

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Ace Doran Hauling & Rigging Co., Notice of Apparent Violation and Intent to Assess Forfeiture.) Case No. 09-383-TR-CVF (OH3256005785C)

OPINION AND ORDER

The Commission, considering the public hearing held on September 29, 2009, issues its opinion and order in this matter.

APPEARANCES:

Dennis Nelson, 1601 Blue Rock Street, Cincinnati, Ohio 45223, on behalf of Ace Doran Hauling & Rigging Co.

Richard Cordray, Ohio Attorney General, by Duane W. Luckey, Section Chief, and Werner L. Margard III and John H. Jones, Assistant Attorneys General, Public Utilities Section, 180 East Broad Street, 6th Floor, Columbus, Ohio 43215, on behalf of the staff of the Public Utilities Commission.

NATURE OF THE PROCEEDING:

On August 14, 2008, the Ohio State Highway Patrol (Highway Patrol) stopped and inspected a motor vehicle, operated by Ace Doran Hauling & Rigging Co. (Ace Doran) and driven by Gary A. Diuk, in the state of Ohio. The Highway Patrol found violations of the Code of Federal Regulations (C.F.R.), including the following violation relevant to this case:

49 C.F.R. §392.9(a)(1)— Failing to secure cargo as specified in 49 CFR 393.100 through 393.142— 2 of 5 straps loose (4 required) in violation of §393.104(f)(3). Out of Service.¹

Ace Doran was timely served a Notice of Preliminary Determination in accordance with Rule 4901:2-7-12, Ohio Administrative Code (O.A.C.). In this notice, Ace Doran was notified that staff intended to assess a civil monetary forfeiture totaling \$100.00 for violation of 49 C.F.R. Section 392.9(a)(1) (Section 392.9). A prehearing teleconference was

¹ 49 C.F.R. §392.9(a)(1), provides, in pertinent part, that: (a) General. A driver may not operate a commercial motor vehicle and a motor carrier may not require or permit a driver to operate a commercial motor vehicle unless—(1) The commercial motor vehicle's cargo is properly distributed and adequately secured as specified in Sections 393.100 through 393.136 of this subchapter.

conducted in the case. The parties, however, failed to reach a settlement agreement during the conference. Subsequently, a hearing was convened on September 29, 2009.

Background

The inspection in this case took place near Mile Post 7 on U.S. Route 30 in Stark County, Ohio. At the time of the inspection, Ace Doran's truck was hauling steel rods from Canton, Ohio, to Columbus, Indiana.

Issue in the Case:

Staff argued that the load on Ace Doran's truck was not secured properly with the required number of straps. Ace Doran maintained that the load was secured.

DISCUSSION:

Motor carrier enforcement officer, Douglas M. Hostetler, testified that he observed Ace Doran's truck in transit on the highway and noticed two loose straps, which were over the top tier of the load of steel rods on the truck, moving as air passed beneath them. He then pulled the vehicle over for a roadside inspection (Tr. at 9, 13). Officer Hostetler testified that the load of steel rods was not positioned against a headerboard and that he measured the load at 22.75 feet. Subsequently, he called the shipper's office to verify the measurement (Tr. at 12-13). Officer Hostetler noted that there was a total of seven straps on the entire load, the top and bottom tiers of steel rods on the truck. He testified that the top tier of steel rods needed to have at least four properly secured straps. There were five straps on the top tier. Two straps, however, were loose. Officer Hostetler testified that the loose straps were ineffective as securement devices and that Ace Doran thus was in violation of the load securement sections of the C.F.R. He placed Ace Doran's truck temporarily out of service until the driver tightened the loose straps (Tr. at 19-20, 25).

Officer Hostetler testified that the Highway Patrol requires motor carrier enforcement officers to list all load securement violations under Section 392.9 on their laptop computers. That generic C.F.R. section states that a cargo has to be secured as specified in 49 C.F.R. Sections 393.100 through 393.136. Officer Hostetler noted that, under 49 C.F.R. Section 393.110 (Section 393.110),² by using the measurements of a load, and the

² 49 C.F.R. Section 393.110 provides, in pertinent part, that: a) When tiedowns are used as part of a cargo securement system, the minimum number of tiedowns required to secure an article or group of articles against movement depends on the length of the article(s) being secured.... (b) When an article is not blocked or positioned to prevent movement in the forward direction by a headerboard, bulkhead, other cargo that is positioned to prevent movement, or other appropriate blocking devices, it must be secured by at least: (3) Two tiedowns if the article is longer than 10 feet (3.04 meters), and one additional tiedown for every 10 feet (3.04 meters) of article length, or fraction thereof, beyond the first 10 feet (3.04 meters) of length.

different examples listed in the section, the number of straps that are needed to secure a particular cargo can be determined. Further, Officer Hostetler testified that 49 C.F.R. Section 393.104(f)(3) (Section 393.104(f)(3))³ and 49 C.F.R. Section 393.106,⁴ respectively, specify that load securement straps are not allowed to be loose and that the cargo has to be firmly immobilized (Tr. at 22-24).

Officer Hostetler testified that he did not remember which of the five straps on the top tier of the load were loose. He stated, however, that two of those five straps were not properly used and were not considered legal securement (Tr. at 24-25).

Gary Diuk, the driver of Ace Doran's truck, agreed that two straps on the load were loose. However, he disagreed as to the locations of the loose straps. Mr. Diuk testified that, from the back of the trailer, strap No. 2 on the bottom and the center strap on the top were loose. Mr. Diuk testified that he tightened those straps. He disagreed with Officer Hostetler about the existence of a violation, because he had more than the required number of straps for the load (Tr. at 34-37, 40; Staff Exhibit 4).

Mr. Diuk testified that he observed the inspection and that Officer Hostetler did not measure the load. Mr. Diuk did not dispute Officer Hostetler's telephone call to the shipper to verify the length of the load. Nor did he dispute the length of the steel rods, 22.75 feet (Tr. at 35, 42-43).

The Commission initially observes that Section 392.9(a)(1) specifies that "....a motor carrier may not require or permit a driver to operate a commercial motor vehicle unless-- (1) The commercial motor vehicle's cargo is properly distributed and adequately secured as specified in Sections 393.100 through 393.136" In turn, Section 393.110 specifies that "....When an article is not blocked or positioned by a headerboard, bulkhead, other cargo.... it must be secured by at least: (3) Two tiedowns if the article is longer than 10 feet (3.04 meters), and one additional tiedown for every 10 feet...." And Section 393.104(f)(3) mandates that straps must be attached and secured so they do not become loose. After a review of the testimony and evidence submitted in the case, we believe that the record is clear regarding a violation of Section 392.9(a)(1), as set forth in Section 393.110 and Section 393.104(f)(3). The Commission is of the opinion that Officer Hostetler saw Ace Doran's truck in transit with two of the straps on the top tier of the load of steel rods moving up and down as air passed under them, which caused him to stop the truck and conduct an inspection. Although the top tier of steel rods had five straps across it, only three of the

³ 49 C.F.R. Section 393.104(f)(3), provides, in pertinent part, that: (f) Use of tiedowns. 3) Each tiedown must be attached and secured in a manner that prevents it from becoming loose, unfastening, opening or releasing while the vehicle is in transit.

⁴ 49 C.F.R. Section 393.106, provides, in pertinent part, that: (b) General. Cargo must be firmly immobilized or secured on or within a vehicle by structures of adequate strength, dunnage or dunnage bags, shoring bars, tiedowns or a combination of these.

straps were tight. The load was not positioned against the headerboard of the truck as a method of securement (Tr. at 12-13). Further, while Mr. Diuk testified that Officer Hostetler did not measure the load, he did not contest Officer Hostetler's verification of the length of the load with the shipper or that the length of the load was 22.75 feet. The load, therefore, had only three properly secured straps, one less than the four secured straps required, pursuant to Sections 392.9(a)(1), 393.110, and 393.104(f)(3) for the 22.75 foot length of the steel rods (Tr. at 18-19, 24-28).

The Commission believes that Officer Hostetler properly cited the company for the violation and that Ace Doran's arguments at hearing were not sufficient to demonstrate that it should not be held liable for the civil forfeiture assessed for violation of Section 392.9(a)(1). Accordingly, the Commission finds that the respondent was in violation of Section 392.9(a)(1).

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On April 25, 2007, the Highway Patrol stopped and inspected a motor vehicle operated by Ace Doran and driven by Gary Diuk in the state of Ohio. The Highway Patrol found violations of the Code of Federal Regulations (C.F.R.), including the following violation relevant to this case: 49 C.F.R. Section 392.9(a)(1) - Failing to secure cargo as specified in 49 CFR 393.100 through 393.142— 2 of 5 straps loose (4 required) in violation of Section 393.104(f)(3). Out of Service.
- (2) Ace Doran was timely served a Notice of Preliminary Determination that set forth a civil forfeiture of \$100.00 for violation of Section 392.9(a)(1).
- (3) A hearing in this matter was convened on September 29, 2009.
- (4) Staff demonstrated at hearing, by a preponderance of the evidence, that Ace Doran violated Section 392.9(a)(1).
- (5) Ace Doran's arguments at hearing were not sufficient to demonstrate that it should not be held liable for the civil forfeiture assessed for violation of Section 392.9(a)(1).
- (6) Pursuant to Section 4905.83, Revised Code, respondent must pay the state of Ohio the civil forfeiture assessed for violation of Section 392.9(a)(1). Ace Doran shall have 30 days from the date of this order to pay the assessed forfeiture of \$100.00.

It is, therefore,

ORDERED, That Ace Doran pay the assessed amount of \$100.00 for violation of 49 C.F.R. Section 392.9(a)(1), as set forth in Finding (6). Payment should be made payable to "Treasurer, State of Ohio" and mailed or delivered to Public Utilities Commission of Ohio, Attention: Fiscal Department, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. In order to assure proper credit, Ace Doran is directed to write the case number (OH3256005785C) on the face of the check or money order. It is, further,

ORDERED, That Ohio Attorney General take all legal steps necessary to enforce the terms of this opinion and order. 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



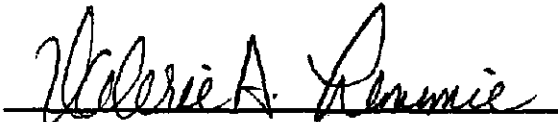
Alan R. Schriber, Chairman



Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie

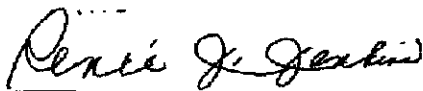


Cheryl L. Roberto

KKS/vrm

Entered in the Journal

FEB 11 2010



Renee J. Jenkins
Secretary