

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Denver M. Beck, Jr., Notice :  
of Apparent Violation and Intent to Assess : Case No. 08-1133-TR-CVF  
Forfeiture. : (3210301303D)

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**POST-HEARING BRIEF  
SUBMITTED ON BEHALF OF THE STAFF OF  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**I. INTRODUCTION**

Denver Beck ("Respondent") contests liability for violation of the motor carrier regulation at issue in this proceeding. But the record shows that the Staff of the Public Utilities Commission of Ohio ("Staff") offered the testimony of a highly qualified and credible safety inspector, as well as the testimony of a compliance officer of the Transportation Compliance Division of the Public Utilities Commission of Ohio ("Commission"), to support both the violation and the resulting civil forfeiture. The record supports the finding of violation of the Motor Carrier Safety Regulation at issue in this proceeding. Based on the evidence of record, established precedent of the Commission, and on sound public policy, the total monetary civil forfeiture of one hundred fifty seven dollars and fifty cents (\$157.50) should be imposed against Respondent Denver M. Beck.

## **II. STATEMENT OF FACTS**

### **A. Procedural History of the Case**

Respondent was sent a Notice of Preliminary Determination on September 15, 2008, as required and described in Section 4901:2-7-12 of the Ohio Administrative Code ("O.A.C"). O.A.C. § 4901:2-7-12 (Baldwin 2007). The Notice of Preliminary Determination cited a violation of Section 392.10(a)(4), failing to stop at railroad crossing, 49 C.F.R. §392.10(a)(4). Respondent then filed a request for a hearing in this matter. The hearing was conducted on January 21, 2009.

### **B. Factual Background of the Violations at Issue in This Proceeding**

On March 4, 2008, at 7:50 a.m., Hazardous Material Specialist Robert Barrett conducted a level II walk-around inspection of a vehicle operated by respondent Denver M. Beck on behalf of Ports Petroleum Company Inc. Following the inspection, Specialist Barrett prepared a report describing the results of his inspection. *Driver Vehicle Examination Report*, Staff Ex. 1.

As stated in his report, Specialist Barrett found a violation of the Federal Motor Carrier Safety Regulations: 49 C.F.R. §392.10(a)(4). *Id.* Specifically, Specialist Barrett noted that Mr. Beck failed to stop prior to crossing the railroad grade crossing. *Id.*

## **III. LAW AND ARGUMENT**

### **A. Drivers of Commercial Motor Vehicles Must Comply with the Motor Carrier Safety Regulations.**

The Commission, as the lead agency for the Motor Carrier Safety Assistance Program ("MCSAP") in Ohio, regulates operation of commercial motor vehicles. Ohio Rev. Code §4923.03(A) (Baldwin 2007). In furtherance of this obligation, the Commission has adopted rules governing the conduct of motor transportation companies that are engaged in commerce.

The Commission has adopted "Safety Rules" for motor carrier safety pursuant to authority delegated by the Ohio General Assembly. Ohio Rev. Code §4923.03(B) (Baldwin 2007). These rules, which are found under Ohio Administrative Code § 4901:2-5-02, largely adopt the U.S. Department of Transportation vehicle safety regulations. The state has continually sought to implement programs to ensure the safety of the motoring public and to reduce accidents involving commercial motor carriers. It is the Commission's duty to keep Ohio's roadways safe from accidents involving commercial motor vehicles. Compliance with the regulations is imperative.

**B. Respondent Failed to Comply with the Regulations by Failing to Stop Before Crossing a Railroad Track.**

The Respondent states in his merit brief that the issue in this case is straight-forward. He is quite correct. The only question really at issue in this case is whether Mr. Beck stopped before crossing the railroad grade. Given the facts in evidence, Respondent failed to stop, and should be found liable for that violation.

Specialist Barrett testified that he observed Mr. Beck as he crossed the railroad grade. Indeed, Specialist Barrett testified that he watched Mr. Beck from the time he exited Interstate 75 and turned onto Breese Road, where the violation occurred. Tr. at 10. He concluded that Mr. Beck failed to stop before crossing the railroad tracks. Respondent therefore violated Section 392.10(a)(4) of the Motor Safety Carrier Regulations, which requires that:

(a) Except as provided in paragraph (b) of this section, the driver of a commercial motor vehicle specified in paragraphs (1) through (6) of this section shall not cross a railroad track or tracks at grade unless he/she first: Stops the commercial motor vehicle within 50 feet of, and not closer than 15 feet to, the tracks; thereafter listens and looks in each direction along the tracks for an approaching train; and ascertains that no train is approaching. When it is safe to do so, the driver may drive the commercial motor vehicle across the tracks in a gear that permits the commercial motor vehicle to complete the crossing without a change of gears. The driver must not shift gears while crossing the tracks.

- (a)(4) Every cargo tank motor vehicle, whether loaded or empty, used for the transportation of any hazardous material as defined in the Hazardous Materials Regulations of the Department of Transportation, Parts 107 through 180 of this title.

The evidence shows that Respondent did not comply with this requirement.

Q (Mr. Margard): And can you explain to me what you observed that caused you to stop this vehicle?

A (Specialist Barrett): Yes. I was parked in what used to be an abandoned gas station. The building was torn down. All that was there was a small asphalt parking lot. It was on the south side of Breeze Road and just to the west of a north-south main line railroad track. I was sitting there because there was a refinery just within a mile or so of that location so there's a lot of commercial traffic that comes through that area. I was parked there watching traffic coming either east or west that would have to go over that grade crossing and just watching to make sure that everybody stopped and that there were no violations there, and while I was observing the grade crossing, I observed a cargo tank combination commercial vehicle, tractor-trailer that had exited Interstate 75 headed southbound.

It came up to the intersection of Breeze Road and the actual 75 exit ramp, stopped behind another vehicle, and then when the passenger car pulled out and turned to the right, which would be westbound on Breeze Road, the tractor-trailer pulled out behind the car and proceeded to cross the grade crossing without stopping prior to.

Tr. at 9, line 16.

Specialist Barrett was asked to clarify whether Mr. Beck brought his vehicle to a stop.

While Specialist Barrett indicated that Respondent stopped when he exited from the freeway, he was very clear – and not in the least equivocal – that Mr. Beck did not stop at the crossing:

Q (Mr. Margard): Based on your observations, at any time from the time that he made a turn onto Breeze Road until the time that he crossed the track crossing, did his vehicle come to a complete stop?

A (Specialist Barrett): I did not see any stop after he made his right-hand turn on Breeze Road.

Tr. at 13, line 4.

Indeed, Specialist Barrett reaffirmed his testimony on cross-examination. He saw that Mr. Beck did not stop. Specialist Barrett disputed that there was any possibility that Mr. Beck could have made even a “momentary” stop:

Q (Mr. Rice): Given the fact that his truck was proceeding slowly, as you describe, isn't it possible that he came to a momentary stop before he reached those tracks?

A (Specialist Barrett): I did not see him stop prior to the tracks.

Q It is possible that he came to a momentary stop?

A I did not see him stop prior to crossing the tracks.

Tr. at 19, line 12.

The Staff has shown by a preponderance of the evidence that Respondent failed to satisfy the requirements for stopping a cargo tank motor vehicle used for the transportation of hazardous material before crossing a railroad track. Accordingly, the Commission should find that Respondent violated 49 C.F.R. §392.10(a)(4).

### **C. The Commission Has Authority To Assess Civil Forfeitures.**

The Public Utilities Commission has statutory power to assess monetary forfeitures against drivers for non-compliance with Federal Motor Carrier Safety Regulations. Ohio Rev. Code §§4919.99, 4921.99, 4923.99 (Baldwin 2007). The Legislature granted the Commission the authority to assess forfeitures for violations of the motor carrier safety provisions. *Id.*

The Commission has authority to adopt safety rules applicable to motor carrier regulation and has, in fact, adopted the Federal Motor Carrier Safety Regulations of the U.S. Department of Transportation in Title 49 of the C.F.R., Parts 40, 382, 383, 385, 387 and 390 through 397. Ohio Admin. Code §4901:2-5-02(A) (Baldwin 2007). The Commission has also adopted civil forfeiture and procedural rules. Ohio Admin. Code §§4901:2-7-01 through 4901:2-7-22

(Baldwin 2007). The Commission enforces the Motor Carrier Safety Regulations for the State of Ohio.

Mr. Tom Forbes, a Compliance Officer in the Transportation Compliance Division of the Commission, testified that the staff recommends a forfeiture in the amount of one hundred fifty seven dollars and fifty cents (\$157.50) in this case. Tr. 31 at 1. Mr. Forbes also testified that the proposed forfeiture was calculated in accordance with the Commission's standard methodology. Tr. 33 at 17.

#### **IV. CONCLUSION**

Based on the record produced at the hearing and for the reasons stated herein, the Staff respectfully requests that the Commission find that the Respondent violated Section 392.10(a)(4) of the Federal Motor Carrier Safety Regulations and that the Commission hold Respondent liable for the civil forfeiture of \$157.50 as recommended by the Staff.

Respectfully Submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the **Post Hearing Brief submitted on Behalf of the Staff of the Public Utilities Commission of Ohio** was served by regular U.S. mail, postage prepaid, or hand-delivered, upon the following party of record, this 13<sup>th</sup> day of March, 2009.

Respectfully Submitted,

  
Werner L. Margard III

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