

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF RICHARD A.  
PEARSON, NOTICE OF APPARENT  
VIOLATION AND INTENT TO ASSESS  
FORFEITURE.

CASE NO. 20-1684-TR-CVF  
(OH3225014232D)

## OPINION AND ORDER

Entered in the Journal on March 9, 2022

### I. SUMMARY

{¶ 1} The Commission finds that Staff demonstrated, by a preponderance of the evidence, that Respondent violated the Commission's transportation rules, and directs Respondent to pay the assessed \$100 forfeiture within 60 days of this Entry.

### II. PROCEDURAL HISTORY

{¶ 2} On August 17, 2020, Inspector John M. Brayer (Inspector Brayer) of the Ohio State Highway Patrol stopped and inspected a vehicle operated by McJunkin Roll Offs Inc. and driven by Richard A. Pearson (Respondent or Mr. Pearson), in the state of Ohio. During the inspection, Inspector Brayer prepared a report indicating a single violation of the Commission's transportation regulations: failure to use a seat belt while operating a commercial motor vehicle (CMV). (Staff Ex. 1.)

{¶ 3} Commission's Staff timely served Mr. Pearson with a Notice of Preliminary Determination (NPD) in accordance with Ohio Adm.Code 4901:2-7-12, alleging a violation of 49 C.F.R. 392.16 for failure to use a seat belt while operating a CMV. The NPD also notified Respondent that Staff intended to assess a \$100 civil monetary forfeiture for violating the Commission's transportation rules pursuant to Ohio Adm.Code 4901:2-7-07. (Staff Ex. 2.)

{¶ 4} On November 5, 2020, Mr. Pearson filed a request for a hearing in accordance with Ohio Adm.Code 4901:2-7-13.

{¶ 5} By Entry dated November 23, 2020, the attorney examiner scheduled a prehearing telephone conference for December 7, 2020, pursuant to Ohio Adm.Code 4901:2-7-16(B). Respondent and Staff participated in the prehearing conference, but the matter was not resolved.

{¶ 6} By Entry dated July 15, 2021, the attorney examiner scheduled an evidentiary hearing for September 7, 2021.

{¶ 7} The hearing commenced as scheduled on September 7, 2021, at the offices of the Public Utilities Commission of Ohio.

{¶ 8} At the hearing, Staff witnesses' Inspector Brayer and Bradley Long testified in support of the violation and forfeiture amount, respectively. Mr. Pearson represented himself at the hearing and testified on his own behalf.

### **III. APPLICABLE LAW**

{¶ 9} 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. Under Ohio Adm.Code 4901:2-5-03(A), the Commission adopted certain provisions of the Federal Motor Carrier Safety Regulations. Specifically, the Commission adopted 49 C.F.R. Sections 40, 367, 380, 382, 383, 385, 386, 387, and 390-397, to govern the transportation of persons or property in intrastate commerce within Ohio. Ohio Adm.Code 4901:2-5-03(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 Ohio. 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.

{¶ 10} The specific regulation that Staff alleges Respondent violated is 49 C.F.R. 392.16. The provisions of 49 C.F.R. 392.16 require that every driver of a CMV shall wear a seat belt while operating the vehicle.

#### IV. ISSUE

{¶ 11} At issue is whether Staff has satisfied its burden to show, by a preponderance of the evidence, that Respondent failed to wear a seat belt while operating a CMV and was, thus, in violation of 49 C.F.R. 392.16.

#### V. SUMMARY OF EVIDENCE

{¶ 12} At the hearing on September 7, 2021, Staff presented the testimony of Inspector Brayer. Inspector Brayer identified Staff Ex. 2 as the driver/vehicle examiner report, which he prepared after inspecting the vehicle on August 17, 2020. Inspector Brayer stopped the vehicle driven by Mr. Pearson on U.S. Route 422 (U.S. 422), while Mr. Pearson was driving eastbound. Inspector Brayer testified that he was sitting in his patrol vehicle at a red light at the intersection of State Route 616 (SR 616) and U.S. 422, facing southbound oncoming traffic, when he observed Mr. Pearson's CMV approach him southbound on SR 616. Inspector Brayer testified that he observed Mr. Pearson wearing a fluorescent vest, but no seat belt coming across his chest. He affirmed that the vest was a lighter color than the seat belt strap, which he testified was grayish black and saw no strap across Mr. Pearson's vest. (Tr. at 10-13; Staff Ex. 2.)

{¶ 13} Mr. Bradley Long, Assistant Chief of the Compliance Division within the Commission's Transportation Department, testified regarding the assessment of forfeitures following roadside inspections (Tr. at 5).

{¶ 14} Referring to Staff Ex. 2, the NPD, Mr. Long explained that the NPD is sent out if the case cannot be resolved via a conference between Staff and a respondent. The NPD includes the violation and associated forfeiture amount. Here, a safety belt violation is a Group 4 violation and such violations always have a fine. (Tr. at 6.) Mr. Long added that

the fine schedule used by Staff in making this assessment is consistent with the fine schedule recommended by the Commercial Vehicle Safety Alliance and is consistent with Commission rules, with the fine for this violation being \$100 (Tr. at 6-8).

{¶ 15} Inspector Brayer testified that, after stopping Mr. Pearson, he informed him that he was writing a violation because Mr. Pearson had not been wearing a seat belt. (Tr. at 13.)

{¶ 16} Inspector Brayer further testified that, when he first approached Mr. Pearson's CMV after pulling it over, Mr. Pearson had said that he has an adjustment device on his left and that after adjusting his seat belt strap with it, the belt may have fallen below his shoulder. (Tr. at 13-14.) Finally, Inspector Brayer testified that the belt would have been below Mr. Pearson's shoulder, located near his underarm. (Tr. at 14). On cross-examination, Inspector Brayer affirmed that he did not see a seat belt on Mr. Pearson as he came toward him southbound on SR 616 as he turned onto U.S. 422. (Tr. at 14-17.)

{¶ 17} On redirect examination, Inspector Brayer testified that he was in the left-hand lane as Mr. Pearson came toward him and was therefore able to see everything about him as he turned. Finally, Inspector Brayer testified that his vehicle was no more than four or five feet from Mr. Pearson's CMV as he made his turn and that he could see Mr. Pearson clearly for three to five seconds during that time. (Tr. at 17-20.)

{¶ 18} On re-cross examination, Inspector Brayer stated that his view of Mr. Pearson in his CMV was approximately level, with the CMV being somewhat taller than his vehicle. Inspector Brayer also testified that Mr. Pearson showed him that there was slack in his seat belt and that he had a device to position the belt for height and comfort. Inspector Brayer testified that Mr. Pearson answered that his seat belt must have fallen from his shoulder on the day of the inspection. (Tr. at 20-22.)

{¶ 19} On direct examination, Mr. Pearson testified that when first he was stopped by Inspector Brayer he was told he was not wearing his seat belt, but that he was wearing

the belt with a slacking device to enable him to lean forward to frequently check his mirrors. Mr. Pearson affirmed that he had been using his slacking device or clip the day he was stopped by Inspector Brayer. Mr. Pearson testified that in older trucks, like the one he was driving on the day of the stop, the seat belts sometimes do not properly retract, so a slackening device helps ensure he can still lean forward if needed. Mr. Pearson clarified that he was actually wearing a fluorescent shirt, not a vest, so his entire upper garment would have contrasted with the seat belt, which he stated was black. Further, Mr. Pearson stated that there was, he thinks, three to five inches of slack in his seat belt, and that he did state to Inspector Brayer that his belt had dropped down. Further, Mr. Pearson testified that he was sitting at least three to four feet higher than Inspector Brayer, such that the latter's viewing angle would have provided a less clear view into the CMV than Inspector Brayer testified. (Tr. at 22-26.)

{¶ 20} On cross examination, Mr. Pearson testified as to whether Inspector Brayer was actually able to see well into his CMV. Additionally, Mr. Pearson testified that the slacking device in his truck is a feature of his CMV and came with the vehicle, so it was, to his knowledge, required to pass safety inspection. (Tr. at 26-30.)

{¶ 21} When asked about the slack in his seat belt, Mr. Pearson responded that he is able to manually adjust the slack and he does so based on what range of movement he requires. (Tr. at 36-39.)

## VI. COMMISSION CONCLUSION

{¶ 22} Ohio Adm.Code 4901:2-7-20 requires that Staff prove the occurrence of a violation by a preponderance of the evidence at hearing. The Commission finds, based on a preponderance of the evidence, that Staff has proven that Mr. Pearson violated 49 C.F.R. 392.16.

{¶ 23} Considering the evidence, the Commission finds that the testimony of Inspector Brayer regarding the circumstances of the alleged seat belt violation to be

persuasive and that the weight of the evidence supports the conclusion that Mr. Pearson failed to wear his seat belt properly while operating a CMV. Mr. Pearson's testimony was not sufficient to demonstrate that he should not be held liable for the civil forfeiture assessed for violation 49 C.F.R. 392.16.

{¶ 24} The Commission finds convincing the testimony of Inspector Brayer, who has been an inspector for 13 years and has received training in commercial standards. (Tr. at 10-11.) He testified that on a clear, sunny day with moderate traffic he observed from an intersection that, as Mr. Pearson approached southbound on SR 616, Mr. Pearson was not wearing his seat belt properly. Further, Inspector Brayer testified that, during the inspection in which he opened Mr. Pearson's door, his seat belt was situated below his shoulder, as if it had fallen down. (Tr. at 13-17, 20-22.) While Mr. Pearson disputes that Inspector Brayer could see completely into his CMV, on cross-examination, Inspector Brayer confirmed that Mr. Pearson's seat belt remained improperly below his shoulder (Tr. at 14). Additionally, Mr. Pearson stated that his seat belt had fallen down. (Tr. at 25.) Consequently, nothing in Mr. Pearson's testimony disputes the fact that his seat belt was improperly placed, regardless of his reasoning for the incident.

{¶ 25} Based on this finding, Respondent should be assessed a \$100 forfeiture for a violation of 49 C.F.R. 392.16, and he should pay the forfeiture within 60 days from the date of this Opinion and Order. Payment of such forfeitures shall be made via the Commission website or by check or money order payable to the "Treasurer, State of Ohio" and mailed or delivered to the Public Utilities Commission of Ohio, Attention: CF Processing, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. Case number 19-2126-TR-CVF and inspection number OH1057000114D should be written on the face of the check or money order.

## VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 26} On August 17, 2020, Inspector John Brayer stopped and inspected a CMV operated by McJunkin Roll Offs Inc. and driven by Mr. Richard A. Pearson. Inspector Brayer found a driver violation of 49 C.F.R. 392.16, failure to use a seatbelt while operating a CMV.

{¶ 27} Mr. Pearson was timely served with a NPD, alleging a violation of 49 C.F.R. 392.16 for failure to use a seat belt while operating a CMV. In the NPD, Mr. Pearson was notified that Staff intended to assess a civil monetary forfeiture of \$100.

{¶ 28} Mr. Pearson participated in a prehearing teleconference on December 7, 2020.

{¶ 29} An evidentiary hearing was held on September 7, 2021.

{¶ 30} 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.

{¶ 31} Based upon the record in this proceeding, the Commission finds that Staff has proven, by a preponderance of the evidence, that Mr. Pearson violated 49 C.F.R. 392.16 for failing to use a seat belt while operating a CMV. Accordingly, Mr. Pearson should be assessed a \$100 forfeiture for a violation of 49 C.F.R. 392.16, and he should pay the forfeiture within 60 days from the date of this Opinion and Order.

## VIII. ORDER

{¶ 32} It is, therefore,

{¶ 33} ORDERED, That Respondent pay a civil forfeiture of \$100 for violating 49 C.F.R. 392.16 within 60 days of this Opinion and Order. Payment shall be made [via the Commission website](#) or by check or money order payable to the “Treasurer, State of Ohio” and mailed or delivered to the Public Utilities Commission of Ohio, Attention: CF Processing, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. Case number 20-1684-TR-CVF and inspection number OH3225014232D should be written on the face of the check or money order. It is, further,

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

COMMISSIONERS:

*Approving:*

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

JMD/mef



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**Case No(s). 20-1684-TR-CVF**

Summary: Opinion & Order finding that Staff demonstrated, by a preponderance of the evidence, that Respondent violated the Commission's transportation rules, and directs Respondent to pay the assessed \$100 forfeiture within 60 days of this Entry. electronically filed by Kelli C. King on behalf of The Public Utilities Commission of Ohio