

## **THE PUBLIC UTILITIES COMMISSION OF OHIO**

**IN THE MATTER OF YEAH MAN TRUCKING,  
INC., NOTICE OF APPARENT VIOLATION  
AND INTENT TO ASSESS FORFEITURE.**

**CASE NO. 15-1679-TR-CVF  
(OH3263001812C)**

### **OPINION AND ORDER**

Entered in the Journal on September 29, 2016

#### **I. SUMMARY**

{¶ 1} The Commission finds Yeah Man Trucking, Inc. in violation of the Commission's transportation rules for operating a commercial motor vehicle with a flat tire.

#### **II. PROCEDURAL HISTORY**

{¶ 2} Following an inspection of a commercial motor vehicle (CMV), Yeah Man Trucking, Inc. (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 it had violated 49 C.F.R. 393.48(a) for operating a CMV with brakes incapable of operating and 49 C.F.R. 393.75(a) for having a flat tire, and that Staff intended to assess a \$0.00 civil forfeiture for the violations (Staff Ex. 1). A prehearing conference was conducted in this case on December 3, 2015, and a hearing was held on March 8, 2016. At the hearing, Trooper Douglas Mowen and Sergeant Yvonne Thorne appeared as witnesses for Staff, while Dane Buckingham appeared on behalf of the Respondent.

#### **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. Pursuant to 49 C.F.R. 393.48(a), "all brakes with which a motor vehicle is equipped must at all times be capable of operating." Further, 49 C.F.R.

383.75(a) provides that no CMV shall be operated on any tire that is flat or has an audible leak. 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 to the violation of 49 C.F.R. 383.75(a) for operating a CMV with a flat tire. Further, the parties stipulated that the Respondent received the NPD. 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 was operating a CMV with brakes that were not capable of operating, in violation of 49 C.F.R. 393.48(a).

#### V. SUMMARY OF EVIDENCE

{¶ 5} Staff presented the testimony of Trooper Douglas Mowen, who is a Motor Carrier Enforcement Supervisor with the Ohio State Highway Patrol (Patrol). Trooper Mowen testified that on June 7, 2015, he was called on duty around 7:00 a.m. to a crash site on Interstate 70 (Tr. at 6-7). At 7:30 a.m., Trooper Mowen started a Level 2 inspection of the Respondent's CMV, which entails checking the lights, paperwork, and a walk-around of the vehicle (Tr. at 9-10; Staff Ex. 2). The Respondent's CMV was a dump-truck that had been hit by another CMV. Trooper Mowen testified that when he observed the CMV, he saw the brake chamber hanging, which he determined was a result of missing bolts from where the brake chamber connects into the mounting bracket (Tr. at 12). Trooper Mowen testified that if the brake chamber is just hanging, it could cause the brakes to not work effectively, or it could cause the pushrod to break off of the CMV (Tr. at 12-13). However, Trooper Mowen testified that the brakes would still work, though they may not work as efficiently as they should (Tr. at 16). On cross examination, Trooper Mowen testified that he first observed the hanging brake chamber when he pulled up to the vehicle, and that he remembers the vehicle having mud-flaps just behind each of the rear wheels (Tr. at 22). He then testified that he did not inspect under the vehicle or crawl beneath it (Tr. at 22). Upon further cross examination, Trooper Mowen testified that the brakes would work, but maybe not to their maximum effect (Tr. at 26-27). Further, Trooper Mowen did not perform any testing to determine the effectiveness of the brakes (Tr. at 27).

{¶ 6} Staff then presented Sergeant Yvonne Thorne, who is Commercial Enforcement Coordinator and Sergeant in Charge of the CMV section of the Patrol. Sergeant Thorne has been with the Ohio State Highway Patrol for 28 years and in the CMV section since 2010. Sergeant Thorne testified that on July 7, 2015, she was in her patrol car when she heard that there was a fatal accident involving a CMV, so she went directly to the accident scene and called Inspector Mowen to conduct a motor carrier inspection. She testified that the fatal accident involved a commercial tractor-trailer striking a pedestrian and then the CMV in this case (Tr. at 33). Sergeant Thorne testified that she was on location because she was working an off-duty specialty position for a construction company to provide law enforcement protection on the interstate during construction work (Tr. at 32). She testified that she assisted during Inspector Mowen's inspection of the Respondent's CMV. She observed minor damage to the front left (driver-side) corner of the dump truck, damage to the front bumper, and debris from a broken turn signal lens (Tr. at 34). Further, she observed the brake chamber at issue in this case. In her words, the brake chamber "appeared to be hanging down, but with the pushrod it was still somewhat connected." However, she testified that it was not connected to the mounting bracket on the axle (Tr. at 34). She then testified that there was no damage to the rear of the CMV and that, in her opinion, the accident with the commercial tractor-trailer could not have caused the violation (Tr. at 35). Additionally, she testified that, in her opinion, the brake can still function properly if it is not connected to the mounting bracket, but if the chamber were to break off the brake would probably not function properly (Tr. at 36). On cross examination, she testified that without going underneath the vehicle or watching the brakes being applied, she could not say whether the brakes were capable of operating as they were (Tr. at 37).

{¶ 7} Thereafter, Dane Buckingham testified on behalf of the Respondent. He is the owner of Yeah Man Trucking, Inc. and has owned the company since it was incorporated in 2009. He testified that he was there at the scene of the accident because the Respondent's dump trucks were assisting with the construction work by hauling away old asphalt after it was milled from the ground (Tr. at 40). He testified that the trucks used by the Respondent have modified brake chambers installed to prevent damage to the trucks when they are being

pushed by a paver. When the Respondent's trucks go to a paving crew, the paver pushes the trucks in the rear while it mills the asphalt, so Mr. Buckingham welds brackets to the original axle to stiffen the brake chambers so they don't bend (Tr. at 41). He testified the brakes on the CMV in this case were operative prior to the inspection, and all of the brakes were operative when he subsequently drove the truck away to the tow yard (Tr. at 42). Further, even though he welds brackets to the axle to prevent damage from a paver, the CMV in this case was not being pushed by a paver prior to the inspection (Tr. at 56). Finally, he testified that to see the brake chamber, someone would need to lift the mud-flaps and get down low enough to see beneath the CMV (Tr. at 49-50).

## VI. COMMISSION CONCLUSION

{¶ 8} The Commission finds that Staff has not proven by a preponderance of the evidence that Respondent was in violation of 49 C.F.R. 393.48(a) for operating a CMV with brakes incapable of operating. Pursuant to 49 C.F.R. 393.48(a), all brakes with which a motor vehicle is equipped must at all times be capable of operating. The evidence in this case demonstrates that the brakes were capable of operating. Initially, Trooper Mowen testified that even if the brake chamber was hanging, the brakes would still work (Tr. at 12). Further, Trooper Mowen later testified that the brakes would work, just potentially not to their maximum effect (Tr. at 26-27). Sergeant Thorne also testified that the brake could still function properly if it were not connected to the mounting bracket (Tr. at 36). Similarly, the Respondent testified that each of the brakes on the CMV were operable (Tr. at 42). As noted above, 49 C.F.R. 393.48(a) provides that "all brakes with which a motor vehicle is equipped must at all times be *capable of operating*" (emphasis added). In this case, all three witnesses testified that the brakes were capable of operating. Further, the Respondent also testified that there were additional parts welded to the CMV to prevent it from being damaged by a paver, which we find could reasonably have led the inspectors to mistake for a broken brake chamber. Finally, Sergeant Thorne acknowledged that, without going underneath the Respondent's CMV or watching the brakes being applied, she could not say whether the brakes were capable of

operating, and both Sergeant Thorne and Trooper Mowen acknowledged that they did not inspect the brakes to observe whether they were operable or capable of operating. (Tr. at 37.)

{¶ 9} Accordingly, based on the evidence and testimony submitted at the hearing in this case, the Commission finds that Staff has not demonstrated by a preponderance of the evidence that the Respondent was in violation of 49 C.F.R. 393.48(a). However, the Commission accepts the parties' stipulation to the violation of 49 C.F.R. 383.75(a) for driving a CMV with a flat tire.

## VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 10} On June 7, 2015, an inspector for the Ohio State Highway Patrol stopped and inspected a CMV operated by Respondent and found it to be in violation of 49 C.F.R. 393.48(a) for brakes incapable of operating and 49 C.F.R. 393.75(a) for having a flat tire.

{¶ 11} The Respondent was timely served with an NPD, alleging violations of 49 C.F.R. 393.48(a) and 49 C.F.R. 383.75(a) and providing that Staff intended to assess civil monetary forfeiture totaling \$0.00.

{¶ 12} A prehearing conference was conducted on December 3, 2015, and a hearing was held on March 8, 2016. At the hearing, Respondent stipulated to the violation of 49 C.F.R. 393.75(a) for having a flat tire.

{¶ 13} The Commission finds that Staff has not proven by a preponderance of the evidence a violation of 49 C.F.R. 393.48(a) for having brakes that are incapable of operating. At the hearing, Staff did not demonstrate by a preponderance of the evidence that the Respondent's brakes were incapable of operating.

{¶ 14} The Commission finds that the Respondent should be assessed the \$0.00 forfeiture for a violation of 49 C.F.R. 383.75(a) for operating a CMV with a flat tire.

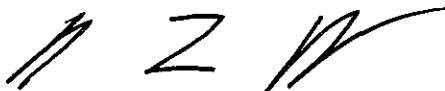
## VIII. ORDER

{¶ 15} It is, therefore,


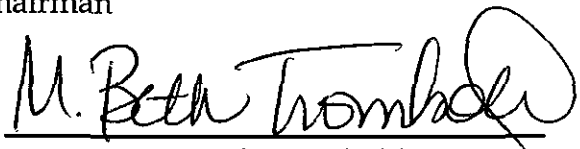
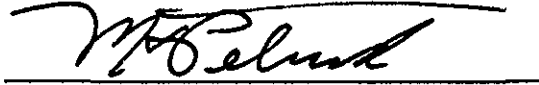
{¶ 16} ORDERED, That Yeah Man Trucking, Inc. violated 49 C.F.R. 383.75(a) by operating CMV with a flat tire. It is, further,

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

## THE PUBLIC UTILITIES COMMISSION OF OHIO

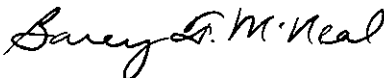


Asim Z. Haque, Chairman

  
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BAM/sc

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SEP 29 2016Barcy F. McNeal  
Secretary