

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF YOHANNES BERHE,
NOTICE OF APPARENT VIOLATION AND
INTENT TO ASSESS FORFEITURE.

CASE NO. 21-983-TR-CVF
(OH3288014008D)

OPINION AND ORDER

Entered in the Journal on January 26, 2023.

I. SUMMARY

{¶ 1} The Commission finds that Staff demonstrated, by a preponderance of the evidence, that Yohannes Berhe violated 49 C.F.R. 395.8(a)(1), no record of duty status/electronic logging device as required; 392.2, no commercial motor vehicle registration or insurance documents at the time of the inspection; 395.22(h)(2), failure to maintain electronic logging device instructions sheet; 395.22(h)(4), failure to maintain a supply of blank log sheets; and 395.13(d)(1), driving after being declared out of service for hours of service violations.

II. PROCEDURAL HISTORY

{¶ 2} On June 17, 2021, Inspector William Johnson (Inspector Johnson), a Motor Carrier Enforcement Investigator of the Commission, stopped and inspected a commercial motor vehicle (CMV) operated by Legacy Brothers Logistics LLC (Legacy Brothers) and driven by Yohannes Berhe (Mr. Berhe or Respondent). Inspector Johnson prepared a report indicating five violations of the Federal Motor Carrier Safety Regulations (FMCSR): 49 C.F.R. 395.8(a)(1), no record of duty status/electronic logging device (ELD) as required; 392.2, no CMV registration or insurance documents at the time of the inspection; 395.22(h)(2), failure to maintain ELD instructions sheet; 395.22(h)(4), failure to maintain a supply of blank log sheets; and 395.13(d)(1), driving after being declared out of service for hours of service violations (Staff Ex. 1.)

{¶ 3} Staff served a Notice of Preliminary Determination (NPD) upon Respondent in accordance with Ohio Adm.Code 4901:2-7-12, alleging a violation of the Commission's transportation regulations. The NPD notified Mr. Berhe that, pursuant to Ohio Adm.Code

4901:2-7-07, Staff intended to assess a \$3,174 civil forfeiture for violating 49 C.F.R. 395.13(d)(1), driving after being declared out-of-service, and 395.8(a)(1) no ELD as required. (Staff Ex. 3.)

{¶ 4} On September 21, 2021, Respondent requested an administrative hearing in accordance with Ohio Adm.Code 4901:2-7-13.

{¶ 5} By Entry on October 20, 2021, the attorney examiner scheduled a telephonic prehearing conference for November 2, 2021 pursuant to Ohio Adm.Code 4901:2-7-16(B). Respondent and Staff participated in the prehearing conference as scheduled, but the matter was not resolved.

{¶ 6} On March 7, 2022, the attorney examiner scheduled an evidentiary hearing for April 25, 2022. However, during the week of April 11, 2022, Respondent contacted the Attorney Examiner to indicate a conflict with attending a hearing on April 25, 2022.

{¶ 7} By Entry issued April 15, 2022, the attorney examiner rescheduled the hearing for May 24, 2022.

{¶ 8} At the hearing on May 24, 2022, Staff witnesses Inspector Johnson and Rod Moser (Mr. Moser), Chief of the Compliance Division within the Commission's Transportation Department, testified in support of the violation and forfeiture amount, respectively. Mr. Berhe testified on his own behalf.

III. 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 FMCSR. 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. 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 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} Staff alleges that Respondent violated: 49 C.F.R. 395.8(a)(1), no record of duty status/ELD as required; 392.2, no CMV registration or insurance documents at the time of stop; 395.22(h)(2), no ELD instructions sheet; 395.22(h)(4), failure to maintain a supply of blank drivers records of duty status; and 395.13(d)(1), driving after being declared out-of-service. Of these violations, a civil forfeiture was assessed against Respondent for violating 49 CFR 395.13(d)(1) and 395.8(a). Mr. Berhe contends that a CMV inspector in Kentucky and Inspector Johnson acted unreasonably in collaboration to place him out of service in both states such that the alleged violations are improper.

IV. ISSUE

{¶ 11} At issue in this case is whether Staff has satisfied its burden to show, by a preponderance of the evidence, that Respondent drove his CMV after being declared out-of-service, failed to maintain a record of duty status with a properly working ELD, did not have an ELD instructions sheet, failed to maintain a supply of blank driver's record of duty status, and did not have in his possession CMV registration or insurance documentation (Staff Ex. 1).

V. SUMMARY OF EVIDENCE

{¶ 12} At the hearing on May 24, 2022, Staff presented the testimony of Inspector Johnson. Inspector Johnson testified that his duties include conducting inspections on trucks for mechanical issues and violations of the FMCSR (Tr. at 7).

{¶ 13} Inspector Johnson asserts that, during the inspection, Respondent's ELD was turned off or was malfunctioning; further, there were no instruction sheets for the ELD, and Respondent had no supply of blank paper log sheets. Respondent could also not produce any documents pertaining to CMV registration or CMV insurance. Consequently, Inspector Johnson found that Mr. Berhe violated 49 CFR 395.8(a)(1), 392.22 (h)(2), 392.22(h)(4), and 392.2, respectively. In addition, Inspector Johnson observes, despite Mr. Berhe having no operable ELD and no paper logs, he continued to drive the CMV into Ohio, thereby violating out of service requirements in 49 C.F.R. 395.13(d). (Tr. at 9-13 35-36, 38-39, 60-62; Staff Ex. 1 and 2).

{¶ 14} Inspector Johnson further explained that Mr. Berhe was placed out of service for 10 hours in London, Kentucky, for not having the prior seven days' logs. After the 10 hours out-of-service expired, and after delivery of Respondent's cargo in Hebron, Kentucky, Inspector Johnson asserts that Respondent could not drive until his ELD was operable, because Mr. Berhe's CMV "is an ELD-required truck"; therefore, Inspector Johnson emphasized, Respondent could not continue his route using paper logs. Inspector Johnson added that Mr. Berhe did not show him any paper logs. (Tr. at 37-38, 40-41, 46-46, 61; Staff Ex. 2.) Given these factors, Inspector Johnson concluded that Mr. Berhe wrongly resumed driving toward Monroe, Ohio (Tr. at 37-40, 46, 60-61; Staff Ex. 1 and 2). Inspector Johnson testified that he did not contact any CMV inspector in Kentucky concerning Mr. Berhe's violations, nor was he contacted by a Kentucky CMV inspector. (Tr. at 35-36.)

{¶ 15} Mr. Moser testified that (1) a 49 CFR 395.13 violation for driving after being placed out of service is considered a "very serious violation" and is always assigned a \$3,174 forfeiture (Tr. at 17), and (2) a 49 C.F.R 395.8(a) violation is always assessed a \$100 forfeiture.

Mr. Moser added that Staff's out of service forfeiture is consistent with the recommended fine schedule adopted by the Commercial Motor Vehicle Alliance. (Tr. at 17-18.)

{¶ 16} During his testimony, Mr. Berhe conceded that, during the inspection, he did not have documents regarding International Fuel Tax, CMV insurance, and CMV registration; he also admitted that his ELD was not operating in Kentucky and Ohio. Mr. Berhe testified that Legacy Brothers had been in business only a short time and that he was a new employee, so the carrier had planned to email the documents to him. Respondent added that he offered to have Legacy Brothers send the missing documents to him during his time with Inspector Johnson (Tr. at 21). According to Mr. Berhe, Legacy Brothers advised him to use a paper log in Kentucky and Ohio for 15 days until the ELD system was repaired (Tr. at 22, 58-59). Mr. Berhe emphasized that he maintained a paper log prior to his Kentucky inspection, even though the Kentucky inspection report did not indicate that he had done so, and he added that he showed the paper logbook to Inspector Johnson in Ohio (Tr. at 24).

{¶ 17} Mr. Berhe explained that, after the Kentucky inspection at 7:30 pm, he did not immediately continue on his route to Ohio; instead, he waited for the required 10 hours out of service status to expire (Tr. at 24, 34). Respondent added that, while he was out of service in London, Kentucky, a co-worker arrived and exchanged an empty trailer with Respondent's trailer that still had undelivered cargo. Upon completing the 10 hours out of service and recording that information in a paper log, Respondent explained, he was driving to Monroe, Ohio, in Butler County, when he was stopped by Inspector Johnson (Tr. at 52-53). Mr. Berhe asserts that the Kentucky CMV inspector and Inspector Johnson coordinated the findings of their inspections to keep Respondent out-of-service (Tr. at 24-26). Respondent contended that the violations and fees assessed against him were incorrect (Tr. at 24-25, 47.) Mr. Berhe produced as evidence copies of paper logs that he asserts were prepared on the dates written on the logs (Tr. at 44-45; Berhe Ex. 1 and 2).

VI. COMMISSION CONCLUSION

{¶ 18} 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. Berhe violated: 49 C.F.R. 395.8(a)(1), no record of duty status/ELD as required; 392.2, no CMV registration or insurance documents at the time of the inspection; 395.22(h)(2), failure to maintain ELD instructions sheet; 395.22(h)(4), failure to maintain a supply of blank log sheets; and 395.13(d), driving after being declared out of service for hours of service violations (Staff Ex. 1.).

{¶ 19} The Commission finds convincing the testimony of Inspector Johnson, who has been with the Commission since 2016 and whose duties include conducting CMV driver and vehicle inspections for FMCSR violations (Tr. at 7). Inspector Johnson testified that Respondent's ELD was turned off or was malfunctioning, there were no instruction sheets for the ELD, and Respondent had no documents pertaining to CMV registration or CMV insurance (Tr. at 9-10). Indeed, the Commission notes Respondent's admission that he did not have in his possession documents pertaining to CMV registration and CMV insurance, and that the ELD was inoperable (Tr. at 21). In addition, Mr. Berhe did not dispute the violation for not having an ELD instruction sheet. The parties, then, apparently have no disagreement concerning these three violations.

{¶ 20} We also find compelling Inspector Johnson's testimony that Respondent had no paper log sheets and continued to drive after being declared out of service (Tr. at 9-10, 23-26, 61). We reject Mr. Berhe's assertion that he prepared paper logs during the days that he was traveling in Kentucky and Ohio, and that he showed the paper logs to Inspector Johnson (Tr. at 22-24; Behr Ex. 1 and 2). Moreover, we find that even if Mr. Berhe did show paper logs to Inspector Johnson, he could not continue driving into Ohio with an inoperable ELD after complying with 10 hours out of service in Kentucky because the cargo that he was to deliver was ultimately delivered by a co-worker who picked up Respondent's trailer during the out of service period (Tr. at 52-53; Staff Ex. 1, which indicates that Mr. Berhe's

trailer had no cargo). We reach this conclusion based on FMCSA Regulatory Guidance, issued March 10, 2022, which states in part that:

“[If] a driver is stopped for a roadside inspection and does not have a required ELD installed and in use * * * [the driver is placed out of service for 10 hours] * * * after which the driver is allowed to complete the current trip to his or her final destination using paper logs. If the driver is stopped again prior to the final destination, the driver will be asked to provide the safety official a copy of the inspection report and evidence (e.g., bill of lading) proving he/she is continuing the original trip. After reaching the final destination, if the driver is dispatched after obtaining a compliant ELD, he/she will again be subject to the OOS procedures. However, a driver may return with an empty . . . CMV to his/her principal place of business or home terminal, as indicated on the roadside inspection report.”

Applying this guidance to the facts of Mr. Berhe’s case, we see that Respondent did not have an operable ELD at the time of the Kentucky inspection; consequently, he was placed out of service. After he waited the required 10 hours out of service, he could not have continued with paper logs to make the delivery, because during the out-of-service period a co-worker picked up Respondent’s trailer and made the delivery, leaving an empty trailer, which Mr. Berhe purportedly continued hauling into Ohio. Thus, Mr. Berhe’s initial delivery was completed, albeit by another driver, and FMCSA Regulatory Guidance forbids him from driving his empty trailer other than back to his home terminal until the ELD is operable.

{¶ 21} Finally, we address Respondent’s contention that Inspector Johnson and a Kentucky State Trooper collaborated as to their inspections to keep Mr. Berhe out of service (Tr. at 24-25). Respondent did not provide any evidence to support this allegation, and Trooper Johnson testified that he did not contact any Kentucky CMV inspector, nor was he contacted by any Kentucky CMV inspector (Tr. at 36). As above, we find Inspector Johnson’s testimony to be credible such that Respondent’s claim is not well-supported.

{¶ 22} Based on this finding, Respondent should be assessed a \$3,274 forfeiture for violating 49 CFR 395.13(d)(1) and 395.8(a)(1), and he should pay the forfeiture in 10 consecutive monthly installments of \$327.40 commencing 60 days from the date of this Opinion and Order. Payment shall be made via the Commission website or by certified 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 21-983-TR-CVF and inspection number OH3288014008D should be written on the face of the check or money order.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 23} On June 17, 2021, Inspector Johnson, motor carrier enforcement inspector at the Commission, conducted a roadside inspection of a CMV operated by Respondent. Inspector Johnson determined that Mr. Berhe violated: 49 C.F.R. 395.8(a)(1), no record of duty status/ELD as required; 392.2, no CMV registration or insurance paperwork at the time of the inspection; 395.22(h)(2), failure to maintain ELD instructions sheet; 395.22(h)(4), failure to maintain a supply of blank log sheets; and 395.13(d)(1), driving after being declared out of service for hours of service violations .

{¶ 24} Staff timely served an NPD on Respondent, alleging a violation of 49 CFR 395.13(d)(1) and 395.8(a)(1). In the NPD, Staff stated its intention to assess a civil monetary forfeiture of \$3,274 upon Respondent.

{¶ 25} On September 21, 2021, Respondent requested an administrative hearing in accordance with Ohio Adm.Code 4901:2-7-13.

{¶ 26} Mr. Berhe participated in a prehearing teleconference with Staff on November 2, 2021. The parties were not able to reach a resolution during the conference.

{¶ 27} An evidentiary hearing was held on May 24, 2022.

{¶ 28} 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.

{¶ 29} Based upon the record in this proceeding, the Commission finds that Staff has proven, by a preponderance of the evidence, that Respondent violated: 49 C.F.R. 395.8(a)(1), no record of duty status/ELD as required; 392.2, no CMV registration or insurance paperwork at the time of the inspection; 395.22(h)(2), failure to maintain ELD instructions sheet; 395.22(h)(4), failure to maintain a supply of blank log sheets; and 395.13(d)(1), driving after being declared out of service for hours of service violations. Accordingly, Mr. Berhe should be assessed a \$3,274 total forfeiture, payable in 10 consecutive monthly installments of \$327.40, for the violation of 49 CFR 395.13(d)(1) and 395.8(a), and should begin paying the forfeiture within 60 days from the date of this Opinion and Order.

VIII. ORDER

{¶ 30} It is, therefore,

{¶ 31} ORDERED, That Respondent pay a total civil forfeiture of \$3,274 for violating 49 CFR 395.13(d)(1) and 395.8(a)(1) in 10 consecutive monthly installments of \$327.40 commencing 60 days from the date of this Opinion and Order. Payment shall be made via the Commission website or by certified 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 21-983-TR-CVF and inspection number OH3288014008D should be written on the face of the check or money order. It is, further,

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

COMMISSIONERS:

Approving:

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

JML/IMM/hac

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Case No(s). 21-0983-TR-CVF

Summary: Opinion & Order that the Commission finds that Staff demonstrated, by a preponderance of the evidence, that Yohannes Berhe violated 49 C.F.R. 395.8(a) (1), no record of duty status/electronic logging device as required; 392.2, no commercial motor vehicle registration or insurance documents at the time of the inspection; 395.22(h)(2), failure to maintain electronic logging device instructions sheet; 395.22(h)(4), failure to maintain a supply of blank log sheets; and 395.13(d) (1), driving after being declared out of service for hours of service violations electronically filed by Ms. Donielle M. Hunter on behalf of Public Utilities Commission of Ohio