

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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PUCO

In the Matter of Dart Trucking :
Company, Inc., Notice of Apparent :
Violation and Intent to Assess :
Forfeiture. :

Case No. 10-608-TR-CVF
(OH3211301579C)

Respondent. :

SETTLEMENT AGREEMENT

I. Introduction

Pursuant to Rule 4901:2-7-11 of the Ohio Administrative Code (O.A.C.), Dart Trucking Company (Carrier or Respondent) and the Staff of the Transportation Department of the Public Utilities Commission of Ohio (Staff) enter into this Settlement Agreement and urge the Commission to adopt the same.

It is understood by the Respondent and the Staff that this Settlement Agreement is not binding upon the Public Utilities Commission of Ohio (Commission). This agreement, however, is based on the Respondent's and the Staff's desire to arrive at a reasonable result considering the law, facts and circumstances. Accordingly, the Respondent and the Staff believe that the Commission should adopt this Settlement Agreement.

This Settlement Agreement is submitted on the condition that the Commission adopts the agreed upon terms. In the event the Commission rejects any part of the Settlement Agreement, or adds to, or otherwise materially modifies its terms, each party

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shall have the right, within thirty days of the Commission's order, to file an application for rehearing that includes a request to terminate and withdraw from the Settlement Agreement. Upon the application for rehearing and request to terminate/withdraw from the Settlement Agreement being granted by the Commission, the Settlement Agreement shall immediately become null and void. In such event, the parties shall proceed to a hearing as if this Settlement Agreement had never been executed.

II. Procedural History

- A. On March 5, 2010, Respondent's commercial motor vehicle was stopped and inspected within the State of Ohio. At the time of the inspection, Respondent was carrying Hazardous Materials, Class 5.2 and 6.1. As a result of the inspection, Respondent was served a Driver/Vehicle Examination Report that included two citations for not having placards when required (inhalation hazard and no provisions for 5.2 and 2.2) in violation of 49 C.F.R. 177.823(a) and one citation for having improper markings in flammable solid placard in violation of 49 C.F.R. 177.823 (a).
- B. On March 25, 2010, Commission Staff sent Respondent a combined Notice of Apparent Violation and Intent to Assess Forfeiture in accordance with Rules 4901:2-7-05 and 07 for the Carrier citations. This notice contained the same Hazmat citations that were listed in the Driver/Vehicle Examination Report that was served on the Driver at the time of the inspection. The Carrier was assessed a \$6,120.00 forfeiture by Staff for the violations listed in the notice.

- C. On April 16, 2010, a settlement conference was held between Staff and Respondent, but the parties were unable to settle the case at that time.
- D. On April 26, 2010, Staff sent Respondent a notice of preliminary determination, pursuant to Rule 4901:2-07-12 of the O.A.C., which contained the same Hazmat citations that were included in the Driver/Vehicle Examination Report above. In response to the notice of preliminary determination, Respondent made a timely formal request for an administrative hearing pursuant to Rule 4901:2-7-13 of the O.A.C. in this case.
- E. The parties have negotiated this Settlement Agreement which the parties believe resolves all the issues raised in the case.

III. Settlement Agreement

The parties hereto agree and recommend that the Commission find as follows:

- A. The parties agree to a civil forfeiture of \$6,120.00 for the Hazmat citations contained in the Driver/Vehicle Examination Report.
- B. The Commission Staff and Respondent agree that the Hazmat citations served on Respondent in the Driver/Vehicle Examination Report and notice of preliminary determination may be included in Respondent's Safety-Net record and history of violations for purposes of determining future penalty actions.
- C. Within 30 days of the effective date of the Settlement Agreement, Respondent shall begin making payments of \$510.00 each month for

twelve consecutive months to make the balance or total amount of \$6,120.00 paid-in-full. Each of the twelve payments shall be made using a certified check or money order payable to: "Treasurer State of Ohio," and mail to: PUCO Fiscal, 180 E. Broad St., 4th Floor, Columbus, Ohio 43215-3793. The case number should be referenced with all payments.

- D. This Settlement Agreement shall not become effective until adopted by an Opinion and Order of the Commission. The date of the entry of the Commission order adopting the Settlement Agreement shall be considered the effective date of the Settlement Agreement.
- E. This Settlement Agreement is made in settlement of all factual or legal issues in this case. It is not intended to have any affect whatsoever in any other case or proceeding.

IV. Conclusion

This agreement, which is subject to the Rules of the Commission, constitutes the entire agreement of the parties. The Signatory parties agree that this Settlement Agreement is in the best interest of all parties, and urge the Commission to adopt the same. The undersigned respectfully request that the Commission issue an entry in accordance with the terms set forth in this Settlement Agreement.

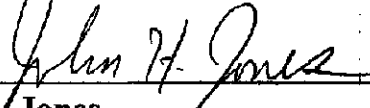
The parties have manifested their consent to the Settlement Agreement by affixing their signatures below on this 5th day of August, 2010.

On behalf of the Respondent



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On behalf of the Staff of the Public
Utilities Commission of Ohio



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