

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Ted Bundschuh, Notice)	Case No. 15-1336-TR-CVF
of Apparent Violation and Intent to)	OH1239001658D
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 Ted Bundschuh in violation of 49 C.F.R. 392.16 for failing to properly use a seatbelt.

I. Procedural History

Following an inspection of a commercial motor vehicle (CMV), Ted Bundschuh (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 monetary forfeiture for a violation of the Commission's transportation rules. A prehearing conference was conducted in this case on September 9, 2015, and a hearing was held on October 29, 2015. At the hearing, Officer Michael Schneider and Tom Persinger appeared as witnesses for Staff and Mr. Bundschuh 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), 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. 49 C.F.R. provides 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.

III. Issue

The issue in this case is whether or not the driver, Mr. Bundschuh, was properly wearing his seat belt while operating a CMV, in violation of 49 C.F.R. 392.16. Staff alleges that Officer Schneider witnessed Mr. Bundschuh not properly using the seat belt. Mr. Bundschuh asserts that he was properly wearing the belt.

IV. Summary of the Evidence Presented at the Hearing

Officer Schneider explained that he has completed training regarding inspections of CMVs for violations of the FMCSR and has been doing motor carrier inspections since 1992. Further, Officer Schneider states he has been a motor carrier supervisor since 2010 (Tr. at 6-7). Officer Schneider testified that on May 22, 2015, while posted on Interstate 75, he witnessed Mr. Bundschuh drive past him. As Mr. Bundschuh drove past him, Officer Schneider stated he observed the driver wearing an orange shirt, but not any type of belt crossing his shoulder. After pulling over Mr. Bundschuh, Officer Schneider asserted he saw that he had the seatbelt properly over his lap, but the shoulder strap was under his arm. Officer Schneider averred that a three-point seat belt assembly, such as the one worn by Mr. Bundschuh, is designed to go across the lap and the shoulder. If it does not, then the seatbelt is being used improperly and the driver is in violation of 49 C.F.R. 392.16. (Tr. at 9-11.)

Tom Persinger, staff member of the Commission's Transportation Department, Compliance Division, testified regarding the assessment of forfeitures following roadside inspections. 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 14-16.)

Mr. Bundschuh testified that he was properly wearing his seat belt. He stated the belt was properly latched into place, but was naturally loose across his chest to prevent friction on his neck. Mr. Bundschuh did not dispute that he was improperly wearing the shoulder portion of the seat belt assembly across his upper arm, as opposed to across his shoulder. According to Mr. Bundschuh, the seat belt did not go under his arm until after he was pulled over, when he reached over to open the vehicle door for Officer Schneider. (Tr. at 17-19.)

V. Commission Conclusion and Order

The Commission finds that Staff has proven by a preponderance of the evidence that Mr. Bundschuh was in violation of 49 C.F.R. 392.16, which requires a driver to properly wear the seat belt assembly. We note that Officer Schneider first witnessed Mr. Bundschuh's improper use of a seat belt as the driver passed by, and then confirmed it after he approached the vehicle (Tr. at 9-10). Further, the improper use of the seatbelt assembly was the sole reason why Mr. Bundschuh was pulled over (Tr. at 10). Additionally, the sharp color contrast between the seat belt and the driver's shirt

confirmed Officer Schneider's observation regarding the violation (Tr. at 10). Therefore, based on the evidence, the Commission finds Mr. Bundschuh was in violation of 49 C.F.R. 392.16 and should be assessed a civil forfeiture of \$100. Mr. Bundschuh 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 (OH1239001658D) 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 May 22, 2015, an inspector for the Highway Patrol stopped and inspected a motor vehicle driven by Ted Bundschuh 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 September 9, 2015, and a hearing was held on October 29, 2015.
- (4) In accordance with Ohio Adm.Code 4901:2-7-20 Staff has proven by a preponderance of the evidence that Mr. Bundschuh failed to properly wear a seat belt, constituting a violation of 49 C.F.R. 392.16.
- (5) Mr. Bundschuh 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 Ted Bundschuh violated 49 C.F.R. 392.16 by failing to properly wear a seat belt while operating a commercial motor vehicle. It is, further,

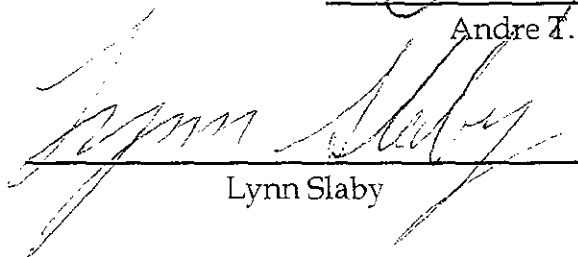
ORDERED, That Mr. Bundschuh pay a civil forfeiture of \$100 for a violation 49 C.F.R. 392.16, within 60 days of this Opinion and Order. Payment shall be made by check

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 15-1336-TR-CVF and inspection number OH1239001658D 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

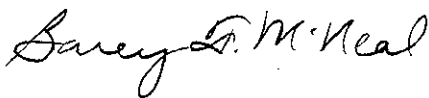

M. Beth Trombold


Asim Z. Haque


Thomas W. Johnson

NW/vrm

Entered in the Journal
FEB 24 2016


Barcy F. McNeal

Barcy F. McNeal
Secretary