

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Eddie R. Greer, Notice of)
Apparent Violation and Intent to Assess) Case No. 15-479-TR-CVF
Forfeiture.) (OH3293007372D)

OPINION AND ORDER

The Commission, considering the applicable law and evidence of record, and being otherwise fully advised, hereby issues its Opinion and Order in this matter, finding Eddie R. Greer in violation of 49 C.F.R. 395.8(e) for a false report of his record of duty status.

I. Procedural History

Following an inspection of a commercial motor vehicle (CMV) driven by Eddie R. Greer (Respondent), Respondent 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 forfeiture for a violation of the Commission's transportation rules. A prehearing conference was conducted in this case on April 8, 2015, and a hearing was held on September 24, 2015. At the hearing, Inspector Bob G. Walker appeared as a witness for Staff and Respondent appeared with the representation of counsel. A briefing schedule was established at the conclusion of the hearing, and Staff filed its brief on November 20, 2015. Respondent did not file a brief.

II. Law

Under Ohio Adm.Code 4901:2-5-03(A), the Commission adopted certain provisions of the Federal Motor Carrier Safety Regulations (FMCSR), 49 C.F.R. Sections 40, 42, 383, 387, 390-397, to govern the transportation of persons or property 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 Respondent falsified his driver's record of duty status, in violation of 49 C.F.R. 395.8(e), which requires that a driver shall not fail to complete his record of duty activities. Staff maintains that Respondent began driving three hours earlier than the time indicated on his record of duty status for January 6, 2015.

Respondent contests the alleged violation, although the parties stipulated to Staff's calculation of the assessed \$100 civil forfeiture in the event the Commission should determine that the violation occurred as alleged by Staff.

IV. Summary of the Evidence Presented at the Hearing

Inspector Walker, an inspector with the Motor Carrier Enforcement Division of the Ohio State Highway Patrol, testified that, on January 7, 2015, he stopped a CMV driven by Respondent, in Madison County, Ohio. Inspector Walker testified that Respondent's record of duty status reflected that, on January 6, 2015, Respondent traveled 731 miles from Matthews, Missouri to Blawnox, Pennsylvania in 11 hours, which the inspector noted is generally the maximum amount of driving time allowed in a day. According to Inspector Walker, a software program known as PC Miler indicated that the trip should have taken 12 hours and 36 minutes. Inspector Walker testified that, upon further investigation, he was informed by a fuel station attendant that Respondent obtained fuel at 4:30 a.m., on January 6, 2015. Inspector Walker also noted that Respondent claimed to have left the fuel station immediately after obtaining fuel. Inspector Walker explained that he concluded that Respondent departed the fuel station around 4:30 a.m., contrary to the log book entry's indication that Respondent was in his sleeper berth until 7:00 a.m. and began driving at 7:30 a.m. Following the inspection, Inspector Walker prepared a Driver/Vehicle Examination Report, finding Respondent in violation of 49 C.F.R. 395.8(e) for a false report of his record of duty status. (Staff Ex. 1; Staff Ex. 2; Tr. at 7, 14-17, 19, 21-22, 24-25, 30-31, 35-37.)

In its brief, Staff argues that, because Respondent told Inspector Walker that he departed the fuel stop immediately after fueling the vehicle, and because Respondent was aware that the fuel station attendant informed the inspector that the fuel was obtained at 4:30 a.m., Respondent admitted to leaving the fuel stop around 4:30 a.m., which is three hours earlier than indicated in the log book. Additionally, Staff argues that the PC Miler calculation used by Inspector Walker corroborates Respondent's admission. (Staff Br. at 5-9.)

Respondent testified that, on January 5, 2015, he arrived at the fuel stop, parked his vehicle, and went into the sleeper berth for approximately eight hours. Respondent further testified that he woke up, drove the vehicle from the parking lot to the fuel station to use the restroom, fueled the vehicle, returned to the sleeper berth, and left the fuel stop at 7:30 a.m. Respondent explained that he did not document the five minutes spent fueling the vehicle in his log book entry, because there is no place in the log book to note five-minute activities, and it is appropriate, according to his driver training, to consider that five-minute fueling as included within his on-duty status from 7:00 a.m. to 7:30 a.m. Respondent also testified that, although he does not recall telling Inspector Walker that he departed the fuel stop immediately after obtaining fuel, he may have said it to avoid a disagreement with the

inspector. Finally, Respondent testified that he was able to travel 731 miles in 11 hours, because he was transporting a light load. (Staff Ex. 2; Tr. at 40-43.)

V. Commission Conclusion and Order

The Commission finds that Staff has proven, by a preponderance of the evidence, that Respondent violated 49 C.F.R. 395.8(e). The regulation provides that "[f]ailure to complete the record of duty activities * * * or making of false reports in connection with such duty activities shall make the driver and/or the carrier liable for prosecution." As Inspector Walker testified, 49 C.F.R. 395.8(e) is intended to ensure that drivers accurately record all of their duty activities (Tr. at 14), and the Commission finds that the regulation is an important means to facilitate the safe operation of CMVs and to protect the traveling public in the state of Ohio. The record in this case reflects that Inspector Walker testified that Respondent admitted, during the inspection, to having departed the fuel stop immediately after obtaining fuel (Tr. at 17, 22, 25; Staff Ex. 1), which Respondent disputed through his own testimony (Tr. at 42). Although Staff and Respondent disagree as to whether Respondent departed the fuel stop at 4:30 a.m. or 7:30 a.m., Respondent does not dispute that he obtained fuel around 4:30 a.m. and that he was not, therefore, in the sleeper berth at that time, as his log book reflects (Tr. at 21-22, 40-42; Staff Ex. 2).

Under 49 C.F.R. 395.2, on-duty time "means all time from the time a driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility for performing work," which includes "[a]ll time inspecting, servicing, or conditioning any commercial motor vehicle at any time" and "[a]ll driving time," but does not include "[t]ime spent resting in a sleeper berth." As the Commission has previously found refueling of the vehicle constitutes "servicing" under the regulation and is, therefore, on-duty time. *In re Thomas J. Peleck*, Case No. 07-563-TR-CVF, Opinion and Order (Dec. 12, 2007) at 4. Respondent also testified that, due to icy conditions at the fuel stop, he drove the vehicle from the parking area to the fuel station to use the restroom and fuel the vehicle (Tr. at 40-42). Therefore, regardless of whether Respondent actually departed the fuel stop at 4:30 a.m. or 7:30 a.m., the record indicates that he was, in fact, driving around 4:30 a.m. and his log book does not accurately reflect the time at which he operated his vehicle (Staff Ex. 2).

In addition, Respondent asserted that his log book does not accommodate a change in duty status of five minutes in duration and that he, therefore, included the fueling of the vehicle within a subsequent on-duty period (Tr. at 41-42). However, pursuant to 49 C.F.R. 395.8(c), drivers are instructed to record each change of duty status with the name of the city, town, or village and state abbreviation. Respondent's log book includes a "Remarks" section for this purpose (Staff Ex. 2). Additionally, the Commission notes that the Federal Motor Carrier Safety Administration has provided the following applicable guidance with respect to 49 C.F.R. 395.8:

Question 1: How should a change of duty status for a short period of time be shown on the driver's record of duty status?

Guidance: Short periods of time (less than 15 minutes) may be identified by drawing a line from the appropriate on-duty (not driving) or driving line to the remarks section and entering the amount of time, such as "6 minutes," and the geographic location of the duty status change.

Respondent also failed to identify the time spent driving to the fuel station and fueling his vehicle, which constituted a duty status change, in this fashion. In sum, we find that the record reflects that Respondent did not comply with the driver's record of duty status requirements set forth in 49 C.F.R. 395.8 and, therefore, Respondent's log book entry for January 6, 2015, constitutes a false report of his record of duty status.

Accordingly, the Commission finds that Respondent was in violation of 49 C.F.R. 395.8(e) and should be assessed a civil forfeiture of \$100. Respondent is directed to make payment of the \$100 civil forfeiture within 60 days of this Opinion and Order by check or money order payable to "Treasurer, State of Ohio" and mailed or delivered to the Public Utilities Commission of Ohio, Attention: CF Processing, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. The inspection number (OH3293007372D) should be written on the face of the check or money order to ensure proper credit.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On January 7, 2015, an inspector for the Ohio State Highway Patrol stopped and inspected a CMV driven by Respondent and found him to be in violation of 49 C.F.R. 395.8(e) for a false report of his record of duty status.
- (2) Respondent was timely served with an NPD, alleging a violation of 49 C.F.R. 395.8(e) for a false report of his record of duty status, and informing him that Staff intended to assess a \$100 civil forfeiture.
- (3) A prehearing conference was conducted on April 8, 2015, and a hearing was held on September 24, 2015.
- (4) In accordance with Ohio Adm.Code 4901:2-7-20, Staff has proven, by a preponderance of the evidence, that Respondent falsified his record of duty status, constituting a violation of 49 C.F.R. 395.8(e).

- (5) Respondent should be assessed a \$100 civil forfeiture for the violation of 49 C.F.R. 395.8(e).

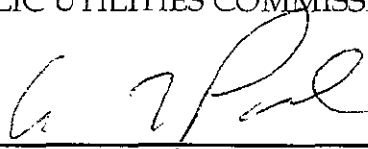
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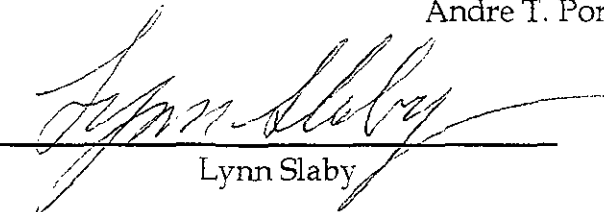
It is, therefore,


ORDERED, That Respondent pay a civil forfeiture of \$100 for the violation of 49 C.F.R. 395.8(e), within 60 days of this Opinion and Order. Payment shall be made by check or money order payable to "Treasurer, State of Ohio" and mailed or delivered to the Public Utilities Commission of Ohio, Attention: CF Processing, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. The inspection number (OH3293007372D) should be written on the face of the check or money order. It is, further,

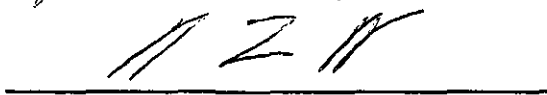
ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

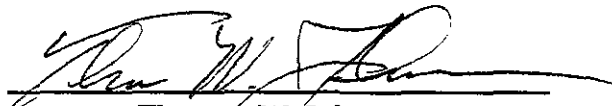
THE PUBLIC UTILITIES COMMISSION OF OHIO


Andre T. Porter, Chairman


Lynn Slaby


M. Beth Trombold

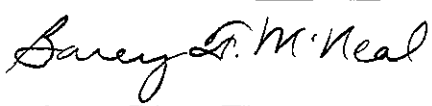

Asim Z. Haque


Thomas W. Johnson

SJP/sc

Entered in the Journal

JAN 06 2016


Barcy F. McNeal
Secretary