

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Felix Stephens Kasonya,)
Notice of Apparent Violation and Intent to) Case No. 10-1123-TR-CVF
Assess Forfeiture.) (OH3254003842D)

OPINION AND ORDER

The Commission, considering the public hearing held on October 27, 2010, issues its opinion and order in this matter.

APPEARANCES:

Felix Stephens Kasonya, 6809 Towerwood Drive, Arlington, Texas 76001, on his own behalf.

Mike DeWine, Ohio Attorney General, by William L. Wright, Section Chief, Stephen R. Reilly, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the staff of the Public Utilities Commission.

NATURE OF THE PROCEEDING:

On October 15, 2010, the Ohio State Highway Patrol (Highway Patrol) stopped and inspected a motor vehicle, operated by Midland Express, Inc. and driven by Felix Stephens Kasonya (Mr. Kasonya, respondent) in the state of Ohio. The Highway Patrol found various violations of the Code of Federal Regulations (C.F.R.), including the following violation that is relevant to this case: 49 C.F.R. §396.9(c)(2) - Operating an out-of-service vehicle.¹

Mr. Kasonya 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, Mr. Kasonya was notified that staff intended to assess a civil monetary forfeiture totaling \$1,000.00 for violation of 49 C.F.R. §396.9(c)(2) (Section 396.9(c)(2)). A prehearing teleconference was conducted in the case. The parties, however, failed to reach a settlement agreement during the conference. Subsequently, a hearing was convened on October 27, 2010.

¹ 49 C.F.R. Section 396.9(c)(2) provides, in pertinent part, that: No motor carrier or intermodal equipment provider shall require or permit any person to operate nor shall any person 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.

Background:

There were two inspections in this case. The first inspection took place on October 14, 2009. Mr. Kasonya was stopped at the Girard Truck Scales, which is located on U. S. Route 80 in Trumbull County, Ohio. At that time, Mr. Kasonya was driving, in the truck scale area, only the tractor unit of his company's truck. During the inspection, multiple violations, including out-of-service violations, were discovered. On October 15, 2009, Mr. Kasonya again was stopped and inspected. The second inspection occurred on U.S. Route 71 near Mile Post 38 in Warren County, Ohio. At that time, Mr. Kasonya was hauling, with the same truck tractor and an attached trailer, general freight from Edison, New Jersey to Dallas, Texas. Multiple violations, including out-of-service violations from the first inspection, were discovered during the second inspection.

Issue in the Case:

Staff maintains that Mr. Kasonya drove an out-of-service vehicle without having all out-of-service violations on the truck repaired. Mr. Kasonya contended that he was not at fault because he had fixed the violations, and because the inspecting officer informed him that he could leave when the repairs were made.

DISCUSSION:

Specialist Hedrick, a hazardous materials specialist with the Commission, observed Mr. Kasonya driving a truck tractor at the highway truck scales. Specialist Hedrick noticed that the left windshield on the vehicle was shattered and that there were no operational stop lights on the vehicle. He then stopped the vehicle for a safety inspection and discovered various violations of the C.F.R., including out-of-service violations. Two of the out-of-service violations were: 49 C.F.R. §393.207(c) - a loose front spring hanger assembly on the left steer axle and 49 C.F.R. Section 396.3(a)(1) - brakes out of adjustment. Specialist Hedrick issued an inspection report to Mr. Kasonya listing the violations and placed his truck out of service. In so doing, Specialist Hedrick placed out-of-service notice stickers on the truck tractor, and issued written and verbal warnings to Mr. Kasonya not to drive his truck until all out-of-service items were repaired. Specialist Hedrick also told Mr. Kasonya that if he could repair the out-of-service violations, then he could do so. Specialist Hedrick's instructions to Mr. Kasonya were: "...you fix it, you remove the sticker, make sure it's fixed, sign the report, and you can leave if it's repaired...". Specialist Hedrick testified that, when he departed from the truck scales, Mr. Kasonya was aware that repairs had to be made before the vehicle could be driven (Tr. 9-13, 19-21, Staff Exhibit 1-Driver/Vehicle Examination Report).

A day later, Inspector McCollister, a commercial motor vehicle inspector with the Highway Patrol, observed Mr. Kasonya proceeding southbound on I-71. Utilizing his

ASPEN computer program, Inspector McCollister discovered a federal request for an inspection of the truck driven by Mr. Kasonya, which was based on his company's poor safety rating. Inspector McCollister then stopped the truck. After being stopped, Mr. Kasonya informed Inspector McCollister that the truck had been inspected the day before and handed him the report from that inspection (Staff Exhibit 1 - driver/vehicle examination report). Based on his experience, Inspector McCollister believed it unlikely that one of the violations on the first inspection report, 49 C.F.R. Section 393.207(c) - a loose front spring hanger assembly on the left steer axle, could have been repaired at the site of the first inspection. According to Inspector McCollister, the bolt securing the leaf spring assembly cannot be tightened by hand. The bolt must be removed, sometimes with a cutting torch, and a new one installed. Inspector McCollister, therefore, escorted the truck to a nearby rest area and conducted a second inspection. A Highway Patrol trooper subsequently arrived at the inspection site and was present during the inspection. During the second inspection, Inspector McCollister discovered various violations of the C.F.R., including out-of-service violations from the first inspection that had not been repaired. Those violations were the aforementioned loose front spring hanger assembly and 49 C.F.R. Section 396.3(a)(1) - brakes out of adjustment. Inspector McCollister then issued another inspection report to Mr. Kasonya, which included a violation for operating an out-of-service vehicle without repairing the out-of-service violations, and placed the vehicle out of service a second time (Tr. 23-40, Staff Exhibit 2-Driver/Vehicle Examination Report).

As noted at hearing by John Canty, assistant chief of Commission's Civil Forfeiture Compliance Division, a Notice of Preliminary Determination, Staff Exhibit 3, was issued to Mr. Kasonya notifying him that staff intended to assess a \$1,000.00 forfeiture for operating an out-of-service vehicle. This monetary value for Mr. Kasonya's violation was determined by using a fine schedule, and the violation listed in this case is indicated by a violation group number in the schedule that refers to the amount of the fine. In addition, the civil forfeiture and the procedure involved in this case are consistent with the recommended penalties and procedures adopted by the Commercial Vehicle Safety Alliance (Tr. 42-45).

Mr. Kasonya, for his part, stated that the testimony given by Specialist Hedrick was true. Mr. Kasonya testified that, for almost two hours, he remained at the truck scales fixing the violations discovered during the first inspection with hand tools. He also noted that, according to Specialist Hedrick, if he repaired the violations, he could leave the inspection site. Mr. Kasonya stated that, at the second inspection, he told Inspector McCollister that he previously had fixed the out-of-service taillight, spring hanger assembly, and brake adjustment violations from the first inspection himself. He further stated that, as instructed by Inspector McCollister, he telephoned and eventually found a mechanic who came to the site of the second inspection and fixed all of the violations, including tightening the spring hanger assembly with an electric spanner. After the repair

work was completed, Mr. Kasonya drove the truck to Texas without incident. Subsequently, Mr. Kasonya's company took the vehicle off the highway, removing it from service (Tr. 48-61).

The Commission agrees with staff on this issue. The language of 49 C.F.R. §396.9(c)(2) is straightforward. That C.F.R. section provides that an out-of-service vehicle shall not be driven "until all repairs required by the 'out-of-service notice' have been satisfactorily completed" (emphasis added). The testimony of Specialist Hedrick and Inspector McCollister, and Mr. Kasonya's own statements at hearing, establish that Mr. Kasonya was aware of the out-of-service violations on his company's truck after the first inspection and that he drove the truck without satisfactorily completing the repairs for those out-of-service violations. Mr. Kasonya specifically stated that, at the site of the second inspection, he had to summon a mechanic to repair the vehicle, including correcting the out-of-service violations from the first inspection. Therefore, Mr. Kasonya was in violation of 49 C.F.R. Section §396.9(c)(2). The Commission believes that Mr. Kasonya's contention, that he was not at fault because he had fixed the violations after the first inspection, and because he was told by the inspecting officer that he could leave once the repairs were made, has no merit. Quite obviously, if the vehicle had to be repaired again by a mechanic, just a day later, then Mr. Kasonya's repairs after the first inspection were not adequately made. Mr. Kasonya was responsible for ensuring that all out-of-service violations were repaired in a sufficient manner after the first inspection.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On October 15, 2010, the Highway Patrol stopped and inspected a motor vehicle driven by Mr. Kasonya in the state of Ohio. The Highway Patrol found various violations of the C.F.R., including the following violation that is relevant to this case: 49 C.F.R. §396.9(c)(2) - Operating an out-of-service vehicle.
- (2) Mr. Kasonya was timely served a Notice of Preliminary Determination that set forth a civil forfeiture of \$1,000.00 for operating an out-of-service vehicle .
- (3) A hearing in this matter was convened on October 27, 2010.
- (4) Staff demonstrated at hearing, by a preponderance of the evidence, that Mr. Kasonya violated 49 C.F.R. §396.9(c)(2).
- (5) Mr. Kasonya's arguments at hearing were not sufficient to demonstrate that he should not be held liable for the civil forfeiture assessed for violation of 49 C.F.R. §396.9(c)(2).

- (6) Pursuant to Section 4905.83, Revised Code, respondent must pay the State of Ohio the civil forfeiture assessed for violation of 49 C.F.R. §396.9(c)(2). Mr. Kasonya shall have 30 days from the date of this entry to pay the assessed forfeiture of \$1,000.00.

It is, therefore,

ORDERED, That Mr. Kasonya pay the assessed amount of \$1,000.00 for violation of 49 C.F.R. §396.9(c)(2), 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, Mr. Kasonya is directed to write the inspection report number (OH3254003842D) on the face of the check or money order. It is, further,

ORDERED, That the 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


Steven D. Lesser, Chairman


Paul A. Centolella


Valerie A. Lemmie


Cheryl L. Roberto

KKS/vrm

Entered in the Journal

FEB 02 2011



Renee J. Jenkins
Secretary