

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
JAMES CUSTER, NOTICE OF APPARENT
VIOLATION AND INTENT TO ASSESS
FORFEITURE.

CASE NO. 18-1752-TR-CVF
(OH3288010380D)

FINDING AND ORDER

Entered in the Journal on May 1, 2019

I. SUMMARY

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

II. DISCUSSION

{¶ 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.

{¶ 3} On May 16, 2018, a commercial motor vehicle (CMV) operated by MJ Daniels Trucking and driven by James Custer (Respondent) was inspected within the state of Ohio. The inspection resulted in violations of 49 C.F.R. 395.8(a) (no record of duty status - electronic logging device (ELD) required) and 49 C.F.R. 383.23(a)(2) (operating a CMV without a commercial driver's license (CDL)).

{¶ 4} Respondent was served with a Notice of Preliminary Determination (NPD), pursuant to Ohio Adm.Code 4901:2-7-12, which assessed Respondent a civil forfeiture of \$100.00 for the violation of 49 C.F.R. 395.8(a) and \$250 for the violation of 49 C.F.R. 383.23(a)(2) .

{¶ 5} On November 29, 2018, Respondent requested an administrative hearing, pursuant to Ohio Adm.Code 4901:2-7-13.

{¶ 6} A prehearing conference was conducted on January 24, 2019.

{¶ 7} On April 2, 2019, Staff and Respondent filed a settlement agreement which, in the parties' opinion, resolves the issue raised 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 admits to the violations in the NPD and agrees that the violations may be included in his history of violations.
- (b) For purposes of settlement only, Staff agrees to reduce the total civil forfeiture to \$200 because of Respondent's corrective action to ensure that he will not operate a CMV without a CDL in the future.
- (c) Accordingly, Respondent shall pay a \$200 civil forfeiture within 30 days after the Commission's order approving this settlement agreement. The payment shall be made payable to "Treasurer State of Ohio," and mailed to PUCO, Attn: PUCO Finance, 180 E. Broad St., 4th floor, Columbus, OH 43215-3793. In order to assure proper credit, Case No. 18-1752-TR-CVF and inspection number OH3288010380D should appear on the face of each 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) It is understood by Respondent and Staff that this settlement agreement can be considered to determine future forfeitures if Respondent has any future cases before the Commission. It is also understood by Respondent and Staff that this settlement agreement is not binding upon the Commission, but rather is based on the parties' desire to arrive at a reasonable result considering the law, facts, and circumstances. Accordingly, Respondent and Staff recommend that the Commission adopt this settlement agreement.
- (f) This settlement agreement is made in settlement of all factual and legal issues in this case.

{¶ 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: PUCO Finance, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. In order to assure proper credit,

Respondent is directed to write Case No. 18-1752-TR-CVF and inspection number OH3288010380D on the face of the check or money order. It is, further,

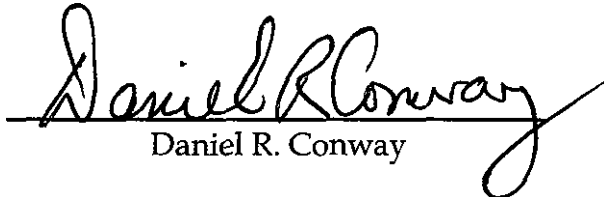
{¶ 12} ORDERED, That a copy of this Finding and Order be served upon Respondent and all other interested parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Sam Randazzo, Chairman


M. Beth Trombold

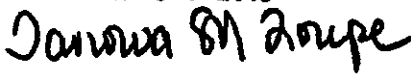
Lawrence K. Friedeman


Daniel R. Conway


Dennis P. Deters

JML/hac

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Tanowa M. Troupe

Tanowa M. Troupe
Secretary