

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF MICHAEL W. MURTON,
NOTICE OF APPARENT VIOLATION AND
INTENT TO ASSESS FORFEITURE

CASE NO. 17-1278-TR-CVF
(OH3230011017C)

FINDING AND ORDER

Entered in the Journal on December 13, 2017

I. SUMMARY

{¶ 1} The Commission finds reasonable and approves the corrected settlement agreement filed between Staff and Michael W. Murton regarding violations of the Commission's transportation rules.

II. DISCUSSION

{¶ 2} R.C. 4923.04(A)(1) mandates that the Commission adopt rules applicable to the transportation of persons or property by motor carriers operating in interstate and intrastate commerce. Pursuant to Ohio Adm.Code 4901:2-5-03(A), the Commission adopted the Federal Motor Carrier Safety Regulations, published in the Code of Federal Regulations, for the purpose of governing transportation by motor vehicle in the state of Ohio. Further, R.C. 4923.99 authorizes the Commission to assess a civil forfeiture of up to \$25,000 per day, per violation, against any person who violates the safety rules adopted by the Commission.

{¶ 3} On March 21, 2017, a commercial motor vehicle operated by O & I Transport, Inc. and driven by Michael W. Murton (Respondent) was inspected in Erie County, Ohio. The inspection resulted in the discovery of multiple apparent violations of the Code of Federal Regulations (C.F.R.), including inoperable required lamps (49 C.F.R. 393.9(a)); failing to secure cargo and equipment (49 C.F.R. 392.9(a)(1) and (2), respectively); and brake hose or tubing chafing and/or kinking (49 C.F.R. 393.45(b)(2)).

{¶ 4} Pursuant to Ohio Adm.Code 4901:2-7-12, Staff timely served Respondent with a Notice of Preliminary Determination (NPD). The NPD categorized the various violations into three groups and assessed Respondent a civil forfeiture of \$400. This total amount represents no forfeiture amount for Group 0, a \$250 forfeiture for Group 1, and a \$150 forfeiture for Group 2.

{¶ 5} On May 17, 2017, Respondent requested an administrative hearing pursuant to Ohio Adm.Code 4901:2-7-13.

{¶ 6} A prehearing conference was conducted on July 11, 2017.

{¶ 7} On November 1, 2017, Staff and Respondent filed a settlement agreement that, in the parties' opinion, resolves the issues raised in the NPD. The following is a summary of the conditions agreed to by the parties; it is not intended to replace or supersede the settlement agreement.

- (a) For purposes of settlement only, Staff agrees to dismiss the Group 1 violations (failing to secure cargo and failing to secure vehicle equipment), reducing the total forfeiture to \$250, for lack of sufficient evidence and to facilitate resolution of the remaining violations cited in the NPD. In mitigation, Respondent has submitted proof that he has taken affirmative steps to repair the lamps and hoses underlying the remaining violations.
- (b) Respondent and Staff agree that Respondent shall make a civil forfeiture payment of \$250 no later than 30 days after the effective date of the settlement agreement. The date the Commission adopts the settlement agreement shall be its effective date.

- (c) Respondent and Staff agree that this settlement agreement can be considered to determine future forfeitures if Respondent has any future cases before the Commission.
- (d) The settlement agreement is made in settlement of all factual or legal issues in this case only.

{¶ 8} On November 21, 2017, Staff's counsel filed a letter regarding the settlement agreement. As explained by counsel, the purpose of the letter was to correct a recently discovered, inadvertent error in the settlement agreement regarding the recommended total civil forfeiture. Specifically, although the agreement provided a figure of \$250 as the total forfeiture for the Group 0 and Group 2 violations, that amount should be \$150. Thus, as corrected, the parties recommend that the Commission adopt \$150 as the total civil forfeiture to be paid by Respondent for the Group 0 and Group 2 violations.

{¶ 9} The Commission finds that the parties' submitted settlement agreement, as corrected by counsel's explanatory correspondence, is reasonable. Therefore, the corrected settlement agreement shall be approved and adopted in its entirety.

III. ORDER

{¶ 10} It is, therefore,

{¶ 11} ORDERED, That the settlement agreement submitted in this case be approved and adopted in its entirety. It is, further,

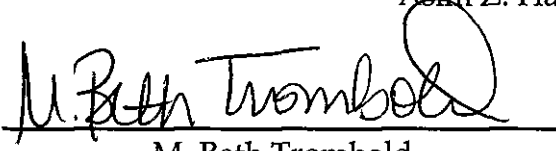
{¶ 12} ORDERED, That Respondent pay the civil forfeiture of \$150 in accordance with the settlement agreement. Payment shall be made by check or money order payable to the "Treasurer, State of Ohio" and mailed or delivered to PUCO FINANCE, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. In order to ensure proper credit, Respondent is directed to write case number OH3230011017C on the face of the check or money order. It is, further,

{¶ 13} ORDERED, That a copy of this Finding and Order be served upon Respondent and all other interested parties of record.

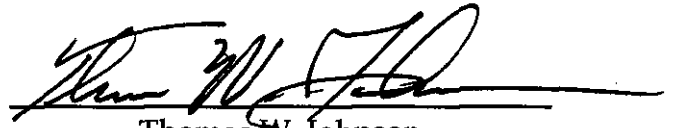
THE PUBLIC UTILITIES COMMISSION OF OHIO



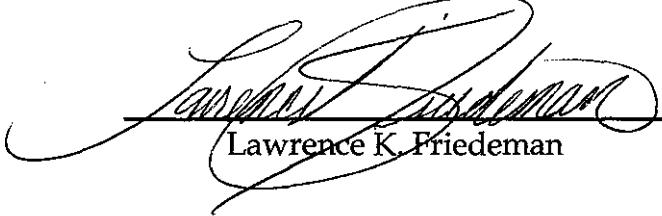
Asim Z. Haque, Chairman



M. Beth Trombold



Thomas W. Johnson

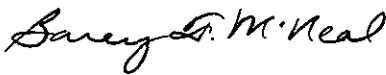


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Barcy F. McNeal
Secretary