

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Imeda Londaridze and :
Blue Way Transport, LLC, Notice of :
Apparent Violation and Intent to Assess : Case No. 16-1233-TR-CVF
Forfeiture. :

POST HEARING BRIEF SUBMITTED ON BEHALF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

INTRODUCTION

This case is about whether Respondent, Imeda Londaridze, was required to obtain a commercial driver's license (CDL) to operate his vehicle. That issue turns on whether Respondent's vehicle is considered a "commercial motor vehicle," which in this case is determined by the gross vehicle weight rating (GVWR) of the vehicle.

Respondent's combined GVWR for his truck and trailer met the threshold for the CDL requirement. However, Respondent improperly reduced the GVWR of his trailer to avoid obtaining a CDL. The National Highway Traffic Safety Administration (NHTSA) has spoken directly to this improper modification of the GVWR and has cautioned against it. The Commission should follow NHTSA's guidance and reinforce the significance of the assignment of a GVWR and the CDL program.

FACTS

On March 21, 2016, Inspector Arthur Philabaum, of the Ohio State Highway Patrol, inspected a commercial motor vehicle driven by Respondent. *See* Staff Ex. 1. During the inspection, Inspector Philabaum took note of the gross vehicle weight rating (GVWR) on the trailer's Vehicle Identification Number (VIN) plate, which was listed as 11,950 pounds. Staff Ex. 3. Because that GVWR did not seem to correspond to the size and style of the trailer, Inspector Philabaum looked at the federal identification (ID) tag, which is placed on the trailer by the manufacturer, to ensure that the GVWR on the VIN plate was accurate. Staff Ex. 2. The federal ID tag, however, showed that the manufacturer assigned a GVWR of 20,000 pounds to Respondent's trailer. *Id.*

Respondent's trailer had two axles with eight wheels. Tr. at 56-57. At the time that Respondent purchased the trailer, it had a GVWR of 20,000 pounds. Tr. at 34. Adding that trailer to Respondent's truck would give the vehicle a combined GVWR of 34,000 pounds. Respondent knew that he would have to acquire a CDL to operate a CMV that has a GVWR of 34,000 pounds. Tr. at 41. To avoid regulation under the CDL program, Respondent purchased a replacement VIN plate from the trailer's manufacturer. Respondent Ex. 4. The new VIN plate showed a false GVWR of 11,950 pounds, which lowered the combined GVWR to 25,950 pounds. *Id.* At the time of the inspection, Respondent did not have a CDL. Tr. at 34, 37.

After conducting a full inspection, Inspector Philabaum cited Respondent for violating 49 C.F.R. 391.11(b)(5) (driver does not have a valid operator's license for the

CMV being operated), 390.21(b) (carrier name and/or USDOT number not displayed as required), and 393.43 (no/improper breakaway or emergency braking). Staff Ex. 1.

Respondent requested a hearing, which was held on August 25, 2016. Inspector Philabaum testified on behalf of the Staff of the Public Utilities Commission of Ohio (Commission). He is certified as an inspection officer and has worked in this capacity with the Ohio State Highway Patrol for twelve years, performing over 8,000 commercial motor vehicle inspections. Tr. at 8, 59. At the hearing, Respondent stipulated that he violated 49 C.F.R. 390.21(b) and 393.43. Tr. at 6-7. The only violation at issue, therefore, was the violation of 49 C.F.R. 391.11(b)(5)—that Respondent did not have a valid operator’s license.

LAW AND DISCUSSION

The Federal Motor Carrier Safety regulations prohibit a person from driving a commercial motor vehicle unless that person is qualified. 49 C.F.R. 391.11(a). The qualifications for driving a CMV are listed under 49 C.F.R. 391.11(b). Subsection (5) requires that the driver have a “currently valid commercial motor vehicle operator’s license issued only by one State or jurisdiction.”

A commercial motor vehicle is defined in 49 C.F.R. 383.5 as, among other things, “a combination of motor vehicles used in commerce to transport ... property if the motor vehicle – (1) has a gross combination weight rating or gross combination weight of ... 26,001 pounds or more” Therefore, if a vehicle has a combined GVWR of 26,001

pounds or more, it is considered a commercial motor vehicle under the regulations, and a driver must have a commercial driver's license.

A vehicle's GVWR is assigned by its manufacturer. 49 C.F.R. 567.4(g). The National Highway Traffic Safety Administration (NHTSA) has provided guidance on the issue of changing a vehicle's GVWR several times. In response to a question from a truck rental company seeking to lower the GVWR of its vehicles so that a renter would not need to have a CDL, NHTSA clarified that 49 C.F.R. 567 allows only certain parties to modify a vehicle's GVWR: the original manufacturer, a final stage manufacturer, or an alterer. *See* Letter from Paul Jackson Rice, Chief Counsel, Nat'l Highway Traffic Safety Admin., to Jerry Tasan (March 19, 1991) (<http://isearch.nhtsa.gov/files/2899yy.html>) ("Tasan"). Therefore, "a vehicle owner that performs no manufacturing operations on a vehicle cannot modify the GVWR of the vehicle." *Id.* NHTSA has also stated that the GVWR is fixed prior to its first sale, and can only be modified when the manufacturer made an error in originally assigning the GVWR. Letter from Philip R. Recht, Chief Counsel, Nat'l Highway Traffic Safety Admin., to Baysul Parker, Manager, California Trucking Ass'n. (February 14, 1995) at 1 (<http://isearch.nhtsa.gov/gm/95/nht95-1.66.html>) ("Parker"); Letter from Paul Jackson Rice, Chief Counsel, Nat'l Highway Traffic Safety Admin., to J. Leslie Dobson, Owner, McKinley Vehicle Services (Nov. 20, 1992) (<http://isearch.nhtsa.gov/gm/92/nht92-2.14.html>) ("Dobson").

On numerous occasions, NHTSA has emphasized that "modifications to assigned GVWRs should not be made for reasons relating to the GVWR threshold of the

commercial driver's license program." Letter from Paul Jackson Rice, Chief Counsel, Nat'l Highway Traffic Safety Admin., to Gene Fouts, Shelbyville Mun. Water and Sewer (July 1, 1992) at 1 (<http://isearch.nhtsa.gov/gm/92/nht92-5.31.html>) ("Fouts"); *see also* Dobson; Parker at 2.

Here, Respondent's vehicle is a commercial motor vehicle under 49 C.F.R. 383.5 because it has a combined GVWR of 34,000 pounds (the sum of the trailer's GVWR—20,000 pounds—and the truck's GVWR—14,000 pounds). Respondent's vehicle surpassed the GVWR threshold for the CDL program, which is set at 26,001 pounds. Therefore, Respondent was required to have a CDL.

At the hearing, Respondent admitted that, at the time of purchase, he knew that the combined GVWR for his vehicle was 34,000 pounds and that required him to have a CDL. Tr. at 41. Despite that fact, Respondent argued that his trailer's GVWR is 11,950 pounds, not 20,000 pounds. Tr. at 36. Respondent therefore believes that he is not required to have a CDL because his combined GVWR is below 26,001 pounds. But Respondent provides no legitimate justification for modifying the trailer's GVWR. He simply wanted to avoid the CDL requirement, which NHTSA has emphasized is an improper justification for changing a vehicle's GVWR.

Although he testified at the hearing that a mechanic worked on the trailer, Tr. at 41-42, there is no evidence on the record of the modifications, if any, that were done to the trailer that would justify lowering its GVWR. Respondent also provided no evidence

that the mechanic that worked on the vehicle was certified as an “alterer” under 49 C.F.R. 567 to modify the GVWR.

Moreover, Inspector Philabaum testified that the trailer had the characteristics of a trailer with a 20,000-pound GVWR. Tr. at 57. It had two axles and eight wheels, which suggests a GVWR of 10,000 pounds per axle. *Id.* He also testified that the trailer did not appear to be modified; it retained the federal ID tag that specified a GVWR of 20,000 pounds. Tr. at 59. Although it is not common to reduce a vehicle’s GVWR, it would likely only be reduced by removing an axle, which did not occur here. Tr. at 58-59.

The true GVWR of Respondent’s trailer is 20,000 pounds and Respondent’s claims otherwise are misleading.

The GVWR is meant to characterize a vehicle by its size, weight, load carrying capacity, and intended use. Parker at 1. It follows then that any change in a vehicle’s GVWR, must be a result of a change in one of those characteristics. If anyone can change a vehicle’s GVWR by simply filling out a form for a new VIN plate, then the assignment of a GVWR and the CDL requirement would be meaningless. Changing a GVWR without any modifications to the vehicle would leave the vehicle with a GVWR that would no longer reflect a “good faith evaluation” of the vehicle’s size and carrying capabilities. Moreover, the CDL program, whose purpose is to regulate commercial motor vehicle drivers, would become useless if anyone can reduce a GVWR to avoid its requirements.

CONCLUSION

Based on the record produced at the hearing and for the reasons stated above, Staff respectfully requests that the Commission find that Respondent violated 49 C.F.R. 391.11(b)(5) and require him to pay the forfeiture amount of two hundred fifty dollars.

Respectfully submitted,

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Ohio Attorney General

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Section Chief

/s/Natalia V. Messenger

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**On behalf of the Staff of
The Public Utilities Commission of Ohio**

PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Post-Hearing Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served upon Respondent, Imeda Londaridze, 1733 Rockwell Road, Abington, PA 19001, this 7th day of October, 2016.

/s/Natalia V. Messenger

Natalia V. Messenger

Assistant Attorney General

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Summary: Brief Post Hearing Brief submitted on behalf of the Public Utilities Commission of Ohio. electronically filed by Ms. Tonneta Scott on behalf of PUC