

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF RAY'S TRANSPORT,
INC., NOTICE OF APPARENT VIOLATION
AND INTENT TO ASSESS FORFEITURE.

CASE No. 21-143-TR-CVF
(OH328801319C)

ENTRY

Entered in the Journal on October 6, 2021

I. SUMMARY

{¶ 1} The Commission grants Staff's motion for default judgment against Ray's Transport, Inc. for failure to appear at a hearing concerning violation of the Commission's transportation rules.

II. DISCUSSION

{¶ 2} R.C. 4923.04 provides that the Commission shall 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 for purposes 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 November 5, 2020, Ohio State Highway Patrol Inspector W. Johnson (Inspector Johnson) inspected a commercial motor vehicle (CMV) operated by Ray's Transport Inc. (Respondent). Inspector Johnson discovered a violation of:

- I. *Code 395.22H2, i.e., Driver failure to maintain ELD instruction sheet.*
- II. *Code 395.3A311, i.e., Driving beyond 8 hour limit since the end of the last duty or sleeper period of at least 30 minutes.*
- III. *Code 395.3A3-PROP, i.e., Driving beyond 11 hour driving limit in a 14-hour period (Property Carrying Vehicle).*
- IV. *Code 395.1515, i.e., Onboard recording device does not display required information.*
- V. *Code No. 395.24C211, i.e., Driver failed to manually add the trailer number.*
- VI. *Code 395.24C211, i.e., Driver failed to manually add shipping document number.*

{¶ 4} Staff served a notice of preliminary determination (NPD) upon Respondent, in accordance with Ohio Adm.Code 4901:2-7-07, regarding the above recited carrier violations.

{¶ 5} On February 16, 2021, Respondent requested an administrative hearing in accordance with Ohio Administrative Code 4901:2-7-13.

{¶ 6} By Entry dated May 11, 2021, the attorney examiner scheduled a prehearing settlement teleconference in this matter. During the teleconference, which occurred as scheduled on May 25, 2021, the parties were unable to reach a settlement.

{¶ 7} By Entry dated July 1, 2021, the attorney examiner scheduled a hearing in this matter for August 17, 2021.

{¶ 8} At the hearing on August 17, 2021, Staff presented, as exhibits, the Driver/Vehicle Examination Report (Staff Ex. 1); the Notice of Apparent Violation applicable to this case, dated November 6, 2020 (Staff Ex. 2); the NPD, dated December 22, 2020 (Staff Ex. 3); a series of photographs taken by Inspector Johnson during the

inspection (Staff Ex. 4 and 5); and a copy of Emergency Declaration No. 2020-002, issued on March 13, 2020 by Jim Mullen, Acting Administrator of the Federal Motor Carrier Safety Administration (Staff Ex. 6). Staff also presented the testimony of Inspector Johnson and of Rod Moser, both testifying in support of the violations (Tr. 7-15, and 16-22). Respondent did not appear at the hearing or present any evidence as to why it should not be held liable for the violations (Tr. 5). In response, Staff moved for a default judgment against Respondent (Tr. 6).

{¶ 9} Ohio Adm.Code 4901:2-7-14(E) provides that a respondent who has requested an administrative hearing and fails to participate in the hearing proceeding shall be in default. The rule further states that a respondent in default shall be deemed to have committed the occurrence of the violation and waived all further right to contest liability to the state for the forfeiture described in the notice.

{¶ 10} Upon review of the evidence presented at the hearing, we find Inspector Johnson's testimony persuasive in demonstrating that Respondent committed the violations described in Paragraph 3 (Tr. 7-15). Furthermore, in view of Respondent's failure to participate in the hearing, the Commission finds that, in accordance with Ohio Adm.Code 4901:2-7-14, Staff's motion for default judgment should be granted. Therefore, the Commission finds that Respondent violated the Code provisions described in Paragraph 3.

III. ORDER

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That Staff's motion for default judgment be granted. It is, further,

{¶ 13} ORDERED, That a copy of this Entry be served upon all parties of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Dennis P. Deters

DEF/kck

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Case No(s). 21-0143-TR-CVF

Summary: Entry granting Staff's motion for default judgment against Ray's Transport, Inc. for failure to appear at a hearing concerning violation of the Commission's transportation rules. electronically filed by Kelli C. King on behalf of The Public Utilities Commission of Ohio