

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF CHARLIE WASAYA,
NOTICE OF APPARENT VIOLATION AND
INTENT TO ASSESS FORFEITURE.**

**CASE NO. 15-1049-TR-CVF
(OH3229011733D)**

OPINION AND ORDER

Entered in the Journal on September 29, 2016

I. SUMMARY

{¶ 1} The Commission finds Charlie Wasaya in violation of the Commission's transportation rules for operating an out-of-service commercial motor vehicle and directs him to pay the assessed civil forfeiture.

II. PROCEDURAL HISTORY

{¶ 2} Following an inspection of a commercial motor vehicle (CMV), Charlie Wasaya (Respondent) was timely served with a Notice of Preliminary Determination (NPD) in accordance with Ohio Adm.Code 4901:2-7-12, notifying the Respondent that he had violated 49 C.F.R. 396.9(c)(2) for operating an out-of-service CMV and that Staff intended to assess a \$2,500 civil forfeiture for the violation. A prehearing conference was conducted in this case on July 16, 2015, and a hearing was held on April 14, 2016. At the hearing, Inspector Melanie Kurtz and Inspector Harold Emnett appeared as witnesses for Staff, while the Respondent testified 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 (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. 49 C.F.R. 393.207(b) requires that all adjustable axle assemblies shall not have locking pins missing or disengaged. Further, pursuant to

49 C.F.R. 396.9(c)(2), no person shall operate any CMV declared and marked out-of-service until all repairs required by the out-of-service notice have been satisfactorily completed. Finally, 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.

IV. ISSUE

{¶ 4} Initially, the parties stipulated that the Respondent received the NPD and the forfeiture amount of \$2,500 was properly calculated. Accordingly, there is only one issue to resolve in this case: whether Staff satisfied its burden to show, by a preponderance of the evidence, that Respondent operated a CMV declared and marked out-of-service, before all repairs required by the out-of-service notice had been satisfactorily completed, in violation of 49 C.F.R. 396.9(c)(2).

V. SUMMARY OF THE EVIDENCE

{¶ 5} Initially, Staff presented the testimony of Melanie Kurtz, a Motor Carrier Enforcement Inspector with the Ohio State Highway Patrol (Patrol). On January 21, 2015, Inspector Kurtz was working at the southbound scales, which is a CMV weigh station, on Interstate 75 near mile marker 162 (Tr. at 7, 10). She indicated that she stopped the Respondent for having lights that were not functioning properly (Tr. at 7; Staff Ex. 1). She then conducted a Level II walk-around inspection, observed three violations of 49 C.F.R. 393.207(b) because three out of four axle locking pins on the Respondent's CMV were missing or disengaged, and placed the Respondent's CMV out-of-service. She noted that missing or disengaged axle pins can cause the axle on a CMV to slide, causing the tandem axles to come out and that "[a]ll the pins have to be in. If even one pin is out, it's a violation." (Tr. at 7, 10-12, 17; Staff Ex. 1). She testified that when she places a CMV out-of-service, she explains the violation to the driver, puts a bright orange out-of-service sticker on the CMV, and then fills out an inspection report (Tr. at 12; Staff Ex. 1). She stated that she explained to the Respondent that all of the out-of-service violations must be corrected before he could leave the scales, and that only once all four of the pins were repaired could the Respondent remove the out-of-service sticker (Staff Ex. 1, Inspection Notes). She explained that on many occasions, repairs must be performed at the

scales and, in this case, the required repairs would necessitate welding and many other tools the Respondent would not have available. She advised the Respondent that in the building at the scales is a list of service companies he could call to make the repairs. She further stated that she never observed any vehicles come to repair the Respondent's CMV and she never told the Respondent that he could leave the weigh station after two pins were engaged on his CMV (Tr. at 12, 70, 72). She further testified that because the CMV was at a safe location, she would not escort him to a repair facility and instead directed the Respondent to move the CMV to a corner of the parking lot (Tr. at 13, 18). Soon thereafter, she observed the Respondent drive past the front of the scales and proceed to leave the weigh station and drive onto the highway, even though the CMV had been placed out-of-service (Tr. at 13, 15). She noted that the scales have green lights and a speaker, but the lights are always green and re-inspections are not performed when a driver proceeds across the scales a second time (Tr. at 73).

{¶ 6} Staff then presented Harold Emnett, who is also a Motor Carrier Enforcement Inspector and has been with the Patrol for over 25 years (Tr. at 19). He indicated he was also working at the southbound scales on Interstate 75 on January 21, 2015 (Tr. at 20). Inspector Emnett testified that Inspector Kurtz advised him that the Respondent was leaving the scales prior to correcting the out-of-service violations for which he had just recently been cited. Inspector Emnett explained that he followed the Respondent down the ramp from the scales and pulled him over as he was entering back onto Interstate 75. Inspector Emnett testified that he pulled the Respondent over on Interstate 75 just south of the weigh station to conduct a follow-up inspection to determine if the out-of-service violations had been corrected (Tr. at 21, 23-24, 31).¹ Inspector Emnett conducted a Level II walk-around inspection of the Respondent's CMV and recognized two violations of 49 C.F.R. 393.207(b) for having two axle locking pins missing or disengaged (Tr. at 24, 29; Staff Ex. 2). Additionally, Inspector Emnett cited the Respondent for a violation of 49 C.F.R. 396.9(c)(2) for operating a CMV declared and marked out-of-service before all repairs required by the out-of-service notice had been satisfactorily

¹ The entrance and exit ramps are part of the traveled roadway. The ramps are not part of the scales, the scales building, platform, or parking lot behind the scales (Tr. at 79).

completed (Staff Ex. 2). Further, Inspector Emmett observed the out-of-service sticker torn in half and resting in the cab of the Respondent's CMV (Tr. at 25-26). He explained that, according to CVSA policy, he then escorted the Respondent to the nearest truck stop, about 25 miles, to make the necessary repairs for the out-of-service violations because he could not have backed up to the scales, which would have been illegal (Tr. at 27, 77).

{¶ 7} The Respondent testified that when he picked up the trailer, he conducted a pre-trip check (Tr. at 33). During this pre-trip check he confirmed that all of the lights were functioning properly and all of the interlocking axle pins were functional and working (Tr. at 34). He explained that, while he was driving, he saw the scales open and got in line with the other CMVs to enter the weigh station (Tr. at 35). He testified that Inspector Kurtz directed him to pull around the weigh station for a safety inspection. He then assisted her with the inspection by operating his lights and other functions while she conducted the inspection (Tr. at 37). He claimed the lights on his CMV were functional when he conducted his pre-trip check; however, there was a wiring issue causing the lights to malfunction temporarily, but the lights came back on when he moved some of the wiring (Tr. at 39). He alleged that he discussed the interlocking pin violations with Inspector Kurtz and had a misunderstanding regarding whether he could return to service after getting two of the pins engaged (Tr. at 40-41). The Respondent then testified that Inspector Kurtz provided him a copy of the Driver/Vehicle Examination Report, which he did not sign. Instead of signing the report, he wrote "Go to T.A." (Tr. at 41; Resp. Ex. 1). He testified that there was no way he could get all of the axle locking pins functioning, so he intended to proceed to a T.A. truck stop or repair facility (Tr. at 41-42). He testified that he then removed the out-of-service sticker because it was his understanding that if he could get two of the four interlocking axle pins engaged he could remove the out-of-service sticker and return to service (Tr. at 42). He testified that it would not have been possible for him to repair the remaining two pins while at the weigh station (Tr. at 43). He testified that he corrected the problem as best he could so that he could proceed to a repair shop and he claimed that Inspector Kurtz advised him that if he could correct two of the violations he could proceed to a repair facility (Tr. at 43-44).

{¶ 8} He noted that after repairing the axle locking pins to the best of his ability, he returned to the scales and was given a green light to proceed through to the highway. However, after proceeding through the scales, he was subsequently pulled over by Inspector Emnett (Tr. at 44). He testified that he spoke with Inspector Emnett and told him that he had the torn out-of-service sticker in the cab with him (Tr. at 46). He acknowledged that Inspector Emnett issued him a Driver/Vehicle Examination Report containing the violations of 49 C.F.R. 396.9(c)(2) (Resp. Ex. 2). The Respondent testified that Inspector Emnett then escorted him to a repair facility, about 30 miles from the stop, which repaired the CMV (Tr. at 49-52; Resp. Ex. 4). The repairs to the Respondent's CMV included fixing the lighting, which had some wiring that was cut, and straightening out the frame of the CMV, which was bent (Tr. at 52-57; Resp. Ex. 4). The Respondent stated that the repairs took approximately five to six hours, and thereafter, Inspector Emnett, the Respondent, and the repair facility signed a Driver/Vehicle Examination Report indicating that the repairs had been conducted (Tr. at 53, 62; Resp. Ex. 3).

VI. CONCLUSION

{¶ 9} The Commission finds that Staff has proven by a preponderance of the evidence that Respondent operated a CMV declared and marked out-of-service before all repairs required by the out-of-service notice had been satisfactorily completed, in violation of 49 C.F.R. 396.9(c)(2). The evidence demonstrates the Respondent's CMV was inspected and placed out-of-service by Inspector Kurtz for three violations of 49 C.F.R. 393.207(b) for having three disengaged axle locking pins (Tr. at 10; Staff Ex. 1; Resp. Ex. 1). The Respondent was then informed that he was required to repair all of the disengaged axle locking pins prior to proceeding onto the roadway and returning to service. The evidence demonstrates that extensive repairs were necessary to engage all of the axle locking pins and return the CMV to service, as the frame was bent and required being cut before being welded back together (Tr. at 52, 54-56; Resp. Ex. 4). However, the Respondent repaired only one of the three axle locking pins, removed the out-of-service sticker, and then proceeded onto the public roadway to enter Interstate 75 (Tr. at 13, 15, 21, 23-24, 31, 42-44).

{¶ 10} Initially, we find no merit to the Respondent's claim that he believed he only had to repair one of the axle pins. The evidence shows that Inspector Kurtz clearly explained to the Respondent that all of the out-of-service violations must be corrected before leaving the scales, and that only after all of the out-of-service violations were repaired could he remove the out-of-service sticker and proceed onto the roadway (Tr. at 70-72). The evidence shows that the Respondent both proceeded onto the public roadway and removed the out-of-service sticker before all of the repairs were made (Tr. at 21, 23-24, 31). Further, as to the Respondent's claim that he saw a green light and thought that indicated he was permitted to proceed, we also find no merit. Inspector Kurtz testified that the light is always green and has nothing to do with re-inspections (Tr. at 72-73). Further, the Respondent had no basis for leaving the scales or removing the out-of-service sticker until all of the repairs were performed. Lastly, as the parties stipulated that the forfeiture amount of \$2,500 was properly calculated for a violation of 49 C.F.R. 396.9(c)(2), we accept the amount of the forfeiture recommended by Staff.

{¶ 11} Accordingly, based on the evidence, the Commission finds that Staff has demonstrated by a preponderance of the evidence that the Respondent was in violation of 49 C.F.R. 396.9(c)(2).

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 12} On January 21, 2015, an inspector for the Patrol stopped and inspected a CMV operated by Respondent and found multiple violations and declared and marked the Respondent's CMV out-of-service. Thereafter, the Patrol again stopped and inspected the CMV operated by the Respondent and found the Respondent to be in violation of 49 C.F.R. 396.9(c)(2) for operating a CMV declared and marked out-of-service before all repairs required by the out-of-service notice had been satisfactorily completed.

{¶ 13} The Respondent was timely served with an NPD, alleging a violation of 49 C.F.R. 396.9(c)(2) and providing that Staff intended to assess a civil monetary forfeiture totaling \$2,500.

{¶ 14} A prehearing conference was conducted on July 16, 2015, and a hearing was held on April 14, 2016.

{¶ 15} The Commission finds that Staff has proven by a preponderance of the evidence a violation of 49 C.F.R. 396.9(c)(2) for operating a CMV declared and marked out-of-service before all repairs required by the out-of-service notice had been satisfactorily completed.

{¶ 16} The Commission finds that the Respondent should be assessed the \$2,500 forfeiture for a violation of 49 C.F.R. 396.9(c)(2) and should pay the forfeiture within 60 days from the date of this Opinion and Order.

VIII. ORDER

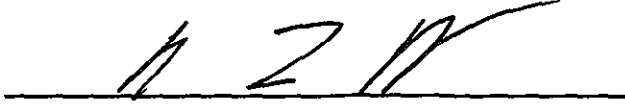
{¶ 17} It is, therefore,

{¶ 18} ORDERED, That Charlie Wasaya violated 49 C.F.R. 396.9(c)(2) for operating a CMV declared and marked out-of-service before all repairs required by the out-of-service notice had been satisfactorily completed. It is, further,

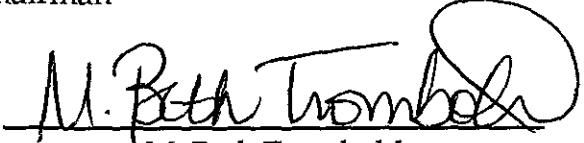
{¶ 19} ORDERED, That Mr. Wasaya pay a civil forfeiture totaling \$2,500 for a violation of 49 C.F.R. 396.9(c)(2), within 60 days of this Opinion and Order. Payment shall be made by check or money order payable to the "Treasurer, State of Ohio" and mail or deliver it to the Public Utilities Commission of Ohio, Attention: Fiscal Division, 180 East Broad Street, 4th Floor, Columbus, Ohio 43216-3793. Case No. 15-1049-TR-CVF and inspection number OH3229011733D should be written on the face of the check or money order. It is, further,

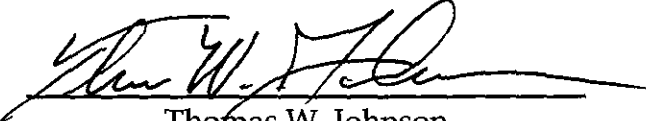
{¶ 20} ORDERED, That a copy of this Opinion and Order be served upon all parties in this proceeding.


THE PUBLIC UTILITIES COMMISSION OF OHIO


Asim Z. Haque, Chairman


Lynn Slaby


M. Beth Trombold

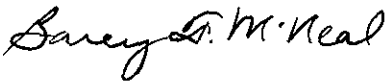

Thomas W. Johnson


M. Howard Petricoff

BAM/sc

Entered in the Journal

SEP 29 2016


Barcy F. McNeal

Barcy F. McNeal
Secretary