

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Request of)
Patrick Hudnell for an) Case No. 09-389-TR-CVF
Administrative Hearing.) (OH0573003696D)

OPINION AND ORDER

The Commission, considering the evidence of record, the arguments of the parties, and the applicable law, and being otherwise duly advised, hereby issues its opinion and order.

APPEARANCES:

Patrick Hudnell, 4000 Eveline Avenue, Warren, Ohio 44484, on his own behalf.

Mike DeWine, Ohio Attorney General, by Stephen A. Reilly, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the staff of the Public Utilities Commission of Ohio.

OPINION:

I. Background

On January 23, 2009, Ohio Highway Patrol Trooper Brett Mealer inspected a commercial motor vehicle owned by B&T Express, Inc., and driven by Patrick Hudnell (Respondent) (Tr. at 9-10; Staff Ex. 1).

Prior to the inspection, Trooper Mealer was traveling westbound on Interstate 80 (Ohio Turnpike) in Sandusky County (Tr. at 9; Staff Ex. 1). Trooper Mealer observed the commercial motor vehicle operated by the Respondent traveling eastbound and operating in the left-hand lane at or near milepost 74 (Tr. at 9). Because operating a commercial motor vehicle in the left-hand lane of the Ohio Turnpike is a traffic violation, Trooper Mealer stopped the Respondent and performed a commercial motor vehicle inspection at the milepost 77 plaza (Tr. at 9, 20; Staff Ex. 1).

Among other violations, Trooper Mealer noted an apparent violation of Title 49, Code of Federal Regulations (C.F.R.), Section 391.11(b)(5) (not licensed for type of vehicle being operated—operating with a medical restriction—corrective lenses required) (Staff Ex. 1). Subsequently, on April 27, 2009, the Commission's Transportation Department Staff (Staff) issued a Notice of Preliminary Determination, proposing a forfeiture of

\$250.00 for an apparent violation of 49 C.F.R., Section 391.11(b)(5) (not licensed for type of vehicle being operated) (Staff Ex. 3).

On May 6, 2009, Respondent requested an administrative hearing regarding the apparent violation and proposed forfeiture. A prehearing conference was held on November 2, 2009, and a hearing was held on February 1, 2010. At the hearing, Trooper Mealer and John J. Canty testified on behalf of the Staff, and Mr. Hudnell testified on his own behalf.

II. The Law

Pursuant to the provisions of Rule 4901:2-5-02, Ohio Administrative Code (O.A.C.), the Commission has adopted the provisions of the Federal Motor Carrier Safety Rules, 49 C.F.R. Sections 40, 42, 383, 387, 390-397, to govern the highway transportation of persons or property into or through this state. Further, Section 4921.99, Revised Code, authorizes the Commission to assess a civil forfeiture of up to \$10,000 per day, per violation, against any person who violates the safety rules adopted by the Commission.

III. Discussion and Conclusion:

At the hearing, the Staff presented testimony by Trooper Mealer, who has been employed by the Ohio Highway Patrol for 17 years (Tr. at 6). For the last 10 years, Trooper Mealer has been employed in a specialty position as a commercial vehicle inspector and he maintains certification as such from the United States Department of Transportation (Tr. at 5, 6).

Trooper Mealer testified that, prior to the inspection, he was traveling westbound on the Ohio Turnpike (Tr. 9). He observed the Respondent operating a commercial motor vehicle in the left-hand lane of the Turnpike, traveling eastbound (*id.*). Trooper Mealer testified that, when he initially saw the Respondent, he had a clear view of the cab of the truck and of Mr. Hudnell and that Mr. Hudnell was not wearing glasses (Tr. at 18, 19).

Further, Trooper Mealer testified that, when he stopped Respondent's vehicle to perform the inspection, Mr. Hudnell was not wearing corrective lenses although his driver's license required him to wear corrective lenses (Tr. at 10-11). Trooper Mealer stated that, at the time of the inspection, Mr. Hudnell's glasses were on the dash in a glasses case (Tr. at 11).

Mr. Hudnell testified that he took his glasses off when he was pulled over for inspection (Tr. at 46). Further, Respondent questioned the ability for Trooper Mealer to observe whether he was wearing his glasses when Trooper Mealer observed his vehicle

on the Turnpike, based upon the fact that Mr. Hudnell sits far back in the cab and upon the relative closing speed of his vehicle and Trooper Mealer's vehicle as they approached each other on the Turnpike (Tr. at 45-46). However, Mr. Hudnell acknowledged that he does not know what Trooper Mealer was able to see as the vehicles approached each other (Tr. at 49-50).

Rule 4901:2-7-20, O.A.C., requires that, at hearing, Staff prove the occurrence of a violation by a preponderance of the evidence. 49 C.F.R. Section 391.11(b), states, in pertinent part,

[A] person is qualified to drive a motor vehicle if he/she—

- (1) Is physically qualified to drive a commercial motor vehicle in accordance with subpart E—Physical Qualifications and Examinations of this part; [and]
- (2) Has a currently valid commercial motor vehicle operator's license issued only by one State or jurisdiction;

The Commission notes that, although Staff alleged that Respondent violated 49 C.F.R. Section 391.11(b)(5), the evidence in the record demonstrates that the Respondent actually violated 49 C.F.R. Section 391.11(b)(4).

It is undisputed that the Respondent was required to wear corrective lenses while operating a vehicle (Tr. 10, 46, 48). Staff's witness, Trooper Mealer, testified unequivocally that he had a clear view of the Respondent's cab and that the Respondent was not wearing glasses while he operated his commercial motor vehicle on the Turnpike (Tr. at 10-11, 18, 20) and that Respondent was not wearing glasses at the time of the inspection (Tr. 10-11). Further, Trooper Mealer's testimony is supported by the inspection report (Staff Ex. 1), which was prepared by Trooper Mealer contemporaneously with the inspection (Tr. at 11-17). Thus, we find the testimony by Trooper Mealer regarding the circumstances of the inspection to be persuasive and that the weight of the evidence more fully supports the conclusion that the Respondent violated 49 C.F.R. Section 391.11(b)(4).

The Staff also presented testimony from John J. Canty, the Assistant Chief of the Compliance Division of the Transportation Department regarding the proposed civil forfeiture. Mr. Canty testified that the proposed forfeiture of \$250.00 is appropriate and is consistent with the recommended fine schedule produced by the Commercial Motor Vehicle Safety Alliance (Tr. at 32-33, 37). Rule 4901:2-7-06(A), O.A.C., states that, in assessing civil forfeitures, the Commission shall consider: the nature and circumstances of the violation, the extent and gravity of the violation, the degree of the Respondent's culpability, the Respondent's prior violations, the Respondent's ability to pay, and all

other matters as justice requires. Based upon the evidence at the hearing, the Commission finds that the proposed forfeiture of \$250.00 is fair and reasonable. Accordingly, the Commission will assess a civil forfeiture of \$250.00 against the Respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On May 6, 2009, Respondent filed a request for an administrative hearing regarding an apparent violation of 49 C.F.R. Section 391.11(b)(5) and a civil forfeiture of \$250.00 proposed by the Staff.
- (2) A prehearing conference was held on November 2, 2009.
- (3) A hearing was held on February 1, 2010.
- (4) Rule 4901:2-7-20, O.A.C., requires that, at hearing, Staff prove the occurrence of a violation by a preponderance of the evidence.
- (5) Based upon the record in this proceeding, Staff has proven that the Respondent violated 49 C.F.R. Section 391.11(b)(4).
- (6) Based upon the record in this proceeding, the proposed forfeiture of \$250.00 is fair and reasonable.

ORDER:

It is, therefore,

ORDERED, That Respondent be assessed a civil forfeiture of \$250.00 for violation of 49 C.F.R. Section 391.11(b)(4), as adopted by the Commission. It is, further,

ORDERED, That Respondent pay the assessed amount to the State of Ohio within 30 days. Payment of the forfeiture must be made by certified check or money order 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. The inspection number should be written on such certified check or money order. It is, further,

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

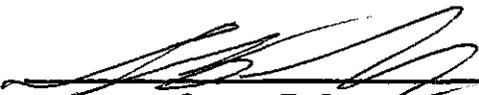
ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

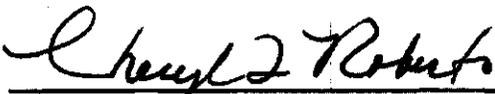
THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman


Paul A. Centolella


Valerie A. Lemmie


Steven D. Lesser


Cheryl L. Roberto

GAP/sc

Entered in the Journal
MAR 09 2011



Renee J. Jenkins
Secretary