

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of John Byrd, Notice of)
Apparent Violation and Intent to Assess) Case No. 06-16-TR-CVF
Forfeiture.) (OH3272002826D)

OPINION AND ORDER

The Commission, considering the public hearing held on March 2, 2006, issues its opinion and order in this matter.

APPEARANCES:

Mr. John Byrd, 2913 E. Kings Creek, Urbana, Ohio 43078, on his own behalf.

Jim Petro, Attorney General of Ohio, by Duane W. Luckey, Senior Deputy Attorney General, by John H. Jones, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215.

I. Nature of the Proceeding:

On May 25, 2005, the Ohio Highway Patrol (Highway Patrol) stopped and inspected a motor vehicle driven by John Byrd (Mr. Byrd or respondent) in the state of Ohio. The Highway Patrol found various violations of the Code of Federal Regulations (C.F.R.), including the following violations relevant to this case:¹

49 C.F.R. Section 383.23(a)(2) - Operating a commercial motor vehicle without a commercial driver's license.

49 C.F.R. Section 391.41(a) - No medical certificate in driver's possession.

¹ Staff Exhibit 1 (vehicle inspection report), Tr. 12-47. Other violations discovered during the inspection, but not charged against Mr. Byrd in this case, were: 49 C.F.R. Section 396.17(c)- Periodic inspection/operating a CMV without periodic inspection, 2-5-10- No company markings, 49 C.F.R. Section 393.95(c)- Emergency equipment/no emergency warning devices in vehicle, 49 C.F.R. Section 393.19- Requirements for turn signaling systems/both left and right turn signals inoperative, 49 C.F.R. Section 393.11- Lighting devices and reflectors/both left and right side marker lights on bed inoperative, Section 4513.05, Revised Code- Tail lights and illumination of rear license plate/license plate light missing/not operative, Section 4503.21, Revised Code- Display of license plate/rear license plate obscured, 49 C.F.R. Section 393.83(g)- Exhaust systems/exhaust leak at right rear corner of truck cab, 49 C.F.R. Section 396.3(a)(1)- Inspection, repair and maintenance/tires/nail in tire, and 49 C.F.R. Section 396.3(a)(1)- Inspection, repair and maintenance/brake out of adjustment.

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49 C.F.R. Section 392.16 - Failing to use seat belt while operating a commercial motor vehicle.

Mr. Byrd was timely served a Notice of Apparent Violation and Intent to Assess Forfeiture and a Notice of Preliminary Determination in accordance with Rules 4901:2-7-07 and 4901:2-7-12, Ohio Administrative Code (O.A.C.), respectively. In these notices, Mr. Byrd was notified that the Commission's staff (Staff) intended to assess civil monetary forfeitures totaling \$450.00 for violation of 49 C.F.R. Section 383.23(a)(2)[\$250.00], 49 C.F.R. Section 391.41(a)[\$100.00], and 49 C.F.R. Section 392.16[\$100.00].

A prehearing teleconference was conducted in the case. The parties, however, failed to reach a settlement agreement at the conference. Subsequently, a hearing was convened on March 2, 2006. Thereafter, staff filed its brief of the case. Mr. Byrd did not file a brief in this matter.

II. Background:

Mr. Byrd, driving a truck owned by his employer, Ms. Kaye Slesinger, was stopped and inspected by the Highway Patrol on Highway 68 in Clark County, Ohio. Mr. Byrd was transporting bales of straw and hand tools from a farm near Urbana, Ohio, owned by Ms. Slesinger, to a housing development, also owned by Ms. Slesinger, in Xenia, Ohio. The straw was intended for use as a landscaping material on the lawns of a housing development. After delivery of the straw, the truck was intended to proceed to yet a third property owned by Ms. Slesinger, another farm. The truck carried a farm vehicle license plate.

III. Issue in the Case:

At issue is whether the vehicle driven by Mr. Byrd was subject to the Federal Motor Carrier Safety Regulations (FMCSRs), and whether Mr. Byrd was liable for the alleged violations in the case, or was operating under an intrastate exception to transportation regulations that applies to farm vehicles. Staff contends that the truck driven by Mr. Byrd qualified as a commercial motor vehicle (CMV), with a gross vehicle weight rating (GVWR) of over 26,001 pounds, and was used for a purpose not connected with the operation of a farm, i.e., the transportation of straw for growing grass seed on the lawns of a housing development. Staff argued that the truck thus became a CMV subject to the FMCSRs instead of a farm truck. In addition, staff noted that Ms. Slesinger, Mr. Byrd's employer, paid the assessed forfeitures in the companion case against her that involved the same set of facts in this case. Staff, therefore, argued that the payment of the forfeitures by Mr. Byrd's employer is contrary to any argument that the FMCSRs do not apply to Mr. Byrd. For Mr. Byrd's part, his witness indicated that, according to the Bureau of Motor Vehicles, the vehicle driven by Mr. Byrd was under the legal weight that would otherwise require Mr. Byrd to obtain a commercial driver's license (CDL). The witness

further stated that Mr. Byrd was delivering a farm product, straw, to market, the housing development owned by Mr. Byrd's employer, and the truck driven by Mr. Byrd thus was a farm vehicle.

IV. Discussion:

The Commission observes that Section 4923.02, Revised Code, provides an exemption from intrastate regulation for the private transportation of farm supplies to a farm or farm products from farm to market. With regard to the applicability of this code section in this matter, we note that, during the inspection, Mr. Byrd informed Officer Staudt that he was proceeding from a "shop" to a "job" in Xenia, Ohio (Tr. 48). The inspector then cited Mr. Byrd for the FMCSRs violations in this case. Mr. Byrd did not inform the inspector that he was traveling from a farm or that the ultimate destination of the truck he was driving was another farm (Tr. 51). At hearing, however, Mr. Byrd's witness noted that Mr. Byrd had departed from one farm and that the truck was en route to another farm, with a stopover at a housing development to deliver seven bales of straw. The witness also testified that the housing development was intended as the market for the straw (Tr. 81). Further, as mentioned previously in this opinion and order, both farms and the housing development on the route traveled by Mr. Byrd, as well as the truck Mr. Byrd was driving and the straw that he was delivering, were owned by the same person, Mr. Byrd's employer (Tr. 75-77).

After considering the circumstances surrounding this violation, the Commission is of the opinion that, in this instance, Mr. Byrd was transporting a farm product, straw, from the farm of his employer to a market for that straw, the housing development owned by that same employer. In light of this situation, the Commission believes that Mr. Byrd was exempt in Ohio from intrastate regulation within the meaning of Section 4923.02, Revised Code, for the transportation of a farm product to market. Moreover, the Commission notes that, having found that the Section 4923.02 farm/market exception applies to the inspection of the truck in this case, thus rendering the vehicle non-jurisdictional under the Ohio regulations, we do not reach the consideration of possible violations under the FMCSRs. Accordingly, the Commission finds that Mr. Byrd was not in violation of 49 C.F.R. Section 383.23(a)(2), 49 C.F.R. Section 391.41(a), and 49 C.F.R. Section 392.16.

Lastly, the Commission would emphasize that we construe our ruling as applying narrowly to the facts of this case only. In part, we base our decision, that Mr. Byrd was eligible for the farm/market exemption from regulation under Section 4923.02, Revised Code, on the testimony of record stating that the housing development owned by Mr. Byrd's employer was a market for the straw being transported. The Commission notes that nowhere in the Ohio regulations governing motor carrier transportation, Title 49, Revised Code, is the term "market" defined. There was no direct sale of the straw being transported. However, in light of the testimony stating that the end-use of the straw was

for growing grass on the lawns of the housing development and that the lots of the development would eventually be marketed to individual buyers, we believe it is possible that, in this particular case, the housing development can be construed as a market for the straw. We would also note that our decision in this case is expressly limited by the fact that Mr. Byrd's employer owned everything involved in the case--- farms, truck, straw and tools, and housing development.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On May 25, 2005, the Highway Patrol stopped and inspected a commercial motor vehicle operated by John Byrd. The Highway Patrol found Mr. Byrd to be in violation of 49 C.F.R. Section 383.23(a)(2)- Operating a commercial motor vehicle without a commercial driver's license, 49 C.F.R. Section 391.41(a)- No medical certificate in driver's possession, and 49 C.F.R. Section 392.16- Failing to use seat belt while operating a commercial motor vehicle.
- (2) Respondent was timely served a Notice of Apparent Violation and Intent to Assess Forfeiture and a Notice of Preliminary Determination setting forth the violations and forfeiture amounts totaling \$450.00 in this case.
- (3) A hearing in this matter was convened on March 2, 2006.
- (4) Respondent was exempt in Ohio from intrastate regulation within the meaning of Section 4923.02, Revised Code, for the transportation of a farm product to market. Respondent, therefore, was not in violation of the commercial driver's license, medical certificate, and seat belt requirements of 49 C.F.R. Section 383.23(a)(2), 49 C.F.R. Section 391.41(a), and 49 C.F.R. Section 392.16, respectively.

ORDER:

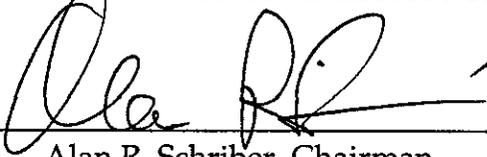
It is, therefore,

ORDERED, That this case be dismissed and closed of record. It is, further,

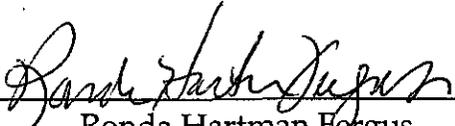
ORDERED, That that the violations be deleted from Mr. Byrd's Safety Net record and history of violation. It is, further,

ORDERED, That a copy of this opinion and order be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



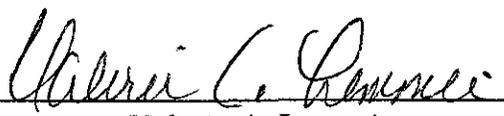
Alan R. Schriber, Chairman



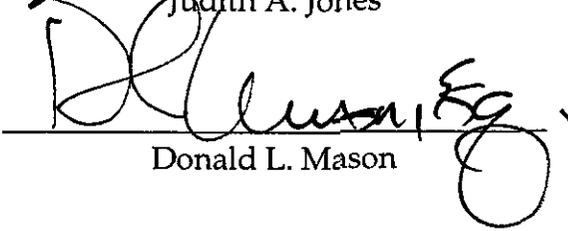
Ronda Hartman Fergus



Judith A. Jones



Valerie A. Lemmie

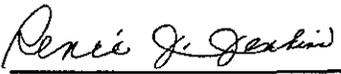


Donald L. Mason

KKS:ct

Entered in the Journal

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Renee J. Jenkins
Secretary