

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF TRAVIOUS M.
EVANS, NOTICE OF APPARENT
VIOLATION AND INTENT TO ASSESS
FORFEITURE.

CASE NO. 20-1525-TR-CVF
(OH3278013264D)

OPINION AND ORDER

Entered in the Journal on February 21, 2024

I. SUMMARY

{¶ 1} The Commission finds that Staff demonstrated, by a preponderance of the evidence, that Travious M. Evans violated the Commission's transportation regulations.

II. PROCEDURAL HISTORY

{¶ 2} On May 24, 2019, Inspector Ryan Pack (Inspector Pack), a Motor Carrier Enforcement Inspector of the Ohio State Highway Patrol, stopped and inspected a commercial motor vehicle (CMV) operated by Western Express, Inc. and driven by Travious M. Evans (Respondent). At the time of the inspection, Inspector Pack prepared a report indicating one violation of the Federal Motor Carrier Safety Regulations (FMCSR), as published in the Code of Federal Regulations (CFR), specifically, 49 CFR 383.51(a), driving a CMV while commercial driver's license (CDL) is suspended for safety-related or unknown reason and outside the state of driver's license issuance.

{¶ 3} On March 24, 2020, Staff served Mr. Evans with a Notice of Preliminary Determination (NPD) in accordance with Ohio Adm.Code 4901:2-7-12. The NPD notified Respondent that Staff intended to assess a \$500 civil forfeiture for violating the Commission's transportation rules.

{¶ 4} A prehearing conference was conducted on November 24, 2020, but the matter was not resolved.

{¶ 5} Following the prehearing conference, the attorney examiner first scheduled the case for an evidentiary hearing to take place on July 12, 2022. However, in response to a series of requests to continue the hearing made by both Respondent and Staff, the hearing was rescheduled four times. Ultimately, the evidentiary hearing was convened on December 6, 2022, at the offices of the Commission.

{¶ 6} Assistant Attorney General, Robert Eubanks, appeared on behalf of Staff, with Mr. Rod Moser, Chief of the Compliance and Registration Sections of the Transportation Department, testifying. Also testifying on behalf of Staff was Inspector Pack of the Ohio State Highway Patrol.

{¶ 7} Mr. Evans appeared without legal counsel and 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 CFR Sections 40, 367, 380, 382, 383, 385, 386, 387, 390-397, to govern the transportation of persons or property in intrastate commerce. 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.

{¶ 9} 49 CFR 383.51(a) states, “A person required to have a CLP [commercial learner’s permit] or CDL who is disqualified must not drive a CMV.”

IV. ISSUE

{¶ 10} The issue in this case is whether Staff has satisfied its burden to show, by a preponderance of the evidence, that Respondent was driving a CMV without a valid CDL.

V. SUMMARY OF THE EVIDENCE

{¶ 11} Admitted into evidence at the hearing were the NPD (Staff Ex. 1) and a driver/vehicle examination report (Staff Ex. 2).

{¶ 12} Staff witness, Inspector Pack, testified that he has completed all training required for his position of Inspector (Tr. at 12). Inspector Pack recalled that on the date of the inspection, he chose to inspect Respondent's vehicle because the carrier of the vehicle had an Inspection Selection System score of 99, which is the highest score a carrier can have and still be in service (Tr. at 13). Inspector Pack identified Respondent as the driver of the vehicle (Tr. at 13). Inspector Pack testified that he did not find any violations on the vehicle itself, but when he checked the status of Respondent's license and CDL, he found that Respondent's CDL was under suspension. He indicated the suspension was recorded in both the Law Enforcement Automated Data System (LEADS) and Commercial Driver's License Information System (CDLIS) (Tr. at 14-15). Further, Inspector Pack said he was not aware of why Respondent's CDL was suspended as neither database lists that information (Tr. at 16).

{¶ 13} Staff's witness, Rod Moser, testified that he is the Chief of the Compliance and Registration Sections of the Transportation Department of the Commission. He indicated he is certified in regulatory standards as found in North American Standards Parts A and B, cargo tank regulations, general hazmat rules, and bulk and non-bulk carriers (Tr. at 7). He testified that when the Commission receives an inspection report alleging a violation, the Transportation Department sends the alleged violator a Notice of Apparent Violation and Intent to Assess Forfeiture. He confirmed that this notice was mailed to the Respondent (Tr. at 8). Mr. Moser further explained that the Transportation Department also

sent a second notice, known as an NPD, to Respondent. The NPD outlined Respondent's rights and options in relation to the alleged violation and set forth that Respondent was being assessed a civil forfeiture of \$500. He testified that the amount of the forfeiture was determined by state regulations and was the same for all individuals found to be in violation of 49 CFR 383.51(a) (Tr. at 8-10).

{¶ 14} Respondent testified that he was driving the vehicle on the day of the inspection. He acknowledged that his CDL was suspended on that date but explained that he was not aware of it until Inspector Pack told him of the suspension (Tr. at 18-19). He further explained that he later discovered that his CDL had been suspended by the State of Georgia on May 24, 2019, the same day of the inspection in Ohio. He did not receive the mailing from Georgia notifying him of the suspension until more than a week after the Ohio inspection occurred. Therefore, Mr. Evans reasoned he had no way of knowing he was driving without a CDL. (Tr. at 19-20). Respondent additionally testified his CDL had been suspended due to having two moving violations (Tr. at 20). Respondent said he no longer had a copy of his suspension notice from Georgia to present as evidence (Tr. at 20).

VI. COMMISSION CONCLUSION

{¶ 15} After reviewing the evidence, the Commission finds that Staff has demonstrated a violation of 49 CFR 383.51(a), operating a CMV without a valid CDL.

{¶ 16} Regarding the alleged CDL violation, Inspector Pack testified credibly that upon stopping Respondent he ran Mr. Evans's credentials in CDLIS and LEADS. Both systems indicated to the inspector that Mr. Evans's CDL had been suspended (Tr. at 14-15).

{¶ 17} The Respondent acknowledged that his CDL had been suspended by the State of Georgia (Tr. at 18-19). He further stated Georgia suspended his CDL on the same day he was inspected in Ohio, May 24, 2019; therefore, he had no way of knowing before Inspector Pack's inspection that his CDL had been suspended (Tr. at 19-20). For this reason, Respondent argues that he should not be held liable for the civil forfeiture.

{¶ 18} The Commission does not find Respondent's argument persuasive. He failed to provide easily obtainable independent evidence of the date of his suspension. Additionally, he admitted that he had received two moving violations prior to the Ohio inspection, and consequently, should have been aware that, as a result, a suspension was pending in his home state (Tr. at 20). However, even if the Commission views all the Respondent's testimony in his favor, 49 CFR 383.51(a) does not require an alleged violator to have actual knowledge that his CDL has been suspended for him to be held liable for driving under suspension. The rule imposes strict liability upon drivers for the status of their licensure. Here, Mr. Evans was driving a CMV in Ohio, his CDL was suspended at the time he was driving the vehicle; therefore, he was liable under the rule.

{¶ 19} Thus, Mr. Evans is directed to make payment of the \$500 civil forfeiture within 30 days of this Opinion and Order via the Commission website or by certified check or money order payable to "Public Utilities Commission of Ohio" and mailed or delivered to the Public Utilities Commission of Ohio, Attention: CF Division, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. Case Number 20-1525-TR-CVF and inspection number OH3278013264D should be written on the face of the certified check or money order to ensure proper credit.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 20} On May 24, 2019, Inspector Ryan Pack, a Motor Carrier Enforcement Inspector of the Ohio State Highway Patrol, stopped and inspected a CMV driven by Travious M. Evans. At the time of the inspection, Inspector Pack identified the following violation: 49 CFR 383.51(a), operating a CMV without a valid CDL.

{¶ 21} In accordance with Ohio Adm.Code 4901:2-7-12, Mr. Evans was served with an NPD on March 24, 2020. In the NPD, Respondent was notified that Staff intended to assess a civil forfeiture of \$500 for the violation.

{¶ 22} A prehearing conference was conducted on November 5, 2020, but the matter was not resolved. Accordingly, an evidentiary hearing was held on December 6, 2022.

{¶ 23} 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.

{¶ 24} Based on the record in this proceeding, the Commission finds that Staff has proven, by a preponderance of the evidence, that Mr. Evans was in violation of 49 CFR 383.51(a), operating a CMV without a valid CDL.

{¶ 25} Mr. Evans should be assessed the \$500 forfeiture for violating 49 CFR 383.51(a) and should pay the assessed forfeiture within 30 days of the date of this Opinion and Order.

VIII. ORDER

{¶ 26} It is, therefore,

{¶ 27} ORDERED, That Mr. Evans pay the \$500 civil forfeiture within 30 days of this Opinion and Order via the Commission website or by certified check or money order payable to “Public Utilities Commission of Ohio” and mailed or delivered to the Public Utilities Commission of Ohio, Attention: CF Division, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. Case Number 20-1525-TR-CVF and inspection number OH3278013264D should be written on the face of the certified check or money order to ensure proper credit. It is, further,

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

COMMISSIONERS:

Approving:

Jenifer French, Chair
Daniel R. Conway
Lawrence K. Friedeman
Dennis P. Deters

JWT/dr

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Case No(s). 20-1525-TR-CVF

Summary: Opinion & Order finding that Staff demonstrated, by a preponderance of the evidence, that Travius M. Evans violated the Commission's transportation regulations electronically filed by Debbie S. Ryan on behalf of Public Utilities Commission of Ohio.