

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Liberty Transportation Inc.,)
Notice of Apparent Violation and Intent to) Case No. 14-2045-TR-CVF
Assess Forfeiture.) (OH3263001239C)

OPINION AND ORDER

The Commission, considering the applicable law and evidence of the record, and being otherwise fully advised, hereby issues its Opinion and Order in this matter finding Liberty Transportation Inc. in violation of 49 C.F.R. 393.209(d) for having a loose pitman arm on the steering gear output shaft.

I. Procedural History

Following an inspection of a vehicle operated by Liberty Transportation Inc. (LTI or respondent), Respondent was timely served with a Notice of Preliminary Determination (NPD) in accordance with Ohio Adm.Code 4901:2-7-12, notifying it that Staff intended to assess a \$100 civil monetary forfeiture for a violation of the Commission's transportation rules. A prehearing conference was conducted in this case on December 18, 2014, and a hearing was held on February 26, 2015. At the hearing, Inspector Douglas Mowen appeared as a witness for Staff and Joseph Huth appeared pro se for LTI.

II. Law

Under Ohio Adm.Code 4901:2-5-02(A), the Commission adopted certain provisions of the federal motor carrier safety regulations (FMCSR) to govern the transportation of persons or property in intrastate commerce within Ohio. Ohio Adm.Code 4901:2-5-02(C) 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. Ohio Adm.Code 4901:2-7-20 requires that, at hearing, Staff prove the occurrence of a violation by a preponderance of the evidence.

III. Issue

The issue in this case is whether or not the pitman arm on the steering output shaft of LTI's motor vehicle was loose, in violation of 49 C.F.R. 393.209(d). Staff alleges that when Inspector Mowen examined the LTI vehicle, the pitman arm was loose. LTI asserts that a mechanic who had arrived to fix the vehicle did not find the pitman arm to be loose.

IV. Summary of the Evidence Presented at the Hearing

Inspector Mowen explained that he was a motor carrier inspector for three years, and has completed training regarding inspections of commercial motor vehicles (CMV) for violations of the FMCSR) (Tr. at 7-8). Inspector Mowen testified that on July 21, 2014, he conducted a Level 1 inspection of a vehicle operated by LTI and driven by Joseph Sorrell (Tr. at 11-12). Inspector Mowen explained that a Level 1 inspection is "every thing, including rolling underneath the truck, testing air brakes * * * from front to the back, all the way back underneath." (Tr. at 14, 17.) Inspector Mowen indicated that, in order to conduct his inspection, he viewed the pitman arm while the driver turned the steering wheel. According to Inspector Mowen, when the driver turns the wheel, the steering gear output shaft and the pitman arm should both turn at the same time with no motion of the shaft inside the pitman arm and if there is any motion at all, the tires will not be turning at the exact same time and the arm is considered loose. (Tr. at 21-22.) Inspector Mowen stated he had the driver turn the steering wheel back and forth and he noticed the pitman arm was loose, as the output shaft and the pitman arm were not in sync. Inspector Mowen stated that the looseness "does not have to be a huge turn * * * it can be the slightest movement that you can see in there (and) it's considered loose," according to the FMCSR. After observing the violation, Inspector Mowen testified that he demonstrated to the driver why the pitman arm was loose, and that the driver acknowledged the looseness. (Tr. at 25-26.) According to Inspector Mowen, "any" looseness within the steering gear output shaft on the pitman arm is considered an out-of-service violation, which means the vehicle cannot be moved until the violation is corrected. Inspector Mowen also noted that he placed an out-of-service sticker on the truck, and informed the driver what process would have to be completed to have the truck returned to the road. (Tr. at 29-31.)

Joseph Huth, Corporate Safety Director for LTI, testified that he was notified by a manager of the alleged violation and that the vehicle was marked as "out-of-service." He stated that LTI hired a mechanic to go to the vehicle and repair the arm so the vehicle would be serviceable. While the mechanic was not present at the hearing, according to Mr. Huth, the mechanic claimed nothing was wrong with the vehicle. Because the mechanic did not find anything wrong, Mr. Huth believes the inspector may have made a mistake; however, Mr. Huth admitted that he had no personal knowledge of the inspection and was not present for the inspection or for the repair of the vehicle (Tr. at 38, 39-40). Mr. Huth also indicated that LTI was not contesting the amount or the calculation of the forfeiture (Tr. at 6).

V. Commission Conclusion and Order

The Commission finds that Staff has proven by a preponderance of the evidence, that LTI was in violation of 49 C.F.R. 393.209(d), which requires that "the pitman arm * * * shall not be loose." We note the thoroughness of the pitman arm inspection, as it required

involvement from both Mr. Mowen and the driver, and was repeated in order to demonstrate the looseness to the driver (Tr. at 24-25). While Mr. Huth claimed the mechanic that serviced the vehicle allegedly did not find the arm to be loose, neither the mechanic nor the driver testified at the hearing and we give little weight to the testimony of Mr. Huth regarding what the mechanic allegedly told him regarding the vehicle. Mr. Huth also had no firsthand knowledge of the events involved in this case. The evidence shows that in this case, Inspector Mowen observed looseness and movement in the pitman arm and was able to demonstrate such looseness and movement to the driver. Respondent provided no witnesses or evidence to dispute the violations. Therefore, the Commission finds LTI was in violation of 49 C.F.R. 393.209(d) and should be assessed a civil forfeiture of \$100. LTI is directed to make payment of the \$100 civil forfeiture within 60 days of this Opinion and Order by certified check or money order payable to "Treasurer, State of Ohio" and mailed or delivered to the Public Utilities Commission of Ohio, Attention: Fiscal Division, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. The inspection number (OH3263001239C) should be written on the face of the certified check or money order to ensure proper credit.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On July 21, 2014, an inspector for the Highway Patrol stopped and inspected a motor vehicle driven and operated by LTI and found the carrier to be in violation of 49 C.F.R. 393.209(d), for having a loose pitman arm on the steering gear output shaft.
- (2) Respondent was timely served with an NPD, alleging a violation of 49 C.F.R. 393.209(d) for having a loose pitman arm on the steering gear output shaft and that Staff intended to assess civil monetary forfeiture of \$100.
- (3) A prehearing conference was conducted on December 18, 2014 and a hearing was held on February 26, 2014.
- (4) In accordance with Ohio Adm.Code 4901:2-7-20 Staff has proven by a preponderance of the evidence that LTI's vehicle had a loose pitman arm on the steering gear output shaft, constituting a violation of 49 C.F.R. 393.209(d).
- (5) LTI should be assessed a \$100 forfeiture for a violation of 49 C.F.R. 393.209(d), and LTI should pay the forfeiture within 60 days from the date of this Opinion and Order.

ORDER:

It is, therefore,

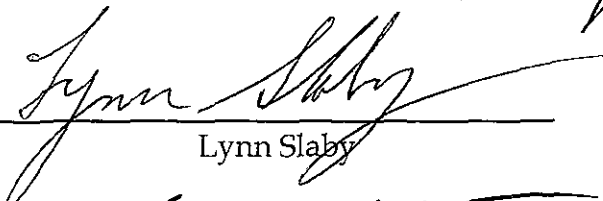
ORDERED, That LTI violated 49 C.F.R. 393.209(d) by operating a CMV with a loose pitman arm on the steering gear output shaft. It is, further,

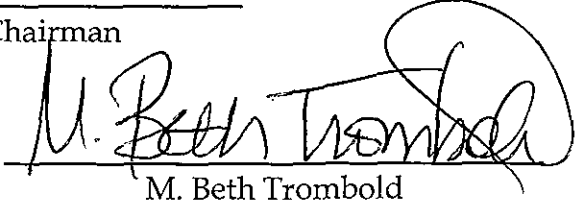
ORDERED. That LTI pay a civil forfeiture of \$100 for a violation 49 C.F.R. 393.209(d), within 60 days of this Opinion and Order. Payment shall be made by check or money order payable to the "Treasurer, State of Ohio" and mail or deliver it to the Public Utilities Commission of Ohio, Attention: Fiscal Division, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. Case number 14-2045-TR-CVF and inspection number OH3263001239C should be written on the face of the check or money order. It is, further,

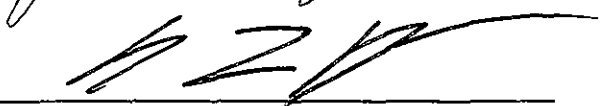
ORDERED, That a copy of this Opinion and Order be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Andre T. Porter, Chairman

Lynn Slaby

M. Beth Trombold

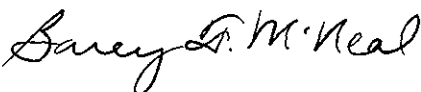
Asim Z. Haque

Thomas W. Johnson

NW/vrm

Entered in the Journal

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Barcy F. McNeal
Secretary