

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF CUAHUTEMOC
ESPINOZA, NOTICE OF APPARENT
VIOLATION AND INTENT TO ASSESS
FORFEITURE.

CASE NO. 21-822-TR-CVF
(OH3209302315D)

FINDING AND ORDER

Entered in the Journal on October 6, 2021

I. SUMMARY

{¶ 1} The Commission finds reasonable and approves the settlement agreement regarding a 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 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 May 5, 2021, a commercial motor vehicle (CMV) operated by Newman Carriers Inc. and driven by Cuahutemoc Espinoza was inspected within the state of Ohio. The inspection resulted in violation of 49 C.F.R. 382.501(a) (prohibited from performing safety sensitive functions in the Drug and Alcohol Clearinghouse).

{¶ 4} On May 6, 2021, Respondent was served with a Notice of Preliminary Determination (NPD), pursuant to Ohio Adm.Code 4901:2-7-12, which assessed Respondent a civil forfeiture of \$3,174.00 for the violation of 49 C.F.R. 382.501(a).

{¶ 5} On July 26, 2021, Respondent requested an administrative hearing, pursuant to Ohio Adm.Code 4901:2-7-13.

{¶ 6} A prehearing conference was conducted on August 24, 2021.

{¶ 7} On September 20, 2021, Staff and Respondent filed a settlement agreement which, in the parties' opinion, resolves the issues raised in the NPD. The following is a summary of the conditions agreed to by the parties and is not intended to replace or supersede the settlement agreement.

- (a) Respondent admits to the violation listed above and recognizes that the violations may be included in Respondent's Safety-Net record and history of violations, insofar as it may be relevant for purposes of determining future penalty actions.
- (b) Respondent has demonstrated that he has since become compliant with the Drug and Alcohol Clearing House.
- (c) Respondent and Staff agree that the total forfeiture should be reduced to \$500 based upon mitigating circumstances offered by Respondent.
- (d) Accordingly, Respondent shall pay the reduced civil forfeiture within 30 days of the Commission's order approving this settlement agreement. The payment shall be made payable by check or money order to "Treasurer State of Ohio," and mailed to PUCO Finance, 180 E. Broad St., 4th floor, Columbus, OH 43215-3793. In order to assure proper credit, Case No. 21-822-TR-CVF and inspection number OH3209302315D should appear on the face of the check or money order.
- (e) This settlement agreement shall not become effective until adopted by the Commission. The date of the Entry or

order of the Commission adopting this settlement agreement shall be considered the effective date of the settlement agreement.

- (f) This settlement agreement is made in settlement of all factual and legal issues in this case. It is not intended to have any effect in any other case or proceeding.

{¶ 8} The Commission notes that, in accordance with Ohio Adm.Code 4901:2-7-14(D), if the respondent fails to comply with the provisions of the settlement agreement for a period exceeding 30 days, the respondent shall be in default and shall be deemed to have admitted the occurrence of the violations, and waived all further right to contest liability for the forfeiture originally assessed by Staff.

{¶ 9} The Commission finds that the settlement agreement submitted in this case is reasonable. Therefore, the 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 a civil forfeiture of \$500 in accordance with the settlement agreement. Payment shall be made via the Commission website or by check or money order payable to "Treasurer, State of Ohio," and mailed to PUCO, Attn: PUCO Finance, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. In order to assure proper credit, Respondent is directed to write Case No. 21-822-TR-CVF and inspection number OH3209302315D 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.

COMMISSIONERS:

Approving:

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Dennis P. Deters

JML/hac

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Case No(s). 21-0822-TR-CVF

Summary: Finding & Order approving the settlement agreement regarding a violation of the Commission's transportation rules. electronically filed by Kelli C. King on behalf of The Public Utilities Commission of Ohio