

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF CLIFF NEELY, NOTICE  
OF APPARENT VIOLATION AND INTENT  
TO ASSESS FORFEITURE.

CASE NO. 17-1097-TR-CVF  
(OH0187000352C)

## OPINION AND ORDER

Entered in the Journal on November 29, 2017

### I. SUMMARY

{¶ 1} The Commission finds that Staff did not demonstrate, by a preponderance of the evidence, that Cliff Neely violated the Commission's transportation rules for having insufficient tiedowns.

### II. PROCEDURAL HISTORY

{¶ 2} Following an inspection of a commercial motor vehicle (CMV) operated by Cliff Neely, Staff served Mr. Neely a notice of preliminary determination (NPD) in accordance with Ohio Adm.Code 4901:2-7-12, notifying him that Staff intended to assess a \$100 civil monetary forfeiture for a violation of the Commission's transportation regulations. Specifically, Staff alleged a violation of 49 C.F.R. 393.110(B) for having insufficient tiedowns to prevent forward movement for a load not blocked by headerboard, bulkhead, or other cargo.<sup>1</sup> On April 19, 2017 Mr. Neely filed a request for an administrative hearing in accordance with Ohio Adm.Code 4901:2-7-13. A prehearing conference was held on May 22, 2017; however, the parties were unable to reach a resolution. A hearing was held on August 8, 2017. At the hearing, Inspector James Drake and Mr. Rod Moser appeared as witnesses for Staff and Mr. Neely appeared on his own behalf.

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<sup>1</sup> Staff additionally alleged a violation of 49 C.F.R. 392.2. Mr. Neely did not request an administrative hearing regarding this violation and, during the hearing, he confirmed he is not contesting this violation (Tr. at 40-41).

### III. LAW

{¶ 3} Under Ohio Adm.Code 4901:2-5-03(A), the Commission adopted certain provisions of the Federal Motor Carrier Safety Regulations, 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.

{¶ 4} As relevant to this case, 49 C.F.R. 392.9(a)(1) specifies that a motor carrier may not permit a driver to operate a commercial motor vehicle unless the CMV's cargo is properly distributed and adequately secured. Further, 49 C.F.R. 393.110 provides that when cargo is not blocked or positioned to prevent movement in the forward direction by a headerboard or other appropriate blocking device, it must be secured by at least two tiedowns if the article is longer than 10 feet, with one additional tiedown for every 10 feet of article length, or fraction thereof, beyond the first 10 feet of length.

### IV. ISSUE

{¶ 5} At issue is whether Staff satisfied its burden to show, by a preponderance of the evidence, that Mr. Neely had insufficient tiedowns to prevent forward movement for a load not blocked by headerboard, bulkhead, or other cargo in violation of 49 C.F.R. 393.110(B)(3). Staff alleges that Mr. Neely had insufficient tiedowns for the length of his load. Mr. Neely contests the violation, stating he had sufficient tiedowns and that his load was properly secured.

### V. SUMMARY OF THE EVIDENCE

{¶ 6} Inspector James Drake testified that, on December 5, 2016, he performed a level 2 inspection on Mr. Neely's CMV while in Cuyahoga County. According to Inspector

Drake, Mr. Neely was carrying an oversized load on a trailer that did not have a bulkhead. For a load that size, Inspector Drake stated that Mr. Neely did not have the correct number of tiedowns. Inspector Drake asserted that, in his opinion, this particular load required two tiedowns at the beginning of the load, and then one tiedown for every 10 feet of load after. According to Inspector Drake, Mr. Neely only had one strap at the beginning of the load. (Tr. at 14-15.) Inspector Drake maintained that the Truck Drivers Guide Book (Staff Ex. 2) corresponds with his interpretation of the Federal Motor Carrier regulations. (Tr. at 18-19.) Regarding the securement of the rest of the load, Inspector Drake averred that Mr. Neely did have several additional straps on the load, approximately every 10 feet. However, Inspector Drake stated he did not remember the exact length of the load or total number of straps securing the load. (Tr. at 15, 28-30.) Additionally, Inspector Drake stated he did not take any pictures during the inspection (Tr. at 29).

{¶ 7} Mr. Rod Moser, Chief of Compliance within the Transportation section at the Public Utilities Commission, testified that he reviews civil forfeiture assessments for the Commission to ensure that the fines are the correct amount and that he reviewed the assessment against the Respondent. According to Mr. Moser, the NPD in this matter was sent to Mr. Neely on March 8, 2017, and identified the violation and the amount of the assessment for the violation (Staff Ex. 3). Mr. Moser testified that the cargo securement violation is a Group 1 Offense and carries a \$100 fine. He further testified that the penalty is consistent with the recommended fine schedule and recommended civil penalty procedure adopted by the Commercial Motor Vehicle Alliance. Accordingly, Mr. Moser recommended the forfeiture amount to the Commission (Tr. at 33-36).

{¶ 8} Mr. Cliff Neely testified that he had proper tiedowns on his oversized load. Mr. Neely explained that, on the day of the inspection, he was transporting a 60 foot beam on an extended trailer. According to Mr. Neely, an extended trailer comes apart to create two separate trailer beds. Mr. Neely maintained that he had a strap at the front of the trailer, with a chain a foot behind the strap, and then another chain on the front part of the trailer.

He continued that there was then an additional six chains on the rest of the load. Thus, Mr. Neely contends he had a total of eight chains on the load plus a strap (Tr. at 37-40). On redirect, Inspector Drake stated that he did not remember any chains being near the front of the load, and that, if there were, he would not have cited Mr. Neely with a violation (Tr. at 43).

## VI. COMMISSION CONCLUSION

{¶ 9} Pursuant to 49 C.F.R. 393.110, when the load on a CMV is not blocked or positioned to prevent movement in the forward direction by a headerboard, bulkhead, or other cargo, it must be secured by at least two tiedowns if the cargo is longer than 10 feet, and one additional tiedown for every 10 feet of article length, or fraction thereof, beyond the first 10 feet of length.

{¶ 10} Upon review, the Commission finds that the Staff has not demonstrated, by a preponderance of the evidence, that Mr. Neely was in violation of 49 C.F.R. 393.110. In assessing the evidence, we first note the discrepancies in the testimonies of Staff's witness and the Respondent. Inspector Drake testified that there was a strap securing the load at the very front of the trailer, and then additional straps approximately every 10 feet thereafter (Tr. at 14-15). Notably, Inspector Drake could not identify the length of the load or how many additional straps were securing the load (Tr. at 15, 28-30). Mr. Neely, on the other hand, claimed there was a strap at the beginning of the 60-foot beam he was transporting, a chain within a foot of the initial strap, and then seven additional chains securing the rest of the load (Tr. at 37-40). However, even assuming Staff's version of the facts, we do not find there was a violation of 49 C.F.R. 393.110. Staff's interpretation of the statute asserts that a driver must "have at least two tiedowns at the beginning of that load, and then \* \* \* one tiedown every ten feet after" (Tr. at 15). Regarding how close the initial straps need to be, Inspector Drake stated the straps should be "together, like right next to each other" (Tr. at 29). The Commission finds that Staff's argument that two straps are required at the very front of the load is not supported by the statute. Here, Inspector Drake testified that there

was a strap at the very beginning of the load and then another strap 10 feet from the front. Thus, as described by Inspector Drake, there were two tiedowns for the first 10 feet of length, which complies with 49 C.F.R. 393.110, as well as the guidance in the Truck Drivers Guide Book (Staff Ex. 2 at 34). Staff's understanding of the statute, with two initial straps at the front and an additional strap at 10 feet, would result in three straps for the first 10 feet of length and would exceed the minimum standards. While this would provide additional securement, there was no testimony that the load was not firmly secured or otherwise noncompliant with 49 C.F.R. 393.106.

{¶ 11} The Commission, therefore, finds that, based on a preponderance of the evidence, Staff has not proven that Mr. Neely violated 49 C.F.R. 393.110(B). Accordingly, the violation of 49 C.F.R. 393.110(B) should be dismissed and removed from Mr. Neely's Safety Net record and history of violations.

## VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 12} On December 5, 2016, Inspector James Drake stopped a CMV driven by Mr. Neely because of an alleged violation of the Commission's transportation regulations, 49 C.F.R. 393.110(B), insufficient tiedowns to prevent forward movement for load not blocked by headerboard, bulkhead, or other cargo.

{¶ 13} Mr. Neely was timely served with an NPD listing a civil forfeiture of \$100 for violation of 49 C.F.R. 393.110(B).

{¶ 14} A prehearing conference was conducted on May 22, 2017 and a hearing was held on August 8, 2017.

{¶ 15} Ohio Adm.Code 4901:2-7-20 requires that, at hearing, Staff prove the occurrence of a violation by a preponderance of the evidence.

{¶ 16} Based upon the record in this proceeding, the Commission finds that Staff has not proven, by a preponderance of the evidence, that Mr. Neely violated 49 C.F.R.

393.110(B). Accordingly, the violation of 49 C.F.R. 393.110(B) should be dismissed and removed from Mr. Neely's Safety Net record and history of violations.

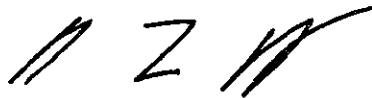
### VIII. ORDER

{¶ 17} It is, therefore,

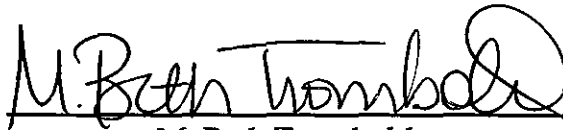
{¶ 18} ORDERED, That the alleged violation of 49 C.F.R. 393.110(B) by Mr. Neely be dismissed and removed from his Safety Net record and history of violations. It is, further,

{¶ 19} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

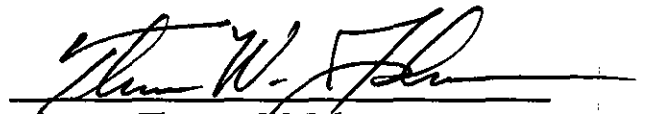
### THE PUBLIC UTILITIES COMMISSION OF OHIO



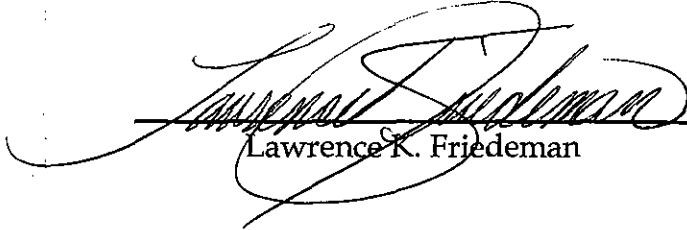
Asim Z. Haque, Chairman



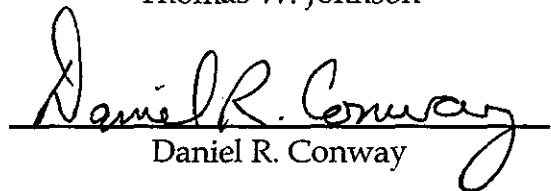
M. Beth Trombold



Thomas W. Johnson



Lawrence K. Friedeman



Daniel R. Conway

SEC/sc/NJW/vrm

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Barcy F. McNeal  
Secretary