

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Trux Transportation, Inc.,)	
Notice of Apparent Violation and Intent to)	Case No. 13-1168-TR-CVF
Assess Forfeiture.)	(OH3268010628C)

OPINION AND ORDER

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

APPEARANCES:

Donald M. Carpenter, President of Trux Transportation, on behalf of Trux Transportation, Inc., 580 Mayer Street, Bridgeville, Pennsylvania 15017.

Mike DeWine, Ohio Attorney General, by Devin D. Parram, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the Staff of the Commission.

OPINION:

I. Nature of the Proceeding and Background

On January 7, 2013, Officer Jack W. Goins of the Ohio State Highway Patrol (Highway Patrol) inspected a commercial motor vehicle (CMV), operated by Trux Transportation, Inc. (Trux Transportation or respondent) and driven by Larry D. Aynes, in the state of Ohio. The Highway Patrol found an apparent violation of:

49 C.F.R. Section 392.9(a) – Failing to secure load per 49 C.F.R. 393.120.

Trux Transportation was timely served a notice of preliminary determination, in accordance with Ohio Adm.Code 4901:2-7-12. In the notice, Trux Transportation was informed that Staff intended to assess a civil monetary forfeiture totaling \$100.00 for the violation. The parties conducted a prehearing teleconference on the case on June 27, 2013. The parties, however, failed to resolve the issues in dispute during the conference. The hearing was held on October 1, 2013.

II. Applicable Law

Under Ohio Adm.Code 4901:2-5-02(A), the Commission adopted certain provisions of the federal motor carrier safety regulations to govern the transportation of persons or property in intrastate commerce within Ohio. Ohio Adm.Code 4901:2-5-02(B), requires all motor carriers engaged in interstate commerce in Ohio to operate in conformity with all federal regulations that have been adopted by the Commission.

Additionally, 49 C.F.R. 392.9(a)(1) provides that "a motor carrier may not require or permit a driver to operate a commercial motor vehicle unless . . . [t]he commercial motor vehicle's cargo is properly distributed and adequately secured," as further specified in 49 C.F.R. 393.100 through 393.136. Under 49 C.F.R. 393.106(b), "[c]argo must be firmly immobilized or secured on or within a vehicle by structures of adequate strength, dunnage or dunnage bags, shoring bars, tiedowns or a combination of these." In addition, the aggregate working load limit of tiedowns "used to secure an article or group of articles against movement must be at least one-half times the weight of the article or group of articles..."(Id). The aggregate working load limit may be calculated as the "sum of: (3) one-half the working load limit of each tiedown that goes from an anchor point on the vehicle, through, over, or around the article of cargo, and then attaches to another anchor point on the other side of the vehicle," (49 C.F.R. 393.106(d)). With respect to the securement of metal coils in particular, 49 C.F.R. 393.120(b) reads, in part, as follows:

Securement of coils transported with eyes vertical on a flatbed vehicle, in a sided vehicle or in an intermodal container with anchor points--(1) An individual coil. Each coil must be secured by tiedowns arranged in a manner to prevent the coils from tipping in the forward, rearward, and lateral directions.

III. Issue and Summary of the Parties' Positions

In this case, Trux Transportation was transporting a metal coil in commerce, secured by use of three devices: hooks, chains, and binders (which enable the chains to be tightened against the load). While there is no dispute that the hooks and chains used on the load in question were of sufficient capacity to properly secure the load, the parties disagree as to whether the binders attached to the chains were of sufficient rating to properly secure the load. Staff contends that the load was inadequately secured by the driver because the binders used had an insufficient load capacity rating. Mr. Donald M. Carpenter, representing Trux Transportation in his capacity as the respondent company's president, argues, however, that the driver secured the load properly and that the officer did not properly examine the binders used, which had a load rating higher than that recorded in the note section of his inspection report, and which, together, had a combined

load rating that was legally sufficient in all respects. At the hearing, Staff offered the testimony of Jack Goins, an officer from the Highway Patrol and Mr. Carpenter testified on behalf of Trux Transportation. Mr. Larry Aynes, the driver, did not testify at the hearing.

A. Staff

Officer Goins testified that he has been a motor carrier enforcement inspector for the Highway Patrol for 13 years. He testified that, on January 7, 2013, he conducted a Level II inspection of the vehicle operated by respondent and driver Larry Aynes, which is limited to the officer walking around the load to visually detect any defects in securement (Tr. at 9,11). Officer Goins' interprets the bill of lading as showing that the driver was hauling one metal coil, weighing 44,530 pounds, from Ghent, Kentucky to Brookfield, Ohio (Tr. at 14-15; Staff Ex. 4). Officer Goins stated that in order to comply with regulations, the coil would have had to be secured to at least half the coil's weight, or 22,265 pounds (Tr. at 15; Staff Ex. 1). However, after adding up all of the weight ratings of the binders, Officer Goins found that the load was only secured up to 21,600 pounds, leaving a deficiency of approximately 625 pounds (*Id.*, 26-27). Officer Goins stated that he and the driver were the only two people present during the inspection (Tr. at 21).

According to the inspection notes and Officer Goins' testimony, the coil was secured by two 5/16" G-70 chains and two 3/8" G-70 chains, with the binders securing the chains, each having a working load of 5,400 pounds (*Id.*; Staff Ex. 1). According to Officer Goins, the load capacity rating was stamped onto the side of the handle on the binders, each of which he claimed was 5,400 pounds (Tr. at 20-21). Officer Goins also stated that, due to the way the metal coil was covered, the binders were clearly visible and he could stand behind the vehicle and see them, enabling him to make the inspection without physically getting into the trailer to observe the binders (Tr. at 27-28). Officer Goins also added that officers are required to make the calculation of working load capacity according to the weakest link of attachment, which was the binders in this case, since the chains had a working load capacity of 22,600 pounds (two 5/16" chains at 4,700 pounds and two 3/8" chains at 6,600 pounds) (Tr. at 26-27). Officer Goins acknowledged that he initially declared the vehicle Out of Service, but then allowed the driver to utilize an additional chain to secure the load and proceed on from the stop, without any mention or notation on the inspection report regarding the binders used with the additional chain (Tr. 17; Staff Ex. 1).

Officer Goins testified that he took several photographs during the course of the inspection, including a photograph of the chains that held the coil in place (Tr. 21, Staff Ex. 3). However, Officer Goins did not provide any photographs of the actual binders used, or the binder stamps indicating the weight rating (Tr. at 24). Officer Goins suggested that a photograph of the binders in use "could have" been taken at the scene of the inspection,

but added that any such photos, if taken, also "could have not come out" due to a problem during the "upload" process (Tr. at 52). Officer Goins gave inconsistent testimony as to whether he actually saw the binders. Initially, he testified, as noted above, that he could stand behind the vehicle and see them, enabling him to make the inspection without physically getting into the trailer to observe the binders (Tr. at 27-28). However, later on in his testimony, Officer Goins specifically recalled that, during the inspection, he was able to, and did, "walk over and see" the binders, each indicating a 5,400-pound weight rating (Tr. at 53). He also admitted that he was unsure whether he saw any binders on the trailer rated at 6,600 pounds (Tr. 52). Lastly, when questioned concerning Trux Ex. 1, a photograph of a binder with a 6,600 pound load rating introduced as a hearing exhibit by the respondent, Officer Goins stated that the binder depicted in Trux Ex. 1 "could have been" physically located in trailer as extra equipment, but insisted that the binder depicted in the exhibit "could not have been in use" and "wasn't the one in use" at the time of the inspection (Tr. At 51).

B. Respondent

Mr. Carpenter testified he has been involved in the trucking business for over 50 years, and indicated that the driver had 19 years of experience working for Trux Transportation as well (Tr. 37, 40-41). Mr. Carpenter emphasized in his testimony that he is very aware of safety concerns, has a longstanding working knowledge of all safety regulations pertinent to his business, and does everything he can to ensure the safety of his drivers and of all other drivers on the roadway (Tr. 47-49).

According to Mr. Carpenter, a discrepancy exists regarding the actual weight of the coil. Mr. Carpenter indicated that he believed the weight of the coil to be 44,320 pounds rather than 44,530 pounds, as indicated by Officer Goins (Tr. at 29). Mr. Carpenter also asserted that his company does not use any 5/16" chains in practice and only uses ratchet binders on securement loads (Tr. at 30-31; Trux Ex. 1). In addition, Mr. Carpenter testified the ratchet binders utilized for all securement loads have a weight load capacity of 6,600 pounds, which is stamped on the side of all the ratchet binders owned by the company, including those used to secure the metal coil in this case (Tr. at 31-32; Trux Ex. 2). Mr. Carpenter further testified that one could not see the binders securing the load to the trailer from the ground because the trailers are all-sided, requiring someone to enter the trailer to see any aspect of the securement (Tr. at 32-33). Mr. Carpenter alleged that, because the metal coil was covered with a tarp for its own protection, the binders were even more difficult to see without entering the actual trailer (*Id.*). Though Mr. Carpenter agreed that the weakest link of the securement is what ultimately matters, he testified that the correct working loads to make this determination included: (1) the four hooks, rated for 6,900 pounds each; (2) the chains, rated at 6,600 pounds each; and (3) the binders, also rated at 6,600 pounds each (Tr. at 33; Trux Ex. 3). This would result in an aggregate

working load capacity of 26,400 pounds, approximately 4,135 pounds above the required securement level (*Id.*). Mr. Carpenter also added that even if two different-sized binders were in use on the trailer at the time of inspection, the weight rating is the crucial determining factor and every binder in use, regardless of size, had a weight rating of 6,600 pounds (*Id.*).

Mr. Carpenter also stated that all of the chains and binders that were rated less than 6,600 pounds had been determined to be obsolete nearly a decade ago, due to changes in securement regulations, and had been removed from use from any of his trucks (Tr. at 36, 40, 42). Thus, all the binders in use by the company, at the time of this inspection, were rated at 6,600 pounds (Tr. at 36). However, Mr. Carpenter did acknowledge that his company at one time did utilize binders that had a lower weight rating than 6,600 pounds (Tr. at 41). Mr. Carpenter further noted that all of the binders had the same stamp indicating the 6,600-pound weight rating (Tr. at 36). Mr. Carpenter questioned why a picture of the binders in use on the trailer was not taken at the scene if the officer had taken other photographs (Tr. at 43-44, 45). Mr. Carpenter also noted that one could easily navigate on both sides of the coil while inside the trailer and take pictures (Tr. at 44-45). He also claimed that it was impossible to see the binders from outside the trailer because the sides were covered.

Mr. Carpenter acknowledged that he was not physically present during the time of the initial inspection, and verified that Mr. Aynes, following the inspection, had successfully delivered the metal coil to Brookfield, Ohio and then returned to the office the next morning (Tr. at 38-39). According to Mr. Carpenter, his son took the photographs provided as Trux Exhibit 1 and Trux Exhibit 2, but he and Mr. Aynes were present at the time the photographs were taken (Tr. at 39). Trux Ex. 1 is a photograph of a binder with a stamp on its handle that shows it to have 6,600 pound load rating.

IV. Conclusion

Ohio Adm.Code 4901:2-7-20, requires that, at hearing, Staff prove the occurrence of a violation by a preponderance of the evidence. The Commission finds that, based upon the evidence in this proceeding, Staff failed to present sufficient evidence proving that, on the shipment of the heavy metal coil involved in this case, the respondent failed to use binders (or any other types of tiedowns used to secure the involved cargo load) with an aggregate working load limit of less than at least one-half times the weight of the cargo load involved. As such, staff failed to prove a violation of 49 C.F.R 392.9(a). Our determination is based on factors unique to this case.

This case turns on whether the load rating of each of the four binders that secured the coil was 5,400 pounds, as Officer Goins testified and indicated in his inspection report,

which would have been an insufficient load rating or whether each of the four binders had a load rating of 6,600 pounds, as Mr. Carpenter testified, which would have been a sufficient load rating. On balance, we find the testimony provided by Mr. Carpenter to be the more convincing.

First, the key piece of evidence on which to make a determination on the binders is absent. Officer Goins took a photograph of the chains securing the load which was introduced as a staff exhibit. It appears that he took the photograph from a position inside, not outside and behind the trailer. However, the photograph depicts only that side of the coil which did not include the binders, even though the load rating of the binders is the crucial piece of evidence on which turns the question of whether any motor carrier safety violation even occurred. Instead, he took a photograph which shows only the four chains, on the side of the load where the chains were not attached to the binders which were used. Since the photo was apparently taken from inside the trailer, it appears that the officer could have, just as easily, moved to the binder side of the cargo and produced a photograph that documented his claim that the stamps on the binders read 5,400 pounds. But for reasons never made clear, he did not.

Second, the testimony of Officer Goins is inconsistent. When asked how he determined that the load capacity of the binders that were used was 5,400 pounds and not 6,600 pounds, Officer Goins indicated that he looked on the handle of the binder at the stamp which indicates its load rating (Tr. 27). However, when first asked by the attorney examiner whether he actually got up on the truck to look at the stamps on the handles of the involved binders, Officer Goins stated "You can actually stand behind the vehicle and see them" (Tr. 27, 28). Yet, the officer produced photographic evidence from inside the trailer, depicting how the non-binder side of the securement appeared at the time of the inspection. In rebuttal to the respondent's testimony that it was impossible to read the stamps from the ground behind the trailer, the officer stated that "he did" walk around and read the stamps (Tr. 53). But if he did so, and at the time he was already in the mode of taking photos on the other side of the securement from inside the trailer, we are left to question why he did not document with pictures what he claims to have seen stamped on the handle of the binders.

Third, Mr. Carpenter's testimony convincingly evidences his and his company's longstanding commitment to safety regulation compliance. Mr. Carpenter has been in the business of hauling this type of heavy coil requiring special securement for 50 years (Tr. 30). His business is small and hands on; he only operates three trucks (Tr.41). He testified that, based on his many years of experience, both from a safety standpoint and also with regard to the goal of protecting the load itself from damage, his company pays very close attention to details regarding the type of equipment that must be used to secure loads (Tr. 30). "We don't want to have an issue of securement that's for sure" explained

Mr. Carpenter because, if one of these coils comes off "it could cause a lot of problems and it could hurt the people, kill them, and we know that" (Tr. 37). He added, "this is not an issue where we haul these [coils] every once in awhile. We haul them daily just about and we understand the safety that is required * * * and we try to adhere to all the safety regulations" (Tr. 37). The involved driver, Mr. Larry Aynes, was a seasoned driver with 19 years of experience, who has hauled coils for the involved shipper, out of Ghent, Kentucky, on a regular basis, ever since the shipper opened for business (Tr. 37).

There is also undisputed evidence which shows that Trux Transportation uses load securement chains with a 6,600 pound load rating, and hooks that are load rated at 6,900 pounds apiece (Tr. 27, 31, 33, 40, 53). If, as a matter of course, the respondent uses chains and hooks that comply with existing load capacity requirements, there is no logical reason to suspect that it would use binders that fail to do so. Indeed, Mr. Carpenter testified that, at the time of the inspection, the only binders his business used were all load rated at 6,600 pounds and "the binders that the officer talked about, we have deleted those years ago off of all of our trucks" (Tr. 36). He stated that there were two different sized binders used in the trailer for the particular load in question (Tr. 31, 34). But he insisted that, although the dimensions differed between of the two sizes of ratchet binders used, nevertheless, the load rating of both sizes was 6,600 pounds (Tr. 33). Mr. Carpenter explained that years ago, when regulations regarding the strength requirements for binders became more stringent, his business eliminated its former use of binders with a 5,400 pound load rating and, since that time, binders with a 6,600 pound load rating are the only type that he purchases for his business (Tr. 36, 40). Before the regulations became more stringent, Mr. Carpenter explained, the old binders, rated at 5,400 pounds, were in common usage throughout the industry, and he used them then too. But approximately ten years ago, they became obsolete and, as a result, he eliminated them (Tr. 36, 40, 41, 42).

This contrasts with the testimony of Officer Goins, who admitted that a binder or binders with a 6,600 pound rating could have been on the trailer at the time of his inspection, but stated that he "could not answer" when asked whether he recalled seeing any such binder on the vehicle during his inspection (Tr. 39, 51, 52).

In sum, the Commission concludes that there is insufficient evidence to find that the respondent violated 49 C.F.R. 392.9(a). This finding does not mean that the Commission has found that the respondent was using four binders, each with a 6,600 pound load rating on the load in question. The Commission's opinion is limited to the finding that insufficient evidence has been presented to determine that the binders used were load rated at 5,400 pounds, as asserted by Staff. Had Staff produced a photograph showing that the binders used were stamped with a 5,400 pound load rating, we would have arrived at a different conclusion.

Accordingly, the Commission finds that the respondent should not be assessed the \$100.00 forfeiture for violating 49 C.F.R. 392.9(a). The Commission also finds that the alleged violation should be deleted from the respondent's Safety-Net record and history of violations.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On January 7, 2013, the Highway Patrol inspected a CMV operated by Trux Transportation in the state of Ohio. The Highway Patrol found the following violation: 49 C.F.R. Section 392.9(a)(1) - failing to secure load per 49 C.F.R. 393.120.
- (2) Trux Transportation was timely served a notice of preliminary determination that set forth a civil forfeiture of \$100.00 for the above-noted violation.
- (3) A prehearing conference was held on June 27, 2013.
- (4) A hearing in this matter was convened on October 1, 2013.
- (5) Ohio Adm.Code 4901:2-7-20 requires that, at the hearing, Staff prove the occurrence of a violation by a preponderance of the evidence.
- (6) Insufficient evidence has been presented to conclude that the respondent failed to use binders (or any other types of tiedowns used to secure the involved cargo load) with an aggregate working load limit of less than at least one-half times the weight of the cargo load involved. Staff, therefore, has not proven by a preponderance of the evidence, pursuant to Ohio Adm.Code 4901:2-7-20, that a violation of 49 C.F.R. Section 392.9(a)(1) occurred.
- (7) Trux Transportation should not be assessed the \$100.00 forfeiture, and the alleged violation should be deleted from the respondent's Safety-Net record and history of violations.

ORDER:

It is, therefore,

ORDERED, That Trux Transportation should not be assessed the civil forfeiture of \$100.00 for the alleged violation of 49 C.F.R. Section 392.9(a)(1), which should be removed from its Safety-Net record and history of violations. It is, further,

ORDERED, That a copy of this opinion and order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

M. Beth Trombold

Lynn Slaby

Asim Z. Haque

DEF/sc

Entered in the Journal
FEB 13 2014

Barcy F. McNeal
Secretary