

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF PLH CARRIERS,
INC., NOTICE OF APPARENT VIOLATION
AND INTENT TO ASSESS FORFEITURE.

CASE NO. 17-2404-TR-CVF
(OH3238012071C)

OPINION AND ORDER

Entered in the Journal on November 28, 2018

I. SUMMARY

{¶ 1} The Commission finds that Staff demonstrated, by a preponderance of the evidence, that Mr. Norman Brown violated the Commission's transportation rules by having an inoperable required lamp and loose wheel fasteners. In addition, by a preponderance of the evidence, Staff did not demonstrate that Mr. Brown violated Commission transportation rules requiring proof of a periodic inspection while operating a Commercial Motor Vehicle. Therefore, the violation should be deleted from Mr. Brown's Safety-Net record and history of violations.

II. PROCEDURAL HISTORY

{¶ 2} Following an inspection of a commercial motor vehicle (CMV) operated by PLH Carriers, Inc. (PLH Carriers) and driven by Norman Brown (Respondent), Staff served PLH Carriers a notice of preliminary determination (NPD) in accordance with Ohio Adm.Code 4901:2-7-12, notifying him that Staff intended to assess a \$150 civil monetary forfeiture for a violation of the Commission's transportation regulations. Specifically, Staff alleged a violation of 49 C.F.R. 393.9, inoperable required lamp (3 citations); 49 C.F.R. 396.17(c), operating a CMV without proof of a periodic inspection, and 49 C.F.R. 393.205(c), wheel fasteners loose and/or missing. On November 22, 2017, PLH Carriers filed a request for an administrative hearing in accordance with Ohio Adm.Code 4901:2-7-13. A prehearing conference was held on February 15, 2018; however, the parties were unable to reach a resolution. A hearing was held on June 5,

2018. At the hearing, Inspector Michal Byrne and Mr. Rod Moser appeared as witnesses for Staff and Mr. Brown appeared on behalf of PLH Carriers.

III. LAW

{¶ 3} Under Ohio Adm.Code 4901:2-5-02(A), the Commission adopted certain provisions of the Federal Motor Carrier Safety Regulations (FMCSR), 49 C.F.R. Sections 40, 42, 383, 387, 390-397, to govern the transportation of persons or property in intrastate commerce within Ohio. Ohio Adm.Code 4901:2-5-02(C) requires all motor carriers engaged in interstate commerce in Ohio to operate in conformity with all federal regulations that have been adopted by the Commission. 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 when transporting persons or property, in interstate commerce, in or through this state. Ohio Adm.Code 4901:2-7-20 requires that, at the hearing, Staff prove the occurrence of a violation by a preponderance of the evidence.

{¶ 4} As relevant to this case, 49 C.F.R. 393.9 specifies that all lamps shall be capable of being operated at all times. Further, 49 C.F.R. 396.17(c) requires an inspection report, performed within the last 12 months, on any commercial motor vehicle being operated and 49 C.F.R. 393.205(c) specifies that wheel nuts or bolts shall not be missing or loose.

IV. ISSUE

{¶ 5} At issue is whether Staff satisfied its burden to show, by a preponderance of the evidence, that Mr. Brown had inoperable required lamps, was operating a CMV without an inspection report, and had missing or loose nuts or bolts in violation of 49 C.F.R. 393.9, 396.17 (c), and 393.205(c), respectively.

V. SUMMARY OF THE EVIDENCE

{¶ 6} Inspector Byrne stated that he has been with the Ohio State Highway Patrol for 14 years and is trained for CMV and hazardous material inspections (Tr. at 6-7). He explained that he inspected Mr. Brown's CMV and found Mr. Brown was not in compliance with many of the Commission's transportation rules (Tr. at 9-13; Staff Ex. 1).

{¶ 7} Inspector Byrne asserted that the first violation was for loose wheel fasteners. Inspector Byrne stated there were two fasteners out of 10 which were loose on the left axle wheel. Inspector Byrne noted that he took a photograph at the inspection of the two loose fasteners. (Tr. at 9-10; Staff Ex. 2.)

{¶ 8} Inspector Byrne explained that the second, third, and fourth violations are for inoperable lamps. According to Inspector Byrne, the left turn signal lamp on the trailer was inoperable, which caused him to stop Mr. Brown resulting in the second violation. Inspector Byrne stated he then placed the vehicle out of service. Inspector Byrne contended that the third violation was the left tail lamp, which is at the rear of the tractor, was inoperable during his inspection. He took a photograph during the inspection after conducting his walk-around showing that the left tail lamp is not illuminated as opposed to the right tail lamp. During the walk-around of the inspection, Inspector Byrne observed the left turn signal switch, which also serves as a stop lamp and hazard warning light, was inoperable. Inspector Byrne noted that this was repaired by the driver on the spot. (Tr. at 10-12, Staff Ex. 3.)

{¶ 9} Inspector Byrne stated that he checks to make sure that the truck and trailer have a current periodic inspection and that the periodic inspection is typically part of their paperwork and/or a decal. He explained that Respondent's tractor had a current inspection but the trailer did not, in violation of 49 C.F.R. 396.17(c). He further explained, the trailer had an inspection sticker on the right front of the trailer dated August, 20, 2016, and the most recent paperwork showed the last inspection was February 15, 2011.

Inspector Byrne noted that the sticker on the trailer was valid until August of 2017 and his inspection was on September 8, 2017, when the decal was clearly expired, thus resulting in a violation. (Tr. at 13-14.)

{¶ 10} Mr. Rod Moser, Chief of Compliance within the Transportation section at the Public Utilities Commission, testified that he reviews civil forfeiture assessments for the Commission to ensure that the fines are the correct amount and that he reviewed the assessment against the Respondent. According to Mr. Moser, the NPD in this matter sent to PLH Carriers identified the violations and the amount of the assessment for the violations (Staff Ex. 4). Mr. Moser testified that in this case there are three Group 0 violations where no fine was assessed and two separate Group 2 violations which carry a fine of \$50 for the initial violation and \$100 for the second violation. He further testified that the penalty is consistent with the recommended fine schedule and recommended civil penalty procedure adopted by the Commercial Motor Vehicle Alliance. Accordingly, Mr. Moser recommended the forfeiture amount to the Commission. (Tr. at 18-22; Staff Ex. 4.)

{¶ 11} Mr. Brown testified that he is the owner of the PLH Carriers and has been a driver for 38 years. He stated that the night before he was pulled over, at a rest area, his truck was vandalized. Mr. Brown believed that the vandals caused the fasteners to be loose and the pigtail that runs the light on the back of the trailer to be pulled apart. Mr. Brown stated that he didn't realize the cord was broken inside until he was being inspected, as it was working when he left the rest stop in the morning. Further, he replaced the pigtail during the inspection and was able to restore power. Lastly, Mr. Brown noted that he had the tractor inspection and trailer inspection stickers together, but they were in the truck. Mr. Brown testified he was nervous during the inspection and couldn't quickly find the documents. (Tr. at 23-29; Staff Ex. A.)

VI. COMMISSION CONCLUSION

{¶ 12} Ohio Adm.Code 4901:2-7-20(A) requires that, at the hearing, Staff prove the occurrence of a violation by a preponderance of the evidence. Based upon the record in this proceeding, the Commission finds that Staff has proven, by a preponderance of the evidence, that Respondent violated 49 CF.R. 393.9 (three separate violations for inoperable required lamps) and 49 CF.R. 393.205(c) (wheel fasteners loose and/or missing); but has not proven that Respondent violated 49 CF.R. 396.17(c) (operating a CMV without proof of a periodic inspection).

{¶ 13} With respect to the three separate violations of 49 CF.R. 393.9, which pertain to inoperable turn signals and other lamps, the evidence of record reflects that, during the time of the inspection, none of the lamps in question were in operation, as confirmed by Inspector Byrne's testimony, the photos taken during the inspection, and the Driver/Vehicle Examination Report that he completed following the inspection (Staff Ex. 1 and 3; Tr. at 10-12). Although Mr. Brown testified that after he installed a new pigtail all of the lamps were fully functioning, Mr. Brown did not dispute that the three lamps in question were not operating correctly during the inspection (Tr. at 25).

{¶ 14} Turning to the alleged violation of 49 C.F.R. 396.17(c), which pertains to operating a CMV without proof of a periodic inspection, the evidence demonstrates that the respondent was properly registered at the time of the inspection, and likely had the corresponding documents in his cab, but was unable to produce the documents at that time (Tr. at 28-29, 32). While we recognize the necessity for drivers to promptly produce the appropriate documents for enforcement personnel during the course of vehicle inspections, we do not believe the assessment of a violation is justified by the evidence in this case. The Commission finds persuasive the Respondent's testimony that the necessary paperwork was present in the cab at the time of inspection, but he was unable to locate the documents because he was flustered and hurrying to fix the inoperable lamp (Tr. at 28-29, 32). Accordingly, we find no occurrence of the alleged violation.

{¶ 15} Next, in regard to the alleged violation 49 C.F.R. 393.205(c), which pertains to wheel fasteners loose and/or missing, the evidence of record reflects that, during the time of the inspection, the wheel fasteners were loose, as confirmed by Inspector Byrne's testimony, the photos taken during the inspection, and the Driver/Vehicle Examination Report that he completed following the inspection (Staff Ex. 1 and 2; Tr. at 9-10). Mr. Brown testified that the wheel fasteners may have been loose due to vandalism at a rest stop over night and he did not see the loose lug nuts when he inspected his vehicle in the morning, however, Mr. Brown confirmed that, when he was pulled over, the lug nuts were loose (Tr. at 25-26, 30).

{¶ 16} Accordingly, although the Commission concludes that Respondent was in violation of 49 C.F.R. 393.9 (three separate violations) and 393.205(c), we find that Staff presented insufficient evidence with respect to the violation of 49 C.F.R. 396.17(c).

{¶ 17} Finally, with regard to the civil forfeiture recommended by Staff, the evidence of record demonstrates the total civil forfeiture of \$150 was recommended for the violation of 49 C.F.R. 393.9 related to the inoperable left rear tail lamp and loose wheel fasteners under 49 C.F.R. 393.205(c), while no civil forfeiture amount was recommended for the other lamp violations under 49 C.F.R. 393.9. No civil forfeiture amount was recommended for the violation of 49 C.F.R. 396.17(c), which we have determined was not a violation. (Staff Ex. 4.)

{¶ 18} Accordingly, the Commission finds that Respondent should be assessed a civil forfeiture of \$150 for the violations of 49 C.F.R. 393.9 and 393.205(c). Respondent is directed to make payment of the assessed civil forfeiture of \$150 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 (OH3242009152C) should be written on the face of the certified check or money order to ensure proper credit. Payment must be made within 30 days of this Opinion and Order. The alleged violation of

49 C.F.R. 396.17(c) should also be deleted from Respondent's Safety-Net record and history of violations.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 19} On September 8, 2017, Inspector Byrne inspected a CMV driven by Mr. Brown and found an alleged violations of the Commission's transportation regulations including; inoperable required lamps, operating a CMV without an inspection report, and missing or loose nuts or bolts in violation of 49 C.F.R. 393.9, 396.17(c), and 393.205(c), respectively.

{¶ 20} Mr. Brown was timely served with an NPD listing a civil forfeiture of \$150 for violation of 49 C.F.R. 393.9 and 393.205(c).

{¶ 21} A prehearing conference was conducted on February 15, 2018, and a hearing was held on June 5, 2018.

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

{¶ 23} Based upon the record in this proceeding, the Commission finds that Staff demonstrated, by a preponderance of the evidence, that Mr. Norman Brown violated the Commission's transportation rules by having an inoperable required lamp and loose wheel fasteners and should be assessed the \$150 civil forfeiture recommended by Staff. In addition, by a preponderance of the evidence, Staff did not demonstrate that Mr. Brown violated Commission transportation rules requiring proof of a periodic inspection while operating a Commercial Motor Vehicle. Therefore, the violation should be deleted from Mr. Brown's Safety-Net record and history of violations.

VIII. ORDER

{¶ 24} It is, therefore,

{¶ 25} ORDERED, That Respondent pay the civil forfeiture of \$150 for violations of 49 C.F.R. 393.9 and 393.205(c). Payment shall be made by check or money order payable to the "Treasurer, State of Ohio" and mailed or delivered to Public Utilities Commission of Ohio, Attention: Fiscal Division, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. In order to assure proper credit, Respondent is directed to write Case No. 17-2404-TR-CVF and inspection number OH3238012071C on the face of the check or money order. It is, further,

{¶ 26} ORDERED, That the alleged violation of 49 C.F.R. 396.17(c) be dismissed and removed from Respondent's Safety-Net record and history of violations. It is, further,

{¶ 27} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

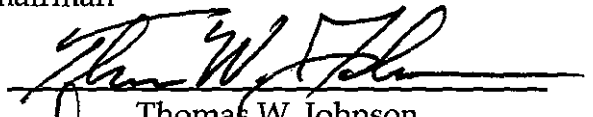
THE PUBLIC UTILITIES COMMISSION OF OHIO



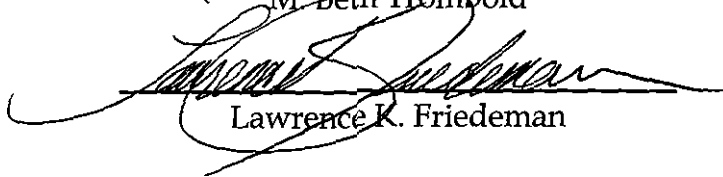
Asim Z. Haque, Chairman



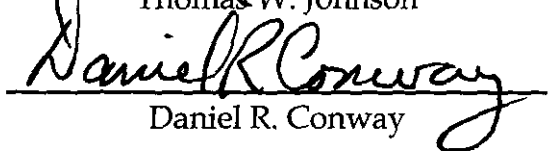
M. Beth Trombold



Thomas W. Johnson



Lawrence K. Friedeman

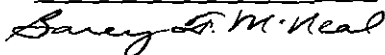


Daniel R. Conway

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Secretary