

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF MITCHELL R.
DURKOP, NOTICE OF APPARENT
VIOLATION AND INTENT TO ASSESS
FORFEITURE.

CASE NO. 21-603-TR-CVF
(OH3230016165D)

FINDING AND ORDER

Entered in the Journal on September 20, 2023

I. SUMMARY

{¶ 1} The Commission finds reasonable and approves the settlement agreement regarding a violation of the Commission's transportation rules.

II. PROCEDURAL HISTORY

{¶ 2} 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. Pursuant to Ohio Adm.Code 4901:2-5-03(A), the Commission adopted the Federal Motor Carrier Safety Regulations for the purpose of governing transportation by motor vehicle in the state of Ohio. Further, R.C. 4923.99 authorizes the Commission to assess a civil forfeiture of up to \$25,000 per day against any person who violates the safety rules adopted by the Commission.

{¶ 3} On February 23, 2021, a commercial motor vehicle driven by Mitchell R. Durkop (Respondent) was stopped and inspected within the state of Ohio. As a result of the inspection, Respondent was found to have violated 49 C.F.R. 390.17, which prohibits use of additional equipment and accessories that decrease the safety of operation.

{¶ 4} On March 1, 2021, Staff served Respondent a Notice of Apparent Violation and Intent to Assess Forfeiture (NIF). The NIF assessed the Respondent \$250.00 for the alleged violation.

{¶ 5} On April 29, 2021, Staff sent Respondent a Notice of Preliminary Determination (NPD). The NPD assessed Respondent \$250.00 for the violation.

{¶ 6} On May 20, 2021, Respondent filed a request for an administrative hearing in accordance with Ohio Adm.Code 4901:2-7-13.

{¶ 7} On January 18, 2022, by Entry, the attorney examiner scheduled a prehearing conference to occur on February 1, 2022, to discuss settlement of the case. Both parties attended the prehearing conference; however, they were unable to reach a settlement.

{¶ 8} On May 6, 2022, by Entry, the attorney examiner scheduled a hearing to commence on July 6, 2022. The hearing was called and Staff represented to the attorney examiner that a settlement agreement had been reached and would be filed in the case docket shortly thereafter (Tr. at 3-4).

{¶ 9} On September 21, 2022, the parties filed a settlement agreement, which they believe resolves all of the issues raised in the NPD. The following is a summary of the conditions agreed to by the parties and is not intended to replace or supersede the settlement agreement:

- (a) Respondent agrees to the violation of 49 C.F.R. 390.17, operating a commercial motor vehicle while using additional equipment and accessories that decrease the safety of operation. Respondent recognizes that this violation may be included in the Respondent's Safety-Net Record and Respondent's history of violations insofar as it may be relevant for purposes of determining future penalty actions.
- (b) Respondent has provided proof sufficient to Staff that he has a compliance plan in place to correct the violation found in this inspection. Therefore, for purposes of settlement, Staff agrees to reduce the amount of the civil forfeiture from \$250.00 to \$175.00 and Respondent agrees to pay the amount of \$175.00 to resolve the case.

- (c) Respondent shall pay the \$175.00 civil forfeiture within 30 days after the Commission's Order approving the settlement agreement. The payment may be paid via the Commission's website or by check or money order made payable to the "Public Utilities Commission of Ohio," and shall be mailed to Public Utilities Commission of Ohio, Attn: CF Processing, 180 East Broad Street, 4th Floor, Columbus, OH 43215-3793. Case No. 21-603-TR-CVF and inspection number OH3230016165D should appear on the face of the check.
- (d) The settlement agreement shall not become effective until adopted by an Order of the Commission. The date of the entry of the Commission Order adopting the settlement agreement shall be considered the effective date of the agreement.
- (e) The settlement agreement is made in settlement of all factual or legal issues in the case. The agreement is not intended to have any effect whatsoever in any other case or proceeding, except as described in Paragraph 9(a) above.

{¶ 10} The Commission finds that the settlement agreement submitted in this case is reasonable. Therefore, the settlement agreement shall be approved and adopted in its entirety. The Commission notes that in accordance with Ohio Adm.Code 4901:2-7-14(D), if the Respondent fails to comply with the provisions of the agreement for a period exceeding 30 days, Respondent shall be in default and shall be deemed to have admitted the occurrence of the violation and waive all further right to contest liability for the forfeiture originally assessed by Staff.

III. ORDER

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That the settlement agreement submitted in this case be approved and adopted in its entirety. It is, further,

{¶ 13} ORDERED, That Respondent pay the civil forfeiture of \$175 in accordance with the settlement agreement. Payment shall be made via the Commission's website or by check or money order payable to "Public Utilities Commission of Ohio," and mailed to the Public Utilities Commission of Ohio, Attn: CF Processing, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. To ensure proper credit, Respondent is directed to write Case No. 21-603-TR-CVF and inspection number OH3230016165D on the face of the check or money order. It is, further,

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

COMMISSIONERS:

Approving:

Jenifer French, Chair

Daniel R. Conway

Dennis P. Deters

John D. Williams

JMD/mef

**This foregoing document was electronically filed with the Public Utilities
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in

Case No(s). 21-0603-TR-CVF

Summary: Finding & Order that the Commission finds reasonable and approves the settlement agreement regarding a violation of the Commission's transportation rules. electronically filed by Ms. Donielle M. Hunter on behalf of Public Utilities Commission of Ohio.