

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Markeith Spriggs,
Notice of Apparent Violation and
Intent to Assess Forfeiture.

Case Nos. 22-136-TR-CVF
22-931-TR-CVF

**POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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TABLE OF CONTENTS

	PAGE
I. INTRODUCTION	1
II. STATEMENT OF FACTS.....	3
III. LAW AND ARGUMENT.....	6
A. Carriers, and drivers of commercial motor vehicles, must comply with the Motor Carrier Safety Regulations.	6
B. Respondent Operated a Vehicle After Being Placed Out of Service (OOS) in violation of Ohio Adm.Code 4901:2-5-07(D).	7
IV. CONCLUSION	12
CERTIFICATE OF SERVICE.....	14

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I. INTRODUCTION

Based on the record produced at the hearing and for the reasons stated herein, the Staff respectfully requests that the Public Utilities Commission of Ohio (Commission) find that Markeith Spriggs (Respondent) violated Ohio Adm.Code 4901:2-5-02(D), by driving a commercial motor vehicle after being declared out of service (“out of service” or “OOS”), and is responsible for the \$3,174.00 forfeiture.¹ Placing a driver OOS only occurs to protect the public when a trained, authorized, and qualified inspector encounters a serious and specific safety issue which could harm the public if the driver proceeded to operate the commercial motor vehicle. If OOS drivers continued to operate motor vehicles when these serious safety issues have been discovered, the risk to the general public is great, yet preventable. Respondent was initially stopped (“First Stop” or “First Inspection”) and cited for violating 49 C.F.R. § 395.8(a)(1), operating without a record of

¹ Respondent requested two separate Commission hearings – 22-136-TR-CVF and 22-931-TR-CVF. Both hearing requests, however, refer to the same Inspection Report (OH1865001582D).

duty status when one is required. The violation of 49 C.F.R. § 395.8(a)(1) resulted in Respondent being placed out of service. When a driver is placed OOS for a record duty of status violation, the driver must wait ten hours prior to returning to the road to protect the safety of Ohio's motoring public.

Less than three hours later, Respondent was stopped a second time ("Second Stop" or "Second Inspection") and it was discovered that Respondent was operating a commercial motor vehicle while being declared out of service. As a result of this second inspection, Respondent was issued a citation for operating a commercial motor vehicle while being declared out of service. This second violation, operating a motor vehicle while being declared out of service, resulted in a \$3,174.00 forfeiture and is the only violation at issue in this case.

Despite Respondent's claim that he was not "told" he was out of service at the First Stop, both the record evidence and his undisputed admission through full \$100 payment of the First Inspection demonstrate he was indeed declared out of service. Ohio State Highway Patrol Trooper Jonathan Lauper (Trooper Lauper) testified that, after escorting Respondent to a safe location, Respondent was told he was placed out of service for 10 hours. In addition, the First Inspection Report also clearly indicated that Respondent was placed out of service. Drivers may not unilaterally override the OOS determination of a trained inspector at the time of the stop, here the First Stop. Finally, it is an undisputed fact that Respondent paid the \$100.00 forfeiture associated with the First Stop's record-duty-of-status violation and payment of a forfeiture constitutes an admission of the occurrence of the violation under the Commission's rules.

As a result, based on the record evidence, the \$3,174.00 forfeiture from the Second Inspection should be imposed against Respondent, since Respondent operated a commercial motor vehicle in Ohio less than ten hours after being placed out of service by an Ohio State Trooper.

II. STATEMENT OF FACTS

As described in further detail below, two inspections were conducted as Mr. Spriggs operated a motor vehicle in Ohio on November 24, 2021. Following the First Inspection at 12:50 p.m., Mr. Spriggs was placed out of service. The Second Inspection, at 3:31p.m., resulted in a violation for driving within ten hours of being declared out of service after the First Inspection.

On February 28, 2022, Respondent paid the amount of the citation issued in connection with the violation from the First Stop, driving without a record of duty when one is required. Staff Ex. 6 at 1 (Salesforce proof of \$100.00 payment); and Tr.at 33-36.² The forfeiture amount in connection with the Second Stop, the citation for driving after being declared out of service, was not received from Respondent. Respondent, after his payment of the fine associated with the violation which placed him out of service at the First Stop, now disputes that he was placed out of service.

The First Stop on November 24, 2021, occurred at 12:50 p.m. in Mahoning County, Ohio. Respondent was stopped by Trooper Lauper, who was in uniform driving a

² Citations to the hearing transcript (“Tr.”) refer to the transcript for the April 20, 2023 Evidentiary Hearing at the Commission.

marked vehicle, for speeding and failing to maintain marked lanes of travel. This roadside stop occurred on Interstate 76 westbound, as Respondent indicated that he was transporting motor vehicles to Canal Fulton, Ohio. As a result of the inspection, Trooper Lauper placed Respondent OOS for violating 49 C.F.R. § 395.8(a)(1), as he had no record of duty when one was required. Staff Ex.1 at 1-2. Additionally, Trooper Lauper issued warnings to the Respondent for the following other violations: 49 C.F.R. § 392.2-SLLS2, by speeding 6-10 miles per hour over the speed limit, while in Ohio, in violation of R.C. 4511.21D4, when operating within the jurisdiction of the Ohio Revised Code (“R.C.”), 49 C.F.R. § 392.2-SLLS2, by Failure to Maintain Lane 4511.33, See, Staff Ex. 1 at 1.

A physical citation was issued to Respondent on the scene at the First Stop by Trooper Lauper, which indicated to Respondent he was being placed OOS, and Respondent was apprised of his legal rights in those documents. Staff Ex. 1 at 2. Respondent does not dispute that he received this physical citation which stated he was being placed OOS. Tr. at 52-53. Trooper Lauper indicated to Mr. Spriggs he did not wish for him to be left in an unsafe position on the roadway, so it was decided he would follow Mr. Spriggs to Love’s truck Stop on Interstate 76 & State route 225, and Mr. Spriggs would remain at Love’s truck Stop on Interstate 76 & State route 225 until he could secure safe transportation from that location, without violating the requirement mentioned above that he must remain out of service for ten hours. Tr. at 17-18.

The Second Stop, at 3:31 p.m., occurred less than three hours later, following the citation Respondent received from Trooper Lauper in Mahoning County at 12:50 p.m.,

which placed Respondent Out of Service. Respondent was stopped by Ohio State Trooper D. Harrison, while Trooper Harrison was in uniform, driving a marked car, at 3:31 p.m., less than three hours following the first stop on November 24, 2021. Staff Ex. 3 at 1.

As noted in the inspection report, the Second Stop was initiated due to the observation of excessive window tint and an ID lamp burned out. Staff Ex. 3 at 3. A Level III inspection at the Second Stop, upon Trooper Harrison's search of Mr. Spriggs information in the Federal Motor Carrier Safety Administration's portal, revealed that Respondent had been placed out of service at the First Stop less than three hours prior to the Second Stop, and proceeded to haul motor vehicles in Ohio, operating a commercial vehicle, despite an OOS status, in violation of Ohio Adm.Code 4901:2-5-07(D).

Respondent subsequently requested a hearing, and contested at that hearing on April 20, 2023, the forfeiture from the Second Stop on the grounds that his actions were not violative of the applicable regulations. Respondent does not believe he was placed out of service following the First Stop, despite his payment for that violation. Staff Ex. 6 (Salesforce proof of \$100.00 payment) at 1; Tr. 33-36.

Contrary to Respondent's position, the facts show that Respondent is in violation of the law and must pay the civil forfeiture recommended by the Staff. This brief will show **(III.A)** that the Regulation at issue is applicable to Respondent and **(III.B)** that Respondent's conduct amounts to a violation of the Regulations governing commercial motor vehicles.

III. LAW AND ARGUMENT

A. Carriers, and drivers of commercial motor vehicles, must comply with the Motor Carrier Safety Regulations.

The Commission, as the lead agency for the Motor Carrier Safety Assistance Program (“MCSAP”) in Ohio, regulates operation of commercial motor vehicles. R.C. 4905.80. In furtherance of this obligation, the Commission has adopted rules governing the conduct of motor transportation companies that are engaged in commerce. The Commission has adopted standards for motor carrier safety pursuant to authority delegated by the Ohio General Assembly. R.C. 4905.81. These rules adopt the U.S. Department of Transportation motor carrier safety regulations.

The state has continually sought to implement programs to ensure the safety of the motoring public and to reduce accidents involving commercial motor carriers. It is the Commission’s duty to keep Ohio’s roadway safe from accidents involving commercial motor vehicles. Compliance with the regulations is imperative. As Mr. Spriggs was operating a commercial motor vehicle in Ohio on November 24, 2021, he was subject to the MCSAP regulations, as well as Ohio authority.

B. Respondent Operated a Vehicle After Being Placed Out of Service (OOS) in violation of Ohio Adm.Code 4901:2-5-07(D).

Respondent violated Ohio Adm.Code 4901:2-5-02(D), by driving a commercial motor vehicle after being declared out of service, and is responsible for the \$3,174.00 forfeiture.³ Ohio Adm.Code 4901:2-5-02(D) states:

(D) No person shall operate or permit the operation of a motor vehicle that has been declared "out of service," or permit a driver that has been declared "out-of-service", to operate a commercial motor vehicle except under the following conditions:

- (1) The motor vehicle may be towed in accordance with 49 C.F.R. 396.9, as effective on the date referenced in paragraph (C) of rule 4901:2-7-07(C) of the Administrative Code.
- (2) If the motor vehicle is located beside the traveled portion of a highway, or contains hazardous materials and is located at a place where parking of hazardous materials is not permitted it may be escorted by authorized personnel to the nearest safe location, provided that doing so would enhance public safety more so than if the motor vehicle was not relocated.

Ohio Adm.Code 4901:2-5-07(C) states:

(C) Drivers declared "out-of-service" shall remain out-of-service until such time that all conditions required by law, rule, or the out-of-service declaration have been met.

³ Staff Ex. 3 (Second Inspection Report) also refers to 49 C.F.R. 392.2 which states: "Every commercial motor vehicle must be operated in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated. However, if a regulation of the Federal Motor Carrier Safety Administration imposes a higher standard of care than that law, ordinance or regulation, the Federal Motor Carrier Safety Administration regulation must be complied with." Ohio Adm.Code 4901:2-5-07(D) is the Ohio law for this OOS violation and also cited in Staff Ex. 3.

Respondent was initially stopped by Trooper Lauper at 12:50 p.m. and cited for violating 49 C.F.R. § 395.8(a)(1), operating without a record of duty status when one is required. Staff Ex. 1. 49 C.F.R. 359.8(a)(1) states that "...a motor carrier subject to the requirements of this part must require each driver used by the motor carrier to record the driver's duty status for each 24-hour period..." Trooper Lauper testified that Respondent did not have the proper record of the duty of status because an electronic log book was needed and Respondent could not provide the correct one. Tr. at 12-16.

The violation of 49 C.F.R. § 395.8(a)(1) resulted in Respondent being placed out of service. Both Trooper Lauper and Trooper Harrison testified that when a driver is placed OOS for a record duty of status violation, the driver must wait ten hours prior to returning to the road to protect the safety of Ohio's motoring public. Tr. at 19; Tr. at 27.

Despite Respondent's claim that he was not "told" he was out of service at the First Stop, Trooper Lauper testified that, after escorting Respondent to a safe location, he explained to Respondent that he was placed out of service for ten hours. The First Inspection Report also clearly indicates that Respondent was declared out of service. Staff Ex. 1 at 2 (First Inspection Report). Respondent admitted that he was new to the trucking industry and that he did not read the First Inspection Report provided to him at the First Stop. Tr. at 44; Tr. at 52-53. Regardless of Respondent's experience and understating of the applicable regulations, those regulations must be complied with to protect Ohio's motoring public.

Less than three hours later, Respondent was stopped a second time by Trooper Harrison and it was discovered that Respondent was operating a commercial motor vehicle while being declared out of service. Tr. at 27.

As a result of this Second Inspection, Respondent was issued a citation for operating a commercial motor vehicle while being declared out of service. Tr. at 28. Drivers may not unilaterally override the OOS determination of a trained inspector at the time of the stop, here the First Stop. When a safety issue, such as an hours of service violation is uncovered, drivers may not override the inspector's decision.

Authorized personnel, such as qualified and trained commercial motor vehicle inspectors, in this case, Trooper Lauper, are empowered, pursuant to Ohio Adm.Code 4901:2-5-07(A)(2) to declare out of service, any driver that is found to be operating in violation of the U.S. Department of Transportation Safety standards. Included within the United States Department of Safety standards, applicable to an OOS violation, is 49 C.F.R. § 395.8(a)(1), which requires a record of duty, the statute cited by Trooper Lauper as the First Inspection uncovered Respondent had no record of duty. Therefore, when Trooper Lauper declared, based upon his experience, knowledge and observation that Respondent should be OOS on November 24, 2021, that determination was an enforceable decision. Since Respondent did not remain OOS, as directed by Trooper Lauper and the citation issued to him on November 24, 2021, Respondent is responsible for the consequences for not remaining OOS.

This second violation, operating a motor vehicle while being declared out of service, resulted in a \$3,174.00 forfeiture and is the only violation at issue in this case.

Staff witness Long testified that \$3,174.00 is the correct forfeiture amount for this violation. Tr. at 33.

Further demonstrating his acknowledgment and responsibility for driving without a record of his duty status, the violation which placed him OOS November 24, 2021, Respondent paid the fine associated with the First Stop on February 28, 2022. Staff Ex. 6 at 1. Staff witness Long testified, and it is an undisputed fact, that Respondent paid the \$100.00 forfeiture associated with the First Stop's record-duty-of-status violation and payment of a forfeiture constitutes an admission of the occurrence of the violation under the Commission's rules. Tr. at 34-39; Staff Ex. 6 (Salesforce proof of \$100.00 payment).

Under the Ohio Adm.Code 4901:2-7-22(B),

“[i]f the only remedy requested with respect to a violation is the payment of a forfeiture, and full payment of the forfeiture demanded in the notice is made prior to the execution of a settlement agreement or any final commission order, full payment constitutes an admission of the occurrence of the violation ... Full payment under these circumstances shall conclusively establish the occurrence of the violation for purposes of consideration of a respondent's history of violations and for determining the appropriate remedy for any future violation.”

Therefore, through the full payment of the citation for the violation in the First Stop, Respondent admitted the occurrence of the violation, the result of which placed him OOS. Further, through payment, the occurrence of the violation is established and relevant for purposes determining the appropriate remedy for any future violation. The relevant future violation here was at the Second Stop at 3:31 p.m., where Respondent was cited for driving while OOS from the First Stop. Being declared OOS was established, and confirmed by Respondent through the payment of the citation in the First Stop.

Respondent now argues, without merit, that despite payment acknowledging his admission of the violation at the First Stop, that he was not declared OOS, and therefore could not have been driving while OOS, the violation resulting from the Second Inspection.

Ohio Adm.Code 4901:2-7-22(B) should be enforced in this instance as under Ohio law, an administrative agency such as the Commission cannot create requirements contrary to the law, but any administrative rule, “issued pursuant to statutory authority, has the force and effect of law unless it is unreasonable or is in clear conflict with statutory enactment governing the same subject matter.” *Youngstown Sheet & Tube Co. v. Lindley* (1988), 38 Ohio St.3d 232, 234, 527 N.E.2d 828, quoting *Kroger Grocery & Baking Co. v. Glander* (1948), 149 Ohio St. 120, 125, 77 N.E.2d 921. Courts will give considerable deference to an administrative agency's interpretation of its own rules and regulations. *State v. Anderson*, Franklin App. No. 04AP-1171, 2005 Ohio 5243, at P 14, citing *City of Columbus v. Childs*, Franklin App. No. 04AP-911, 2005 Ohio 3683." *State v. Reedy*, 2006 Ohio 1212, at P 10. As such, as with Ohio Courts, the Commission is aided by rules of statutory construction, which apply to administrative rules and regulations having the effect of legislative enactment. *State v. Staley*, 141 Ohio Misc.2d 40, 2006-Ohio-7274, 868 N.E.2d 1284, ¶ 13 (M.C.).

As shown above, Respondent violated Ohio Adm.Code 4901:2-5-02(D), by driving a commercial motor vehicle after being declared out of service, and is responsible for the \$3,174.00 forfeiture.

IV. CONCLUSION

In evidentiary hearings, Staff is required to prove the occurrence of alleged violations of the Commission's rules and the Federal Motor Carrier Safety Regulations by a preponderance of the evidence. Staff presented evidence demonstrating that Respondent was operating a commercial motor vehicle while being declared out of service in violation of Ohio Adm.Code 4901:2-5-07(D).

Based on the record produced at the hearing and for the reasons stated above, Staff respectfully requests that the Commission find that the Respondent violated Ohio Adm.Code 4901:2-5-07(D), operating a commercial motor vehicle while being declared out of service, and that the Commission hold Respondent liable for the civil forfeiture of \$3,174.00 as recommended by Staff.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the **Post Hearing Brief submitted on Behalf of the Staff of the Public Utilities Commission of Ohio** was served via regular U.S. mail or electronic mail upon the following party of record, this 26th day of May 2023.

/s/ Ashley M. Wnek

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