

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of David Grass, Notice of) Case No. 22-0085-TR-CVF
Apparent Violation and Intent to) (OH1777003089D)
Assess Forfeiture.)

**MEMORANDUM CONTRA RESPONDENT'S MOTION TO DISMISS
SUBMITTED ON BEHALF OF THE STAFF OF THE PUBLIC UTILITIES
COMMISSION OF OHIO**

The Staff of the Public Utilities Commission of Ohio (Staff) files this Memorandum Contra in opposition to Respondent's Motion to Dismiss pursuant to Ohio Administrative Code (Ohio Adm.Code) Rule 4901-1-12(B)(1).

Respondent's Motion to Dismiss is without merit and should be denied, as more fully explained in the accompanying Memorandum in Support.

Respectfully submitted,

Dave A. Yost
Ohio Attorney General

John H. Jones
Section Chief

/s/ Sarah Feldkamp
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**On Behalf of the Staff of
The Public Utilities Commission of Ohio**

MEMORANDUM IN SUPPORT

I. INTRODUCTION

Pursuant to Ohio Adm.Code Rule 4906-2-27(B)(1), the Staff of the Public Utilities Commission of Ohio (Staff) submits this memorandum contra the Motion to Dismiss filed by David Grass (Respondent) filed on May 3, 2022. As set forth in detail below, Respondent fails to provide good cause for his motion. Moreover, this case was opened because Respondent requested a hearing to contest the violation and Staff's proposed forfeiture. Therefore, Staff respectfully requests that Respondent's Motion to Dismiss be denied and that this matter be set for hearing.

II. BACKGROUND

On October 29, 2021, a vehicle driven by Respondent, and operated by Tucson Inc., was inspected in the State of Ohio, resulting in the discovery of an apparent violation of the Commission's rules. Specifically, the Respondent was determined to have violated 49 C.F.R. 392.16 by failing to use a seat belt while operating a commercial motor vehicle.

Staff served a Notice of Apparent Violation and Intent to Assess Forfeiture on the Respondent on November 5, 2021 in accordance with Ohio Adm.Code 4901:2-7-07. A second notice was served on December 5, 2021.

A conference was scheduled and conducted with Staff on January 11, 2022 pursuant to Ohio Adm.Code 4901:2-7-10. As a result of that conference, Staff made a preliminary determination that the Commission should assess a civil forfeiture against the Respondent in the amount of \$100.00. Pursuant to Ohio Adm.Code 4901:2-7-12,

Staff served a Notice of Preliminary Determination upon Respondent on January 13, 2022. On January 29, 2022, Respondent requested an administrative hearing in accordance with Ohio Adm.Code 4901:2-7-13.

On March 8, 2022, a prehearing conference was held between the parties. The parties determined the case could not be settled and should be set for hearing.

On May 3, 2022, Respondent filed a Request to Dismiss this Case with Prejudice, stating three reasons for this request: (1) the charge was brought more than six months ago, (2) Respondent alleges he has not received evidence, and (3) Respondent alleges he has “been denied access to a court to prove my innocence on this charge in a timely manner.” This memorandum will address Respondent’s arguments.

III. ARGUMENT

A. The Commission Staff is not subject to Respondent’s demand for discovery.¹

Respondent argues the case should be dismissed because he has not received evidence (discovery of all body cameras, radio and computer transmission, and dash camera video from the officer’s vehicle). However, Respondent has not demonstrated that he is entitled to any such discovery, nor do the Commission’s rules permit discovery on Staff. Respondent’s discovery demand on Staff should be denied.

This is an administrative proceeding, not a criminal case. Respondent has not cited to any Commission rules that entitle him to the discovery that he seeks.

¹ However, Respondent may seek and obtain the same information through a public records request to the Department of Public Safety, Ohio State Highway Patrol, who is the legal custodian of such information. The inspection in this case was conducted by a Trooper of the Ohio State Highway Patrol.

The Commission's procedural rules for motor carrier forfeiture proceedings appear in Ohio Adm.Code Chapter 4901:2-7. Ohio Adm.Code 4901:2-7-16(C) provides that:

Discovery shall be conducted in accordance with rules 4901-1-16 to 4901-1-24 of the Administrative Code except that depositions will be permitted only upon agreement of all parties or motion granted by the commission, the legal director, the deputy legal director, or the attorney examiner assigned to the case, which leave shall not be unreasonably withheld.

However, the Commission's rules provide that its Staff "shall not be considered a party to any proceeding" with respect to the discovery rules contained in Ohio Adm.Code 4901-1-16 to 4901-1-24. Ohio Adm.Code 4901-1-10(C). Respondent is not entitled to the evidence or discovery that it has demanded, and the Commission should not order its Staff to respond otherwise.

Respondent was provided a copy of the Driver/Vehicle Examination Report, which Staff will rely on to prosecute its case. Also, Respondent was served with the various notices described above, which should be in his possession too. Staff represents that all other evidence to be adduced at hearing will be offered through the oral testimony of witnesses called during the hearing. Staff has no evidence that it could produce that is not already uniquely within the possession and control of the Respondent. Therefore, Respondent's statement that he has not received evidence through a discovery request to Staff is not a sufficient reason to dismiss this case.

B. This case is proceeding in a timely manner, so no good cause or reason is provided for a dismissal of this case.

Respondent argues that this case should be dismissed because the charge was brought more than six months ago. Section II of this Memorandum Contra lays out the timeline of events as they have occurred in this case to now. That timeline begins in October 2021. The case is on a normal procedural track and has proceeded in a timely manner, pursuant to the Ohio Administrative Code. The fact that the inspection occurred in October 2021 and the last event was a prehearing conference held in March 2022, and now the parties are waiting for the evidentiary hearing to be scheduled, has not prejudiced the Respondent or justify dismissal of the case.

Respondent asks that his case be dismissed with prejudice, in essence, because he believes the administrative process has not moved fast enough to a hearing. Respondent does not seek to dismiss the hearing that he requested because he no longer contests the violation.

Staff contends that Respondent misunderstands the administrative process and procedure of Commission transportation cases. In these types of cases, following the issuance of an Inspection Report, violation notices are served and a settlement and prehearing conferences are held with the Respondent before the matter is subsequently scheduled for an evidentiary hearing, if necessary. Respondent is not being denied access to a hearing to prove his innocence before the Commission in this case. The law and procedure to be followed in these cases comes from R.C. Chapters 4921 and 4923.

and the accompanying Ohio Administrative Code provisions that amplify the laws and process for those Chapters.

Staff believes the Respondent mistakenly thinks his violation in this case is akin to a criminal or traffic offense that is subject to a more accelerated criminal or traffic case procedure and scheduling. To make it clear to the Respondent, the following laws do not have application to his case: R.C. 2901.13(A)(1)(c), which bars prosecution of minor misdemeanors unless commenced within six months after an offense is committed; and the 6th Amendment to the U.S. Constitution, which provides that an accused shall enjoy the right to a speedy and public trial “in all criminal prosecutions.”

This is not a criminal offense. The Commission has no jurisdiction to adjudicate criminal matters. The Commission has been granted the authority to adopt rules relating to motor carriers operating in interstate and intrastate commerce. R.C. 4923.04(A). The Commission is authorized to assess forfeitures for violations of those rules. R.C. 4923.99(A)(1). These forfeitures are civil and not criminal in nature. A civil forfeiture, or fine, is issued when a motor carrier, driver or hazardous materials shipper is found to be in violation of a transportation regulation.

Statutes of limitations relating to criminal offenses, and the right to a speedy trial, simply do not apply to administrative proceedings to assess civil forfeitures. The Commission was authorized by the General Assembly to adopt rules to provide reasonable notice of the intent to assess a forfeiture, and to afford an opportunity for a hearing. Significantly, the Commission’s rules provide that a notice of intent to assess forfeiture may be served “[w]ithin ninety days of the receipt of a report of violation, or

the discovery of a violation, but no later than one year following the date the violation occurred.” The notice of intent to assess a forfeiture, indeed both of such notices, were served on Respondent within 35 days of the date of the violation in this case.

The Commission’s rules do not require that the hearing commence within any specified time after the violation. Ohio Adm.Code 4901:2-7-16(D). The Respondent was not denied access to have a hearing to prove his innocence.

IV. CONCLUSION

Respondent’s rights to have a hearing have not been violated, and his motion to dismiss should be denied. And the Commission’s rules do not allow for discovery to be propounded upon its Staff. His demand for discovery should be denied.

Mr. Grass has requested a hearing, and that request is supported by the Staff of the Commission. Respondent’s due process rights have not been denied in this case. For the foregoing reasons, Respondent’s Motion to Dismiss this Case should be denied.

Respectfully submitted,

Dave A. Yost
Ohio Attorney General

John H. Jones
Section Chief

/s/ Sarah Feldkamp
Sarah Feldkamp
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On Behalf of the Staff of
The Public Utilities Commission of Ohio

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the **Memorandum Contra Respondent's Motion to Dismiss** submitted on behalf of the Staff of the Public Utilities Commission of Ohio has been served upon the below-named party via United States mail and/or electronic service upon the following parties of record, this 18th day of May, 2022.

/s/ Sarah Feldkamp

Sarah Feldkamp

Assistant Attorney General

Parties of Record:

David Grass

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New Phila, Ohio 44663

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Summary: Memorandum Contra Respondent's Motion to Dismiss electronically filed
by Mrs. Tonneta Y. Scott on behalf of PUCO