

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF BRUCE HENRY,
NOTICE OF APPARENT VIOLATION AND
INTENT TO ASSESS FORFEITURE.**

CASE NO. 16-1873-TR-CVF

ENTRY

Entered in the Journal on November 30, 2016

{¶ 1} By Entry issued October 28, 2016, a hearing was scheduled for December 5, 2016.

{¶ 2} On October 31, 2016, Bruce Henry (Respondent) filed objections and motions regarding an alleged violation of 49 C.F.R. 16, failure to use seat belt while operating a commercial motor vehicle (CMV).

{¶ 3} On November 7, 2016, Respondent filed a motion for production of all documents that will be used by Staff at hearing, and a copy of the inspection notes written by Trooper Rodney Ramps, as disseminated to Cheryl Streets and John Jones.

{¶ 4} On November 8 and 15, 2016, respectively, Staff filed a memorandum contra Mr. Henry's objections and motions, and a memorandum contra his motion for production of documents.

{¶ 5} Respondent did not file reply memoranda to either of Staff's memoranda contra.

{¶ 6} In his October 31, 2016 filing, Mr. Henry raises multiple motions and requests. First, Mr. Henry moves to strike the alleged violation "based on traffic signage, based on failure to bring said case in the jurisdiction in which the alleged violation occurred."

{¶ 7} In response, Staff contends that proper venue and jurisdiction are with the Commission. Staff explains that the Commission regulates operation of CMVs and

has, pursuant to pursuant to Ohio Adm.Code Chapter 4901:2-5, adopted the Federal Motor Carrier Safety Rules (FMCSR). Further, Staff adds, Ohio State Highway Patrol (OSHP) employees may, under R.C. 4923.06, conduct inspections of motor vehicles and drivers to enforce the FMCSR, and pursuant to R.C. 4923.99, the Commission has statutory power to assess monetary forfeitures for rules violations. Staff asserts that the Commission can only exercise jurisdiction conferred by the General Assembly, and neither R.C. Title 49 nor R.C. Chapter 4923 provide for a jury trial to contest a civil forfeiture.

{¶ 8} It is not clear what Mr. Henry means when he requests to strike the alleged violation “based on traffic signage.” In addition, as stated by Staff, the Commission regulates operation of CMVs via adoption of the FMCSR, which are enforced by the OSHP through CMV and driver inspections. Therefore, proper venue for the hearing regarding Respondent’s alleged violation is with the Commission. Respondent’s motion is denied.

{¶ 9} Second, Mr. Henry moves that venue for the case be changed to Mahoning County court, which is “a regular court of jurisdiction in which the alleged violation occurred.”

{¶ 10} Staff’s response to Respondent’s second motion is summarized in Paragraph 7.

{¶ 11} Mr. Henry’s motion to change venue to a court where the violation occurred is denied, for reasons specified in the second and third sentences of Paragraph 8.

{¶ 12} Third, Respondent moves that the hearing for the alleged violation take place in Federal civil court, because the \$100 civil forfeiture exceeds the \$20 Seventh Amendment threshold for a jury trial.

{¶ 13} Staff's response to Respondent's third motion is summarized in Paragraph 7.

{¶ 14} Mr. Henry's motion to change venue to a Federal court is denied, for reasons specified in the second and third sentences of Paragraph 8.

{¶ 15} Fourth, Mr. Henry moves that the hearing venue be changed to Federal civil court, given his right to a jury trial under the Seventh Amendment, and because the Commission "disallows a jury trial under state law for all charges under \$1,000 while prosecuting under a Federal Law (392.16)."

{¶ 16} Staff's response is summarized in Paragraph 7.

{¶ 17} Although Mr. Henry asserts that the Commission does not allow a jury trial when the fine is less than \$1,000, he fails to cite a statute or rule as a basis for his contention. For this reason, and the reasons stated in the second and third sentences of Paragraph 8, Respondent's motion is denied.

{¶ 18} Fifth, Mr. Henry moves to suspend execution of sentence pending appeal, because he "will appeal any adverse decision."

{¶ 19} Staff responds that the hearing is scheduled for December 5, 2016, and a decision is not expected until sometime in 2017. Thus, contends Staff, Respondent's motion is premature and should be denied.

{¶ 20} Mr. Henry's motion to suspend execution of sentence is premature, because the hearing has not taken place and a decision has not been issued. Therefore, Mr. Henry's motion is denied.

{¶ 21} Sixth, Mr. Henry moves to strike Trooper Ramps' notes from the record "based on the self-serving narrative submitted to the PUCO."

{¶ 22} Staff did not respond to Respondent's motion to strike Trooper Ramps' notes from the record.

{¶ 23} The attorney examiner observes that the record from which a Commission decision will be issued will consist of testimony given and evidence presented at the hearing. The hearing has not yet taken place. Mr. Henry's motion to strike is moot and is denied.

{¶ 24} Seventh, Respondent moves that Trooper Ramps' notes contained in the driver/vehicle examination report be disallowed at hearing as they are a "false and misleading narrative of events * * *."

{¶ 25} Staff contends that Trooper Ramps recorded the notes at the time that he conducted the inspection of Mr. Henry. Thus, adds Staff, the notes "go to the weight of the evidence to be considered by the Commission in this case," and the motion should be denied.

{¶ 26} The Commission will consider all evidence and testimony offered by both parties at hearing before issuing a decision on the alleged violation. If Mr. Henry indeed believes that the notes are "false and misleading," he will have the opportunity to explain further at the hearing. Therefore, Respondent's motion to exclude Trooper Ramps' notes at the hearing is denied.

{¶ 27} Eighth, Respondent requests production of documents concerning Trooper Ramps' qualifications, pursuant to 49 CFR 396.17 and 49 CFR 396.19.

{¶ 28} Staff asserts that no such records for Trooper qualifications exist or are available at the Commission offices.

{¶ 29} The attorney examiner notes that Mr. Henry's reference to 49 C.F.R. 396.17 actually concerns CMV inspections performed by the motor carrier, while

49 C.F.R. 396.19 concerns the motor carrier's responsibility to ensure that individuals performing the annual CMV inspection comply with certain criteria. Clearly, the motor carrier did not perform the inspection that led to Respondent's alleged violation. Further, Ohio Adm.Code 4901-1-20(A)(2) states that a party may serve a written request upon another party to "produce for inspection * * * any tangible things which are in the possession * * * of the party upon whom the request is served." The attorney examiner notes Staff's contention that no such records exist at the Commission offices. Indeed, Trooper Ramps is employed by the OSHP, not the Commission. For the foregoing reasons, Respondent's motion is denied.

{¶ 30} Ninth, Mr. Henry moves for sanctions against several Staff members who discussed the case with him during conference calls. Respondent asserts that the Staff members provided "false and misleading information," and one Staff member "yelled racial epithets" at Mr. Henry during a conference.

{¶ 31} Staff responds that it is not the finder of fact and that no decision was made on the merits of Respondent's case by Staff. Staff contends that Respondent's allegations concerning false information and racial epithets are unsupported and have no merit.

{¶ 32} The attorney examiner reemphasizes that Mr. Henry will have his opportunity at hearing to dispute Staff's contentions regarding the alleged violation. Further, the purpose of the December 5, 2016 hearing will be to create a record from which a Commission decision will be issued concerning the alleged violation. Thus, this proceeding is not the forum in which to request "sanctions," and Respondent's motion is denied.

{¶ 33} Respondent's November 7, 2016 motion is for production of documents, specifically a copy of Trooper Ramps' written notes, to be used by Staff at the December 5, 2016 hearing.

{¶ 34} In reply, Staff states that on November 8, 2016, it mailed to Mr. Henry the driver/vehicle examination report and the notice of preliminary determination that Staff expects to introduce and use at the hearing. Staff adds that the driver/vehicle examination report includes Trooper Ramps' notes.

{¶ 35} Given that Staff has responded to the request for production of documents, Respondent's motion is moot and is denied.

{¶ 36} It is, therefore,

{¶ 37} ORDERED, That Mr. Henry's motions are denied. It is, further,

{¶ 38} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/James Lynn

By: James M. Lynn
Attorney Examiner

JRJ/sc

This foregoing document was electronically filed with the Public Utilities

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Case No(s). 16-1873-TR-CVF

Summary: Attorney Examiner Entry denying Mr. Henry's motions filed on 10/31/2016 and 11/7/2016. - electronically filed by Sandra Coffey on behalf of James Lynn, Attorney Examiner, Public Utilities Commission of Ohio