

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF TROY A. POIRIER,
NOTICE OF APPARENT VIOLATION AND
INTENT TO ASSESS FORFEITURE.

CASE NO. 20-1599-TR-CVF
(OH3207302851D)

OPINION AND ORDER

Entered in the Journal on November 30, 2022

I. SUMMARY

{¶ 1} The Commission finds that Staff demonstrated, by a preponderance of the evidence, that Troy A. Poirier violated 49 C.F.R. 392.10(A)(4) by failing to stop prior to crossing railroad tracks while operating a commercial motor vehicle used for transportation of hazardous material.

II. PROCEDURAL HISTORY

{¶ 2} On July 29, 2020, William Forbes, Chief of the Commission's Transportation Department, Enforcement Division (Chief Forbes), stopped and inspected a commercial motor vehicle (CMV) operated by Bruceton Petroleum Company Inc. and driven by Troy A. Poirier (Mr. Poirier or Respondent). At the time of the inspection, Chief Forbes prepared a report indicating violations of the Federal Motor Carrier Safety Regulations (FMCSR), published in the Code of Federal Regulations (C.F.R.), including, 49 C.F.R. 392.10(A)(4), failing to stop before crossing railroad tracks. (Tr. at 8-10; Staff Ex.1.)

{¶ 3} Staff served a notice of preliminary determination (NPD) upon Respondent in accordance with Ohio Adm.Code 4901:2-7-07, alleging a violation of the Commission's transportation regulations.

{¶ 4} On October 15, 2020, Respondent requested an administrative hearing in accordance with Ohio Adm.Code 4901:2-7-13.

{¶ 5} On November 5, 2020, the attorney examiner scheduled a prehearing conference for December 14, 2020, pursuant to Ohio Adm.Code 4901:2-7-16(B). The

prehearing conference was conducted via telephone, but the parties were unable to reach a settlement.

{¶ 6} On August 20, 2021, the attorney examiner scheduled the matter for an evidentiary hearing on November 9, 2021.

{¶ 7} At the hearing on November 9, 2021, Chief Forbes and Rod Moser, Transportation Chief of Compliance and Registration for the Commission, testified in support of the violation identified by Staff. Mr. Poirier testified on his own behalf.

III. LAW

{¶ 8} Under Ohio Adm.Code 4901:2-5-03(A), the Commission adopted certain provisions of the FMCSR, specifically, 49 C.F.R. Sections 40, 367, 380, 382, 383, 385, 386, 387, 390-397, to govern the transportation of persons or property in intrastate commerce within Ohio. Through the same rule, the Commission also adopted those portions of the regulations contained in 49 C.F.R. 107, Subparts F and G, and 49 C.F.R. 171 to 180, as are applicable to transportation of hazardous materials by motor vehicle. 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 this state. 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.

IV. ISSUE

{¶ 9} The issue in this case is whether Staff has satisfied its burden to show, by a preponderance of the evidence, that Mr. Poirier was operating a CMV in violation of 49 C.F.R. 392.10(A)(4). Staff alleges that Respondent failed to stop before crossing railroad tracks. Mr. Poirier agrees that he did not stop before crossing the tracks. He states that he

initially tried to brake, but the braking caused the vehicle he was operating to pull left towards an oncoming vehicle, so he proceeded through the railroad tracks without stopping.

V. SUMMARY OF THE EVIDENCE

{¶ 10} Mr. Forbes testified that he observed the violation while stationary at a railroad crossing on July 29, 2020 (Tr. at 8; Staff Ex. 1). Although other violations were noted at the stop, the violation at issue in this proceeding is 49 C.F.R. 392.10(A)(4), failing to stop at a railroad crossing (Tr. at 18-19; Staff Ex. 3). Chief Forbes testified that there is a video recorder in his vehicle, which recorded Mr. Poirier's vehicle failing to stop at the railroad crossing. Chief Forbes also stated that the vehicle was hauling gasoline and diesel fuel. The video was played at the hearing and admitted into evidence. (Tr. at 9-10; Staff Ex. 2). Chief Forbes stated that, after he pulled the vehicle over, Mr. Poirier said that his truck had pulled left toward an oncoming commercial motor vehicle when he applied the brakes (Tr. at 10, 13). Chief Forbes also testified that brake or equipment failure as described by Respondent does not excuse the violation of failure to stop (Tr. at 13). Upon cross examination, Chief Forbes stated that he did not conduct a Level 1 inspection, which would have included a brake inspection. He stated that the vehicle was pulled off the road and not in a safe location to conduct a Level 1 inspection. (Tr. at 14.) As noted by Staff witness Rod Moser, a civil forfeiture of \$500 was derived for this violation (Tr. at 18; Staff Ex. 3).

{¶ 11} Mr. Poirier stated that he does not dispute the testimony that he failed to stop the vehicle before crossing the railroad tracks. He stated that as he approached the railroad tracks, the road has a downgrade. Mr. Poirier stated that he applied the brakes twice, and both times the truck jerked to the left. He stated that he released the brakes because a dump truck was oncoming. (Tr. at 21.) Mr. Poirier offered the vehicle examination report that he had received, which specifically stated that the "driver slowed but failed to stop." He offered this exhibit to demonstrate that he did slow the vehicle, which was not captured in Staff's Exhibit 1. (Tr. at 24; Driver Ex. 1.) He stated that he made his final delivery after the stop, and then, after making the delivery, inspected the brakes and discovered that only

three out of six brakes were working on the tractor. Mr. Poirier testified that at that point, he had the truck towed to a repair shop, and the truck was repaired the following day. He also presented a copy of his daily log to show that the truck was in the repair shop the day after Chief Forbes pulled him over. (Tr. at 21-22, 25-30, 35-36; Driver Ex. 2.) Mr. Poirier testified that an air valve went bad, which only allowed air to flow to part of the brake system (Tr. at 29). Mr. Poirier added that he has no receipt or other documentation to show what was repaired (Tr. at 36-37).

VI. COMMISSION CONCLUSION

{¶ 12} 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. Poirier violated 49 C.F.R. 392.10(A)(4).

{¶ 13} Considering the evidence, the Commission finds that the testimony of Mr. Forbes regarding the circumstance of Respondent's failure to stop at a railroad crossing to be persuasive and that the weight of the evidence supports the conclusion that Mr. Poirier did commit the abovementioned violation. Respondent's testimony was insufficient to demonstrate that Respondent should not be held liable for the civil forfeiture assessed for failure to stop at a railroad crossing under 49 C.F.R. 392.10(A)(4).

{¶ 14} It is undisputed that Mr. Poirier failed to stop at the railroad crossing or that he was required to stop at the railroad crossing (Tr. at 8-10, 21). Additionally, video evidence was presented to show Respondent's failure to stop at the railroad crossing (Tr. at 9; Staff Ex. 2). The disputed issue is whether Respondent should be excused for his failure to stop because of his testimony that he had problems braking. In support of his testimony that he had brake problems, Respondent presented evidence that his truck spent the following day at a repair shop (Driver Ex. 2.) However, Mr. Forbes testified that brake or equipment failure as described by Respondent does not excuse the violation of failure to stop (Tr. at 13). Further, Respondent testified that after Mr. Forbes' inspection on July 29,

2020, Respondent continued driving to his final delivery for the day. Respondent said that after he made the final delivery, he discovered that only three brakes out of six were working. (Tr. at 21, 30, 35.) The Commission notes that, although Respondent presented testimony that his vehicle was at the repair shop the day after the inspection, Respondent did not present a repair receipt or invoice to show that the brakes were repaired (Tr. at 36-37). The Commission is persuaded that there are no sufficient mitigating factors for the 49 C.F.R. 392.10(A)(4) violation due to the fact that Respondent continued driving to his final destination after his failure to stop at the railroad crossing, and there was no evidence that Respondent's brakes were in need of significant repair, aside from Respondent's own testimony to this point. Furthermore, Staff presented testimony that brake or equipment failure does not excuse the violation.

{¶ 15} Based on these findings, Respondent should be assessed a \$500 forfeiture for violation of 49 C.F.R. 392.10(A)(4) and he should pay the forfeiture within 60 days from the date of this Opinion and Order. Payment shall be made via the Commission website or by check or money order payable to the Public Utilities Commission 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 20-1599-TR-CVF and inspection number OH3207302851D should be written on the face of the check or money order.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 16} On July 29, 2020, Chief Forbes stopped and inspected a commercial motor vehicle operated by Bruceton Petroleum Company Inc. and driven by Respondent. Chief Forbes issued a citation for 49 C.F.R. 392.10(A)(4), failing to stop before crossing railroad tracks.

{¶ 17} Staff timely served an NPD on Respondent, alleging a violation of 49 C.F.R. 392.10(A)(4). In the NPD, Staff stated its intention to assess a civil monetary forfeiture of \$500 upon Respondent.

{¶ 18} On October 15, 2020, Respondent requested an administrative hearing in accordance with Ohio Adm.Code 4901:2-7-13.

{¶ 19} Respondent participated in a prehearing teleconference with Staff on December 14, 2020, but the matter was not resolved.

{¶ 20} An evidentiary hearing was held on November 9, 2021.

{¶ 21} Ohio Adm.Code 4901:2-7-20 requires that, during the evidentiary hearing, Staff must prove the occurrence of a violation by a preponderance of the evidence.

{¶ 22} Based on the record in this proceeding, the Commission finds that Staff has proven, by a preponderance of the evidence, that Mr. Poirier violated 49 C.F.R. 392.10(A)(4), failing to stop at a railroad crossing.

{¶ 23} Mr. Poirier should be assessed a \$500 forfeiture for violating 49 C.F.R. 392.10(A)(4), failing to stop at a railroad crossing, and should pay the forfeiture within 60 days from the date of this Opinion and Order.

VIII. ORDER

{¶ 24} It is, therefore,

{¶ 25} ORDERED, That Respondent pay a civil forfeiture of \$500 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 Public Utilities Commission 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 20-1599-TR-CVF and inspection number OH3207302851D should be written on the face of the check or money order. It is, further,

{¶ 26} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

JWS/IMM/mef

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Summary: Opinion & Order that the Commission finds that Staff demonstrated, by a preponderance of the evidence, that Troy A. Poirier violated 49 C.F.R. 392.10(A)(4) by failing to stop prior to crossing railroad tracks while operating a commercial motor vehicle used for transportation of hazardous material electronically filed by Ms. Donielle M. Hunter on behalf of Public Utilities Commission of Ohio