

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Kirila Contractors, Inc.,)	Case No. 15-908-TR-CVF
Notice of Apparent Violation and Intent)	(OH3225005703C)
to Assess Forfeiture.)	

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 Kirila Contractors, Inc. in violation of 49 C.F.R. 392.9(a)(1) for failing to properly secure cargo in accordance with 49 C.F.R 393.130.

I. Procedural History

Following an inspection of a commercial motor vehicle (CMV), Kirila Contractors, Inc. (Kirila, or 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 July 7, 2015, and a hearing was held on August 4, 2015. At the hearing, Inspector John Brayer and Tom Persinger appeared as witnesses for Staff and Robert Kirila appeared pro se for Kirila.

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 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 a backhoe being transported by Kirila was adequately secured. 49 C.F.R. 392.9(a)(1) requires that the cargo of a CMV must be adequately secured, as defined in 49 C.F.R. 393.100-393.136. Specifically, 49 C.F.R.

393.140 outlines the requirements for the transportation of heavy vehicles, equipment, and machinery, which are described as weighing more than 10,000 pounds and operating on crawler tracks or wheels. Such cargo must be restrained against movement using at least four tiedowns. Staff alleges that the backhoe did not have the required four tiedowns and thus was not properly secured. Kirila asserts the backhoe was adequately restrained against movement.

IV. Summary of the Evidence Presented at the Hearing

Inspector Brayer explained that he has been employed by the State Highway Patrol for over 17 years, has been in motor carrier enforcement for over four years, and has completed training regarding inspections of CMVs for violations of the FMCSR (Tr. at 7-9). Inspector Brayer testified that on December 31, 2014, around 1:45 p.m., he witnessed a CMV operated by Kirila drive past him hauling a backhoe that did not appear to be properly secured. The inspector directed the vehicle to stop and he initiated a Level 2 inspection, which included walking around the vehicle. (Tr. at 9-13.) Inspector Brayer stated that he examined the cargo's VIN plate, which showed that the backhoe weighed 20,000 pounds (Tr. at 17; Staff Ex. 5). The backhoe, according to Inspector Brayer, consisted of a rear hydraulic arm, a front hydraulic bucket, and the actual machine, which includes the wheels, motor, and cab. (Tr. at 17-21, 26; Staff Ex. 4, 6, 7.) Accordingly to Inspector Brayer, at least four distinct securements are required under the FMCSR, separate from the arm and the bucket, in order to properly secure the machine. According to Inspector Brayer, the securements are necessary at both the front and the back of the machine in order to prevent rear and forward movement. In this case, Inspector Brayer claimed that, while the rear arm and the front bucket were both secured properly with chains and binders, the machine did not have any securements and was thus in violation of 49 C.F.R. 393.140. (Tr. at 22-27; Staff Ex. 4, 8, 9, 10, 11.) Because the cargo was not properly secured, Inspector Brayer stated he cited the violation and marked the trailer as out-of-service (Tr. at 28).

Tom Persinger, staff member of the Commission's Transportation Department, Compliance Division, testified regarding the assessment of forfeitures following roadside inspections. Referring to Staff Ex. 1, the NPD, Mr. Persinger 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. Persinger 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 32-33.)

Mr. Kirila claimed the backhoe was properly secured. He stated his company uses a header board to secure the cargo and the company followed the rules for a header board securement. According to Mr. Kirila, the cargo needs two tie-downs for every ten feet of cargo, which is what the company had. He stated the four-point securement discussed by Inspector Brayer is for heavier equipment. (Tr. at 35-36.) Further, he asserted that the inspector incorrectly ascertained the weight of the cargo. According to Mr. Kirila, the backhoe likely weighs around 16,000 pounds, not 20,000 pounds. (Tr. 34-35, 37.) By tying down the bucket and the arm, and by pushing the front tires of the backhoe against the header board, Mr. Kirila asserted the backhoe was sufficiently restrained against movement and was thus properly secured (Tr. at 35; Staff Ex. 8, 9).

V. Commission Conclusion and Order

The Commission finds that Staff has proven by a preponderance of the evidence that Kirila was in violation of 49 C.F.R. 392.9(a)(1) for failing to properly secure cargo in accordance with 49 C.F.R. 393.130. Although Staff and Kirila disagreed about the specific weight of the backhoe in question, they both concurred that it weighed over 10,000 pounds; thus the securement of the backhoe was required to meet the requirements set forth in 49 C.F.R. 393.140. 49 C.F.R. 393.140 requires the cargo to be secured with at least four tiedowns to prevent movement in the lateral, forward, rearward, and vertical directions. As explained by Inspector Brayer and as shown in Staff Exhibits 4, 8, 9, 10, and 11, the backhoe was not secured with the requisite number of tiedowns and it was not properly restrained against movement. Therefore, the Commission finds Kirila did not adhere to the requirements of 49 C.F.R. 393.130 and was therefore in violation of 49 C.F.R. 391.9(a)(1) and should be assessed a civil forfeiture of \$100. Kirila 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 (OH3225005703C) 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 31, 2014, an inspector for the Highway Patrol stopped and inspected a motor vehicle operated by Kirila Contractors, Inc. and found it to be violation of 49 C.F.R. 392.9(a)(1) for failing to properly secure cargo as specified in 49 C.F.R 393.130(c)(1).
- (2) Respondent was timely served with an NPD, alleging a violation of 49 C.F.R. 392.9(a)(1) for failing to properly secure cargo as specified in 49 C.F.R 393.130(c)(1) and that Staff intended to assess civil monetary forfeiture of \$100.
- (3) A prehearing conference was conducted on July 7, 2015, and a hearing was held on August 4, 2015.
- (4) In accordance with Ohio Adm.Code 4901:2-7-20 Staff has proven by a preponderance of the evidence that Kirila failed to properly secure its cargo, constituting a violation of 49 C.F.R. 392.9(a)(1), as specified in 49 C.F.R 393.130(c)(1).
- (5) Kirila should be assessed a \$100 forfeiture for a violation of 49 C.F.R. 392.9(a)(1) and it should pay the forfeiture within 60 days from the date of this Opinion and Order.

ORDER:

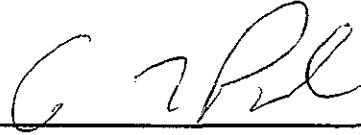
It is, therefore,

ORDERED, That Kirila Contractors, Inc. violated 49 C.F.R. 392.9(a)(1) by failing to properly secure cargo in accordance with 49 C.F.R. 393.130(c)(1). It is, further,

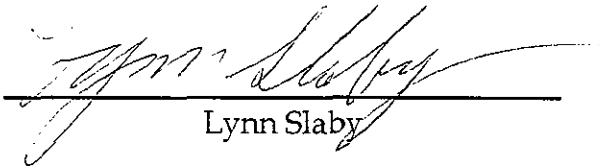
ORDERED, That Kirila pay a civil forfeiture of \$100 for a violation 49 C.F.R. 392.9(a)(1), within 60 days of this Opinion and Order. Payment shall be made by check or money order payable to the "Treasurer, State of Ohio" and mail or deliver it to the Public Utilities Commission of Ohio, Attention: Fiscal Division, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. Case number 15-908-TR-CVF and inspection number OH3225005703C 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.

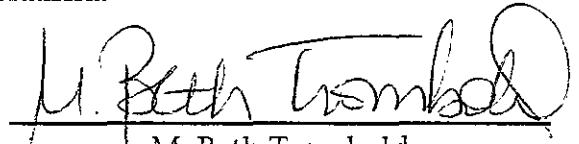
THE PUBLIC UTILITIES COMMISSION OF OHIO



Andre T. Porter, Chairman



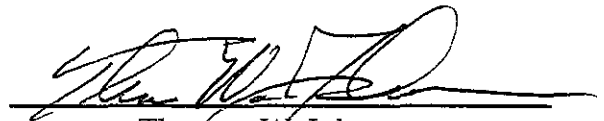
Lynn Slaby



M. Beth Trombold



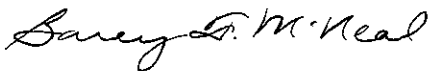
Asim Z. Haque



Thomas W. Johnson

NJW/sc

Entered in the Journal **JAN 06 2016**



Barcy F. McNeal
Secretary