

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF IMEDA LONDARIDZE
AND BLUE WAY TRANSPORT, LLC,
NOTICE OF APPARENT VIOLATION AND
INTENT TO ASSESS FORFEITURE.

CASE NO. 16-1233-TR-CVF
(OH32161007850D)
(OH32161007850C)

OPINION AND ORDER

Entered in the Journal on November 30, 2016

I. SUMMARY

{¶ 1} The Commission finds that Imeda Londaridze violated the Commission's rules by not possessing a commercial driver's license while operating a commercial motor vehicle, and that Blue Way Transport, LLC, violated the Commission's rules by operating a commercial motor vehicle with improper brakes and identification markings.

II. PROCEDURAL HISTORY

{¶ 2} Following an inspection of a commercial motor vehicle (CMV), operated by Blue Way Transport, LLC (Blue Way or Respondent) and driven by Blue Way's owner, Imeda Londaridze (Mr. Londaridze or Respondent), Mr. Londaridze and Blue Way were each timely served with a Notice of Preliminary Determination (NPD) in accordance with Ohio Adm.Code 4901:2-7-12. The NPD served on Mr. Londaridze (Staff Exhibit 4) stated that Staff intended to assess him a civil forfeiture of \$250 for a violation of 49 C.F.R. 391.11(b)(5), no commercial driver's license (CDL) for the CMV being operated. The NPD served on Blue Way (Staff Exhibit 5) stated that Staff intended to assess Blue Way civil forfeitures totaling \$150 for violations of 49 C.F.R. 393.43, improper breakaway or emergency braking, and 49 C.F.R. 390.21(b), United States Department of Transportation (USDOT) number not displayed as required. A prehearing conference was conducted in this case on July 6, 2016, and a hearing was held on August 25, 2016. At the hearing, Mr. Londaridze, on behalf of Blue Way, stipulated to the occurrence of the CMV braking and USDOT marking violations, 49 C.F.R. 393.43 and 49 C.F.R. 390.21(b), respectively. Testifying at the hearing were Inspector Arthur Philabaum and Jonathan Frye, appearing

as witnesses for Staff, and Mr. Londaridze, who appeared on his own behalf. Staff filed a brief on October 7, 2016; however, neither Blue Way nor Mr. Londaridze made any post-hearing filing.

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. 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. In this case, three sections of the FMCSR are relevant to the Commission's decision. First, 49 C.F.R. 383.5(a) defines a CMV as, among other things, a combination of motor vehicles used in commerce to transport property if the combined motor vehicle has a gross vehicle weight rating (GVWR) of 26,001 pounds or more. Second, 49 C.F.R. 391.11(a) provides that a person shall not drive a CMV unless he or she is qualified as a CMV driver. Finally, 49 C.F.R. 391.11(b)(5) provides that a person is qualified to drive a CMV if he or she has a currently valid CDL.

IV. ISSUE

{¶ 4} At issue in this case is whether Mr. Londaridze, was required to obtain a CDL to operate his vehicle. Staff alleges that the GVWR for Mr. Londaridze's truck and trailer exceeded 26,000 pounds, which qualified the vehicle as a CMV, and thus Mr. Londaridze was required to obtain a CDL, which he did not have, in order to drive it. Staff contends that Mr. Londaridze improperly reduced the GVWR of his trailer below 26,001 pound threshold in order to avoid the requirement of having to obtain a CDL. Mr. Londaridze admits that he wanted to avoid exceeding the GVWR weight limit for his truck and trailer, and thus be required to obtain a CDL. He asserts, however, that he took the necessary steps to reduce the GVWR of his trailer, so that the combined weight of his truck

and trailer would be below the threshold weight limit that would have required him to obtain a CDL.

V. SUMMARY OF THE EVIDENCE

A. *Staff's position*

{¶ 5} Initially, with regard to the alleged violation of driving a CMV without a CDL, Inspector Arthur Philabaum, a motor carrier inspection officer with the Ohio State Highway Patrol, stated that a CMV is a truck with a GVWR of 26,001 pounds or more and can only be operated by a driver who possesses a CDL. Inspector Philabaum explained that a truck with a GVWR below 26,001 pounds is not considered a CMV or regulated as one; consequently, no CDL is needed to be legally qualified to drive such a truck. However, when a truck exceeds the threshold weight of 26,001 pounds, then the classification changes, the truck qualifies as a CMV, and a driver needs a CDL in order to operate it. (Tr. at 14-15.)

{¶ 6} As to the inspection in this matter, Inspector Philabaum testified that, on March 21, 2106, he inspected a CMV driven by Mr. Londaridze. During the inspection, Inspector Philabaum discovered that there were two GVWRs displayed on Mr. Londaridze's trailer, one on the trailer's federal identification (ID) tag (20,000 pounds) and another on its Vehicle Identification Number (VIN) plate (11,950 pounds) (Staff Exs. 2 and 3, respectively). Inspector Philabaum noted that if 11,950 pounds is considered the GVWR of the trailer, then a CDL for the driver is not required, because the combined GVWR of the truck (14,000 pounds) and trailer (11,950 pounds) would be 25,950 pounds, and that weight would be under the 26,001-pound threshold necessary to qualify the vehicle as a CMV. However, accepting 11,950 pounds as the trailer's GVWR would reduce the GVWR listed on the trailer's ID tag (20,000 pounds) by almost one half. Inspector Philabaum testified that it would not be possible to reduce the GVWR of Mr. Londaridze's trailer from 20,000 pounds to 11,950 pounds without removing an axle, and in this case, he observed no modifications that had been made to the trailer. According to Inspector Philabaum, the trailer was just as it was when it was sold new. (Tr. at 8, 15-19.)

{¶ 7} Inspector Philabaum also testified that the VIN plate was attached to Mr. Londaridze's trailer with screws instead of the rivets that a trailer manufacturer usually uses for VIN plate attachment. Inspector Philabaum explained that each trailer manufacturer has its own unique style or trademark shape for the head of the particular rivet that it uses, with the head style of the rivet being modified to look different, sort of a unique part of a manufacturer's trademark. Inspector Philabaum testified that a trailer manufacturer also modifies the style or shape of its rivets as a preventive measure, because of trailer theft or someone stealing the VIN plate off one trailer and attaching it to another one. Moreover, Inspector Philabaum testified that the location of the VIN plate on Mr. Londaridze's trailer was strange because it was attached low on the trailer body, instead of the normal practice of mounting the plate in a higher position to protect it from theft or being damaged in a crash. (Tr. at 20-21.)

{¶ 8} Inspector Philabaum testified that, in his opinion, it did not appear that a manufacturer had attached the VIN plate to Mr. Londaridze's trailer. He also stated his belief that a driver can perform certain functions that would tend to raise or lower the GVWR of a vehicle, but that a manufacturer or its representative are the only ones permitted to make the actual GVWR adjustments. Further, Inspector Philabaum noted ways that the GVWR of a vehicle can be altered — by removing or adding an axle, which lowers or raises the GVWR respectively, or by adding a freight box on the back of a straight truck and thereby increasing the truck's GVWR. (Tr. at 21.)

{¶ 9} On cross examination, Inspector Philabaum testified that he relies on the GVWR on the ID tag because it is placed by the manufacturer on the trailer, and it cannot just be reproduced in a copier. Also, if the ID tag is removed, the word "void" will be revealed on the trailer beneath the tag. Inspector Philabaum noted that the VIN plate (Staff Ex. 3), at the time of the inspection, appeared to be an axle tag that was removed from an axle and screwed on to the side of the trailer. Further, the VIN plate did not read "axles;" its listing was "axle" — "10,000 pound, 11,950 maximum GVWR per axle." (Tr. at 23-24.)

{¶ 10} Jonathan Frye, chief of the Commission's Motor Carrier Compliance Division, identified Staff Exhibits 4 and 5, the NPD's that were sent to Mr. Londaridze and Blue Way, and testified that each NPD reflects the forfeiture amounts assessed in this matter. Mr. Frye explained that the forfeitures in this case were allocated to one of four violation groups, and based on the type and severity of the violation, a dollar amount was assigned. Mr. Frye further testified that the forfeitures are based on the recommended fine schedule of the Commercial Vehicle Safety Alliance and that his recommendation would be for a Commission order directing the Respondents to pay the amounts of the forfeitures. (Tr. at 26-29.)

B. Mr. Londaridze's position

{¶ 11} Mr. Londaridze testified that, before the GVWR for his trailer was changed, he made a telephone call to the Pennsylvania Department of Transportation (PDOT) and informed the PDOT that he wanted to buy the trailer. In addition, Mr. Londaridze testified that he communicated the trailer's VIN and 20,000 pound GVWR to the PDOT, and informed them that he wanted the trailer to be under the requirement for which he would need a CDL. According to Mr. Londaridze, the PDOT explained to him what he could not do with respect to the GVWR of the trailer and sent him a form to fill out. Mr. Londaridze asserted that he was told by the PDOT to return the completed form to them and to call the manufacturer of the trailer, Kaufman Trailers. He testified that, after making the suggested telephone call and explaining his situation, Kaufman Trailers advised him to pay a fee to obtain new stickers; and subsequently, they changed the GVWR for his trailer.¹ (Tr. at 32-33.)

{¶ 12} Mr. Londaridze testified that, when he bought the trailer, he was aware that the GVWR was 20,000 pounds and that he needed a CDL to drive his truck with that

¹ Respondent's Exhibit 4 is a copy of a document from Kaufman Trailers of Lexington, North Carolina. The document is entitled "Hold Harmless Agreement for Request for Duplicate Certificate of Origin or Trailer Tag." In the document, over Mr. Londaridze's signature, and with regard to his request for a duplicate VIN metal plate changing the GVWR of his trailer from 20,000 pounds to 11,950 pounds, Mr. Londaridze agrees to hold Kaufman Trailers harmless from any legal action arising from the request.

trailer. Mr. Londaridze testified that he requested the change in the GVWR of the trailer in order to avoid having to get a CDL. He noted that the PDOT gave him approval to have the GVWR of the trailer changed, and because of that approval, he went ahead and bought the trailer. Further, Mr. Londaridze stated that, if he had not received approval to have the GVWR of the trailer changed from 20,000 pounds to 11,950 pounds, he would not have purchased the trailer. (Tr. at 34-39.)

{¶ 13} Mr. Londaridze testified that, when he bought the trailer, its GVWR was 20,000 pounds and that he then took the trailer to mechanics at a big trailer shop and had the GVWR changed. He stated that he does not know what changes were made by the trailer shop to lower the GVWR of the trailer, because he just trusted that the changes would be made. Mr. Londaridze testified that he does not know if an axle on the trailer was altered and that he is unaware of any change that was made to the trailer. Further, he noted that he is not a mechanic, just a driver. (Tr. at 39-45.)

VI. COMMISSION CONCLUSION

{¶ 14} The Commission observes that the testimony of Inspector Philabaum places the GVWR of Mr. Londaridze's trailer, on the day of the inspection, at 20,000 pounds, unaltered from the 20,000 pound GVWR listing on the trailer's federal ID tag. Inspector Philabaum testified that no axle had been removed from the trailer, thus enabling the trailer's GVWR to be lowered, and that the trailer's configuration appeared to be like a new trailer. (Tr. at 19, 56-59.) Mr. Londaridze did not dispute this testimony. Instead, he contended that he followed the necessary, legal steps to have the trailer's GVWR lowered, and trusted that his request to reduce the weight of the trailer would be accomplished by mechanics at a trailer company; but, he did not know if any changes to the trailer, in fact, had been made (Tr. at 39-45). The Commission makes no comment on Mr. Londaridze's purported efforts to have the GVWR of his trailer changed, or on the presence of the screw-in metal VIN plate, which Inspector Philabaum found affixed to Mr. Londaridze's trailer, listing a 11,950 GVWR for the trailer (Tr. at 15, 18-21). We do, however, believe that Mr. Londaridze's contention that he was not at fault for the 49 C.F.R. 391.11(b)(5), CDL

violation, because he took all the steps necessary to have the GVWR of his trailer changed, and paid a \$40 fee for doing so (Tr. at 32-33, 35-36), has no merit. Mr. Londaridze was solely responsible for ensuring that any alterations to lower the GVWR of his trailer actually were made by the trailer company.

{¶ 15} Mr. Londaridze's own testimony at hearing establishes that he was aware, when he purchased the trailer, that the combined GVWR for his truck and trailer would be over the threshold weight limit for CMVs, and that he would be required to obtain a CDL as a CMV driver (Tr. at 34, 41). Mr. Londaridze also testified that he requested a change in his trailer's GVWR, from 20,000 pounds to 11,950 pounds, so that he would not have to obtain a CDL (Tr. at 38-39). After considering this testimony, together with Inspector Philabaum's testimony as to the unaltered state of Mr. Londaridze's trailer when he inspected it, the Commission agrees with Staff that the GVWR of Mr. Londaridze's trailer had not been changed from its original 20,000 pounds and that his truck and trailer weighed in excess of 26,001 pounds on the day of the inspection, which qualified the vehicle as a CMV under 49 C.F.R. 383.5(a). Thus, pursuant to 49 C.F.R. 391.11(b)(5), Mr. Londaridze needed a CDL, which he did not have, in order to operate the vehicle legally. Therefore, because we conclude that Staff has proven, by a preponderance of the evidence, that Mr. Londaridze's truck and trailer qualified as a CMV, and because he did not have the CDL necessary to drive his vehicle, the Commission finds that Mr. Londaridze was in violation of 49 C.F.R. 391.11(b)(5).

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 16} On March 21, 2016, a motor vehicle operated by Blue Way, and driven by Blue Way's owner, Imeda Londaridze, was stopped and inspected within the state of Ohio. As a result of the inspection, Mr. Londaridze was found to be in violation of 49 C.F.R. 391.11(b)(5), for not having a CDL for the CMV he was driving, and Blue Way's truck was found to be in violation of 49 C.F.R. 393.43, for improper braking, and 49 C.F.R. 390.21(b), for not displaying the USDOT number as required.

{¶ 17} Respondents were timely served with NPDs, alleging violations of 49 C.F.R. 391.11(b)(5), 49 C.F.R. 393.43, and 49 C.F.R. 390.21(b), and stating that Staff intended to assess civil forfeitures totaling \$400 for the violations.

{¶ 18} A prehearing conference was conducted on July 6, 2016, and a hearing was held on August 25, 2016.

{¶ 19} In accordance with Ohio Adm.Code 4901:2-7-20, Staff has proven by a preponderance of the evidence that Mr. Londeridze did not have a CDL for the CMV he was driving, constituting a violation of 49 C.F.R. 391.11(b)(5), and that Blue Way's truck had improper braking, in violation of 49 C.F.R. 393.43, and a USDOT number not displayed as required, in violation of 49 C.F.R. 390.21(b).

{¶ 20} Mr. Londeridze and Blue Way should be assessed forfeitures totaling \$400 for violations of 49 C.F.R. 391.11(b)(5), 49 C.F.R. 393.43, and 49 C.F.R. 390.21(b). Further, Mr. Londeridze and Blue Way should pay the \$400 in forfeitures, i.e., \$250 assessed to Mr. Londeridze and \$150 assessed to Blue Way, within 60 days from the date of this Opinion and Order.

VIII. ORDER

{¶ 21} It is, therefore,

{¶ 22} ORDERED, That Mr. Londeridze and Blue Way pay civil forfeitures totaling \$400 for violations of 49 C.F.R. 391.11(b)(5), 49 C.F.R. 393.43, and 49 C.F.R. 390.21(b), 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: CF Processing, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. Case number 16-1233-TR-CVF and inspection numbers OH32161007850D and OH32161007850C should be written on the face of the check or money order. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

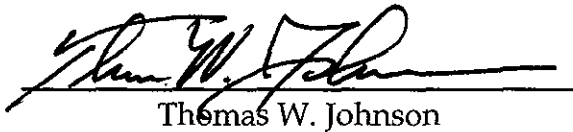


Asim Z. Haque, Chairman

Lynn Slaby



M. Beth Trombold



Thomas W. Johnson

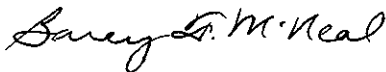


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