

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Todd Agosta, Notice of)
Apparent Violation and Intent to Assess) Case No. 15-430-TR-CVF
Forfeiture.) (OH1366001727D)

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 Todd Agosta in violation of 49 C.F.R. 392.16 for failing to properly use a seat belt.

I. Procedural History

Following an inspection of a commercial motor vehicle (CMV), Todd Agosta (Respondent), the driver, was timely served with a Notice of Preliminary Determination (NPD) in accordance with Ohio Adm.Code 4901:2-7-12, notifying him 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 April 9, 2015, and a hearing was held on June 11, 2015. At the hearing, Inspector Lee Darden and Jonathan Frye appeared as witnesses for Staff and Mr. Agosta appeared pro se.

II. Law

Under Ohio Adm.Code 4901:2-5-03(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 4901:2-5-03(B) and (C) require all motor carriers engaged in intrastate and 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(A) 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 driver, Mr. Agosta, was properly wearing his seat belt while operating a CMV, in violation of 49 C.F.R. 392.16, which requires that a CMV 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. Staff alleges that Inspector Darden witnessed Mr. Agosta not using the seat belt. Mr. Agosta asserts that he was wearing the belt.

IV. Summary of the Evidence Presented at the Hearing

Inspector Darden explained that he has been employed by the State Highway Patrol for over 25 years, and has completed training regarding inspections of CMVs for violations of the FMCSR (Tr. at 5-6). Inspector Darden testified that at 8:35 a.m., on July 21, 2014, while he was posted in the crossover on U.S. Route 33, he witnessed Mr. Agosta drive past him while not wearing his seat belt. According to Inspector Darden, after pulling over the vehicle and watching Mr. Agosta through the driver's side mirror of the CMV, he confirmed that Mr. Agosta was not wearing a seat belt and witnessed him attempt to put on and then remove the belt. (Tr. at 9-10.) Inspector Darden stated the non-use was easier to identify than other, similar situations because there was a sharp contrast in color between the seat belt, which was bright orange, and Mr. Agosta's shirt, which was brown (Tr. at 11-12, 15-17).

Jonathan Frye, staff member of the Commission's Transportation Department, Compliance Division, testified regarding the assessment of forfeitures following roadside inspections. Referring to Staff Ex. 2, the NPD, Mr. Frye explained that the forfeiture amount is calculated from a fine schedule where, depending upon the type of violation that is found on the inspection report, a certain dollar amount may or may not be assessed for that particular violation. Mr. Frye stated that the fine schedule used by staff in making the \$100 assessment in this case is consistent with the fine schedule recommended by the Commercial Vehicle Safety Alliance. (Tr. at 25-26.)

Mr. Agosta testified that he was properly wearing his seat belt. He states he was not attempting to put on his seat belt, as Inspector Darden testified, but rather he was removing a seat belt clip he wears to prevent the belt from chafing his neck. Further, Mr. Agosta notes that the color of his shirt that day was grey, not brown. (Tr. at 28-29.)

V. Commission Conclusion and Order

The Commission finds that Staff has proven by a preponderance of the evidence that Mr. Agosta was in violation of 49 C.F.R. 392.16, which requires a driver to properly wear a seat belt. We note that Inspector Darden witnessed Mr. Agosta's nonuse of a seat belt both as the driver passed by and as he later approached the vehicle (Tr. at 12-13). Further, the nonuse of the seatbelt was the sole reason why Mr. Agosta was pulled over (Tr. at 9). There also were no impediments to the inspector's view, as Inspector Darden stated his initial view was in the daylight and unobstructed and, when he approached the vehicle, he also had a full view of the driver's upper body in the mirror (Tr. at 13-14, 17.) Additionally, the sharp color contrast between the seat belt and the driver's shirt made it less likely that Inspector Darden was mistaken (Tr. at 15). Therefore, the Commission finds Mr. Agosta was in violation of 49 C.F.R. 392.16 and should be assessed a civil forfeiture of \$100. Mr. Agosta 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 (OH1366001727D) 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 December 22, 2014, an inspector for the Highway Patrol stopped and inspected a motor vehicle driven by Todd Agosta and found the driver to be in violation of 49 C.F.R. 392.16, for failing to properly use a seat belt.
- (2) Respondent was timely served with an NPD, alleging a violation of 49 C.F.R. 392.16 for failing to properly use a seat belt and that Staff intended to assess civil monetary forfeiture of \$100.
- (3) A prehearing conference was conducted on April 9, 2015, and a hearing was held on June 11, 2015.
- (4) In accordance with Ohio Adm.Code 4901:2-7-20 Staff has proven by a preponderance of the evidence that Mr. Agosta failed to properly wear a seat belt, constituting a violation of 49 C.F.R. 3932.16.
- (5) Mr. Agosta should be assessed a \$100 forfeiture for a violation of 49 C.F.R. 392.16 and he should pay the forfeiture within 60 days from the date of this Opinion and Order.

ORDER:

It is, therefore,

ORDERED, That Todd Agosta violated 49 C.F.R. 392.16 by failing to properly wear a seat belt while operating a commercial motor vehicle. It is, further,

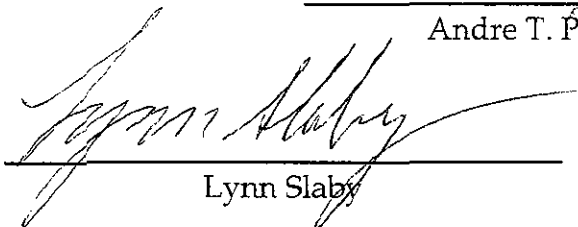
ORDERED, That Mr. Agosta pay a civil forfeiture of \$100 for a violation 49 C.F.R. 392.16, within 60 days of this Opinion and Order. Payment shall be made by check or money order payable to the "Treasurer, State of Ohio" and mail or deliver it to the Public Utilities Commission of Ohio, Attention: Fiscal Division, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. Case number 15-430-TR-CVF and inspection number OH1366001727D 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.

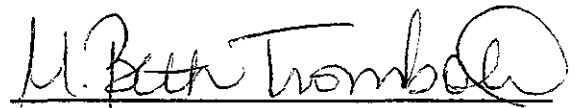
THE PUBLIC UTILITIES COMMISSION OF OHIO



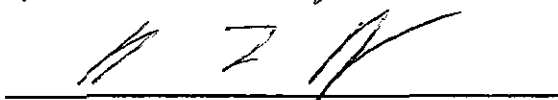
Andre T. Porter, Chairman



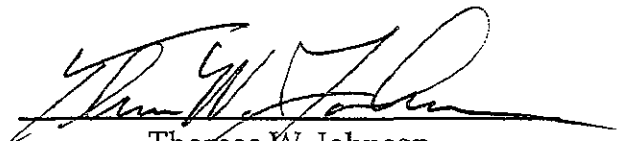
Lynn Slaby



M. Beth Trombold



Asim Z. Haque



Thomas W. Johnson

NJW/vrm

Entered in the Journal

JAN 06 2018

Barcy F. McNeal
Secretary