

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF LEONARD DALE
HITE, NOTICE OF APPARENT VIOLATION
AND INTENT TO ASSESS FORFEITURE.

CASE NO. 21-60-TR-CVF
(OH3247016874D)

ENTRY

Entered in the Journal on May 5, 2021

I. SUMMARY

{¶ 1} The Commission grants Staff's motion to dismiss the case, finding that there is no jurisdiction to further adjudicate this matter.

II. DISCUSSION

{¶ 2} R.C. 4923.04 provides that the Commission shall adopt rules applicable to the transportation of persons or property 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 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 against any person who violates the safety rules adopted by the Commission.

{¶ 3} On January 19, 2021, Leonard Dale Hite (Mr. Hite or Respondent) sent a letter to the Commission requesting to have his "case reopened," which the attorney examiner interpreted as a request for an administrative hearing in accordance with Ohio Adm.Code 4901:2-7-13.

{¶ 4} On February 10, 2021, the attorney examiner scheduled a prehearing conference for March 8, 2021.

{¶ 5} On February 19, 2021, Staff filed a motion to dismiss the case and to stay proceedings. Staff also requested that the prehearing conference be suspended and the case stayed pending a decision on its motion to dismiss. In its motion to dismiss, Staff argues that the case is an improper attempt to re-open a matter that is already subject to a final

order of the Commission. Staff states that a notice of apparent violation and intent to assess forfeiture was sent to Respondent on June 10, 2019, and a second notice was sent to Respondent on July 10, 2019. Staff notes that Mr. Hite requested a conference with Staff that was conducted on August 20, 2019. Next, Staff explains that a notice of preliminary determination was issued on March 6, 2020, informing Respondent that he had 30 days to pay the assessed \$600 forfeiture or request an administrative hearing. Staff asserts that Mr. Hite neither paid the forfeiture nor requested a hearing within the 30-day period. Additionally, Staff states that a letter was sent to Mr. Hite on May 18, 2020, advising him that the forfeiture remained unpaid. Staff did not receive a response to that letter. Staff adds that on August 26, 2020, the Commission issued a Finding and Order requiring Respondent to either pay the assessed forfeiture or demonstrate why he was not in default by September 25, 2020.¹ Staff further notes that on August 27, 2020, Staff sent a letter to Mr. Hite indicating that the forfeiture was unpaid and attached a copy of the Commission's August 26, 2020 Finding and Order. Staff contends that Respondent did not reply within the time allowed. Staff contends that Respondent had " * * * ample opportunity to contest the violation and forfeiture but failed to do so in a timely manner," and that Mr. Hite could have requested a rehearing of the August 26, 2020 Finding and Order, but he did not. Staff emphasizes that a final Commission judgment has already been made and that Respondent should not have further opportunity to contest the violation. Staff urges dismissal of the case.

{¶ 6} On February 23, 2021, the attorney examiner suspended the prehearing conference previously scheduled for March 8, 2021. In that entry, Respondent was also instructed to file a response to Staff's motion to dismiss by March 15, 2021.

{¶ 7} Respondent did not file a response to Staff's motion to dismiss.

¹ See *In re Default of Motor Carriers and Drivers Pursuant to Rule 4901:2-7-14 of the Ohio Administrative Code*, Case No. 20-533-TR-CVF, Finding and Order, (August 26, 2020).

{¶ 8} The Commission finds Staff's motion to dismiss the case to be reasonable. Initially, we note that the Commission has already found Mr. Hite in default, pursuant to Ohio Adm.Code 4901:2-7-14, in *In re Default of Motor Carriers and Drivers*, Case No. 20-533-TR-CVF, Finding and Order (August 26, 2020), att. at 2. Ohio Adm.Code 4901:2-7-14 states that respondents found in default are deemed to have admitted the occurrence of the violation and waive all further right to contest liability. The Commission's order directed any respondents to indicate why they are not in default by September 25, 2020. Here, Respondent's request for hearing was not filed until January 19, 2021. As indicated by Staff, Mr. Hite did not respond in a timely manner to the March 6, 2020 notice of preliminary determination or to the Commission's August 26, 2020 Finding and Order requiring him to either pay the assessed forfeiture or demonstrate why he was not in default. Respondent did not request a rehearing of the August 26, 2020 Finding and Order, nor did he reply to Staff's May 18, 2020 and August 27, 2020 letters indicating that the forfeiture was unpaid. Finally, Mr. Hite did not respond to Staff's motion to dismiss. Therefore, as there is already a final Commission decision concerning Respondent's default, Staff's motion to dismiss should be granted.

III. ORDER

{¶ 9} It is, therefore,

{¶ 10} ORDERED, That Staff's motion to dismiss be granted. It is, further,

{¶ 11} ORDERED, That a copy of this Entry be served upon Respondent and all other parties of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

JWS/kck

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/5/2021 2:29:49 PM

in

Case No(s). 21-0060-TR-CVF

Summary: Entry granting Staff's motion to dismiss the case, finding that there is no jurisdiction to further adjudicate this matter. electronically filed by Kelli C. King on behalf of The Public Utilities Commission of Ohio