

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Request of)
Refix Truck and Trailer Repair, Inc., for) Case No. 12-3198-TR-CVF
an Administrative Hearing.) (OH0573006465C)

OPINION AND ORDER

The Commission, considering the evidence of record, the applicable law, and being otherwise fully advised, issues its opinion and order in these matters.

APPEARANCES:

The McQuades Co., LPA, by Alan J. Lehenbauer, 105 Lincoln Street, P.O. Box 237, Swanton, Ohio 43558, on behalf of Refix Truck and Trailer Repair, Inc.

Mike DeWine, Ohio Attorney General, by Stephen A. Reilly, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the staff of the Commission.

OPINION:

Nature of the Proceedings and Background:

On August 28, 2012, Trooper Brett A. Mealer with the Ohio State Highway Patrol, Motor Carrier Enforcement (Highway Patrol) stopped and inspected a vehicle operated by Refix Truck and Trailer Repair, Inc. (Refix or Respondent), and driven by Tadeusz Gawron, in the state of Ohio. The Highway Patrol found that Refix committed two violations of Title 49 of the Code of Federal Regulations (C.F.R.):

<u>C.F.R. Section</u>	<u>Violation</u>
393.201(a)	Frame cracked/loose/sagging/broken, upper rail buckled with missing and loose roof bows.
393.201(a)	Frame cracked/loose/sagging/broken, lower rail right and left side with missing fasteners at side posts, chain in use to keep trailer from buckling.

Refix was timely served with a Notice of Preliminary Determination (NPD) in accordance with Rule 4901:2-7-7, Ohio Administrative Code (O.A.C.). In the NPD, Refix was notified that the Commission's Staff (Staff) intended to assess a civil monetary

forfeiture of \$100.00 for the violations of the above-noted section of the C.F.R. However, the NPD also reflected that, as a result of a conference conducted pursuant to Rule 4901:2-7-10(B), O.A.C., Staff no longer intended to assess a civil monetary assessment for the violations. A prehearing conference in this case was conducted on January 14, 2013; however, the parties failed to reach a settlement agreement during the conference. Thereafter, a hearing was held on May 6, 2013, following two requests by Refix to reschedule the hearing. Mark Zcupta and Tadeusz Gawron appeared as witnesses for Refix.

Background:

The inspection in this case took place at the 47 milepost of the Ohio Turnpike near Delta, Ohio. At the time of the inspection, Mr. Gawron was driving Refix's vehicle and pulling an empty trailer from Canton, Ohio, to Illinois.

Issue in the Case:

Staff alleges that Trooper Mealer observed Refix's vehicle being operated, carrying a trailer with a buckled upper rail, missing and loose roof bows, and with missing fasteners. Further, Staff contends that Refix's vehicle does not meet the definition of a driveaway-towaway operation because it was not transporting the trailer directly from the scene of an accident to a repair facility, but was transporting it from a towing facility to a repair facility. Refix argues that it does meet the definition of a driveaway-towaway operation, regardless of the fact that it was transporting the trailer from a towing facility and not from a crash site.

DISCUSSION:

Trooper Brett Mealer testified that on August 28, 2012, he conducted an inspection of a vehicle operated by Refix and driven by Mr. Gawron at the 47 milepost on the Ohio Turnpike (Tr. at 9). Trooper Mealer testified that the vehicle's trailer had synthetic webbing wrapped around the sides and that the sides of the trailer were "caved in" (Tr. at 9). Trooper Mealer continued that, during the course of his inspection, he found that the trailer had a cracked lower rail; the roof bows were missing; the top upper rail was buckled; a chain was wrapped from the landing gear to the rear axles of the trailer to give it rigidity; and that, on the inside of the trailer, synthetic webbings were affixed to the side of the trailer (Tr. at 12-17). Trooper Mealer concluded that the vehicle was unsafe, issued a traffic citation to the driver for operation of an unsafe vehicle, instructed the driver to drive to the truck stop in Delta, Ohio, and then placed the vehicle out of service (Tr. at 20-21). Thereafter, Trooper Mealer elaborated that he deemed the vehicle to be unsafe because the upper rails were bent and lower rails cracked, and portions of the roof were missing, and that he believed it was possible that the wind could catch the trailer and cause it to flip or that the trailer could further buckle and collapse while traveling down the road (Tr. at 46). Trooper Mealer also clarified that he learned from

the driver that the trailer came from Mark's Towing in Canton, Ohio, and was being transported to Illinois for repair (Tr. at 43-44). Trooper Mealer continued that he had no reason to believe that the crash that damaged the trailer occurred at Mark's Towing, and that, based on the name of the company, Refix, he believed the trailer was taken to Mark's Towing after it sustained the damage (Tr. at 44-45).

Trooper Mealer testified on cross examination that that he did not believe Refix was a driveaway-towaway operation as defined in the Code of Federal Regulations because it did not involve a tow from a crash scene, as referred to in the definition of "disabling damage" (Tr. at 33-34). He testified that, in his opinion, a damaged trailer could legally be towed from a crash scene to a repair facility, at which time it would have to be repaired (Tr. at 35-36). Trooper Mealer continued that he received no reports that pieces were flying off the trailer and did not observe pieces flying off the trailer or the roof of the trailer tearing away (Tr. at 51-52). Additionally, Trooper Mealer testified that he had no knowledge as to whether any further damage to the trailer occurred from the time it left Mark's towing until the time he stopped the trailer (Tr. at 52-53). He also testified that he did not measure or conduct tests on the synthetic webbing and did not state in his report that that the synthetic webbing he observed was improperly installed (Tr. at 55-57).

Mark Zcupta testified that he is the owner of Refix and the nature of the company is repair of semi trailers (Tr. at 74-75). Mr. Zcupta further testified that Refix pulls trailers similar to the trailer at issue in this case on a daily basis and that Refix's vehicle that pulls the trailers is a towing truck and not a regular truck (Tr. at 80-81, 95). Mr. Zcupta continued that he is trained in the methods to properly secure a damaged trailer and that a typical towing operation from the scene of an accident would not have the ability to make certain "big" repairs to a vehicle on site, such as replacement of 52-foot rails, which was necessary for this damaged trailer (Tr. at 80-81). Mr. Zcupta testified that this trailer was not used to transport any goods and that Refix does not pull vehicles that have loads because any load could collapse the trailer (Tr. at 81). Mr. Zcupta continued that the driver in this case, Mr. Gawron, is also a mechanic and that, prior to sending Mr. Gawron to pick up the trailer, he determined what needed to be done to secure the trailer to bring it to the repair facility and discussed it with Mr. Gawron (Tr. at 82-83). Mr. Zcupta testified that Mr. Gawron secured the trailer by releasing the pressure of the four rails—attaching three chains to the trailer: from the front to back of each side of the rail and from the front axle to the landing gear, and tightening them with a "come-along," which is a winch or binding unit (Tr. at 86-89, 95-96). Additionally, Mr. Zcupta testified that Mr. Gawron attached three straps inside the trailer to secure the walls so they would not collapse on the outside and placed a strap near where a portion of the roof was missing to prevent the wind from picking up the remainder of the roof (Tr. at 91-92). Mr. Zcupta continued that this trailer was badly damaged because the roof was missing and that it would have been dangerous to haul the trailer down the road without the security features Refix put in place—which held the chassis and trailer together (Tr. at 98).

Mr. Zcupta also testified that it would not be possible to transport the trailer on a lowboy because it would be too tall and would hit bridges (Tr. at 102-104).

Mr. Gawron testified that he had been employed by Refix for ten years and transported damaged trailers for about seven years (Tr. at 105). Mr. Gawron continued that he is a mechanic and he put the straps on the trailer and the chains at the facility in Canton, Ohio, in order to put the trailer on the road (Tr. at 105-106).

The Commission notes that Rule 4901:2-7-20, O.A.C., provides that Staff must prove the occurrence of a violation by a preponderance of the evidence. The Commission finds that, after reviewing the evidence presented at the hearing, Staff did not demonstrate the occurrence of violations of 49 C.F.R. 393.201(a) by a preponderance of the evidence. Consequently, in light of the fact that Staff did not meet its burden of proof, the Commission finds that the violations of 49 C.F.R. 393.201(a) should be removed from Refix's Safety-Net record and history of violations. In reaching this decision, the Commission emphasizes that we construe our ruling as applying narrowly to the evidence presented in this case only.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On August 28, 2012, the Highway Patrol stopped and inspected a motor vehicle driven operated by Refix in the state of Ohio. The Highway Patrol found the following C.F.R. violations:

<u>C.F.R. Section</u>	<u>Violation</u>
393.201(a)	Frame cracked/loose/sagging/broken, upper rail buckled with missing and loose roof bows.
393.201(a)	Frame cracked/loose/sagging/broken, lower rail right and left side with missing fasteners at side posts, chain in use to keep trailer from buckling.

- (2) Refix was timely served with an NPD that set forth a total civil forfeiture amount of \$100.00 for the violations. However, the NPD also reflected that, as a result of a conference, Staff intended to make a civil monetary assessment of zero dollars.
- (3) A prehearing conference was held on January 14, 2013.
- (4) A hearing was held on May 6, 2013.

- (5) Rule 4901:2-7-20, O.A.C., requires that, at hearing, Staff prove the occurrence of a violation by a preponderance of the evidence.
- (6) Based upon the record in this proceeding, Staff did not demonstrate the occurrence of violations of 49 C.F.R. 393.201(a) by a preponderance of the evidence. Therefore, the violations of 49 C.F.R. 393.201(a) should be removed from Refix's Safety-Net record and history of violations.
- (7) There was no civil forfeiture assessed in this case.

It is, therefore,

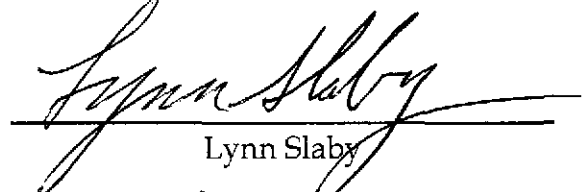
ORDERED, That the alleged violations of 49 C.F.R. 393.201(a) be removed from Refix's Safety-Net record and history of violations. It is, further,

ORDERED, That a copy of this Opinion and Order be served upon each party of record.

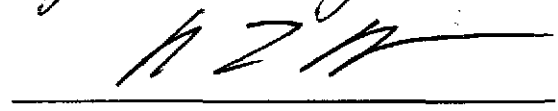
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser


Lynn Slaby

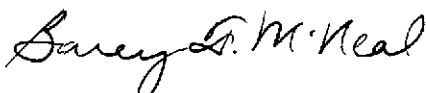

M. Beth Trombold


Asim Z. Haque

MWC/sc

Entered in the Journal

OCT 16 2013


Barcy F. McNeal
Secretary