THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF GREGORY D. WILLET, NOTICE OF APPARENT VIOLATION AND INTENT TO ASSESS FORFEITURE.	**CASE NO. 18-946-TR-CVF (OH1575000626D)**

OPINION AND ORDER

Entered in the Journal on June 19, 2019

I. SUMMARY

{¶ 1} The Commission finds that Staff demonstrated, by a preponderance of the evidence, that Gregory D. Willet violated the Commission's transportation rules by failing to restrain himself with a seat belt while operating a commercial motor vehicle.

II. PROCEDURAL HISTORY

{¶ 2} Following an inspection of a commercial motor vehicle (CMV) operated by Containerport Group, Inc., and driven by Gregory D. Willet (Respondent or Mr. Willet), Respondent was timely served with 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 forfeiture for a violation of 49 C.F.R. 392.16(a), for a failure to use a seat belt while operating a CMV.

{¶ 3} A prehearing conference took place on February 5, 2019, and a hearing convened on April 4, 2019. At the hearing, Trooper Timothy Mularcik and Rod Moser appeared as witnesses for Staff, and Respondent appeared on his own behalf.

III. APPLICABLE LAW

{¶ 4} 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, and 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. 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 Ohio. 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. 49 C.F.R. 392.16(a) states, in part, that "[n]o driver shall operate a [CMV] * * * unless the driver is properly restrained by the seat belt assembly."

IV. ISSUE

{¶ 5} At issue is whether Staff satisfied its burden to show, by a preponderance of the evidence, that Respondent was, in fact, operating a CMV without properly restraining himself with a seat belt, and thus, in violation of 49 C.F.R. 392.16(a). Staff alleges that Respondent operated a CMV without using a seat belt. Respondent disputes this driver violation and asserts that he was wearing his seat belt while operating a CMV.

V. SUMMARY OF THE EVIDENCE

{¶ 6} At the hearing, Trooper Mularcik testified that he has been working for the Ohio State Highway Patrol for 15 years and as a motor carrier enforcement inspector for the last two and a half years (Tr. at 6). Trooper Mularcik averred that he generated the Driver/Vehicle Examination Report as a result of the observed seat belt violation on the day of the inspection (Tr. at 8; Staff Ex. 1). Trooper Mularcik stated that, on February 7, 2018, he was driving southbound on Alum Creek Drive and positioned in the middle lane with no view obstructions to his right side when he observed Respondent exit I-270 onto Alum Creek Drive and enter the far right turn lane. Trooper Mularcik claimed that, as Respondent approached a red light, and as Trooper Mularcik had the green light, he observed Respondent lean forward away from the seatback and this movement demonstrated that the seat belt was not in use. Trooper Mularcik explained that a primary indicator of a driver wearing a seat belt is the presence of the belt coming from the door pillar to the shoulder and testified that he did not see a seat belt coming from the door pillar to Respondent's

shoulder. (Tr. at 10.) Trooper Mularcik stated that he specifically looks for drivers wearing or not wearing their seat belt as part of his job duties (Tr. at 16).

{¶ 7} In this instance, Trooper Mularcik testified that at the time of observing Respondent, it was clear and obvious that there was no seat belt coming from the door pillar to Respondent's shoulder (Tr. at 10). Trooper Mularcik claimed that he first observed the violation through Respondent's driver's side as Respondent was leaning forward, and then as Trooper Mularcik crossed the intersection, he observed the violation again through Respondent's windshield. Trooper Mularcik testified that, as he crossed the intersection, he was about one lane's width away from Respondent's front bumper when he observed Respondent without his seat belt. Trooper Mularcik stated that he drove through the Alum Creek Drive and I-270 exit ramp intersection, rode past Respondent positioned at the red light, and waited for Respondent to come out from the red light to conduct the inspection. (Tr. at 13.) Trooper Mularcik claimed that at no point was he driving directly next to Respondent, but did pull up momentarily next to the CMV to record Department of Transportation information, the company name, and number (Tr. at 13-14). Lastly, Trooper Mularcik testified that, on the day of inspection, the weather was clear and that he does not wear glasses or contacts (Tr. at 16).

{¶ 8} On cross-examination, Trooper Mularcik testified that there was no inclement weather such as heavy snow or rain that would have impeded his observation and further clarified that had he believed any vision obstructions existed, he would not have conducted the inspection and issued a violation (Tr. at 19). Lastly, Trooper Mularcik stated that he did not recall whether Respondent was wearing his seat belt when he pulled Respondent over (Tr. at 20).

{¶ 9} Mr. Moser testified that he is employed at the Commission as the Chief of the Compliance Section within the Transportation Department. Mr. Moser stated that Respondent received an NPD indicating a group 4 violation totaling $100. Mr. Moser

averred that the forfeiture amount applied to Respondent is the standard amount assessed for this violation. (Tr. at 21-25.)

{¶ 10} During direct examination, Mr. Willet testified that, on February 7, 2018, he exited I-270 onto Alum Creek Drive and that he wore his seat belt that day (Tr. at 26). Mr. Willet claimed that he made a right-hand turn onto Alum Creek Drive and that he did not see Trooper Mularcik at the intersection as alleged. Mr. Willet testified that he first noticed Trooper Mularcik at the traffic light at Groveport Road. (Tr. at 27.) Mr. Willet alleges that Trooper Mularcik looked straight through his passenger side window and that he could not have been able to tell whether he had his seat belt on or not (Tr. at 27, 28). Additionally, Mr. Willet introduced, as evidence, photographs of him sitting in a CMV to illustrate the angle he believes Trooper Mularcik viewed the alleged violation (Tr. at 28; Respondent Ex. 1).

{¶ 11} Mr. Willet stated that it snowed about three to four inches the previous night and on the day of the inspection and introduced, as evidence, weather reports for February 6 and February 7, 2018. Further, Mr. Willet averred that there was "clearly stuff on [his] windshield." (Tr. at 26-27; Respondent Ex. 1.) Mr. Willet stated that he had been working since 6:00 a.m. that morning. Mr. Willet reiterated that the weather conditions were not favorable on the day of the inspection, and his CMV was covered in salt and brine. (Tr. at 27).

{¶ 12} On cross-examination, Mr. Willet clarified that he is depicted in the photographs and that the photographs were taken from the passenger side (Tr. at 29). Additionally, Mr. Willet testified that he always wears his seat belt; however, Mr. Willet later testified that he has been cited for more than three seat belt violations in the past and does not recall when he was last cited for a seat belt violation (Tr. at 30).

{¶ 13} During rebuttal, Trooper Mularcik testified that he could not identify whether the CMV depicted in Respondent's Exhibit 1 was the same CMV he inspected on February 7, 2018, and averred that neither photograph depicts his line of vision on the day of the

inspection because the violation was not viewed alongside the passenger window; the violation was viewed through the driver's side and through the windshield (Tr. at 32). Furthermore, Trooper Mularcik claimed that his vehicle is silver, blends in with the gray pavement, and it is credible that Respondent did not see him at the intersection (Tr. at 33). Additionally, Trooper Mularcik testified that it was not snowing at the time of inspection and that Respondent's windshield was clean (Tr. at 34).

{¶ 14} On rebuttal cross-examination, Trooper Mularcik testified that he observed the violation through the driver's side window and that Respondent's driver's side window was clean. Further Trooper Mularcik stated that it was clear to him that, regardless of any potential dirt on the window, if Respondent were wearing his seat belt, a dark silhouette of the seat belt coming off of the door pillar would have been very obvious (Tr. at 35). Furthermore, Trooper Mularcik stated that Respondent was leaning forward off of the seat back to view oncoming traffic, and Trooper Mularcik did not see a seat belt coming off the door pillar. Trooper Mularcik was unable to recall the color of Respondent's shirt that day and the interior color of the CMV. (Tr. at 36).

VI. COMMISSION CONCLUSION

{¶ 15} After reviewing the evidence, the Commission finds that Staff has demonstrated, by a preponderance of the evidence at hearing, that a violation of 49 C.F.R. 392.16(a) occurred when Respondent failed to restrain himself with a seat belt while operating a CMV. In doing so, the Commission found Trooper Mularcik's testimony to be persuasive, as Trooper Mularcik recalled distinct details about the observed violation and traffic stop through his testimony and the Driver/Vehicle examination report. Initially, we note Trooper Mularcik had a clear and unobstructed view of Respondent because he was positioned at the Alum Creek Drive and I-270 Exit intersection and was facing Respondent (Tr. at 8; Staff Ex. 1 at 1). Trooper Mularcik testified that he knew Respondent was not wearing a seat belt because he did not see a seat belt coming from the door pillar to Respondent's shoulder when Respondent leaned forward off of the seat back (Tr. at 10, 36).

Furthermore, Trooper Mularcik verified the observed violation by driving through the intersection and viewing the violation through Respondent's windshield (Tr. at 13, 32). Although Respondent indicated recent snowfall would likely have left his windows and windshield covered in salt and brine, Trooper Mularcik testified that it was not snowing at the time of the inspection and his view was unobstructed (Tr. at 34-35). Additionally, Respondent's photographs did not accurately recreate Trooper Mularcik's viewpoint of the violation because Trooper Mularcik viewed the violation through Respondent's driver's side window and then again through the windshield. Trooper Mularcik did not view the violation through the passenger's side window as Respondent's testimony and photographs indicate.

{¶ 16} Accordingly, the Commission finds that sufficient evidence was presented to show that, more likely than not, the violation occurred. Thus, Respondent is directed to make payment of the $100 civil forfeiture within 60 days of this Opinion and Order by certified check or money order payable to "Treasurer, State of Ohio" and mailed or delivered to the Public Utilities Commission of Ohio, Attention: CF Processing, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. Case number 18-946-TR-CVF and inspection number OH1575000626D should be written on the face of the certified check or money order to ensure proper credit.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 17} On February 7, 2018, Trooper Mularcik stopped and inspected a CMV driven by Respondent because of an alleged violation of the Commission's transportation regulation 49 C.F.R. 392.16(a).

{¶ 18} Respondent was timely served with an NPD recommending a civil forfeiture of $100 for violation of 49 C.F.R. 392.16(a), for failing to restrain himself with a seat belt while operating a CMV.

{¶ 19} A prehearing conference was conducted on February 5, 2019, and a hearing was held on April 4, 2019.

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

{¶ 21} Based upon the record in this proceeding, the Commission finds that Staff has proven, by a preponderance of the evidence, that Respondent violated 49 C.F.R. 392.16(a). Accordingly, Respondent should be assessed a $100 forfeiture for a violation of 49 C.F.R. 392.16(a) and should pay the forfeiture within 60 days from the date of this Opinion and Order.

VIII. ORDER

{¶ 22} It is, therefore,

{¶ 23} ORDERED, That Respondent pay a civil forfeiture of $100 for a violation of 49 C.F.R. 392.16(a), 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 mailed or delivered to the Public Utilities Commission of Ohio, Attention: CF Processing, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. Case number 18-946-TR-CVF and inspection number OH1575000626D should be written on the face of the certified check or money order to ensure proper credit. It is, further,

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

COMMISSIONERS:
Approving:
Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

LLA/hac

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