

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF HORIZONTAL
WIRELINE SERVICES, LLC, NOTICE OF
APPARENT VIOLATION AND INTENT TO
ASSESS FORFEITURE.

CASE NO. 18-1176-TR-CVF
(OH3285010684C)

OPINION AND ORDER

Entered in the Journal on January 16, 2019

I. SUMMARY

{¶ 1} The Commission finds that Staff demonstrated, by a preponderance of the evidence, that Horizontal Wireline Services, LLC violated 49 C.F.R. 393.43(d), no or defective automatic trailer brake: breakaway switch inoperable.

II. PROCEDURAL HISTORY

{¶ 2} On April 27, 2018, Motor Carrier Enforcement Inspector Daniel Shaffer of the Ohio State Highway Patrol stopped and inspected a commercial motor vehicle (CMV) operated by Horizontal Wireline Services LLC (HWS) and driven by Randal Atkins. At the time of the inspection, Inspector Shaffer prepared a report that identified one violation of the Federal Motor Carrier Safety Regulations (FMCSR), specifically, 49 C.F.R. 393.43(d): no or defective automatic trailer brake -- breakaway switch inoperable. In accordance with Ohio Adm.Code 4901:2-7-12, HWS was served on June 21, 2018, with a Notice of Preliminary Determination (NPD). In the NPD, Respondent was notified that Staff intended to assess a civil forfeiture of \$0.00 for the violation.

{¶ 3} A prehearing conference was conducted on August 27, 2018, but the matter was not resolved, and a hearing was conducted on September 17, 2018. At the hearing, Staff witnesses included Inspector Shaffer and Rod Moser, Chief of Compliance. Daniel Lindy, compliance coordinator for HWS, testified on behalf of the carrier.

III. LAW

{¶ 4} Under Ohio Adm.Code 4901:2-5-03(A), the Commission adopted certain provisions of the FMCSR, specifically, 49 C.F.R. Sections 40, 367, 380, 382, 383, 385, 386, 387,

390-397, to govern the transportation of persons or property in intrastate commerce within Ohio. Through the same rule, the Commission also adopted those portions of the regulations contained in 49 C.F.R. 107, Subparts F and G, and 49 C.F.R. 171 to 180, as are applicable to transportation of hazardous materials by motor vehicle. Ohio Adm.Code 4901:2-5-03(C) requires all motor carriers engaged in interstate commerce in Ohio to operate in conformity with all federal regulations that have been adopted by the Commission. Further, R.C. 4923.99 authorizes the Commission to assess a civil forfeiture of up to \$25,000 per day, per violation, against any person who violates the safety rules adopted by the Commission when transporting persons or property, in interstate commerce, in or through this state. Ohio Adm.Code 4901:2-7-20 requires that, at the hearing, Staff prove the occurrence of a violation by a preponderance of the evidence.

{¶ 5} 49 C.F.R. 393.43(d) states, in part, that “* * * Every trailer required to be equipped with brakes shall have brakes which apply automatically and immediately upon breakaway from the towing vehicle. * * * ”

IV. ISSUES

{¶ 6} The issue in this case is whether Staff has satisfied its burden to show, by a preponderance of the evidence, that Respondent violated 49 C.F.R. 393.43(d), no or defective automatic trailer brake: breakaway switch inoperable.

V. SUMMARY OF THE EVIDENCE

{¶ 7} Inspector Shaffer testified that the breakaway switch is attached to the power unit, i.e. the tractor. He added that if a trailer breaks away from the tractor, a power wire detaches from the breakaway switch, causing the trailer brakes to be activated as emergency brakes (Tr. at 10.)¹ To test the breakaway system, Inspector Shaffer removed a pin from the breakaway switch; in so doing, the power wire was detached. Inspector Shaffer then

¹ The breakaway system includes a battery that is recharged via a power wire connected to the tractor.

When the power wire is pulled from the breakaway switch, the trailer brakes are automatically applied via the battery.

directed the driver to move the tractor forward. As the tractor moved just two or three feet, Inspector Shaffer asserted, the trailer brakes should have automatically locked up, but that did not happen. Inspector Shaffer repeated this test a second time, but the results were no different, leading him to conclude that the breakaway switch was inoperable. (Tr. at 10 - 11; Staff Ex. 1).

{¶ 8} Mr. Moser testified that the fine assessed for an inoperable breakaway switch is \$50. He added that if the total forfeiture for all violations is less than \$90, the Commission “erases the fine.” (Tr. at 13-14.) Therefore, because Inspector Shaffer found no other violations during the inspection, HWS received a Notice of Preliminary Determination letter indicating a \$0.00 fine for the violation (Tr. at 13-14; Staff Ex. 1 and 2). Mr. Moser noted that Federal Motor Carrier Safety Administration records indicate that HWS has had three other 49 C.F.R. 393.43(d) violations, specifically, on November 15, 2017, April 11, 2017, and March 20, 2017 (Tr. at 15-17; Staff Ex. 3).

{¶ 9} Mr. Lindy explained that, after the inspection, the battery for the breakaway system was replaced, after which the breakaway system operated correctly, and the driver completed his deliveries. During a post-trip inspection, however, it was determined that the breakaway system again was inoperable. (Tr. at 18, 20). Mr. Lindy added that the Ford F450 tractor was then inspected at a Ford dealership, where it was determined that a “fuse issue” with the tractor had drained the battery for the breakaway system (Tr. at 18-19). Mr. Lindy contends that the driver could not have discovered the “fuse issue” during the pre-trip inspection (Tr. at 18).

VI. COMMISSION CONCLUSION

{¶ 10} 49 C.F.R. 393.43(d) states, in part, that “* * * Every trailer required to be equipped with brakes shall have brakes which apply automatically and immediately upon breakaway from the towing vehicle.* * *” While Mr. Lindy asserts that a pre-trip inspection would not have found the “fuse issue,” he does not dispute that the breakaway system failed to operate correctly during the inspection. Therefore, the Commission finds that Staff has

proven, by a preponderance of the evidence, that HWS violated 49 C.F.R. 393.43(d), no or defective automatic trailer brake: breakaway switch inoperable. Accordingly, the Commission finds Respondent should be assessed a total monetary forfeiture of \$0.00, and the violation should not be deleted from Commission records.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 11} On April 27, 2018, Motor Carrier Enforcement Inspector Daniel Shaffer of the Ohio State Highway Patrol stopped and inspected a CMV operated by HWS and driven by Randal Atkins. At the time of the inspection, Inspector Shaffer identified one FMCSR violation, specifically, 49 C.F.R. 393.43(d), no or defective automatic trailer brake: breakaway switch inoperable.

{¶ 12} In accordance with Ohio Adm.Code 4901:2-7-12, HWS was served on June 21, 2018, with an NPD. In the NPD, Respondent was notified that Staff intended to assess a civil forfeiture of \$0.00 for the violation.

{¶ 13} At the time of the inspection, Inspector Shaffer identified one violation of the Commission's transportation regulations, specifically, 49 C.F.R. 393.43(d), no or defective automatic trailer brake: breakaway switch inoperable.

{¶ 14} HWS was timely served an NPD notifying it that Staff intended to assess a \$0.00 civil forfeiture for the violation.

{¶ 15} A prehearing conference was conducted on August 27, 2018, but the matter was not resolved. Accordingly, an evidentiary hearing was held on September 17, 2018.

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

{¶ 17} Based on the record in this proceeding, the Commission finds that Staff has proven, by a preponderance of the evidence, that HWS violated 49 C.F.R. 393.43(d), no or defective automatic trailer brake: breakaway switch inoperable.

{¶ 18} Accordingly, Respondent should be assessed a total monetary forfeiture of \$0.00 for the violation of 49 C.F.R. 393.43(d), no or defective automatic trailer brake: breakaway switch inoperable.

VIII. ORDER

{¶ 19} It is, therefore,

{¶ 20} ORDERED, That Respondent be assessed a total monetary forfeiture of \$0.00 for the violation. It is, further,

{¶ 21} ORDERED, That the violation should not be deleted from Commission records. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO



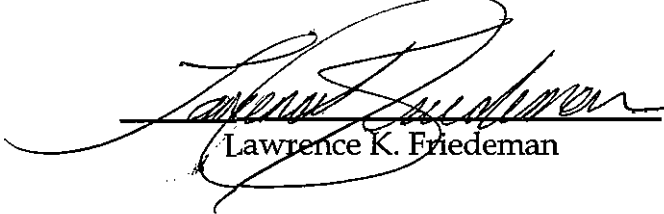
Asim Z. Haque, Chairman



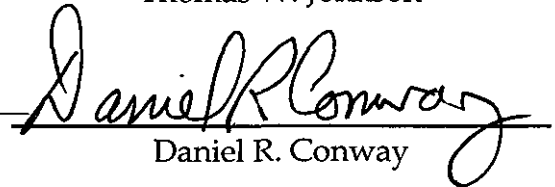
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