

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF CURTIS N. MASSEY,  
NOTICE OF APPARENT VIOLATION AND  
INTENT TO ASSESS FORFEITURE.

CASE NO. 20-545-TR-CVF  
(OH1200001847D)

## OPINION AND ORDER

Entered in the Journal on August 24, 2022

### I. SUMMARY

{¶ 1} The Commission finds that Staff demonstrated, by a preponderance of the evidence, that Curtis N. Massey violated 49 C.F.R. 396.9(c)(2) by operating an out-of-service commercial motor vehicle.

### II. PROCEDURAL HISTORY

{¶ 2} On August 15, 2019, Ohio State Highway Patrol Motor Carrier Enforcement Officer Jeremy Albert (Trooper Albert), stopped and inspected a commercial motor vehicle (CMV) operated by General Transport Inc. and driven by Curtis N. Massey (Mr. Massey or Respondent). At the time of the inspection, Trooper Albert prepared a report indicating violations of the Federal Motor Carrier Safety Regulations (FMCSR), including, 49 C.F.R. 396.9(c)(2), operating an out-of-service vehicle. (Tr. at 14-18; Staff Ex.1.)

{¶ 3} Staff served a notice of preliminary determination (NPD) upon Respondent in accordance with Ohio Adm.Code 4901:2-7-07, alleging a violation of the Commission's Transportation regulations.

{¶ 4} On March 3, 2020, Respondent requested an administrative hearing in accordance with Ohio Adm.Code 4901:2-7-13.

{¶ 5} On March 11, 2020, the attorney examiner scheduled a prehearing conference for April 7, 2020, pursuant to Ohio Adm.Code 4901:2-7-16(B). The prehearing conference was conducted via telephone, but the parties were unable to reach a settlement.

{¶ 6} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies are required to implement procedures consistent with recommendations from the Department of Health to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of the Department of Health regarding this public health emergency in order to protect their health and safety.

{¶ 7} A July 14, 2020 evidentiary hearing was scheduled but subsequently rescheduled numerous times due to the COVID-19 emergency and requests from the parties.

{¶ 8} At the hearing on March 2, 2022, Trooper Albert and Rod Moser, Transportation Chief of Compliance and Registration for the Commission, testified in support of the violation identified by Staff. Mr. Massey testified on his own behalf.

### III. LAW

{¶ 9} 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.

#### IV. ISSUE

{¶ 10} The issue in this case is whether Staff has satisfied its burden to show, by a preponderance of the evidence, that Mr. Massey was operating a CMV in violation of 49 C.F.R. 396.9(c)(2). Staff alleges that Respondent was stopped while driving in Ohio after being placed out-of-service by an officer in Indiana. Mr. Massey contends that the repairs noted by the Indiana inspector were satisfactorily completed, so his CMV was no longer out-of-service.

#### V. SUMMARY OF THE EVIDENCE

{¶ 11} Trooper Albert testified that he was called to assist another officer who stopped Respondent on August 15, 2019. He testified that the initial stop was due to a concerned citizen calling about the damaged trailer. (Tr. at 15-18, 39.) Although other violations were noted at the stop, the violation at issue in this proceeding is 49 C.F.R. 396.9(c)(2), driving an out-of-service CMV (Staff Ex. 3). Trooper Albert stated that, during the inspection, he could not make contact with the Indiana Department of Transportation to verify that the officer allowed Mr. Massey to continue driving after securing the trailer (Tr. at 18). Trooper Albert took numerous photographs of the trailer damage, which included one side of the trailer wall folded in, a sidewall break, the roof of the trailer gone, broken frame rail connections, and metal hanging off the trailer (Tr. at 19-33; Staff Ex. 2). Trooper Albert also testified that he reviewed the Indiana inspection report, which showed that the vehicle was placed out-of-service. Trooper Albert also stated that the Indiana inspector did not verify that the out-of-service was made during the stop, which Trooper Albert could discern because the inspection report marked a "U" in the "Verify" column rather than an "A," which would have shown that the inspector verified that the repair was made. (Tr. at 34-36, 40-41; Staff Ex. 2.) Trooper Albert also noted that on the same inspection report, there is place for the signature of the repairer to show proof that the vehicle was fixed. Trooper Albert testified that the signature in the spot for the repairer appears to be Respondent's signature. (Tr. at 36-37; Staff Ex. 2.) Trooper Albert also testified that after completing his inspection, he recommended to Mr. Massey how to secure the trailer so that

Mr. Massey could continue on his route. Trooper Albert stated that Respondent would be allowed to continue traveling in the vehicle only after the repair was made to secure the trailer. Trooper Albert also stated that he did not stay with Mr. Massey to ensure the trailer was secured and does not know what happened after he left the scene. (Tr. at 44-46.) As noted by Staff witness Rod Moser, a civil forfeiture of \$3,034 was derived for this violation (Tr. at 10; Staff Ex. 3).

{¶ 12} Mr. Massey stated that the damage to the trailer was caused when he went under a low bridge in Chicago. He explained that his carrier asked him to bring the trailer back to Ohio so that they would not have to pay for storage fees in Chicago. Respondent testified that, in Chicago, he hired a tow truck crew to help secure the trailer for the trip back to Ohio. Mr. Massey stated that the tow truck crew put the top of the trailer, which had been peeled back, into the trailer and ran straps from one side of the trailer to the other to pull the sides as tight as they could. (Tr. at 49-51.) Respondent asserted that he was pulled over in Indiana, and the Indiana inspector told him that he could continue on his trip after securing “one loose corner at the top [of the trailer].” He stated that he strapped down the corner while the inspector was still at the scene, and he signed the Indiana inspection report to show that the repair was complete, all while in the presence of the Indiana inspector. Mr. Massey also stated that the Indiana inspector allowed him to drive away after he completed the repair. (Tr. at 51-52.) Respondent testified that during the Ohio inspection, Trooper Albert told him that he could continue on his trip if he could secure the trailer by wrapping straps completely around the trailer. Mr. Massey stated that Trooper Albert left the scene before the trailer was secured. (Tr. 52-53.) Respondent contends that he was not driving an out of service vehicle because the Indiana inspector released him to drive away after he completed the required repair by strapping down the corner of the trailer (Tr. at 54). Mr. Massey stated that the only documentation he has to corroborate his story that the Indiana inspector released him to go back in service was the Indiana inspection report that has his signature stating that the trailer had been repaired. He stated that he did not get additional documentation from the Indiana inspector or Department of Transportation because he

doesn't understand how he would be able to get such documentation. (Tr. at 55, 58-60.) Mr. Massey adds that he is no longer employed with his carrier and does not drive CMVs anymore (Tr. at 54).

## VI. COMMISSION CONCLUSION

{¶ 13} Ohio Adm.Code 4901:2-7-20 requires that Staff, at a hearing, prove the occurrence of a violation by a preponderance of the evidence. The Commission finds that, based on a preponderance of the evidence, Staff has met its burden of proving that Mr. Massey has violated the Commission's transportation rules, specifically, a violation of 49 C.F.R. 396.9(c)(2), which states, "No \* \* \* person [shall] operate any motor vehicle or intermodal equipment declared and marked 'out-of-service' until all repairs required by the 'out-of-service notice' have been satisfactorily completed." Mr. Massey contends that the repairs required by the out-of-service notice were completed while he was stopped in Indiana (Tr. at 51-52). However, Respondent provided no documentation to show which repairs were required by the out-of-service notice or that those repairs were completed before he resumed his trip (Tr. at 55, 58-60). Trooper Albert testified that Mr. Massey was stopped because a call was received from a concerned driver, and Trooper Albert took pictures to show the poor condition of the trailer (Tr. at 18, 39; Staff Ex. 2). Trooper Albert also noted that the Indiana inspection report included a "U" in the "Verify" column to show that the Indiana inspector did not verify that the necessary correction was made. (Tr. at 35-36, 40-41; Staff Ex. 2.) Additionally, Trooper Albert testified that he did not find the trailer to be safe at the time of the stop and allowed Mr. Massey to continue transporting the trailer only after further securing the trailer (Tr. at 44-46).

{¶ 14} While Respondent states that the repairs required by the out-of-service notice were completed while he was stopped in Indiana, we nevertheless uphold the citation for driving an out-of-service CMV. In doing so, we stress the public safety considerations that relate to the ability of law enforcement to determine that an operator is operating safely at the time of an inspection. We note that Mr. Massey has presented no evidence to corroborate his claim that his out-of-service repair was completed beyond his own signature on the

Indiana inspection report. He provided no evidence to Trooper Albert during the inspection and did not acquire any such evidence in preparation for his administrative hearing before the Commission. (Tr. at 55, 58-60.) Given the severe damage to the trailer at issue, which included one side of the trailer wall folded in, a sidewall break, the roof of the trailer gone, broken frame rail connections, and metal hanging off the trailer, we find it unreasonable for Respondent to rely solely on his account that he remedied the Indiana out-of-service determination via a roadside self-repair at the time of that inspection. Accordingly, we uphold the violation for his operation of an out-of-service CMV.

{¶ 15} Ohio Adm.Code 4901:2-7-21 states that, in assessing civil forfeitures, “the [C]ommission may order payment of a forfeiture greater than, less than, or equal to the forfeitures requested in the \* \* \* notice of preliminary determination.” Upon review of the evidence, we find that mitigating factors support not assessing the full forfeiture against Respondent for the 49 C.F.R. 396.9(c)(2) violation. Mr. Massey testified that immediately after the accident that caused the damage to his trailer, he hired a tow truck crew to help secure the trailer (Tr. at 49-51). Respondent asserted that he also took additional steps to further secure the trailer after his Indiana inspection and after Trooper Albert’s inspection (Tr. at 51-53). Mr. Massey also testified that he does not drive CMVs anymore (Tr. at 54). The Commission finds that there is a reasonable basis to find that the forfeiture assessed against Respondent should be reduced. Accordingly, the forfeiture amount for the violation of 49 C.F.R. 396.9(c)(2) shall be reduced from \$3,034 to \$1,500.

{¶ 16} Based on these findings, Respondent should be assessed a \$1,500 forfeiture for violation of 49 C.F.R. 396.9(c)(2) and should pay the forfeiture in 12 consecutive monthly installments of \$125, commencing 60 days from the date of this Opinion and Order. Payment of such forfeiture shall be made via the Commission website or by certified check or money order (reference Case Number 20-545-TR-CVF and OH1200001847D) made payable to: “Public Utilities Commission of Ohio” and shall be mailed or delivered to: Public Utilities Commission of Ohio, Attn: CF Processing, 180 E. Broad St., 4th floor, Columbus, Ohio 43215-3793.

## VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 17} On August 15, 2019, Motor Carrier Enforcement Officer Jeremy Albert stopped and inspected a CMV operated by General Transport Inc. and driven by Curtis N. Massey. Trooper Albert issued a citation for violation of 49 C.F.R. 396.9(c)(2), operating an out-of-service CMV.

{¶ 18} In accordance with Ohio Adm.Code 4901:2-7-12, Mr. Massey was served with an NPD. In the NPD, Respondent was notified that Staff intended to assess a total civil forfeiture of \$3,034 for the violation.

{¶ 19} A prehearing conference was conducted on April 7, 2020, but the matter was not resolved.

{¶ 20} An evidentiary hearing was held on March 2, 2022.

{¶ 21} 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.

{¶ 22} Based on the record in this proceeding, the Commission finds that Staff has proven, by a preponderance of the evidence, that Mr. Massey violated 49 C.F.R. 396.9(c)(2), operating an out-of-service CMV.

{¶ 23} Mr. Massey should be assessed a \$1,500 forfeiture for violating 49 C.F.R. 396.9(c)(2), operating an out-of-service CMV, and should pay the forfeiture in 12 consecutive monthly installments of \$125, commencing 60 days from the date of this Opinion and Order.

{¶ 24} Due to several mitigating factors, the above reduced forfeiture should be assessed against Respondent.

**VIII. ORDER**

{¶ 25} It is, therefore,

{¶ 26} ORDERED, That Curtis N. Massey pay a civil forfeiture of \$1,500 in 12 consecutive monthly installments of \$125, commencing within 60 days of this Opinion and Order. Payment of such forfeiture shall be made via the Commission website or by certified check or money order (reference Case Number 20-545-TR-CVF and OH1200001847D) made payable to: "Public Utilities Commission of Ohio" and shall be mailed or delivered to: Public Utilities Commission of Ohio, Attn: CF Processing, 180 E. Broad St., 4th floor, Columbus, Ohio 43215-3793. It is, further,

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

**COMMISSIONERS:*****Approving:***

Jenifer French, Chair  
M. Beth Trombold  
Lawrence K. Friedeman  
Daniel R. Conway  
Dennis P. Deters

JWS/ dmh



**This foregoing document was electronically filed with the Public Utilities  
Commission of Ohio Docketing Information System on**

**8/24/2022 2:39:49 PM**

**in**

**Case No(s). 20-0545-TR-CVF**

Summary: Opinion & Order finding that Staff demonstrated, by a preponderance of the evidence, that Curtis N. Massey violated 49 C.F.R. 396.9(c)(2) by operating an out-of-service commercial motor vehicle electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio