

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Dean Rickard, Notice of)
Apparent Violation and Intent to Assess) Case No. 09-1926-TR-CVF
Forfeiture.) (OH3281006778D)

OPINION AND ORDER

The Commission, considering the public hearing held on April 1, 2010, issues its opinion and order in this matter.

APPEARANCES:

Dean Rickard, 7042 US Route 6, Vickery, Ohio 43464, on his own behalf.

Richard Cordray, Ohio Attorney General, by Duane W. Luckey, Section Chief, and Sarah Parrot and Werner L. Margard, III, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the staff of the Public Utilities Commission.

NATURE OF THE PROCEEDING:

On September 21, 2009, the Ohio Highway Patrol (Highway Patrol) stopped and inspected a commercial motor vehicle (CMV) operated by Single Source Transportation Company (company) and driven by Dean Rickard (Mr. Rickard, 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 - Failing to use a seat belt while operating a CMV.¹

Mr. Rickard 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. Rickard 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 April 1, 2010.

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 57 on Interstate 76 in Mahoning County, Ohio. At the time of the inspection, Mr. Rickard was driving a company truck from New Castle, Pennsylvania, to Bucyrus, Ohio.

Issue in the Case:

Staff maintains that Officer Glen L. Maffitt, a motor carrier enforcement inspector with the Highway Patrol, observed Mr. Rickard driving without wearing a seat belt shoulder strap. Thereafter, Officer Maffitt stopped the truck and cited Mr. Rickard for not wearing a seat belt. Mr. Rickard denied committing the violation.

DISCUSSION:

In this case, Officer Maffitt testified that he observed Mr. Rickard driving his company's CMV without wearing the shoulder strap part of his seat belt properly. Officer Maffitt stated that Mr. Rickard was wearing a red shirt at the time, with the seat belt being orange in color, and that, from his vehicle, he was able to see Mr. Rickard well enough to warrant the stop. Officer Maffitt testified that, when asked why he did not have his seat belt on, Mr. Rickard replied that he had the lap belt part of the seat belt on, but the shoulder strap was behind his shoulder. Officer Maffitt testified that Mr. Rickard could have been wearing his lap belt, but that, with the shoulder strap behind him, the seat belt was worn improperly. He noted that, because Mr. Rickard's vehicle was equipped with a shoulder strap, both the lap belt and the shoulder strap needed to be worn in the correct position. Officer Maffitt testified that Mr. Rickard admitted to not wearing his seat belt properly, so a violation was noted (Tr. at 18-23; Staff Exhibit 1).

Mr. John Canty, Assistant Chief of Commission's Civil Forfeiture Compliance Division, testified that staff calculated the proposed forfeiture in this case in its customary manner, utilizing its fine schedule for violations (Staff Exhibit 2). Mr. Canty testified that the fine schedule is consistent with the standards of the Commercial Vehicle Safety Alliance and that the proposed forfeiture is reasonable. Mr. Canty further testified that a Notice of Apparent Violation and Intent to Assess Forfeiture and a Notice of Preliminary Determination were issued to Mr. Rickard notifying him that staff intended to assess a \$100.00 forfeiture for the violation (Tr. at 26-34; Staff Exhibits 3 and 4).

Mr. Rickard, for his part, testified that he was wearing a seat belt while driving his truck. Mr. Rickard testified that his lap belt was buckled and that he never told Officer Maffitt his shoulder strap was behind his shoulder. He stated that he did tell Officer Maffitt that might have worn his shoulder strap across his chest and under his arm. Mr. Rickard noted that he did not recall just how he wore the shoulder strap, but that he might have worn it under his arm when he passed Officer Maffitt's vehicle; and that is why

Office Maffitt did not see the shoulder strap. Further, Mr. Rickard noted that even if he wore the shoulder strap under his arm, he was still restrained in the truck (Tr. at 35-41).

The Commission observes that Section 392.16 specifies that a CMV "shall not be driven unless the driver has properly restrained himself/herself with the seat belt assembly" (emphasis added). After a review of the testimony and evidence submitted in the case, we believe that the record is clear regarding a violation of Section 392.16. The Commission is of the opinion that Officer Maffitt saw Mr. Rickard commit the violation by not wearing the shoulder strap part of the seat belt properly, as required by Section 392.16, and subsequently correctly cited him for that violation. Mr. Rickard'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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On September 21, 2009, the Highway Patrol stopped and inspected a motor vehicle driven by Mr. Rickard in the state of Ohio. Staff found the following violation of the Code of Federal Regulations (C.F.R.): 49 C.F.R. Section 392.16 - Failing to use a seat belt while operating a CMV.
- (2) Mr. Rickard was timely served with a Notice of Apparent Violation and Intent to Assess Forfeiture and 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 April 1, 2010.
- (4) Staff demonstrated at hearing, by a preponderance of the evidence, that Mr. Rickard violated 49 C.F.R. Section 392.16.
- (5) The civil forfeiture assessed for violation of 49 C.F.R. Section 392.16 is consistent with the standards of the Commercial Vehicle Safety Alliance and is reasonable.
- (6) Mr. Rickard'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.
- (7) 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. Rickard shall have 30 days from the date of this entry to pay the assessed forfeiture of \$100.00.

- (8) 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, 4th Floor, Columbus, Ohio 43215-3793.

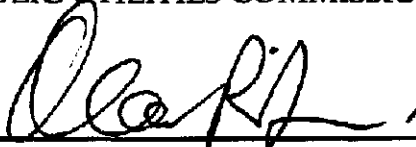
It is, therefore,

ORDERED, That Mr. Rickard pay the assessed amount of \$100.00 for violation of 49 C.F.R. Section 392.16, as set forth in Finding (7). 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, 4th Floor, Columbus, Ohio 43215-3793. In order to assure proper credit, Mr. Rickard is directed to write the case number (OH3281006778D) on the face of the check or money order. 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

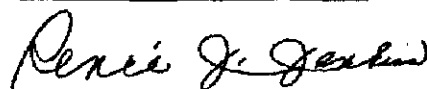

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MAY 13 2010


Renee J. Jenkins
Secretary