

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF RONALD J. KASPEREK,
NOTICE OF APPARENT VIOLATION AND
INTENT TO ASSESS FORFEITURE.

CASE NO. 15-1428-TR-CVF
(OH3230008411D)

ENTRY

Entered in the Journal on May 25, 2016

I. SUMMARY

{¶ 1} The Commission finds that Staff's motion for default judgment should be granted and directs Ronald J. Kasperek (Mr. Kasperek) to pay the assessed forfeiture of \$500.00 within 60 days of this Entry.

II. DISCUSSION

{¶ 2} R.C. 4923.04 provides that the Commission shall adopt rules applicable to the transportation of persons or property by motor carriers operating in interstate and intrastate commerce. Pursuant to Ohio Adm.Code 4901:2-5-03(A), the Commission adopted the Federal Motor Carrier Safety Regulations for the purpose of governing transportation by motor vehicle in the state of Ohio. Further, R.C. 4923.99 authorizes the Commission to assess a civil forfeiture of up to \$25,000 per day against any person who violates the safety rules adopted by the Commission.

{¶ 3} Mr. Kasperek was served with a notice of preliminary determination (NPD), pursuant to Ohio Adm.Code 4901:2-7-12. The NPD informed Mr. Kasperek that Staff intended to assess a civil forfeiture of \$500.00 for a violation of 49 C.F.R. 392.10(a)(3), which is a violation for failing to stop at a railroad grade crossing while operating a hazardous material-placarded vehicle.

{¶ 4} On August 10, 2015, Mr. Kasperek filed a request for an administrative hearing in the above-captioned case in accordance with Ohio Adm.Code 4901:2-7-13.

{¶ 5} A prehearing settlement conference was held on August 24, 2015; however, the parties were unable to settle this matter and a hearing was initially scheduled for October 30, 2015. Thereafter, the hearing was continued at the request of Mr. Kasperek, on two separate occasions, most recently to April 1, 2016. Each Entry continuing the hearing was served on Mr. Kasperek at the address he is registered with the Commission.

{¶ 6} Ohio Adm.Code 4901:2-7-14(E) provides that a respondent who has requested an administrative hearing and fails to participate in the hearing proceeding shall be in default. The rule additionally states that a respondent in default shall be deemed to have admitted the occurrence of the violation and waived all further right to contest liability to the state for the forfeiture described in the notice.

{¶ 7} The hearing was convened, as scheduled, on April 1, 2016. Mr. Kasperek failed to appear at the hearing and, accordingly, Staff moved for a default judgment against Mr. Kasperek (Tr. at 5). Staff presented as exhibits the Driver/Vehicle Examination Report and the NPD issued to Mr. Kasperek. Staff also clarified that the NPD contained the incorrect violation classification; however, the Driver/Vehicle Examination Report in this case provides the correct classification as the commercial motor vehicle driven by Mr. Kasperek was required to be marked or placarded under 49 C.F.R. 392.10(a)(3), but was not considered a cargo tank motor vehicle, as specified under 49 C.F.R. 392.10(a)(4). Staff indicated that the Driver/Vehicle Examination Report had been revised to show the correct citation. Staff maintains that, regardless of the noted classification, the evidence shows that Mr. Kasperek was required, yet failed, to stop at the railroad grade crossing. (Tr. at 6.)

{¶ 8} In view of Mr. Kasperek's failure to participate in the hearing, Mr. Kasperek is in default, in accordance with Ohio Adm.Code 4901:2-7-14. Furthermore, the Ohio Supreme Court has held that the Commission does retain the ability to correct clerical mistakes in its records in the execution of ministerial acts. *Helle v. Pub. Util. Comm.*, 118 Ohio St. 434, 1616 N.E. 282 (1928). In our opinion, the listing of the violation code section on the examination report and the NPD, actions which were performed in the enforcement of the civil forfeitures rules, are just ministerial acts. *In re Grammer Industries, Inc.*, Case No. 07-25-TR-CVF, Opinion

and Order (Apr. 16, 2008). We, therefore, have noted the correct violation code section in this Entry. Accordingly, Staff's motion for default judgment should be granted and the recommended civil forfeiture of \$500.00 should be paid within 60 days.

{¶ 9} Pursuant to R.C. 4923.99, Mr. Kasperek is liable to the State of Ohio for payment of the assessed civil forfeiture of \$500.00. Ohio Adm.Code 4901:2-7-22 provides that payment of such forfeitures be made by certified check or money order made payable to: "Treasurer, State of Ohio" and shall be mailed or delivered to: "Fiscal Division, Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793." Mr. Kasperek should write the inspection number (OH3230008411D) on the check and shall have 60 days from the date of this Entry to pay the assessed forfeiture of \$500.00.

{¶ 10} R.C. 4905.57 provides that, at the direction of the Commission, the Attorney General shall bring a civil action in the Court of Common Pleas of Franklin County to recover an assessed forfeiture.

III. ORDER

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That Staff's motion for default judgment be granted. It is, further,

{¶ 13} ORDERED, That Mr. Kasperek pay the assessed civil forfeiture of \$500.00 within 60 days to the state of Ohio as set forth in Findings (8) and (9). It is, further,

{¶ 14} ORDERED, That the Attorney General take the appropriate action to enforce this Entry as provided by law. It is, further,

{¶ 15} ORDERED, That a copy of this Entry be served upon each party of record.

Commissioners Voting: Asim Z. Haque, Chairman; Lynn Slaby; M. Beth Trombold; Thomas W. Johnson.

MJA/sc