

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF DAVID GELDMACHER,
NOTICE OF APPARENT VIOLATION AND
INTENT TO ASSESS FORFEITURE.

CASE NO. 16-49-TR-CVF
(OH3283012140D)

OPINION AND ORDER

Entered in the Journal on June 15, 2016

I. SUMMARY

{¶ 1} The Commission, considering the applicable law and evidence of the record, finds David Geldmacher violated 49 C.F.R. 395.8(f)(1) because he did not keep a current record of duty status as a commercial motor vehicle driver.

II. PROCEDURAL HISTORY

{¶ 2} Following an inspection of a commercial motor vehicle (CMV) operated by Kuntzman Trucking, Inc. and driven by David Geldmacher (Mr. Geldmacher or 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 cite him for a violation of 49 C.F.R. 395.8(f)(1), failure to keep a current record of duty status (log book). No civil monetary forfeiture was assessed for the alleged violation. A prehearing conference was conducted on February 10, 2016, and a hearing was held on April 27, 2016. At hearing, Inspector Jill C. Fox and Jonathan Frye appeared as witnesses for Staff and Mr. Geldmacher appeared on his own behalf.

III. LAW

{¶ 3} Under Ohio Adm.Code 4901:2-5-03(A), the Commission adopted certain provisions of the Federal Motor Carrier Safety Regulations, 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. As relevant to this case, 49 C.F.R. 395.8(f)(1) provides that drivers shall keep their records of duty status current to the time shown for the last change of duty status.

IV. ISSUE

{¶ 4} The issue is whether Mr. Geldmacher complied with 49 C.F.R. 395.8(f)(1), which requires that a driver of a CMV keep a current log book. Staff alleges that Mr. Geldmacher did not have a current log book at the time of the inspection, which was necessary for him to comply with 49 C.F.R. 395.8(f)(1). Mr. Geldmacher acknowledged that he did not have an up-to-date log book, but stated that recent events occurring before the time of the inspection were contributing factors that prevented him from making current log book entries.

V. SUMMARY OF THE EVIDENCE

{¶ 5} Inspector Fox identified Staff Exhibit 1, the inspection report in this matter, and testified that, on October 1, 2015, at 9:24 A.M., she stopped the truck driven by Mr. Geldmacher for a CMV inspection near Upper Sandusky, Ohio, at Mile Post 21 on U.S. Route 30. Inspector Fox testified that, upon inspecting Mr. Geldmacher's log book, she immediately determined that there were no log book entries for October 1, 2015, and that the last entry in Mr. Geldmacher's log book showed him on duty near North Canton, Ohio on September 30, 2015, at 4:00 P.M. (Tr. at 10-12; Staff Ex. 1.)

{¶ 6} Mr. Geldmacher did not dispute Inspector Fox's testimony. He explained that he was distracted and angry because of an incident, which had occurred prior to the day of the inspection, involving the theft of his antique tool collection and that, because of the overcast weather conditions on the day of the inspection and a non-functioning flashlight in his truck, he could not see adequately in order to fill out his log book. Mr. Geldmacher testified that he told Inspector Fox, at the time of the inspection, that he was

proceeding to a lighted location, a nearby restaurant, to fill out his log book. (Tr. 14, 17-21, 25-30.)

{¶ 7} Jonathan Frye, compliance officer with the Commission's motor carrier compliance division, identified Staff Exhibit 2, the NPD that was sent to Mr. Geldmacher notifying him of the violation in this matter (Tr. at 14-16).

VI. COMMISSION CONCLUSION

{¶ 8} Per 49 C.F.R. 395.8(f)(1), all drivers are required to keep up-to-date log books. If, when an inspection begins, a driver's log book is not current, the driver will be found in violation of 49 C.F.R. 395.8(f)(1). In this case, Mr. Geldmacher admitted that he did not have an up-to-date log book (Tr. at 13-14). Considering this admission by Mr. Geldmacher, and Inspector Fox's testimony during the hearing that Mr. Geldmacher's last log book entry was for September 30, 2015, the day before the inspection (Tr. at 10-12), it is obvious that Mr. Geldmacher was, in fact, not in compliance with 49 C.F.R. 395.8(f)(1) when he was stopped. We thus find that, based on a preponderance of the evidence, Staff has proven that Mr. Geldmacher violated 49 C.F.R. 395.8(f)(1) by failing to keep a current log book record.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 9} On September 21, 2015, Motor Carrier Enforcement Inspector Jill C. Fox stopped and inspected a CMV driven by Mr. Geldmacher and found a violation of the Commission's transportation regulations, 49 C.F.R. 395.8(f)(1), failing to keep a current log book record while driving a CMV.

{¶ 10} Mr. Geldmacher was timely served with an NPD listing a civil forfeiture of \$0.00 for violation of 49 C.F.R. 395.8(f)(1), failing to keep a current log book record while driving a CMV.

{¶ 11} A prehearing conference was conducted on February 10, 2016, and a hearing was held on April 27, 2016.

{¶ 12} Ohio Adm.Code 4901:2-7-20 requires that, at hearing, Staff prove the occurrence of a violation by a preponderance of the evidence.

{¶ 13} Based upon the record in this proceeding, the Commission finds that Staff has proven, by a preponderance of the evidence, that Mr. Geldmacher violated 49 C.F.R. 395.8(f)(1) by not keeping an up-to-date log book on the day of the inspection.

{¶ 14} No civil forfeiture was assessed in this matter for violation of 49 C.F.R. 395.8(f)(1).

VIII. ORDER

{¶ 15} It is, therefore,

{¶ 16} ORDERED, That the violation of 49 C.F.R. 395.8(f)(1) by the Respondent be listed in the Commission's Safety Net record and the Respondent's history of violations. It is, further,

{¶ 17} ORDERED, That a copy of this Opinion and Order be served upon each party of record.

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

KKS/vrm