

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF GARY I. JOHANSEN,
NOTICE OF APPARENT VIOLATION AND
INTENT TO ASSESS FORFEITURE.

CASE No. 17-1158-TR-CVF
(OH 3267011466D)

FINDING AND ORDER

Entered in the Journal on September 13, 2017

I. SUMMARY

{¶ 1} The Commission finds reasonable and approves the settlement agreement regarding violations of the Commission's transportation rules.

II. DISCUSSION

A. *Applicable Law*

{¶ 2} R.C. 4923.04 provides that the Commission shall adopt rules applicable to the transportation of persons or property by motor carriers operating in interstate and intrastate commerce. Pursuant to Ohio Adm.Code 4901:2-5-03(A), the Commission adopted the Federal Motor Carrier Safety Regulations for the purpose of governing transportation by motor vehicle in the state of Ohio. Further, R.C. 4923.99 authorizes the Commission to assess a civil forfeiture of up to \$25,000 per day against any person who violates the safety rules adopted by the Commission.

B. *Procedural History*

{¶ 3} On February 21, 2017, a commercial motor vehicle (CMV) operated by Gary I. Johansen (Respondent) was inspected within the state of Ohio. The inspection resulted in the discovery of two violations of the federal motor carrier safety regulations. The violations were: failure to use a seat belt while operating a CMV in violation of 49 C.F.R. 392.16 – \$100, and operating a CMV without proper endorsement, or in violation of restrictions, in violation of 49 C.F.R. 391.11(b)(5) - DEN – \$250.

{¶ 4} Respondent was served with a Notice of Preliminary Determination (NPD), pursuant to Ohio Adm.Code 4901:2-7-12 on April 9, 2017. The NPD assessed Respondent a civil forfeiture of \$350 for the violations.

{¶ 5} On May 1, 2017, Respondent requested an administrative hearing, pursuant to Ohio Adm.Code 4901:2-7-13.

{¶ 6} A prehearing conference was conducted on June 20, 2017. Thereafter, an evidentiary hearing was conducted on July 18, 2017.

{¶ 7} At the conclusion of the evidentiary hearing, the parties negotiated a settlement agreement that, in the parties' opinion, resolves all of the issues in the NPD. The following is a summary of the conditions agreed to by the parties and is not intended to replace or supersede the settlement agreement.

- (a) Respondent agrees to violations of 49 C.F.R. 392.16 and 49 C.F.R. 391.11(b)(5) - DEN and recognizes that they may be included in Respondent's Safety-Net record and Respondent's history of violations, insofar as they may be relevant for purposes of determining future penalty actions.
- (b) Respondent agrees to pay a civil forfeiture of \$200 for the violations. Respondent has provided proof sufficient to Staff that he has subsequently taken corrective action and obtained interstate licensure. Respondent acknowledges that he did not have the appropriate endorsement at the time of the inspection, but states that this was due to a misunderstanding at the Bureau of Motor Vehicles when he renewed his commercial driver's license.

- (c) Respondent agrees to make monthly payments in the amount of \$25 per month for a period of eight months, with the first payment to be due 30 days from the Commission's approval of this settlement agreement. Payment should be made by certified check or money order payable to "Treasurer, State of Ohio," and mailed to: PUCO, Attn: CF Processing, 180 E. Broad St., 4th floor, Columbus, Ohio 43215-3793. In order to assure proper credit, Case No. 17-1158-TR-CVF and inspection number OH3267011466D should appear on the face of the check or money order.
- (d) This settlement agreement shall not become effective until adopted by the Commission. The date of the entry or order of the Commission adopting this settlement agreement shall be considered the effective date of the settlement agreement.
- (e) This settlement agreement is made in settlement of all factual or legal issues in this case. It is not intended to have any effect whatsoever in any other case or proceeding.

C. Commission Conclusion

{¶ 8} The Commission finds that the settlement agreement submitted in this case is reasonable. Therefore, the settlement agreement shall be approved and adopted in its entirety.

III. ORDER

{¶ 9} It is, therefore,

{¶ 10} ORDERED, That the settlement agreement submitted in this case be approved and adopted in its entirety. It is, further,

{¶ 11} ORDERED, That Respondent pay a civil forfeiture of \$200 in accordance with the settlement agreement. Payment shall be made by check or money order payable to "Treasurer, State of Ohio," and mailed to PUCO, Attn: CF Processing, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. In order to assure proper credit, Respondent is directed to write Case No. 17-1158-TR-CVF and inspection number OH3267011466D on the face of the check or money order. It is, further,

{¶ 12} ORDERED, That a copy of this Finding and Order be served upon Respondent and all other interested parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

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Asim Z. Haque, Chairman

M. Beth Trombold
M. Beth Trombold

Thomas W. Johnson
Thomas W. Johnson

Lawrence K. Friedeman
Lawrence K. Friedeman

Daniel R. Conway
Daniel R. Conway

KKS/vrm

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SEP 13 2017

Barcy F. McNeal

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Secretary