

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Request of
FasTrack LLC for an Administrative
Hearing.

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Case No. 10-2459-TR-CVF
(OH3258002245C)

OPINION AND ORDER

The Commission, considering the violations found, the arguments of the parties, and the applicable law, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES

FasTrack LLC, 8671 Crabb Road, Temperance, Michigan 48182, on its own behalf.

Michael DeWine, Attorney General of Ohio, by Mr. Werner L. Margard, III, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215.

NATURE OF THE PROCEEDING

On July 9, 2010, the Ohio State Highway Patrol (Highway Patrol) stopped and inspected a commercial motor vehicle (CMV) operated by FasTrack LLC (FasTrack or respondent) on Interstate 475 in Lucas County, Ohio. The inspection revealed a violation of the Code of Federal Regulations (C.F.R.), specifically 49 C.F.R. 396.3(a)(1): Failing to inspect, repair, and maintain parts and accessories.

FasTrack was timely served with a Notice of Preliminary Determination (Notice) in accordance with Rule 4901:2-7-12, Ohio Administrative Code (O.A.C.). The Notice informed FasTrack that the Commission Staff (Staff) did not intend to assess a forfeiture for the violation of 49 C.F.R. 396.3(a)(1). A prehearing telephone conference was conducted with respondent on December 9, 2010, and the hearing commenced on January 13, 2011.

APPLICABLE LAW

Under Rule 4901:2-5-02(A), O.A.C., the Commission adopted the Federal Motor Carrier Safety Rules (FMCSR), 49 C.F.R. 40, 42, 383, 387, and 390-397, to govern the transportation of persons or property in intrastate commerce within Ohio. In addition, Rule 4901:2-5-02(B), O.A.C., requires all motor carriers engaged in interstate commerce in Ohio to operate in conformity with all rules of the U.S. Department of Transportation (USDOT). The Commission adopted the civil forfeiture and compliance proceeding rules contained in Rules 4901:2-7-01 through 4901:2-7-22, O.A.C. These rules require that a

respondent be afforded reasonable notice and the opportunity for a hearing where Staff finds a violation of the USDOT motor carrier safety regulations. Rule 4901:2-7-20(A), O.A.C., also provides that, during the evidentiary hearing, Staff must prove the occurrence of the violation by a preponderance of the evidence.

BACKGROUND

At the hearing, Melanie Kurtz, a motor carrier enforcement inspector with the Highway Patrol, testified that she conducted an inspection of a CMV operated by FasTrack and found FasTrack in violation of 49 C.F.R. 396.3(a)(1). 49 C.F.R. 396.3(a)(1) specifies that every motor carrier must ensure that all parts and accessories, including, as relevant here, wheels and steering systems, are in safe proper operating condition at all times. During her inspection, Inspector Kurtz observed that the pitman arm, which is a component of the steering system that turns the gearbox and, correspondingly, the vehicle, was coming into contact with the vehicle's left steer wheel.

ISSUE IN THE CASE

The sole issue raised in this case relates to whether Staff properly determined that the contact between the pitman arm and the steer wheel warranted classification as an out-of-service violation. Staff contends that any contact between a pitman arm and a steer wheel qualifies as an out-of-service violation, while FasTrack argues that the contact was so minimal that it should not have been considered an out-of-service violation.

Inspector Kurtz testified that she conducted the roadside inspection by walking around the vehicle and looking underneath. Inspector Kurtz stated that she observed a shiny spot on the pitman arm. Inspector Kurtz explained that the pitman arm of a vehicle is typically covered in grease, and therefore, the shininess indicated to her that the tire had been recently or repeatedly making contact with the pitman arm. Inspector Kurtz continued that she instructed the driver to turn the vehicle and was able to physically observe the steer tire making contact with the pitman arm when the wheel was turned completely to the right. (Tr. 11-17, 19-22.)

Inspector Kurtz continued that contact between the pitman arm and a steer tire is a violation of 49 C.F.R. 396.3(a)(1). She further explained that, when any part of the vehicle makes contact with any tire, the vehicle is rendered out of service, which means the vehicle must be repaired on-site without being moved. Inspector Kurtz acknowledged that the contact was not extremely severe and that there was no actual erosion of the metal; however, she stated that she never questioned whether the violation was an out-of-service violation, because the pitman arm and steer tire are two very important parts of a vehicle and are integral to the safety of the vehicle. Further, Inspector Kurtz testified that the Commercial Vehicle Safety Alliance out-of-service manual specifically illustrates a steer tire making contact with a pitman arm as an example of an out-of-service violation under the federal motor vehicle safety standards. (Tr. 13, 24-26, 28-33, 35, Staff Ex. 5)

FasTrack does not dispute that contact occurred between the pitman arm and tire; however, respondent maintains that the contact was so minimal that it should not have been categorized as an out-of-service violation. FasTrack suggests that contact only occurred when the vehicle was fully turned to the right and that the pitman arm only made contact with the outer lip of the tire. Further, FasTrack asserts that the tire was not rubbed to the point that it was frayed or at risk for blowing out, and that nothing interfered with the normal movement of the vehicle. FasTrack concludes that the minimal contact did not put the vehicle, driver, or the public in danger, and argues that, consequently, Inspector Kurtz should have merely ordered FasTrack to fix the issue instead of taking the vehicle out of service. (Tr. 28-34, 41-45, 48.)

DISCUSSION

The Commission finds that, as Inspector Kurtz testified and FasTrack admitted, contact occurred between the pitman arm and tire. Although the contact may have been minimal and only when the vehicle was turned to its full extent, it is undisputed that contact occurred. The respondent attempted to rebut the violation by arguing that it should not have been considered an out-of-service violation. However, the Commission finds that Inspector Kurtz properly concluded that the violation constitutes an out-of-service violation, given that the pitman arm and steer tire are both parts that are integral to the safety of the vehicle and that a steer tire making contact with a pitman arm is specifically depicted as an out-of-service violation in the Commercial Vehicle Safety Alliance out-of-service manual. Under such circumstances and in view of the fact that the respondent admitted that contact between the pitman arm and tire occurred, and did not provide sufficient evidence to excuse the violation, the Commission finds that the violation occurred as cited in the inspection report. Further, the testimony of Staff's witness and the inspection report establish the occurrence of the violation by a preponderance of the evidence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On July 9, 2010, motor carrier enforcement Inspector Kurtz inspected a vehicle operated by FasTrack LLC and found a violation of 49 C.F.R. 396.3(a)(1).
- (2) FasTrack was timely served a Notice of Preliminary Determination setting forth the violation of 49 C.F.R. 396.3(a)(1).
- (3) A hearing in this matter was convened on January 13, 2011.
- (4) The record in this proceeding demonstrates that the inspection report makes a prima facie case for the violation charged to FasTrack.

- (5) At hearing, FasTrack admitted that the pitman arm contacted the steering tire but argued that the contact was so minimal that it should not have been categorized as an out-of-service violation. The arguments made by respondent during the hearing were not sufficient to demonstrate that Staff erred when determining that the violation should be considered an out-of-service violation.
- (6) The testimony of Staff's witness and the inspection report establish the occurrence of the violation as charged by a preponderance of the evidence.


ORDER

It is, therefore,

ORDERED, That the violation be included in the respondent's Safety-Net record and history of violations. It is, further,

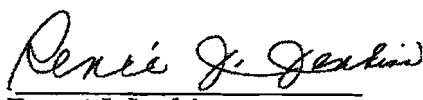
ORDERED, That a copy of this opinion and order be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd J. Snitchler, Chairman
Paul A. Centolella
Valerie A. Lemmie
Steven D. Lesser
Cheryl L. Roberto

MLW/HPG/sc

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Renee J. Jenkins
Secretary