few years, LAC has received an increasing number of calls from clients who have been denied jobs due to criminal record information on a consumer report. In many instances, employers have failed to provide the requisite notices and copies of the consumer report prior to taking adverse action, rendering the client unable to challenge inaccurate or illegally revealed information. In other instances, credit reporting agencies have reported information that is inaccurate and/or prohibited under federal and state Fair Credit Reporting Acts.

National Employment Law Project

6. The National Employment Law Project ("NELP") is a non-profit legal organization with over 30 years of experience advocating for the employment and labor rights of low-wage and unemployed workers. NELP's Second Chance Labor Project works with advocates, policy makers, and people with criminal records to ensure a more fair and effective system of employment screening for criminal records. The Project seeks to protect public safety and security while promoting the rehabilitative value of

work and the basic employment rights of all workers, including those with criminal records. NELP has testified before Congress and state legislatures on employment criminal background checks, and has submitted comments regarding federal regulations that impact the employment of individuals with criminal records, including the new federal regulations that apply to workers in the transportation industry. In addition, NELP promotes public education regarding workers' rights under the Fair Credit Reporting Act when subject to employment criminal background checks.

The National Workrights Institute

7. The National Workrights Institute is a research and advocacy organization dedicated to expanding protection of human rights in the workplace. NWI believes that criminal records should be used by employers only in compliance with the Fair Credit Reporting Act in order to ensure that individuals lose job opportunities only where it is necessary to protect other employees and the public.

The Rainbow PUSH Coalition

8. The Rainbow PUSH Coalition is a progressive organization fighting for social change. As a mighty coalition of conscience, workers, women and people of color, we have the power to make the American Dream a reality. It is the combination of a grassroots organization and a political organization merged together in 1997 as a progressive organization, which seeks to protect, defend and gain civil rights, even the economic and educational playing fields in all aspects of American life, and bring peace to the world.

H&M International Transportation, Inc

9. H&M International Transportation is a New Jersey corporation with offices in South Kearny, New Jersey. H&M provides rail terminal, intermodal trucking, freight yard and warehousing services to the railway and shipping industries. H&M's principal offices are located at 123 Pennsylvania Ave., S. Kearny, New Jersey 07032.

Quality Transportation Services, Inc

10. Quality Transportation Services (QTS) is a Virginia corporation with offices in Ashland, Virginia. QTS provides railcar and rail fleet tracking and management services, along with larger scale rail transport logistical support. QTS' principal offices are located at 9568 Kings Charter Drive, Suite 100, Ashland, Virginia 23005.

Rail Terminal Services, LLC

11. Rail Terminal Services (RTS) is a railway contractor with offices in Omaha, Nebraska and incorporated in the state of Delaware, that specializes in railroad

switching and railway terminal establishments. RTS' principal offices are located at 802 S 178th St, Omaha, Nebraska 68115.

Renzenberger, Inc

12. Renzenberger is a Kansas corporation with offices in Lenexa, Kansas. Renzenberger provides crew and other employee transportation services for the railway industry. Renzenberger's principal offices are located at 14325 W 95th Street, Lenexa, Kansas 66215.

FTC Jurisdiction

13. The Federal Trade Commission has general jurisdiction over the Fair Credit Reporting Act, except for cases involving entities regulated by other agencies as laid out in 15 U.S.C. § 1681s(b). The Secretary of Transportation is given FCRA jurisdiction over all entities normally subject to the jurisdiction of the Surface Transportation Board. The named companies are not "a person providing common carrier railroad transportation for compensation" (49 U.S.C. § 10102(5)), as defines a "rail carrier." They are instead contractors to a number of rail carriers. The Surface Transportation Board does not have jurisdiction over contractors to rail carriers (49 U.S.C. § 10501).
14. In addition, the FTC is uniquely equipped to handle complaints of this nature. Violations of the requirements of the FCRA are considered unfair and deceptive trade practices in violation of section 5(a) of the FTC Act. They also have a much larger available staff than does the STB, and regularly work on issues surrounding privacy, Fair Credit Reporting Act cases, notice requirements and harms due to adverse decisions.

Statement of Facts

15. The named contractors, as part of their work for the railway industry were required by the railways to conduct criminal background checks on their current and future employees, so that they would be allowed onto railway property and permitted to do their jobs.
 - a. These companies contracted with a program called e-RAILSAFE (run by a company named e-VERIFILE) to provide the criminal background checks in question.
 - b. E-RAILSAFE received some of the consumer information in its reports from Axiom
 - c. As part of the contract with these consumer reporting agencies the named contractors were bound by "FCRA User Requirements" section of the "e-

RAILSAFE Subscriber Agreement,”¹ or section A, “The Subscriber Agrees,” section of the Acxiom Information Security Services “Service Agreement”².

- d. According to reports received by petitioners, the employees were told that these checks were a matter of law, rather than a recommendation.
 - e. Some employees signed the consent forms under the pretense that they were required to do so under law.
16. According to reports received by petitioners from attorneys representing terminated rail workers, the dismissed employees have stated that the named contractors variously failed to properly follow the FCRA in dismissing employees who failed criminal background checks, specifically:
- a. Failing to provide “clear and conspicuous disclosure” to the workers, before a criminal background check report was requested, informing the workers that the report would be obtained. (15 U.S.C. § 1681b(b)(2)) While in some cases workers were provided with disclosure, it was often in complex legal terms, and served to workers who either could not read at all, could not read English, and who would most likely not understand it.
 - b. Failing to provide to the employees a copy of their individual reports and a written explanation of their rights under FCRA in advance of taking an adverse action against them. (15 U.S.C. § 1681b(b)(3))
 - c. Failing to notify the employees, after an adverse action has been taken because of a report, that the adverse decision was made because of a report, and failing to inform the employees of the name, address and telephone number of the reporting agency, as well as their right to obtain a copy of their report and to dispute the accuracy of the report’s information. (15 U.S.C. § 1681m(b)(2))
17. According to reports received, some of the employees who had no prior arrest records at all, but were instead the victims of identity theft, mistakes or simple typographical errors were still dismissed. Of these, some were reinstated after the mistake was found, but did not receive back pay for the period of time spent unemployed.
18. It is worth noting that the background checks in question took place over the course of a number of years, from 2004 to the present, during a time when the consumer reporting agency underwent large-scale changes to the way that consumer and criminal data was stored and reported. The changes in the systems would have led to differences in the reports generated over that period of time. Those changes likely have had impacts on the quality of information that has been returned by criminal history checks, and therefore may have led to dismissals where none was warranted.
19. Of particular interest and importance is the fact that notice in this space seems to lack standards. Based on the letters petitioners have seen, there does not seem to be industry agreement about methods and language to be used for notice, which

¹ http://www.e-railsafe.com/e-railsafe.com_subscriber_agreement.pdf

² <http://www.arrin.net/docs/SvcAgrA.pdf>

petitioners believe will only lead to further confusion for the subjects of background checks.

Attempts to Contact Named Companies

20. Petitioners made attempts to contact all four named companies on April 24, 2007, but did not receive much success. Petitioners left voicemails or spoke with representatives from each of the companies.
21. Petitioners left a voicemail for representatives of H&M International explaining this complaint and seeking a conversation on the issues raised and any steps that had been taken to rectify the previous infractions of the FCRA. As of April 30, 2007, petitioners have not received a response from H&M International.
22. Petitioners spoke with a representative from Quality Transportation Services, who informed us that she could not comment generally on any firings that had occurred without a request for information about a specific individual who had been fired. The representative also claimed that the number of people fired from QTS in the past five years had been around five or less. Without specific information on an individual who had been fired from QTS, petitioners could not discover any further information, but we encourage the Commission to obtain such information, if possible, and to seek further comment from QTS.
23. Petitioners left a voicemail for a representative of Rail Terminal Services, explaining this complaint and seeking a conversation on the issues raised and any steps that had been taken to rectify the previous infractions of the FCRA. As of April 30, 2007, petitioners have not received a response from Rail Terminal Services.
24. Petitioners spoke with a representative of Renzenberger who was well informed on the issue in question and assured CDT that the policies in place at Renzenberger complied with the FCRA. The representative claimed that every employee that was submitted for background checks consented to the check, and that those who were terminated because of the results of the check were mailed the necessary information about the reasons for termination, a copy of the received background check and information on correcting any false information contained in the check. Despite the above claims, petitioners still believe that the Commission should investigate the claims made against Renzenberger by former employees, because of the severity of the harm to the former employees, and because clearly establishing whether there was any compliance in the industry may be a key factor in the investigation.

Conclusion and Request for Relief

25. While the named companies have a responsibility to the railways to maintain the safety and security of their properties, it appears evident to petitioners that important provisions of the Fair Credit Reporting Act, which are designed to protect the public against misuse of credit and criminal histories, may not have been followed in the

execution of that responsibility. Despite being informed by e-VERIFILE of their required actions under FCRA, the named companies failed to perform these important actions.

26. Many employees suffered direct financial and other harms due to loss of salary and even those who were rehired after improper termination did not receive back pay for the time spent out of work. If the contractors had complied with FCRA's "adverse action" procedures, these workers could have corrected the mistakes and avoided improper termination.
27. Therefore, petitioners urge the Commission to consider this an urgent matter, and to investigate and prosecute it accordingly. In particular, we urge the Commission to:
 - a. Force the named companies to reform their background check and termination procedures, so as to comply with the FCRA and
 - b. Order such equitable relief as the Commission finds appropriate including monetary penalties.
28. Considering the ongoing and widespread nature of the FCRA offenses by the named companies, petitioners request that the Commission utilize all of the tools available to it during its investigation to ensure that the employees involved receive adequate relief.
29. Petitioners also ask the Commission to examine the current practices regarding the consent and notice provided to subjects of background checks. Individual employers, including small business without legal teams or the knowledge to properly implement the requirements of the FCRA, are conducting credit and criminal background checks in increasingly large numbers. In order to ensure that consumers' rights as laid out in the FCRA are maintained, the FTC should, at the least, seek to promulgate best practices for the obtaining of consent and the notification of adverse decisions. The Commission should also require consumer reporting agencies, who are much better equipped to deal fairly with a large number of background checks, to provide standardized notice to employers who are largely unaware of their responsibilities and have them pass this notice on to the employees. This notice should include information on where appeals regarding the veracity of background information should be sent and the suggested timeliness of use of included information.
30. Petitioners ask the Commission to engage in a public education campaign on the rights and responsibilities that come along with employee criminal background checks. Petitioners do not believe that the violations outlined above were committed out of malice toward the employees, but rather out of ignorance of responsibilities under the law. By educating those who would seek to use the services provided by consumer reporting agencies, the Commission can seek to avoid the need for future litigation altogether.
31. Petitioners believe that this case is important beyond the parties mentioned and the railway industry at large. As the use of background checks increase, similar problems

are likely widespread and existing examples have been reported to the Privacy Rights Clearinghouse and the National Employment Law Project, and documented in the press. Reports have been received from employees of industries and organizations, outside of the railways, that use criminal history background as a part of employment proceedings.