

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF DANIEL J. LINN,
NOTICE OF APPARENT VIOLATION AND
INTENT TO ASSESS FORFEITURE.

CASE NO. 19-2078-TR-CVF
(OH3249009759C)

OPINION AND ORDER

Entered in the Journal on April 8, 2020

I. SUMMARY

{¶ 1} The Commission finds that Staff demonstrated, by a preponderance of the evidence, that Respondent violated the Commission's transportation rules identified by Staff.

II. PROCEDURAL HISTORY

{¶ 2} On September 3, 2019, Safety Investigator Thomas Huff (Investigator Huff) with the Commission performed a post-crash inspection of a vehicle driven and operated by Daniel J. Linn (Respondent or Mr. Linn), in the State of Ohio. Upon inspection, Investigator Huff prepared a report identifying numerous violations of the Commission's transportation regulations, including failure to properly place reflective materials, such as retroreflective sheeting, on the lower and upper rear portions of his commercial motor vehicle (CMV) tractor. (Tr. at 10; Staff Ex. 1, 2, 3.)

{¶ 3} Commission Staff timely served Mr. Linn with a Notice of Preliminary Determination (NPD) in accordance with Ohio Adm.Code 4901:2-7-02, alleging, among other violations, two violations of 49 C.F.R. 393.11(a)(1) for failing to properly place retroreflective sheeting or reflective materials on the lower and upper rear portions of the CMV tractor. The NPD also notified Respondent that Staff intended to assess no civil monetary forfeiture for violating the Commission's transportation rules pursuant to Ohio Adm.Code 4901:2-7-07. (Staff Ex. 2.)

{¶ 4} On November 20, 2019, Mr. Linn filed a request for a hearing in accordance

with Ohio Adm.Code 4901:2-7-13.

{¶ 5} By Entry dated December 6, 2019, the attorney examiner scheduled a prehearing telephone conference for January 8, 2020, pursuant to Ohio Adm.Code 4901:2-7-16(B). Respondent participated in the prehearing conference, but the matter was not resolved.

{¶ 6} By Entry dated January 10, 2020, the attorney examiner scheduled an evidentiary hearing for February 7, 2020.

{¶ 7} At the hearing, Staff witnesses Investigator Huff and Rod Moser testified in support of the violation and forfeiture amount, respectively. Mr. Linn represented himself at the hearing and testified on his own behalf.

III. APPLICABLE LAW

{¶ 8} 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. Under Ohio Adm.Code 4901:2-5-03(A), the Commission adopted certain provisions of the Federal Motor Carrier Safety Regulations (FMCSR). Specifically, the Commission adopted 49 C.F.R. Sections 40, 367, 380, 382, 383, 385, 386, 387, and 390-397, to govern the transportation of persons or property in intrastate commerce within Ohio. 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 Ohio. 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.

{¶ 9} The specific regulation at issue that Staff alleges Respondent violated is 49

C.F.R. 393.11(a)(1), requiring reflective materials, such as retroreflective sheeting, be placed on the upper and lower rear portions of the CMV tractor.

IV. ISSUE

{¶ 10} At issue is whether Staff has satisfied its burden to show, by a preponderance of the evidence, that Respondent, among the other violations listed on the NPD, failed to properly place retroreflective sheeting or reflective materials on the lower and upper rear portions of the CMV tractor and was, thus, in violation of 49 C.F.R. 393.11(a)(1).

V. SUMMARY OF EVIDENCE

{¶ 11} At the hearing on February 7, 2020, Staff presented the testimony of Investigator Huff, a safety investigator with the Commission. At the hearing, Investigator Huff identified Staff Ex. 1 as the driver/vehicle examination report, which he prepared after conducting a post-crash inspection of the CMV driven by Mr. Linn on September 3, 2019, and also identified Staff Ex. 2 and 3 as photographs of Mr. Linn's CMV tractor captured as a part of the inspection on the same day. (Tr. at 8-13; Staff Ex. 1, 2, 3.)

{¶ 12} Investigator Huff testified that Staff Ex. 1 identifies numerous Commission transportation rule violations stemming from the crash; however, the two violations Mr. Linn contests pertain to 49 C.F.R. 393.11(a)(1), which were violations not caused by the crash (Tr. at 9-10). Investigator Huff further testified that, while conducting his inspection, he found that the CMV tractor did not possess lower rear or upper rear retroreflective sheeting or reflective materials as required for a CMV manufactured after December of 1993 (Tr. at 10-11). Investigator Huff also testified that the photographs he captured during the inspection of the lower and upper rear portions of the CMV tractor show that no retroreflective sheeting or other reflective materials were in place, constituting two violations of 49 C.F.R. 393.11(a)(1) (Tr. at 11-13; Staff Ex. 2, 3). Investigator Huff further reiterated that it is the motor carrier's responsibility to ensure that this retroreflective

sheeting or reflective material is in place whenever the CMV is in operation and being driven (Tr. at 21).

{¶ 13} Additionally, Mr. Moser testified regarding the assessment of forfeitures following a roadside, post-crash inspection. Referring to Staff Exhibit 4, the NPD, Mr. Moser explained that a majority of the violations noted on the driver/vehicle examination report and the NPD, specifically 49 C.F.R. 393.75(a), 49 C.F.R. 393.75(a), 49 C.F.R. 393.205(a), 49 C.F.R. 396.5(b), 49 C.F.R. 396.3(a)(1), and 49 C.F.R. 396.3(a)(1), were all caused by the crash; therefore, each violation was assessed a \$0 forfeiture. Mr. Moser also explained that violations of 49 C.F.R. 393.11(a)(1) are always assessed a \$0 fine. (Tr. at 23-25.)

{¶ 14} Mr. Linn testified regarding the circumstances of the accident and the ensuing inspection by Investigator Huff (Tr. 28-41). He admitted several times during his testimony, and during cross-examination, that his CMV tractor did not have the required retroreflective sheeting or other reflective materials required by law on the day of the crash and during the inspection (Tr. at 30-31, 34, 36, 40, 42). Mr. Linn asked the Commission to consider mitigating circumstances regarding the two violations he contests. He testified that the reflective material was properly in place during a predelivery inspection after he purchased the tractor; however, the reflective strips were removed and inadvertently not reattached by the dealership when he had taken the tractor back for a paint touch-up, and he did not notice afterwards that the reflective material was missing. He further claimed that, after the paint service, an annual federal inspection failed to take notice of the missing strips, as did other people at a trade show in which the tractor was on display. And, Mr. Linn testified that he addressed the issue by having the reflective materials attached to the tractor the day following the crash. (Tr. at 30-36.)

VI. COMMISSION CONCLUSION

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

a preponderance of the evidence, that Staff has proven that Mr. Linn violated numerous Commission transportation rules, including the two contested violations of 49 C.F.R. 393.11(a)(1) for failing to place retroreflective sheeting or other reflective materials on the lower and upper rear portions of his CMV's tractor.

{¶ 16} The Commission observes that 49 C.F.R. 393.11(a)(1) requires that reflective materials, such as retroreflective sheeting, be placed on the upper and lower rear portions of a CMV tractor. Staff's witness, Investigator Huff, testified unequivocally that Mr. Linn's CMV tractor did not possess lower and upper rear retroreflective sheeting or other reflective materials at the time of the inspection on September 3, 2019. (Tr. at 10-11; Staff Ex. 1.) Furthermore, Staff provided photographs showing that these reflective materials were not in place at the time of inspection (Staff Ex. 2, 3). Significantly, Mr. Linn admitted several times during his testimony, and during cross-examination, that his CMV tractor did not possess the required retroreflective sheeting or other reflective materials required by law on the day of the crash and during the inspection (Tr. at 30-31, 34, 36, 40, 42). As Investigator Huff testified to and 49 C.F.R. 393.11(a)(1) prescribes, all CMV tractors must be fitted with this reflective sheeting, and a dealership's purported failure to re-attach the sheeting does not absolve the motor carrier from ensuring the proper reflective sheeting is in place prior to it being operated and driven (Tr. at 21, 30-36). Also during his testimony, Mr. Linn did not dispute culpability for committing the other violations listed on the NPD.

{¶ 17} Considering the evidence, the Commission finds that the testimony of Investigator Huff regarding the circumstances of the inspection to be persuasive and that the weight of the evidence supports the conclusion that Mr. Linn failed to attach the proper retroreflective sheeting or other reflective materials to the lower and upper rear portions of his CMV tractor and supports the conclusion that Mr. Linn committed the other violations listed in the NPD. Mr. Linn's testimony was not sufficient to demonstrate that he should not be held liable for the civil forfeiture assessed for violations of 49 C.F.R. 393.11(a)(1) and the other violations. Based on Staff's recommendation, we affirm that no monetary

forfeitures should be assessed for the following violations: 49 C.F.R. 393.11(a)(1), 49 C.F.R. 393.11(a)(1), 49 C.F.R. 393.75(a), 49 C.F.R. 393.75(a), 49 C.F.R. 393.205(a), 49 C.F.R. 396.5(b), 49 C.F.R. 396.3(a)(1), and 49 C.F.R. 396.3(a)(1).

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 18} On September 3, 2019, Safety Investigator Thomas Huff of the Commission performed a post-crash inspection of a commercial motor vehicle driven and operated by Daniel J. Linn. Among other violations, Investigator Huff found two motor carrier violations of 49 C.F.R. 393.11(a)(1), failure to properly place reflective materials, such as retroreflective sheeting, on the lower and upper rear portions of the CMV tractor.

{¶ 19} Mr. Linn was timely served with a Notice of Preliminary Determination, alleging numerous violations of the Commission's transportation regulations, including violations of 49 C.F.R. 393.11(a)(1), failure to properly place reflective materials, such as retroreflective sheeting, on the lower and upper rear portions of the CMV tractor. In the NPD, Mr. Linn was notified that Staff intended to assess a civil monetary forfeiture of \$0.00.

{¶ 20} Mr. Linn participated in a prehearing teleconference on January 8, 2020.

{¶ 21} An evidentiary hearing was held on February 7, 2020.

{¶ 22} 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.

{¶ 23} Based upon the record in this proceeding, the Commission finds that Staff has proven, by a preponderance of the evidence, that Mr. Linn committed two violations of 49 C.F.R. 393.11(a)(1) for failing to properly place reflective materials, such as retroreflective sheeting, on the lower and upper rear portions of the CMV tractor and that Mr. Linn violated 49 C.F.R. 393.75(a), 49 C.F.R. 393.75(a), 49 C.F.R. 393.205(a), 49 C.F.R. 396.5(b), 49 C.F.R. 396.3(a)(1) and 49 C.F.R. 396.3(a)(1).

VIII. ORDER

{¶ 24} It is, therefore,

{¶ 25} ORDERED, That the violations be included in Respondent's record and history of violations. It is, further,

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

COMMISSIONERS:

Approving:

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

MJS/kck

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Summary: Opinion & Order finding that Staff demonstrated, by a preponderance of the evidence, that Respondent violated the Commission's transportation rules identified by Staff. electronically filed by Ms. Mary E Fischer on behalf of Public Utilities Commission of Ohio