

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Jim Schnoll, Notice of)
Apparent Violation and Intent to Assess) Case No. 13-1408-TR-CVF
Forfeiture.) (OH1251000995C)

OPINION AND ORDER

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

APPEARANCES:

Jim Schnoll, P.O. Box 662, Jackson, Wisconsin 53037, on his own behalf.

Mike DeWine, Ohio Attorney General, by Steven L. Beeler, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the Staff of the Public Utilities Commission of Ohio.

OPINION:

I. Nature of the Proceeding and Background

On February 28, 2013, Trooper Rodney D. Ramps of the Ohio State Highway Patrol (Highway Patrol) stopped and inspected a commercial motor vehicle (CMV), operated by Jim Schnoll (Mr. Schnoll or respondent) and driven by Russell R. Heberer, in the state of Ohio. The Highway Patrol found an apparent violation of the Code of Federal Regulations (C.F.R.):

49 C.F.R. 392.9(a) - Failing to secure load per 49 C.F.R. 393.128.

Mr. Schnoll was timely served a notice of preliminary determination, in accordance with Rule 4901:2-7-12, Ohio Administrative Code (O.A.C.). In the notice, Mr. Schnoll was informed that Staff intended to assess a civil monetary forfeiture totaling \$100.00 for the violation (Staff Ex. 16). A prehearing conference was held on July 11, 2013. The parties, however, failed to reach a settlement agreement during the conference. The Commission scheduled a hearing to commence on August 21, 2013, but it was subsequently continued at Staff's request. The Commission held the hearing, as rescheduled, on August 26, 2013. A briefing schedule was established at the conclusion of the hearing, and briefs from the parties were filed on October 15, 2013.

II. Applicable Law

Under Rule 4901:2-5-02(A), O.A.C., the Commission adopted certain provisions of the federal motor carrier safety regulations to govern the transportation of persons or property in intrastate commerce within Ohio. 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 federal regulations that have been adopted by the Commission.

Additionally, 49 C.F.R. 392.9(a)(1) provides that "a motor carrier may not require or permit a driver to operate a commercial motor vehicle unless . . . [t]he commercial motor vehicle's cargo is properly distributed and adequately secured," as further specified in 49 C.F.R. 393.100 through 393.136. With respect to the securement of automobiles in particular, 49 C.F.R. 393.128(b)(1) provides that "[a]utomobiles, light trucks, and vans must be restrained at both the front and rear to prevent lateral, forward, rearward, and vertical movement using a minimum of two tiedowns."

III. Issue and Summary of the Parties' Positions

The primary issues in dispute are whether Mr. Schnoll should be held responsible for the actions of his driver, Mr. Heberer, and whether the load was properly secured, as required by the motor carrier safety regulations. Staff contends that the load was improperly secured by the driver and that the motor carrier, Mr. Schnoll, should be held responsible for violation of 49 C.F.R. 392.9(a)(1). Mr. Schnoll argues, however, that Mr. Heberer secured the load properly, but even if he did not, Mr. Schnoll should not have to incur the entire forfeiture, if any, since it was the driver's responsibility to secure the load. At the hearing, Staff offered the testimony of two witnesses and Mr. Schnoll testified on his own behalf. Mr. Heberer did not testify at the hearing.

A. Staff

Staff witness Rodney D. Ramps, a trooper with the Motor Carrier Division of the Highway Patrol, testified that, on February 28, 2013, he stopped a flatbed tow truck carrying a Pontiac Vibe on State Route 5, after observing significant slack in the chains attaching the car to the flatbed (Tr. at 12-13; Staff Ex. 1). Officer Ramps noted in his testimony that the tow truck was marked with the name "JJEBCO" and the U.S. Department of Transportation number of the motor carrier (Tr. at 10, 15; Staff Ex. 2). Officer Ramps also testified that, to his understanding, these markings indicated that Mr. Schnoll was doing business as JJBECO (Tr. at 15-16). According to Officer Ramps, the driver, Mr. Heberer, was performing a driveaway-towaway operation, with Mr. Heberer using his own vehicle, the Pontiac Vibe, to drive to the location where he picked up the flatbed tow truck and then placing his vehicle on the flatbed (Tr. at 13,

36). Officer Ramps testified that the driver was conveying the tow truck from Mercer, Pennsylvania to West Bend, Wisconsin (Tr. at 13; Staff Ex. 1, 13, 15). Upon cross-examination, Officer Ramps testified that he could not recall whether Mr. Heberer indicated that Mr. Schnoll was aware that Mr. Heberer's personal vehicle was transported on the tow truck's flatbed to the delivery point in Wisconsin (Tr. at 27-28).

With respect to the securement violation, Officer Ramps testified that there were four 3/8 inch chains attached to the Pontiac Vibe, one at each corner, and that all four chains were noticeably and excessively loose, with the left front, right front, and right rear chains flat against the floor of the flatbed, and a noticeable sag in the left rear and right rear chains (Tr. at 12-13, 16-19, 21-23; Staff Ex. 1, 3-7, 9-11). Officer Ramps also testified that the Pontiac Vibe was secured at the middle front by a steel rope with a hook attached to a hydraulic mechanism, which also had a noticeable sag and was excessively loose (Tr. at 23; Staff Ex. 11-12). Officer Ramps explained that he supplemented the findings in his driver/vehicle examination report (Staff Ex. 1) with numerous photographs that depict the slack in the chains and rope (Staff Ex. 3-7, 9-12). Following the inspection, Officer Ramps concluded, based on his extensive experience in securement matters, that his ability to easily reposition the chains and rope, with little effort, indicated that there were no adequately secured tiedowns to prevent lateral, forward, rearward, and vertical movement of the Pontiac Vibe, as required by 49 C.F.R. 392.9(a)(1) and 49 C.F.R. 393.128(b)(1) (Tr. at 13; Staff Ex. 1). Officer Ramps also noted that the driver did not dispute the securement violation at the scene of the inspection (Tr. at 14).

Staff witness Joseph Turek, a staff attorney and supervisor within the Compliance Division of the Transportation Department, testified that a notice of preliminary determination was issued to Mr. Schnoll with a \$100.00 forfeiture assessed for the violation in this case (Tr. at 41; Staff Ex. 16). Mr. Turek also testified that the monetary value of the forfeiture for Mr. Schnoll's violation was determined by using a fine schedule (Tr. at 39; Staff Ex. 17). Further, Mr. Turek testified that the Commission applies the fine schedule and the procedures used in determining the forfeitures in the fine schedule uniformly to motor carriers and drivers (Tr. at 39), and that Mr. Schnoll's assessed forfeiture is consistent with the recommended fine schedule and civil penalty procedures adopted by the Commercial Vehicle Safety Alliance (Tr. at 43). Finally, Mr. Turek testified that securement violations are always assessed against the motor carrier, rather than the driver, and that Mr. Schnoll should, therefore, be held responsible for the securement violation in this case (Tr. at 41, 43-44).

In its post-hearing brief, Staff argues that Mr. Schnoll failed to rebut Staff's evidence of the occurrence of the securement violation. Staff adds that, as the motor carrier, Mr. Schnoll should be held responsible for proper securement, consistent with

Commission precedent. Therefore, Staff requests that the \$100.00 civil forfeiture be imposed on Mr. Schnoll for the violation of 49 C.F.R. 392.9(a)(1).

B. Respondent

Mr. Schnoll testified that he is the lead person of a group of individuals known as JJBECO, which is a motor carrier, and appeared on its behalf before the Commission (Tr. at 54-55). Mr. Schnoll testified that the Pontiac Vibe was properly tied down with at least five cables or other devices holding the vehicle steady (Tr. at 53). Mr. Schnoll emphasized that Mr. Heberer used more tiedowns than are required, enabling even greater protection in the event of an accident or other emergency (Tr. at 53-54). Mr. Schnoll also testified regarding Mr. Heberer's experience in these matters, noting that Mr. Heberer has been in the trucking business for over 30 years and has extensive experience with respect to tow trucks (Tr. at 52-53).

Additionally, Mr. Schnoll testified that he, as the motor carrier, should not be held liable for the actions of the driver since he neither knew of nor had any control over the driver's actions (Tr. at 52-53). Mr. Schnoll emphasized that he was not aware of Mr. Heberer's intentions to drive his own vehicle to Pennsylvania to pick up the tow truck and subsequently load the vehicle onto the tow truck for the trip to Wisconsin (Tr. at 52). Mr. Schnoll testified that he and Mr. Heberer had a verbal agreement that Mr. Heberer would fly out to Pennsylvania in order to pick up the tow truck for transport, rather than drive his car to that location (Tr. at 55). Mr. Schnoll testified that, if the vehicle was not properly secured, Mr. Heberer should be held responsible (Tr. at 54). Mr. Schnoll also testified that Staff should consider dividing the assessed forfeiture between the driver and the motor carrier, as load securement is not the sole responsibility of the motor carrier (Tr. at 58-59). Mr. Schnoll did not contest the amount of the assessed civil forfeiture.

In his post-hearing brief, Mr. Schnoll points out that 49 C.F.R. 393.128 requires that a vehicle be restrained with a minimum of two tiedowns. Noting that Officer Ramps admitted that he did not attempt to move the Pontiac Vibe (Tr. at 29-30), Mr. Schnoll argues that more than two tiedowns were used, such that the Pontiac Vibe could not possibly have fallen off the tow truck. Additionally, Mr. Schnoll argues that the civil forfeiture was not assessed based on the degree of the respondent's culpability, as required by Rule 4901:2-7-07(B)(3), O.A.C. Mr. Schnoll concludes, therefore, that the case should be dismissed.

IV. Conclusion

Rule 4901:2-7-20(A), O.A.C., requires that, at the hearing, Staff prove the occurrence of a violation by a preponderance of the evidence. Based upon the record in

this proceeding, the Commission finds that Staff has proven, by a preponderance of the evidence, that Mr. Schnoll violated 49 C.F.R. 392.9(a)(1). Additionally, we find that Mr. Schnoll, in his capacity as the motor carrier in this case, should be held responsible for the violation.

In support of Staff's contention that respondent was in violation of 49 C.F.R. 392.9(a)(1), Staff primarily points to the fact that, according to Officer Ramps, there were no adequate tiedowns securing the Pontiac Vibe to the flatbed at the time of the inspection, despite the driver's attempt to secure the car with four chains and a steel rope. In addition to the driver/vehicle examination report prepared by Officer Ramps (Staff Ex. 1), Staff presented ample photographic evidence of the slack present in the chains and rope (Staff Ex. 3-7, 9-12). As Officer Ramps testified, the photographs clearly depict that he was easily able to move the chains and rope, indicating the significant slack in each tiedown (Tr. at 12-13, 16-19, 21-23). Although photographs taken during the inspection are not conclusive evidence as to culpability, they do act as an invaluable tool for the Commission to evaluate Staff's allegations, particularly in a case involving cargo loading and securement violations.¹

The Commission observes that 49 C.F.R. 392.9(a)(1) provides that "a motor carrier may not require or permit a driver to operate a commercial motor vehicle unless . . . [t]he commercial motor vehicle's cargo is properly distributed and adequately secured," as further specified in 49 C.F.R. 393.100 through 393.136. Consistent with 49 C.F.R. 393.128(b)(1), "[a]utomobiles, light trucks, and vans must be restrained at both the front and rear to prevent lateral, forward, rearward, and vertical movement using a minimum of two tiedowns." In addition, 49 C.F.R. 393.104(f)(3) mandates that "[e]ach tiedown must be attached and secured in a manner that prevents it from becoming loose, unfastening, opening or releasing while the vehicle is in transit." After a review of the testimony and other evidence submitted in the case, we find that the record establishes a violation of 49 C.F.R. 392.9(a)(1). The record reflects that Officer Ramps observed, as well as documented through numerous photographs, noticeable slack in the four chains and rope attached to the Pontiac Vibe and that, therefore, there were insufficient adequately secured tiedowns (Tr. at 12-13, 16-19, 21-23; Staff Ex. 1, 3-7, 9-12).

With respect to Mr. Schnoll's contention that he should not be held responsible for the actions of his driver, the Commission notes that 49 C.F.R. 390.11 provides that, when a duty is prescribed to a driver or a prohibition is imposed upon a driver, it is the duty of the motor carrier to require observance of such duty or prohibition. In addition, the specific regulation in question, 49 C.F.R. 392.9(a)(1), explicitly states that "a motor carrier may not require or permit a driver to operate a commercial motor vehicle

¹ *In the Matter of the Request of Hanko Farms, Inc., for an Administrative Hearing*, Case No. 05-153-TR-CVF, Opinion and Order, at 3 (September 19, 2007).

unless . . . [t]he commercial motor vehicle's cargo is properly distributed and adequately secured." As the motor carrier, Mr. Schnoll is, therefore, responsible for the driver's compliance with the motor carrier safety regulations. Further, Section 4905.55, Revised Code, places responsibility on Mr. Schnoll, as a motor carrier and public utility, for the acts and omissions of his agents. The section provides that "[t]he act, omission, or failure of any officer, agent, or other person, acting for or employed by a public utility or railroad, while acting within the scope of his employment, is the act or failure of the public utility or railroad."

Additionally, the Commission has emphasized, in many prior cases, that actual knowledge on the part of the motor carrier is not relevant to the issue of the motor carrier's culpability for a violation. The Commission has stated:

Carriers are responsible for the acts of their drivers on company business, and neither a carrier's intent, nor its knowledge of a violation, is necessary for liability on the part of the carrier. This is because carriers, with the incentives of fewer accidents, fewer employee injuries and fines, and lower insurance rates, are in the best position to ensure compliance with motor carrier safety regulations. In short, a basic principle of regulatory control is that a carrier must answer for the actions of its drivers.²

Consistent with this Commission precedent, we find that Mr. Schnoll was properly cited for violation of 49 C.F.R. 392.9(a)(1) and that Mr. Schnoll has raised no argument sufficient to demonstrate that he should not be held liable for the civil forfeiture assessed for the violation. Accordingly, Mr. Schnoll is directed to make payment of the assessed civil forfeiture of \$100.00 by certified check or money order payable to "Treasurer, State of Ohio" and mailed or delivered to the Public Utilities Commission of Ohio, Attention: Fiscal Division, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. The inspection number (OH1251000995C) should be

² *In the Matter of Grammer Industries, Inc., Notice of Apparent Violation and Intent to Assess Forfeiture*, Case No. 07-25-TR-CVF, Opinion and Order, at 5 (April 16, 2008); see also *In the Matter of Artic Express, Inc., Notice of Apparent Violation and Intent to Assess Forfeiture*, Case No. 06-881-TR-CVF, Opinion and Order, at 5-6 (February 14, 2007); *In the Matter of Artic Express, Inc., Notice of Apparent Violation and Intent to Assess Forfeiture*, Case No. 03-238-TR-CVF, Opinion and Order, at 9 (March 17, 2004); *In the Matter of B&T Express, Inc., Notice of Apparent Violation and Intent to Assess Forfeiture*, Case No. 99-274-TR-CVF, Entry, at 15-17 (December 7, 2000); *In the Matter of R. Norris Co., Inc., Notice of Apparent Violation and Intent to Assess Forfeiture*, Case No. 99-745-TR-CVF, Finding and Order, at 3-4 (November 18, 1999).

written on the face of the certified check or money order to ensure proper credit. Payment must be made within 30 days of this opinion and order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On February 28, 2013, the Highway Patrol stopped and inspected a CMV operated by Mr. Schnoll in the state of Ohio. The Highway Patrol found the following violation: 49 C.F.R. 392.9(a) - failing to secure load per 49 C.F.R. 393.128.
- (2) Mr. Schnoll was timely served a notice of preliminary determination that set forth a civil forfeiture of \$100.00 for the violation.
- (3) A prehearing conference was held on July 11, 2013.
- (4) A hearing in this matter was convened on August 26, 2013.
- (5) Rule 4901:2-7-20, O.A.C., requires that, at the hearing, Staff prove the occurrence of a violation by a preponderance of the evidence.
- (6) Based upon the record in this proceeding, Staff has proven, by a preponderance of the evidence, that respondent violated 49 C.F.R. 392.9(a)(1).
- (7) Mr. Schnoll should be assessed a civil forfeiture of \$100.00 for the violation of 49 C.F.R. 392.9(a)(1).

ORDER:


It is, therefore,

ORDERED, That respondent pay the assessed civil forfeiture of \$100.00 for the violation of 49 C.F.R. 392.9(a)(1), in accordance with this opinion and order. Payment shall be made by check or money order payable to "Treasurer, State of Ohio," and mailed to PUCO Fiscal, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. In order to ensure proper credit, respondent is directed to write the inspection number (OH1251000995C) 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 all parties of record.

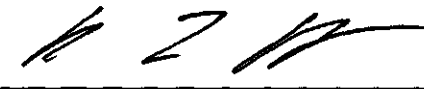
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Spitchler, Chairman


Steven D. Lesser

Lynn Slaby

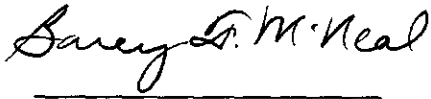

M. Beth Trombold



Asim Z. Haque

SJP/MJK/sc

Entered in the Journal **DEC - 4 2013**



Barcy F. McNeal
Secretary