

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Waymon Lanier,	)	Case No. 12-3231-TR-CVF
Notice of Apparent Violation and	)	(OH1251000439D)
Intent to Assess Forfeiture.	)	

OPINION AND ORDER

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

APPEARANCES:

Mike DeWine, Ohio Attorney General, by Devin Parram, Assistant Attorney General, Public Utilities Section, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the Staff of the Commission.

Waymon Lanier, 3890 East 147th Street, Cleveland, Ohio 44128, on his own behalf.

OPINION:

I. Nature of the Proceeding and Background

On August 14, 2012, Trooper Rodney Ramps (Trooper Ramps) of the Ohio State Highway Patrol (Highway Patrol) conducted an inspection of a commercial motor vehicle (CMV) on Interstate 80 in Mahoning County operated by Special Service Transportation Inc. and driven by Waymon Lanier (Mr. Lanier). Inspector Bays found that Mr. Lanier was not properly wearing his seat belt while operating a commercial motor vehicle, an apparent violation of Title 49, Code of Federal Regulations (C.F.R.), Part 392.16, which states that "a commercial motor vehicle which has a seat belt assembly installed at the driver's seat shall not be driven unless the driver has properly restrained himself/herself with the seat belt assembly."

On December 10, 2012, Commission Staff (Staff) timely served a Notice of Preliminary Determination (NPD), on Mr. Lanier in accordance with Rule 4901:2-7-12, Ohio Administrative Code (O.A.C.). In the NPD, Mr. Lanier was notified that Staff intended to assess a civil monetary forfeiture totaling \$100.00 for violating of 49 C.F.R. 392.16. The parties could not reach settlement at a January 25, 2013, prehearing conference. The hearing was conducted on March 7, 2013.

## II. The Law

Under Rule 4901:2-5-02(A), O.A.C., the Commission adopted the Federal Motor Carrier Safety Rules, found in 49 C.F.R. 40, 107 subparts (f) and (g), 367, 380, 382, 383, 385, 386, 387, and 390-397, to govern transportation or offering for transportation by motor vehicle 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 USDOT. Further, Section 4923.99, Revised Code, authorizes the Commission to assess a civil forfeiture of up to \$25,000 per day against any person who violates the safety rules adopted by the Commission when transporting persons or property, in interstate commerce.

## III. Issue in the Case

The sole issue in this case is whether Mr. Lanier had properly restrained himself with his seat belt while driving his commercial motor vehicle (CMV). It must be noted that, at hearing, Mr. Lanier decided to not contest how the civil forfeiture was calculated; he only disputed whether the alleged violation actually occurred.

### Staff's Position

Trooper Ramps stated that he began his shift at approximately 3:30 a.m. by driving east on Interstate 80 in Mahoning County, a six-lane divided highway (Tr. at 15, 21). According to Trooper Ramps, he was traveling in the left lane closest to the median when he observed Mr. Lanier in the middle of three lanes traveling west (*id.* at 15, 31, 35). Trooper Ramps added that he was utilizing moving radar and noticed that Mr. Lanier was traveling at 72 miles per hour, in violation of the posted speed limit of 65 miles per hour (*id.* at 15).

Upon determining that Mr. Lanier was exceeding the speed limit, Trooper Ramps used his spotlight to illuminate the inside of Mr. Lanier's cab as he traveled toward Trooper Ramps. At that moment, stated Trooper Ramps, Mr. Lanier was approximately 100 feet away and could be seen inside his cab for "a few seconds" (*id.* at 22-23). According to Trooper Ramps, Mr. Lanier was wearing a light gray shirt, and the shoulder harness of the seat belt could not be seen crossing Mr. Lanier's chest and connecting downward to his right side (*id.* at 15-17; Staff Ex. 1). Instead, noted Trooper Ramps, Mr. Lanier was "wearing the shoulder harness so loose that it slumped off the left side of his left shoulder, providing no impact protection" (Tr. at 14; Staff Ex. 1).

Next, contends Trooper Ramps, he found a crossover, turned around, activated his overhead lights, and began following Mr. Lanier. Trooper Ramps added that when

he works in the dark, he typically trains his spotlight in the rearview mirror of the CMV that he is pursuing, thus illuminating the cab and enabling him to see if the driver has "now put his seat belt on, to where that strap would be clearly visible" (Tr. at 17-18, 36). Trooper Ramps stated that he is uncertain whether he used his spotlight in such a manner when following Mr. Lanier (*id.* at 17-18, 36, 48-49).

Once he had stopped Mr. Lanier, Trooper Ramps observed that although Mr. Lanier had his seat belt fastened, "it was the manner in which he was wearing it that made me believe he didn't have it on at all," because "once I made contact with Mr. Lanier, I observed that the shoulder harness . . . was slumped off the left side of his left shoulder to the front, no frontal impact protection, which is why it was not visible to me when he operated down the road" (*id.* at 19, 34). Trooper Ramps also noted that the shoulder harness was black (Staff Ex. 1). Trooper Ramps said that he prepared his inspection report at the time he performed the inspection, which began at 4 a.m. and ended at 4:50 a.m. (Tr. at 12, Staff Ex. 1).

Trooper Ramps asserts that federal law requires that the seat belt "not only be engaged into the locking mechanism," but that the belt "be left with no slack," so that the shoulder harness "is resting firmly against the driver's body, across his left shoulder, middle portion of the chest as it locks into his right hip" (Tr. at 20).

According to Trooper Ramps, the elevation of eastbound and westbound lanes of Interstate 80 at this location is approximately the same, with a slight downhill grade for westbound lanes and a slight uphill grade for eastbound lanes (*id.* at 23, 26-27). The weather conditions were dry and presented no visibility problems, and traffic was light (*id.* at 23; Staff Ex. 2).

#### Mr. Lanier's Position

Mr. Lanier stated that he has been a professional truck driver for 30 years and has "never had a seat belt issue. I've always worn my seatbelt correctly because [the] first thing they teach you [is] that's what saves your life" (Tr. at 39, 41). He adds that he takes his job "seriously, very seriously" (*id.*).

Mr. Lanier says that he was driving downhill prior to being stopped by Trooper Ramps (*id.* at 40). While doing so, he asserts, he did not see a spotlight being directed into his CMV's cab (*id.* at 42, 43, 45). He did, however, see the spotlight in his mirror after Trooper Ramps turned around and began to follow him, so he began to watch Trooper Ramps in the CMV's mirrors (*id.* at 43, 45, 46, 50).

Mr. Lanier contends that, during the inspection, he told Trooper Ramps that his seatbelt was "tight, and it was real tight," which Trooper Ramps denied (*id.* at 41).

Mr. Lanier further asserts that he was wearing the seat belt across his shoulder and over his chest, where it was buckled at his waist (*id.* at 44). He explained because he sits high in his CMV, he needs the seat belt to hold him in the seat, because otherwise he might fall out of the seat when the CMV is turning (*id.* at 51-52). He is uncertain if his shirt was gray, but he agrees with Trooper Ramps that his seat belt was black (*id.* at 47, 48).

### Commission Conclusion

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. The Commission finds that, based upon the evidence in this proceeding, Staff failed to present sufficient evidence proving that Mr. Lanier did not properly restrain himself with the seat belt assembly while driving a CMV. Our determination is based on several factors unique to this case. First, the observations of Trooper Lanier occurred between 3:30 a.m. and 4:00 a.m., when he and Mr. Lanier were traveling in opposite directions on a six-lane divided highway in the dark, with Trooper Ramps driving east in the lane next to the median, presumably at 65 m.p.h., and observing on radar that Mr. Lanier was driving in the middle westbound lane at 72 m.p.h. (*id.* at 15, 21, 31, 35). Second, in the estimation of Trooper Ramps, when Mr. Lanier was approximately 100 feet away, Trooper Ramps needed to use a spotlight to illuminate and observe Mr. Lanier inside the CMV for, in Trooper Ramps' words, "just a few seconds" (*id.* at 22-23). Indeed, under such circumstances, Trooper Ramps would have had to maintain highway speed and direction in his patrol car, while simultaneously operating and focusing a spotlight across several lanes of traffic onto Mr. Lanier's moving CMV, and observing Mr. Lanier and his seat belt mechanism inside the cab. Third, Trooper Ramps could not recall with certainty whether, after turning around to follow Mr. Lanier, he directed his spotlight into the CMV's mirrors to illuminate its cab and again observe Mr. Lanier (*id.* at 17-18, 36, 48-49). Had Trooper Ramps stated that he definitely used the spotlight in this matter, he likely could have provided additional testimony about whether Mr. Lanier was properly wearing his seat belt. Finally, it appears that Trooper Ramps' belief that Mr. Lanier was not properly wearing a seat belt was based, in part, on Trooper Ramps' observation of Mr. Lanier during the inspection. Trooper Ramps' assertion was that, upon stopping Mr. Lanier and making contact with him, "it was the manner in which he was wearing it [the shoulder harness] that made me believe he didn't have it on at all," because "the shoulder harness . . . was slumped off the left side of his left shoulder to the front, no frontal impact protection, which is why it was not visible to me when he operated down the road" (*id.* at 19, 34). However, the issue in this case is whether, while driving, Mr. Lanier was properly restrained with his seat belt. The location of Mr. Lanier's shoulder harness during the inspection is not confirmation of its location while he was driving the CMV.

In sum, the Commission concludes that there is insufficient evidence to find that Mr. Lanier violated 49 C.F.R. 392.16. This finding does not mean that the Commission has found that Mr. Lanier was properly restrained with his seat belt while driving his CMV. The Commission's opinion is limited to the finding that insufficient evidence had been presented to determine that Mr. Lanier failed to wear a seat belt as required by 49 C.F.R. 392.16.

Accordingly, the Commission finds that Mr. Lanier should not be assessed the \$100.00 forfeiture for violating 49 C.F.R. 392.16., and that the alleged violation should be deleted from Mr. Lanier's Safety-Net record and history of violations.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On December 17, 2012, Waymon Lanier filed a request for an administrative hearing regarding the apparent violation of 49 C.F.R. 392.16 and a total civil forfeiture of \$100.00 proposed by the Staff.
- (2) A prehearing conference was held on January 25, 2013.
- (3) A hearing was held on March 7, 2013.
- (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) Insufficient evidence has been presented to conclude that Mr. Lanier was not properly restrained with a seat belt while driving a CMV. Staff, therefore, has not proven by a preponderance of the evidence, pursuant to Rule 4901:2-7-20, O.A.C., that a violation of 49 C.F.R. 392.16 occurred.
- (6) Waymon Lanier should not be assessed the \$100.00 forfeiture, and the alleged violation should be deleted from his Safety-Net record and history of violations.

ORDER:

It is, therefore,


ORDERED, That Waymon Lanier should not be assessed the civil forfeiture of \$100.00 for the alleged violation of 49 C.F.R. 392.16, which should be removed from his Safety-Net record and history of violations. 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

  
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Todd A. Snitchler, Chairman

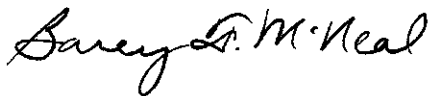
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Entered in the Journal  
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Barcy F. McNeal  
Secretary