

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Mark E. Wilcox, Notice of)
Apparent Violation and Intent to Assess) Case No. 09-358-TR-CVF
Forfeiture.) (OH3291006121D)

OPINION AND ORDER

The Commission, considering the public hearing held on August 12, 2009, issues its opinion and order in this matter.

APPEARANCES:

Mark E. Wilcox, 9200 Johnstown-Alexandria Road, Johnstown, Ohio 43031, on his own behalf.

Richard Cordray, Ohio Attorney General, by Duane W. Luckey, Section Chief, and John H. Jones, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the staff of the Public Utilities Commission of Ohio.

NATURE OF THE PROCEEDING:

On October 30, 2008, the Ohio State Highway Patrol (Highway Patrol) stopped and inspected a commercial motor vehicle (CMV), driven by Mark E. Wilcox (Mr. Wilcox or respondent) in the state of Ohio. The Highway Patrol found the following violation of the Code of Federal Regulations (C.F.R.):

49 C.F.R. Section 392.16 - Operating a CMV without wearing a seat belt.¹

Mr. Wilcox was timely served a Notice of Preliminary Determination in accordance with Rule 4901:2-7-12, Ohio Administrative Code (O.A.C.). In this notice, Mr. Wilcox was notified that staff intended to assess a civil monetary forfeiture totaling \$100.00 for violation of 49 C.F.R. Section 392.16 (Section 392.16). A prehearing teleconference was conducted in the case. The parties, however, failed to reach a settlement agreement during the conference. Subsequently, a hearing was convened on August 13, 2009.

¹ 49 C.F.R. Section 392.16 provides that: "A commercial motor vehicle which has a seat belt assembly installed at the driver's seat shall not be driven unless the driver has properly restrained himself/herself with the seat belt assembly."

Background

The inspection in this case took place at Mile Post 7 on U.S. 23 in Marion County, Ohio. At the time of the inspection, the truck driven by Mr. Wilcox was traveling southbound on U.S. 23 and was running empty.

Issue in the Case

Staff maintains that Officer Jonathan M. Holzworth, a motor carrier enforcement inspector with the Highway Patrol, observed Mr. Wilcox driving without wearing a seat belt and, thereafter, stopped his truck and cited him for that violation. Mr. Wilcox denied committing the violation.

DISCUSSION:

Officer Holzworth stated that, while parked in a highway crossover in his patrol car, he observed Mr. Wilcox driving a CMV without wearing a seat belt. Officer Holzworth also stated that, as he pulled his patrol car behind the tractor/trailer, he witnessed the driver putting his seat belt on in the left side rear view mirror of the truck. Officer Holzworth noted that Mr. Wilcox was wearing a plaid shirt at the time, with the seat belt being tan in color (Tr. at 16, 21, 52; Staff Exhibit 1 - Driver/Vehicle Examination Report).

Mr. Wilcox indicated that, when questioned, Officer Holzworth had no recollection of what happened prior to stopping Mr. Wilcox's truck (Tr. at 19-20). Further, Mr. Wilcox, noting that Officer Holzworth must have been about 75 feet behind his truck, questioned if Officer Holzworth would be able to see him in the truck mirror buckling his seat belt (Tr. at 20-21).

Mr. Wilcox testified that, while driving with his seat reclined, he first noticed the officer positioned in the median strip of the highway. He stated that, when he became aware of the officer behind him, he sat up to look in his mirror, and the officer may have seen the seat belt on his shoulder at that time. Mr. Wilcox testified that he was wearing a seat belt while driving the truck (Tr. at 31-32, 45).

Mr. Wilcox introduced at hearing a document entitled "Ohio State Highway Patrol, Enforcement Guidelines -- Mandatory Use Laws." This document (Respondent's Exhibit 1), which sets forth the Highway Patrol's guidelines for safety restraint enforcement, states that "...motorists shall be treated fairly and given every benefit of the doubt when there is evidence that they are attempting to comply with the law." Because the inspecting officer is employed by the Highway Patrol, Mr. Wilcox indicated that he should have been given the benefit of the doubt concerning the seat belt violation (Tr. at 35-37).

Mr. Wilcox also testified that a plaid shirt, which he displayed at hearing, was worn by him at the time of the inspection and that the shirt contained multiple colors - red, blue, and tan, with grey lines. He stated that his seat belt was grey in color, as shown in a photograph of a seat belt (Respondent's Exhibit 2A), and that the color of the seat belt could have blended in with his shirt. Further, Mr. Wilcox testified that another company driver took the photograph of the seat belt. He noted, however, that his company has only two trucks, both alike, and the picture accurately depicts the seat belt in the truck that he drove (Tr. at 33, 37, 45-48).

On rebuttal, Officer Holzworth testified that he did not see the color grey in the shirt displayed by Mr. Wilcox. He further testified that the seat belt shown in Respondent's Exhibit 2A did not match Mr. Wilcox's shirt (Tr. at 52-53).

In this case, we initially observe that there was disagreement between the parties with regard to the color of both Mr. Wilcox's seat belt and the shirt that he displayed at hearing. Officer Holzworth described the seat belt as tan and the shirt as plaid. He also stated that Mr. Wilcox's seat belt, as depicted in Respondent's Exhibit 2A, and the shirt did not match. Mr. Wilcox, on the other hand, stated that his seat belt, being grey, could have blended visually into the grey in his shirt. Therefore, the belt would not have been seen in place across his shoulder by the officer.

Notwithstanding the parties' disagreement about the color of Mr. Wilcox's seat belt and shirt, we believe that the record is clear regarding a violation of Section 392.16. The record shows that Officer Holzworth twice observed Mr. Wilcox committing the violation, once when Mr. Wilcox's truck passed Officer Holzworth's position in the median of the highway, and again when Officer Holzworth followed Mr. Wilcox's truck in his patrol car, and saw Mr. Wilcox in the truck mirror buckling his seat belt. Mr. Wilcox's arguments at hearing were not sufficient to demonstrate that he should not be held liable for the civil forfeiture assessed for violation of Section 392.16. Accordingly, the Commission finds that the respondent was in violation of Section 392.16.

Finally, with regard to Mr. Wilcox's contention that the Highway Patrol's guidelines for seat belt enforcement should have some bearing on this case, we note that those guidelines, in Respondent's Exhibit 1, apply to sworn troopers empowered to enforce Ohio's seat belt law, under Title 45, Revised Code (Title 45), as it pertains to motorists on the highway. As Officer Holzworth explained (Tr. at 50-52), he enforces the federal motor carrier safety regulations, adopted by the Commission under Title 49, Revised Code (Title 49), as those regulations pertain to commercial truckers. Title 45 has no relevance in this case. The statutes in Title 45, and the guidelines issued by the Highway Patrol to enforce those statutes, have no effect on the rules adopted by the Commission under the authority of Title 49.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On October 30, 2008, the Highway Patrol stopped and inspected a motor vehicle driven by Mr. Wilcox in the state of Ohio. The Highway Patrol found the following violation of the Code of Federal Regulations (C.F.R.): 49 C.F.R. Section 392.16 - Operating a CMV without wearing a seat belt.
- (2) Mr. Wilcox was timely served a Notice of Preliminary Determination that set forth a civil forfeiture of \$100.00 for violation of 49 C.F.R. Section 392.16.
- (3) A hearing in this matter was convened on August 13, 2009.
- (4) Staff demonstrated at hearing, by a preponderance of the evidence, that Mr. Wilcox violated 49 C.F.R. Section 392.16. Moreover, the civil forfeiture in this case is both reasonable and consistent with the fines recommended by the Commercial Vehicle Safety Alliance.
- (5) Mr. Wilcox's arguments at hearing were not sufficient to demonstrate that he should not be held liable for the civil forfeiture assessed for violation of 49 C.F.R. Section 392.16.
- (6) Pursuant to Section 4905.83, Revised Code, respondent must pay the State of Ohio the civil forfeiture assessed for violation of 49 C.F.R. Section 392.16. Mr. Wilcox shall have 30 days from the date of this entry to pay the assessed forfeiture of \$100.00.
- (7) Payment of the forfeiture must be made by certified check or money order made payable to "Treasurer, State of Ohio" and mailed or delivered to Public Utilities Commission of Ohio, Attention: Fiscal Department, 180 East Broad Street, 13th Floor, Columbus, Ohio 43215-3793.

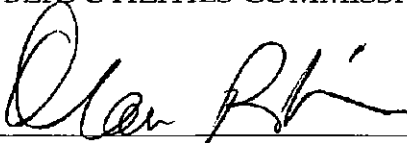
It is, therefore,

ORDERED, That Mr. Wilcox pay the assessed amount of \$100.00 for violation of 49 C.F.R. Section 392.16. Payment should be made payable to "Treasurer, State of Ohio" and mailed or delivered to Public Utilities Commission of Ohio, Attention: Fiscal Department, 180 East Broad Street, 13th Floor, Columbus, Ohio 43215-3793. In order to assure proper credit, Mr. Wilcox is directed to write the case number (OH3291006121D) on the face of the check. It is, further,

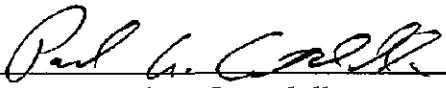
ORDERED, That the Attorney General of Ohio take all legal steps necessary to enforce the terms of this opinion and order. It is, further,

ORDERED, That a copy of this opinion and order be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman



Paul A. Centolella



Ronda Hartman Fergus



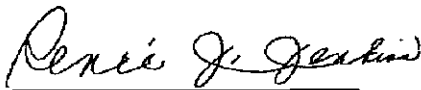
Cheryl L. Roberto

Valerie A. Lemmie

KKS/vrm

Entered in the Journal

OCT 14 2009



Renee J. Jenkins
Secretary