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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Large Cartage, Inc., :  
Notice of Apparent Violation and Intent : Case No. 09-674-TR-CVF  
to Assess Forfeiture. : (OH3242005877C)

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**POST-HEARING BRIEF  
SUBMITTED ON BEHALF OF THE STAFF OF  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**I. INTRODUCTION**

Large Cartage, Inc. ("Respondent") violated provisions of the Federal Motor Carrier Safety Regulations by operating a vehicle without operating rear turn signals. There are neither issues of fact or law in this case. Respondent admitted the violation, and the law is not in dispute.

The record shows that the Staff of the Public Utilities Commission of Ohio ("Staff") offered the testimony of a highly qualified and credible Motor Carrier Enforcement inspector, as well as the testimony of a compliance officer of the Transportation Compliance Division of the Public Utilities Commission of Ohio ("Commission"), to support both the violation and the resulting civil forfeiture. The record supports the finding of the violations of the Motor Carrier Safety Regulations at issue in this proceeding. Based on the evidence of record, established precedent of the

Commission, and on sound public policy, the total monetary civil forfeiture of zero dollars (\$0.00) should be imposed against Respondent.

## **II. STATEMENT OF FACTS**

### **A. Procedural History of the Case**

According to Staff witness Forbes, Respondent was timely and properly provided with all required notices and process in this case. Tr. at 20. Respondent was sent a Notice of Preliminary Determination on July 27, 2009, as required and described in Section 4901:2-7-12 of the Ohio Administrative Code. Ohio Admin. Code § 4901:2-7-12 (Baldwin 200). The Notice of Preliminary Determination cited the following violation:

- 49 C.F.R. § 393.9 - Inoperative turn signal, right rear, no flash, on only

Respondent then filed a request for a hearing in this matter. The hearing was conducted on February 10, 2010.

### **B. Factual Background of the Violations at Issue in This Proceeding**

On April 30, 2009, Ohio State Highway Patrol Motor Carrier Enforcement Officer Mark Irmischer conducted a roadside inspection of a vehicle being operated by a William Gatwood for Respondent, Large Cartage, Inc. Tr. at 7. The inspection was initiated because of obvious violations. Specifically, Officer Irmischer pulled the vehicle over because of inoperative ID lights on the trailer chassis. Tr. at 9. The inspection was performed as part of Officer Irmischer's regular assigned duties and responsibilities. Tr. at 7.

Following the inspection, Officer Irmischer prepared a report describing the results of his inspection. Staff Ex. 1. Officer Irmischer found several violations, including the one noted above. Specifically, Officer Irmischer inspected the vehicle's signaling system and found that, while the turn signals came on, the turn signals did not flash. Tr. at 13-14.

### **III. LAW AND ARGUMENT**

#### **A. Motor Transportation Companies Must Comply with the Motor Carrier Safety Regulations.**

The Commission, as the lead agency for the Motor Carrier Safety Assistance Program ("MCSAP") in Ohio, regulates operation of commercial motor vehicles. Ohio Rev. Code § 4923.03(A) (Baldwin 2009). In furtherance of this obligation, the Commission has adopted rules governing the conduct of motor transportation companies that are engaged in commerce. The Commission has adopted "Safety Rules" for motor carrier safety pursuant to authority delegated by the Ohio General Assembly. Ohio Rev. Code § 4923.03(B) (Baldwin 2009). These rules, which are found under Ohio Admin. Code § 4901:2-5-02, largely adopt the U.S. Department of Transportation motor carrier safety regulations. The state has continually sought to implement programs to ensure the safety of the motoring public and to reduce accidents involving commercial motor carriers. It is the Commission's duty to keep Ohio's roadway safe from accidents involving commercial motor vehicles. Compliance with the regulations is imperative.

**B. Respondent Failed to Comply with the Regulations by Permitting a Driver to Operate a Commercial Motor Vehicle with Inoperative Rear Signal Lights in violation of 49 C.F.R. § 393.9.**

Respondent was cited for a single violation of 49 C.F.R. § 393.9. That section provides in pertinent part that “[a]ll lamps required by this subpart shall be capable of being operated at all times.” Respondent’s vehicle was required to have rear turn signals as required by 49 C.F.R. § 393.11. Officer Irmischer testified that the vehicle’s turn signals could turn on, but would not flash as required. Tr. 13-14.

Company witness Stackhouse testified that the trailer was inspected prior to leaving the shipper’s premises, and that no “damages” were noted. Company Exhibit 1. But the vehicle was apparently driven to the Respondent’s premises and sat there for 15 hours or more before beginning the trip that resulted in this inspection. Company Exhibit 1 is of little or no value given the change in custody and the lapse of time.

Company Exhibit 2 is apparently a statement compiled by Company witness Stackhouse based in part on conversations with respondent’s driver, Mr. Gatwood. While Company Exhibit 2 suggests that Mr. Gatwood conducted a pre-trip inspection, there is no copy of that inspection report contained in the record of this case. Although Mr. Gatwood’s hearsay statement indicates that the inspection was satisfactory, Staff has no way of knowing whether the turn signals, for example, were ever checked.

Respondent admitted that the turn signals did not operate as required by the Motor Carrier Safety regulations. Company witness Stackhouse could not have been more clear about the violations:

Q: (by Attorney Margard): Okay. Very good. Thank you. If I ask you to direct your attention to the inspection report, Staff Exhibit No. 1. And I want to ask you a couple of things about this document, but I want to begin by talking about the violations. Do you agree these violations occurred?

A: (by Company witness Stackhouse): I do agree that they occurred as stated by the officer.

Q: Okay. So it's your opinion that, in fact, the turn lights did not flash.

A: Correct.

Q: Okay.

A: Right.

Q: And that the lamp -- the ID lamp had a light missing.

A: Correct.

Q: You are not contesting the violations.

A: No, not at all.

Tr. at 43.

Respondent has an issue with being responsible for violations that may have been the fault of another. Specifically, the Respondent suggests that the fault that caused the violation was in equipment that it did not own and could not control. Tr. at 38. Staff respectfully submits that this is neither relevant, nor factually what occurred in this case.

As Staff witness Forbes testified, it did not matter who owned the equipment that resulted in the violation. Tr. at 18. Although Mr. Forbes was aware that the regulations were changing (and has since changed) for intermodal cargo like the trailer at issue in this case, it was his opinion that the change would have had no effect on this case even had

the new rules been in place at the time of this inspection. Specifically, he stated that "this violation would have still fallen on Large Cartage after [the effective date of the new rules] for both fine and safety." Tr. at 25. Aside from the fact that the new regulations postdated this inspection and are therefore completely irrelevant, they would not have had any effect on the outcome even if they were in effect.

But even if there was an issue whether the shipper / ship yard might, under newer regulations, also be responsible for this violation, the evidence clearly reflects that the responsibility was the Respondent's alone.

Q: (by Attorney Margard): I understand the relay was hot and, therefore, the signals were not working.

A: (by Company witness Stackhouse): Correct.

Q: And he replaced the relay, and then the turn signals worked.

A: Right.

Q: And he replaced it with a relay he happened to have with him because he carries these for his own vehicle.

A: Exactly, right.

Q: Where is the relay located?

\* \* \*

A: I don't know where the relay is physically located.

Tr. at 45-46. The problem of the inoperative turn signals was effectively repaired by the driver replacing the relay. But the relay was located on the Respondent's tractor, not the shipper's trailer / chassis, as the Respondent wanted the Commission to believe.

Staff witness Officer Irmischer made this clear in his rebuttal testimony. He testified that it is, in fact, the relay that causes the turn signal to flash or blink. Tr. at 51. But more importantly, Officer Irmischer testified that the faulty relay would have been located on the Respondent's tractor.

Q: (by Attorney Margard): Where is the relay located?

A: (by Staff witness Irmischer): It would be -- on Freightliners most of the time they are located on the glove box side of the tractor itself, or it will be under the hood, but it's going to be located on the tractor unit 1.

Q: Have you ever conducted an inspection where such a relay was located on the chassis?

A: No, sir. The only thing on the chassis would be a fuse, and the fuse would cause no taillights, no ID lights, but nothing to do with turn signals.

Q: So if, in fact, this particular relay was malfunctioning and not operating properly, that would have been equipment that belonged to the company; is that correct?

A: That's correct.

Tr. at 52.

### **C. The Commission Has Authority to Assess Civil Forfeitures.**

The Commission has the statutory power to assess monetary forfeitures against motor transportation Companies for non-compliance with Federal Motor Carrier Safety Regulations. Ohio Rev. Code §§ 4919.99, 4921.99, 4923.99 (Baldwin 2009). The Legislature granted the Commission the authority to assess forfeitures for violations of the motor carrier safety provisions. *Id.*

The Commission has authority to adopt safety rules applicable to motor carrier regulation and has, in fact, adopted the Federal Motor Carrier Safety Regulations of the U.S. Department of Transportation in Title 49 of the Code of Federal Regulations, Parts 40, 382, 383, 385, 387 and 390 through 397. Ohio Admin. Code § 4901:2-5-02(A) (Baldwin 2009). The Commission has also adopted civil forfeiture and procedural rules. Ohio Admin. Code §§ 4901:2-7-01 - 4901:2-7-22 (Baldwin 2009). The Commission enforces the Motor Carrier Safety Regulations for the State of Ohio.

Mr. Tom Forbes of the Transportation Compliance Division of the Commission testified that the Staff did not recommend a monetary forfeiture in this case. Tr. 95. Mr. Forbes testified that the no forfeiture determination was made in accordance with the Commission's standard methodology, and is reasonable. Tr. at 96.

He explained that, for certain violations, a fine is only issued if there is a combination of multiple violations within categories. Because there was only one violation in this case, no fine was assessed. Tr. at 18.<sup>1</sup> While there are no monetary consequences for this violation, it is nonetheless reported, and does or may affect the Respondent's safety rating since the violation is still reported to the Federal Motor Carrier Safety Administration. Tr. at 18.

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<sup>1</sup> Mr. Forbes explained that, although Officer Irmischer noted multiple violations, only one violation was considered for purposes of assessing a forfeiture. As he explained, the Commission Transportation Staff only assesses a violation one time on one unit. In this case there were two inoperative turn signals, but on the same unit. The same violation code is only assessed one time. Tr. at 28.

#### **IV. CONCLUSION**


This is a simple case. Respondent was operating a vehicle that had inoperative turn signals. Respondent acknowledged and does not contest the violation. The evidence further demonstrates that the apparent cause of the violation was a faulty relay (inasmuch as its replacement repaired the defect), and that that relay switch was located on the Respondent's equipment and therefore wholly Respondent's responsibility.

Based on the record produced at the hearing and for the reasons stated herein, the Staff respectfully requests that the Commission find that the Respondent violated Sections 393.9 of the Federal Motor Carrier Safety Regulations, and that no forfeiture be assessed.

Respectfully Submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the **Post Hearing Brief submitted on Behalf of the Staff of the Public Utilities Commission of Ohio** was served by regular U.S. mail, postage prepaid, or hand-delivered, upon the following party of record, this 5<sup>th</sup> day of March, 2010.

Respectfully Submitted,

  
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Assistant Attorney General

**Party of Record:**

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