

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF JOHN COY, NOTICE  
OF APPARENT VIOLATION AND INTENT  
TO ASSESS FORFEITURE.

CASE NO. 16-11-TR-CVF  
(OH0047000033D)

OPINION AND ORDER

Entered in the Journal on May 18, 2016

I. SUMMARY

{¶ 1} The Commission finds, by a preponderance of the evidence, that John Coy must pay a \$200.00 civil forfeiture for not wearing a seat belt while operating a commercial motor vehicle, in violation of 49 C.F.R. 392.16, and not possessing a logbook as required, in violation of 49 C.F.R. 395.8(a).

II. FACTS AND PROCEDURAL BACKGROUND

{¶ 2} Following an October 23, 2015 inspection of a Commercial Motor Vehicle (CMV) driven by John Coy, Staff timely served him with a Notice of Preliminary Determination (NPD) in accordance with Ohio Adm.Code 4901:2-7-02. Mr. Coy was cited in the NPD for violating 49 C.F.R. 395.8(a) (failure to possess required logbook) and 49 C.F.R. 392.16 (failure to wear seat belt while operating a CMV). The NPD also notified Mr. Coy that Staff intended to assess a \$200.00 civil monetary forfeiture for violating the Commission's transportation rules. Mr. Coy filed a request for hearing on January 6, 2016. A prehearing conference was convened on January 28, 2016, and a hearing was held on March 31, 2016. Troopers Dennis Wilcox and Russ McDonald of the Ohio State Highway Patrol (OSP), as well as Jonathan Frye, Compliance Chief of the Commission's Transportation Department, testified on behalf of Staff. Mr. Coy testified on behalf of himself.

### III. DISCUSSION

#### *A. Applicable Law*

{¶ 3} Under Ohio Adm.Code 4901:2-5-03(A), the Commission adopted certain provisions of the Federal Motor Carrier Safety Rules (FMCSR), specifically, 49 C.F.R. Sections 40, 42, 383, 387, and 390-397, to govern the transportation of persons or property within Ohio. Ohio Adm.Code 4901:2-5-03(B) and (C) require all motor carriers engaged in intrastate and interstate commerce in Ohio to operate in conformity with all federal regulations that have been adopted by the Commission. Ohio Adm.Code 4901:2-7-20(A) requires that, at hearing, Staff prove the occurrence of a violation by a preponderance of the evidence.

#### *B. Issue*

{¶ 4} Staff contends that Mr. Coy was driving a CMV while not in possession of a logbook and not wearing a seat belt. Mr. Coy asserts that he was wearing his seat belt while operating the CMV; he does not dispute the logbook violation.

#### *C. Summary of the Evidence Presented at the Hearing*

{¶ 5} Trooper Dennis Wilcox testified that he was sitting stationary in a crossover on Interstate 70 as Mr. Coy approached in the right lane. He estimated that the CMV was about 20 to 25 feet away as Mr. Coy drove by at approximately 55 miles per hour, allowing “probably \*\*\* two seconds” to observe Mr. Coy. Trooper Wilcox noticed that Mr. Coy, who was leaning forward and toward the right, was not wearing a seat belt. According to Trooper Wilcox, there were no adverse weather conditions or glare on the CMV’s windows to cause visibility problems, nor were there any other factors that would have obstructed his view of Mr. Coy. During the inspection, Trooper Wilcox noticed that the seat belt was orange and that Mr. Coy was wearing a red sweatshirt. (Tr. at 6-9, 13-14, 16; Staff Ex. 1.)

{¶ 6} Trooper Russ McDonald testified that he was sitting in his own patrol car and in the same crossover as Trooper Wilcox. As Trooper McDonald watched Mr. Coy approach

in the CMV, he similarly observed Mr. Coy leaning forward and to the right, while wearing a red sweatshirt and not wearing a seat belt. Trooper McDonald confirmed that the seat belt was orange. He also asserts that there were no factors such as weather conditions to hinder his view of Mr. Coy. (Tr. at 17, 20.)

{¶ 7} Staff also presented testimony by Jonathan Frye, Chief of the Commission's Compliance Division (Tr. at 24). Mr. Frye testified that the proposed forfeiture for Mr. Coy is appropriate and consistent with the fine schedule that Staff maintains (Tr. at 24-25). Mr. Frye added that Mr. Coy received an NPD informing him of the assessed fine and how to contest the violation (Tr. at 25-26).

{¶ 8} Mr. Coy admitted that he did not possess the required logbook, but contends that he was wearing his seat belt (Tr. at 27). He added that he does not always drive the same CMV for his employer, Jart Xpress, but he is "100 percent" certain that the seat belt was black on the CMV that he was driving, and contends that all CMVs in the Jart fleet have black seat belts. He did not recall the color of his shirt, but added that it "very well could have been" red. (Tr. at 29-30, 38.) Mr. Coy confirmed that, as he was driving, he noticed Trooper Wilcox parked in the median. (Tr. at 32-33.)

#### *D. Commission Conclusion and Order*

{¶ 9} Ohio Adm.Code 4901:2-7-20 requires, at hearing, that Staff prove the occurrence of a violation by a preponderance of the evidence. The Commission finds, based on a preponderance of the evidence, that Staff has proven that Mr. Coy violated the FMCSR.

{¶ 10} The evidence presented by Staff relies on the observations of Trooper Wilcox and Trooper McDonald. Both troopers were parked in a crossover, which Trooper Wilcox estimated was just 20 to 25 feet from Mr. Coy's CMV as he drove by. Thus, the two troopers were stationary and able to observe Mr. Coy from close proximity. In addition, the troopers contend that there were no adverse weather conditions or glare from the sun which would have hindered accurate observation of Mr. Coy. Further, the inspection report indicates that

the inspection began at 9:43 a.m., a time when there was adequate light for visibility, and that "seat belt was found to be orange, and driver was wearing a red sweat shirt." Indeed, both troopers testified that the seat belt was orange and Mr. Coy's sweatshirt was red, which are contrasting colors that would better enable them to observe whether Mr. Coy was wearing a seat belt while driving.

{¶ 11} We also note that, while Mr. Coy claims that his seat belt was black, he did not testify to the presence of any factors such tinted windows, poor weather conditions, or darkness that would hinder the troopers' ability to observe him as he operated the CMV. In addition, Mr. Coy testified that he could see Trooper Wilcox parked in the adjacent crossover as he drove by in the CMV. Finally, Mr. Coy did not produce any documentation or other evidence to support his assertion that Jart has no CMVs with orange seat belts.

{¶ 12} In sum, the Commission concludes that Staff has proven, by a preponderance of the evidence, that Mr. Coy violated 49 C.F.R. 395.8(a) (failure to possess required logbook) and 49 C.F.R. 392.16 (failure to wear seat belt while operating a CMV). The evidence shows that, while parked in crossover adjacent to where Mr. Coy was driving, both troopers observed him not wearing a seat belt. The troopers also noted that Mr. Coy did not possess a logbook, a violation which Mr. Coy does not dispute. Therefore, the Commission finds Mr. Coy was in violation of 49 C.F.R. 395.8(a) and 49 C.F.R. 392.16, and should be assessed a \$200.00 civil monetary forfeiture. Mr. Coy is directed to make payment of the \$200.00 civil forfeiture within 60 days of this Opinion and Order 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 (OH0047000033D) should be written on the face of the certified check or money order to ensure proper credit.

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 13} On October 23, 2015, OSP Troopers Dennis Wilcox and Russ McDonald stopped and inspected a CMV driven by John Coy, and found him to be in violation of 49 C.F.R. 395.8(a) (failure to possess required logbook) and 49 C.F.R. 392.16 (failure to wear seat belt while operating a CMV).

{¶ 14} Mr. Coy was timely served with an NPD, alleging a violation of 49 C.F.R. 395.8(a) (failure to possess required logbook) and 49 C.F.R. 392.16 (failure to wear seat belt while operating a CMV), and indicating that Staff intended to assess a civil monetary forfeiture of \$200.00.

{¶ 15} A prehearing conference was conducted on January 28, 2016, and a hearing was held on March 31, 2016.

{¶ 16} In accordance with Ohio Adm.Code 4901:2-7-20, Staff has proven, by a preponderance of the evidence, that Mr. Coy was operating a CMV while not wearing a seat belt, in violation of 49 C.F.R. 392.16, and that he did not possess a logbook as required, in violation of 49 C.F.R. 395.8(a).

{¶ 17} Mr. Coy should be assessed a \$200.00 forfeiture for violating 49 C.F.R. 392.16 and 49 C.F.R. 395.8(a), and should pay the forfeiture within 60 days from the date of this Opinion and Order.

#### V. ORDER

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That John Coy violated 49 C.F.R. 395.8(a) (failure to possess required logbook) and 49 C.F.R. 392.16 (failure to wear seat belt while operating a CMV). It is, further,

{¶ 20} ORDERED, That John Coy must pay a civil forfeiture of \$200.00 for violating 49 C.F.R. 395.8(a) (failure to possess required logbook) and 49 C.F.R. 392.16 (failure to wear seat belt while operating a CMV), within 60 days of this Opinion and Order. Payment shall be made by 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. Case number 16-11-TR-CVF and inspection number OH0047000033D should be written on the face of the check or money order. It is, further,

{¶ 21} ORDERED, That a copy of this Opinion and Order be served upon each party of record.

**Commissioners Voting: Andre T. Porter, Chairman; Asim Z. Haque, Vice Chairman; Lynn Slaby; M. Beth Trombold; Thomas W. Johnson.**

JML/sc