

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Gary I. Johansen, : Case No. 17-1158-TR-CVF
Notice of Apparent Violation and : (OH3267011466D)
Intent to Assess Forfeiture. :

SETTLEMENT AGREEMENT

I. Introduction

Pursuant to Rule 4901:2-7-11 of the Ohio Administrative Code (O.A.C.), Gary I. Johansen (Respondent) and the Staff of the Transportation Department of the Public Utilities Commission of Ohio (Staff) enter into this settlement agreement and urge the Commission to adopt the same.

It is understood by the Respondent and the Staff that this Settlement Agreement is not binding upon the Public Utilities Commission of Ohio (Commission). This agreement however, is based on the Respondent's and the Staff's desire to arrive at a reasonable result considering the law, facts and circumstances. Accordingly, the Respondent and the Staff believe that the Commission should adopt this Settlement Agreement.

This settlement agreement is submitted on the condition that the Commission adopts the agreed upon terms. The Parties agree that if the Commission rejects all or any part of this Settlement Agreement or otherwise materially modifies its terms, either Party shall have the right, within thirty (30) business days of the Commission's order, either to file an application for rehearing or to terminate and withdraw from this agreement by

filing a notice with the Commission. If an application for rehearing is filed, and if the Commission does not, on rehearing, accept the Settlement Agreement without material modification, either Party may terminate and withdraw from this agreement by filing a notice with the Commission within ten (10) business days of the Commission's order or entry on rehearing. In such an event, a hearing shall go forward, and the Parties shall be afforded the opportunity to present evidence through witnesses, to cross-examine all witnesses, to present rebuttal testimony, and to file briefs on all issues.

II. Procedural History

- A. On February 21, 2017, a vehicle operated by Respondent Gary I. Johansen was inspected within the State of Ohio. The inspection resulted in the discovery of two violations of the federal motor carrier safety regulations. The violations were: failure to use a seat belt while operating a commercial motor vehicle in violation of 49 C.F.R. §392.16; and operating a commercial motor vehicle without proper endorsement, or in violation of restrictions, in violation of 49 C.F.R. §391.11(b)(5)-DEN.
- B. On April 9, 2017, Respondent was timely served with a notice of preliminary determination in accordance with Rule 4901:2-7-12, O.A.C. for Case No. OH3267011466D. The preliminary determination assessed Respondent \$350.00 for the violations.
- C. On April 27, 2017, Respondent made a timely formal request for an administrative hearing pursuant to Rule 4901:2-7-13, O.A.C.

- D. An evidentiary hearing was conducted on July 18, 2017, at which time Staff and Respondent were afforded an opportunity to adduce testimony and offer evidence into the record, which is now closed.
- E. At the conclusion of the evidentiary hearing, the parties negotiated this settlement agreement, which the parties believe resolves all the issues raised in the notice of preliminary determination.

III. Settlement Agreement

The parties hereto agree and recommend that the Commission find as follows:

- A. Respondent agrees to violations of 49 C.F.R. §§392.16 and 391.11(b)(5)-DEN, and recognizes that they may be included in the Respondent's Safety-Net Record and Respondent's history of violations insofar as they may be relevant for purposes of determining future penalty actions.
- B. Respondent agrees to pay a civil forfeiture of \$200.00 for the violations. Respondent has provided proof sufficient to Staff that he has subsequently taken corrective action and obtained interstate licensure. Respondent acknowledges that he did not have the appropriate endorsement at the time of the inspection, but states that this was due to a misunderstanding at the Bureau of Motor Vehicles when he renewed his commercial driver's license.
- C. Respondent agrees to make monthly payments in the amount of \$25.00 per month for a period of eight (8) months, with the first payment to be due

thirty (30) days from Commission approval of this settlement agreement. Payments should be made by certified check or money order to “Treasurer State of Ohio,” and mailed to: PUCO FISCAL, 180 East Broad St., Columbus, OH 43215-3793.

- D. This settlement agreement shall not become effective until adopted by an Opinion and Order of the Commission. The date of the entry of the Commission order adopting the settlement agreement shall be considered the effective date of the settlement agreement.
- E. This settlement agreement is made in settlement of all factual or legal issues in this case. It is not intended to have any affect whatsoever in any other case or proceeding.

III. Conclusion

The Signatory parties agree that this Settlement Agreement is in the best interest of all parties, and urge the Commission to adopt the same. The undersigned respectfully request that the Commission issue an entry in accordance with the terms set forth in this Settlement Agreement.

The parties have manifested their consent to the Settlement Agreement by affixing their signatures below on this 15th day of August, 2017.

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



Gary I. Johansen
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Werner L. Margard III
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Case No(s). 17-1158-TR-CVF

Summary: Stipulation and Recommendation electronically filed by Mrs. Tonnetta Y Scott on behalf of PUCO