

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF RONALD HOGAN,
NOTICE OF APPARENT VIOLATION AND
INTENT TO ASSESS FORFEITURE.

CASE NO. 17-1373-TR-CVF
(OH0969000137D)

OPINION AND ORDER

Entered in the Journal on December 20, 2017

I. SUMMARY

{¶ 1} The Commission, considering the applicable law and evidence of the record, finds that there is sufficient evidence to conclude that Ronald Hogan violated 49 C.F.R. 392.16 by not restraining himself properly with a seat belt while driving a commercial motor vehicle.

II. PROCEDURAL HISTORY

{¶ 2} Following a March 29, 2017 inspection of a commercial motor vehicle (CMV), which was operated by Psi Packaging Services, Inc. and driven by Ronald Hogan (Mr. Hogan or Respondent), on Interstate Route 80 in Trumbull County, Ohio, Respondent was timely served with a Notice of Preliminary Determination (NPD) in accordance with Ohio Adm.Code 4901:2-7-12. The NPD notified Mr. Hogan that Staff intended to cite him for a violation of 49 C.F.R. 392.16, failure to use a seat belt while driving a CMV, and a \$100 civil forfeiture was assessed for the alleged violation. A prehearing conference was conducted on July 12, 2017, and a hearing was held on September 21, 2017. At the hearing, Ohio Highway Patrol Trooper Lauren Merz and Rod Moser appeared as witnesses for Staff and Mr. Hogan appeared on his own behalf.

III. LAW

{¶ 3} Under Ohio Adm.Code 4901:2-5-03(A), the Commission adopted certain provisions of the Federal Motor Carrier Safety Regulations, 49 C.F.R. Sections 40, 42, 383, 387, and 390-397, to govern the transportation of persons or property in intrastate commerce 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. As relevant to this case, 49 C.F.R. 392.16 provides that a CMV which has a seat belt assembly installed at the driver's seat shall not be driven unless the driver has properly restrained himself/herself with the seat belt assembly.

IV. ISSUE

{¶ 4} The issue is whether Mr. Hogan complied with 49 C.F.R. 392.16 by restraining himself with a seat belt when he drove a CMV just prior to the inspection in this matter. Staff alleges that Mr. Hogan did not wear his seat belt properly at that time, which was necessary for him to comply with 49 C.F.R. 392.16. Mr. Hogan denied committing the violation.

V. SUMMARY OF THE EVIDENCE

{¶ 5} Trooper Merz identified Staff Exhibit 1, the inspection report in this matter, and testified that, as the CMV driven by Mr. Hogan approached the position of her vehicle in the highway median, she had a clear view inside the cab and noticed that Mr. Hogan was not wearing a seat belt shoulder strap across his chest. Trooper Merz testified that Mr. Hogan was wearing a neon-green hoodie sweatshirt and that she could clearly see that he did not have a seat belt shoulder strap across his chest; so, she initiated the stop. Trooper Lewis stated that the color of the Mr. Hogan's safety belt, which was hanging loose in the truck cab, was dark grey, that it would have been easily seen against his green hoodie sweatshirt, and that she had a clear and unobstructed view of Mr. Hogan's chest where she expected his seat belt to be; therefore, she was certain that Mr. Hogan was not properly restrained by the seat belt. (Tr. at 9-10, 31-32; Staff Ex. 1 at 1.)

{¶ 6} On cross examination, Trooper Merz explained that, when she checks for a seat belt violation, she looks at the driver's chest area. She noted that, while the hood of a hoodie sweat shirt might conceal the portion of a seat belt shoulder strap near the driver's

shoulder area, it would not cover the driver's chest area. Trooper Merz then reiterated that, with the contrasting colors of Mr. Hogan's seat belt and sweatshirt, she was confident that the shoulder strap of Mr. Hogan's seat belt was not covering his chest area and doing what it is designed to do. Finally, she confirmed that, even considering the speed of Mr. Hogan's truck, 64 miles per hour, she would be able to see, in plain view, if Mr. Hogan's seatbelt was not across his chest where it is supposed to be. (Tr. at 32-35.)

{¶ 7} Rod Moser, chief of compliance with the Commission's Transportation Department, testified that different civil forfeiture violations are broken down into groups depending on the nature of the violation, and the civil forfeiture is determined by a violation group number, Group 4 in Mr. Hogan's case, which refers to the amount of the fine. He identified Staff Exhibit 2, the NPD in this matter, and testified that the notice sent to the Respondent set forth the \$100 forfeiture for the seat belt violation. Mr. Moser testified that the forfeitures assessed by the Commission are consistent with the forfeitures recommended by the Commercial Vehicle Safety Alliance. He further testified that the forfeiture in this case was properly determined and appropriately assessed and that this procedure for determining and assessing forfeitures is the same for all individuals and carriers. (Tr. at 16-21.)

{¶ 8} Mr. Hogan, referring to Respondent's Exhibit 1, a photograph of the inside of his truck cab, testified that he always pulls his seat belt down with as much slack in the belt as he can get, and positions a yellow switch or latch to hold the slack. He then lays the seat belt across his shoulder and puts the hood of his sweatshirt across it, in order to keep the seat belt from chaffing his neck. Mr. Hogan testified that Trooper Merz knocked on the passenger-side door of his truck cab and, in reaching to gather his paperwork and unlock the door, that is when he unsnapped his seat belt. Mr. Hogan testified that he explained to Trooper Merz that he was wearing his seat belt. (Tr. at 22-26.)

{¶ 9} On cross examination, Mr. Hogan testified that, at every stop, he gets into his truck, pulls the seat belt down and flips the yellow switch up to alleviate the constant tension

of the seat belt on him. That way, according to Mr. Hogan, the seat belt is in the proper position where it is supposed to be; however, the seat belt is loose and it drapes across his shoulder. (Tr. at 27-28.)

VI. COMMISSION CONCLUSION

{¶ 10} The Commission first observes Mr. Hogan's own testimony, that he adjusts that tension on the shoulder strap of his seat belt so that the strap is loose on his shoulder and that he then pads the strap with the hood of his sweat shirt in order to keep it from chaffing him (Tr. at 30). We also observe Trooper Merz's response to this testimony by Mr. Hogan. She testified that, with so much slack in the shoulder strap of the seat belt, so that it is not over the chest area, "the seat belt is not doing what it is designed to do." (Tr. at 33). We agree. By Mr. Hogan's own admission, he was not wearing his seat belt correctly. As we have stated in previous Opinion and Orders on this point, 49 C.F.R. 392.16 specifies that a CMV "shall not be driven unless the driver has properly restrained himself/herself with the seat belt assembly" (emphasis added). The Commission continues to believe that the phrase "properly restrained" in this C.F.R. section requires the seat belt shoulder strap to be positioned correctly across the driver's chest. See *In re Lyden Oil Co.*, Case No. 08-734-TR-CVF, Opinion and Order (June 10, 2009) at 6.

{¶ 11} Additionally, the Commission is of the opinion that Trooper Merz's inspection notes in the inspection report (Staff Exhibit 1 at 1), which were recorded soon after Mr. Hogan was stopped, corroborate her testimony pertaining to the seat belt violation. Those notes read as follows: "Sitting stationary in crossover facing eastbound traffic. Observed day cab drive by with driver clearly visible. Upon approach to driver seat belt still not on. Dark grey seat belt observed hanging. Driver admitted violation stating he usually wears it but took it [off] for a second when he stopped." (Staff Exhibit 1 at 1.) Mr. Hogan did not address the inspection notes at hearing and did not present any argument that would refute them.

{¶ 12} The record shows that Trooper Merz clearly observed Mr. Hogan committing the violation, by not correctly positioning the shoulder strap of his seat belt across his chest, when Mr. Hogan's truck passed Inspector Merz's position in the crossover of the highway median (Tr. at 9, 14, 21-32, 35). Further, Mr. Hogan's arguments at hearing were not sufficient to demonstrate that he should not be held liable for the civil forfeiture assessed for a violation of 49 C.F.R. 392.16. The Commission, therefore, concludes that, based on a preponderance of the evidence, Mr. Hogan was in violation of 49 C.F.R. 392.16.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 13} On March 29, 2017, Trooper Lauren Merz stopped and inspected a CMV driven by Mr. Hogan and found a violation of the Commission's transportation regulations, 49 C.F.R. 392.16 – failing to use a seat belt while driving a CMV.

{¶ 14} Mr. Hogan was timely served with an NPD listing a civil forfeiture of \$100 for the violation of 49 C.F.R. 392.16.

{¶ 15} A prehearing conference was conducted on July 12, 2017, and a hearing was held on September 21, 2017.

{¶ 16} Ohio Adm.Code 4901:2-7-20 requires that, at hearing, Staff prove the occurrence of a violation by a preponderance of the evidence.

{¶ 17} Based upon the record in this proceeding, the Commission finds that Staff has proven, by a preponderance of the evidence, that Mr. Hogan violated 49 C.F.R. 392.16 by failing to use a seat belt properly while operating a CMV.

{¶ 18} The civil forfeiture assessed for violation of 49 C.F.R. 392.16 is consistent with the standards of the Commercial Vehicle Safety Alliance and is reasonable.

{¶ 19} Mr. Hogan's arguments at hearing were not sufficient to demonstrate that he should not be held liable for the civil forfeiture assessed for violation of 49 C.F.R. 392.16.

{¶ 20} Pursuant to R.C. 4905.83, Mr. Hogan must pay the state of Ohio the civil forfeiture assessed for violation of 49 C.F.R. 392.16. Mr. Hogan shall have 30 days from the date of this Opinion and Order to pay the assessed forfeiture of \$100.

{¶ 21} Payment of the forfeiture must be made by certified check or money order made payable to "Treasurer, State of Ohio" and mailed or delivered to Public Utilities Commission of Ohio, Attention: Fiscal Department, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793.

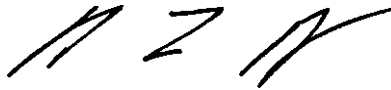
VIII. ORDER

{¶ 22} It is, therefore,

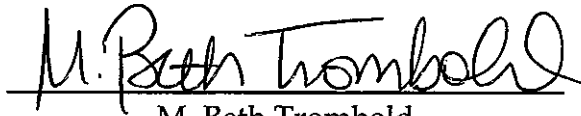
{¶ 23} ORDERED, That Mr. Hogan pay the assessed amount of \$100 for violation of 49 C.F.R. Section 392.16, as set forth in Paragraphs (20) and (21). Payment should be made payable to "Treasurer, State of Ohio" and mailed or delivered to Public Utilities Commission of Ohio, Attention: Fiscal Department, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. In order to assure proper credit, Mr. Hogan is directed to write the case number, 17-1373-TR-CVF, and inspection report number, OH0969000137D, on the face of the check or money order. It is, further,

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


THE PUBLIC UTILITIES COMMISSION OF OHIO



Asim Z. Haque, Chairman



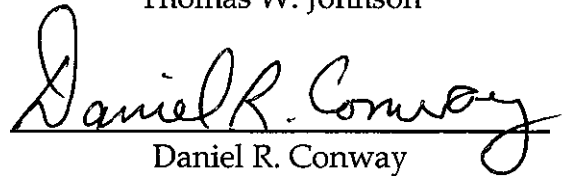
M. Beth Trombold



Thomas W. Johnson



Lawrence K. Friedeman



Daniel R. Conway

KKS/vrm

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DEC 20 2017



Barcy F. McNeal
Secretary