

Received
on
JUL 29 2013
by
State Corporation Commission
of Kansas

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of the Investigation of **Mark Buss, d/b/a**)
Auto Transport of Newton, Kansas, Pursuant to the)
Kansas Highway Patrol Issuance of a Notice of)
Violation for Violation(s) of the Kansas Motor Carrier)
Safety Statutes, Rules and Regulations and the)
Commission's Authority to Impose Penalties,)
Sanctions and/or the Revocation of Motor Carrier)
Authority.)

Docket No. 13-GIMM-702-KHP

DIRECT TESTIMONY
OF
LIEUTENANT JASON HOFFMAN
ON BEHALF OF
THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

July 29, 2013

1 **Q. Please state your full name and business address.**

2 A. Jason Andrew Hoffman

3 2000 N. Poplar

4 Hutchinson, KS 67502

5 **Q. By whom and in what capacity are you employed?**

6 A. I am a Lieutenant employed by the Kansas Highway Patrol.

7 **Q. Please summarize your educational and professional background.**

8 A. In May of 2002, I graduated from Wichita State University with a Bachelor of Science
9 degree in Criminal Justice. From May 2003 through October 2003, I attended and
10 completed the 22-week Kansas Highway Patrol Training (KHP) Academy in Salina,
11 Kansas.

12 I attended the American Standard Inspection (A-Week) training in 2004. This
13 training included the general requirements for identifying a commercial vehicle, required
14 commercial vehicle documentation, driver's license requirements, physical requirements
15 of the drivers and extensive training on log books. This certification required on-the-job
16 inspections of at least 50 logbooks.

17 The North American Standard Inspection-B (B-Week) came next. This week-
18 long training included detailed operating systems knowledge and inspection of those
19 systems. The systems in this training included the required lights, windshield and wiper
20 systems, tires, wheels, brake systems, suspension systems, steering systems and required
21 seatbelts. At least eight hours was dedicated to proper securement of numerous types of
22 loads. This certification required on-the-job inspections of at least 35 commercial
23 vehicles.

1 Since 2005, I have attended CVSA annual re-certification training at our Training
2 Academy in Salina, Kansas.

3 **Q. Please explain your duties and responsibilities in your current position.**

4 A. Currently, I am assigned as a field supervisor over KHP personnel in Reno and Harvey
5 Counties. In addition to administrative duties, I also enforce traffic laws and perform law
6 enforcement duties primarily within those two counties. As part of my traffic law
7 enforcement duties, I maintain my CVSA Level II certification and periodically inspect
8 commercial motor vehicles.

9 **Q. Have you previously testified before this Commission?**

10 A. No.

11 **Q. Please explain circumstances leading to the March 27, 2013, stop and the subsequent
12 inspection of the commercial motor vehicle.**

13 A. I had just completed an accident investigation and was traveling northbound on K-61 at
14 11th Street in Hutchinson, Kansas at approximately 9:05 P.M. While stopped at the
15 intersection of K-61 and 11th Street, I observed a Ford F-350 pulling a three-axle flat-bed
16 trailer traveling westbound on 11th from Conklin Cars. The trailer was loaded with a
17 newer model pick-up truck, which later was found to be a 2012 GMC pick-up. I instantly
18 recognized the truck and trailer as being associated with Auto Transport, as I had
19 previously inspected the vehicle combination on April 6, 2012. As the truck proceeded
20 through the intersection, I observed a federal annual inspection sticker on the driver's
21 side front window, but did not observe the carrier's name or USDOT number displayed
22 on the vehicle. I also did not see a Kansas tag displayed on the rear of the three-axle flat-
23 bed trailer.

1 Shortly thereafter, I observed the truck turning into the rear of the Kwik Shop at
2 1330 E. 30th Avenue in Hutchinson. I then approached the vehicle and made contact with
3 the female driver and male passenger.

4 **Q. Please explain the significance of observing the annual inspection sticker on the**
5 **vehicle.**

6 A. The annual inspection sticker on the side of the truck indicates to me that the vehicle was
7 used in a commercial operation and previously subject to the Federal Motor Carrier
8 Safety Regulations (FMCSRs). The sticker on the side of the truck, plus other factors
9 such as the vehicle leaving Conklin Cars, the newer model GMC pickup on the trailer,
10 and my previous experience with that vehicle combination led me to believe this vehicle
11 was subject to the FMCSRs and inspection.

12 **Q. Are you familiar with the challenge raised by Mark Buss, d/b/a Auto Transport in**
13 **this matter?**

14 A. Yes; Mr. Buss claims this trip was not for hire and was a private move.

15 **Q. During the March 27, 2013 inspection, did you speak with Mr. Buss about this being**
16 **a private versus for-hire transportation?**

17 A. Yes, I did. Upon approaching the vehicle, I asked the driver, who was identified by her
18 Kansas Driver's License as Kelly Vanek, if she was working for Auto Transport. She
19 stated "No," and indicated that she was not working for anyone; however, further
20 conversation with the passenger, who was identified as Mark Buss, owner of Auto
21 Transport, indicated that this was a for-hire transportation.

22 **Q. Based on what factors or statements from Mr. Buss did you determine this was a**
23 **for-hire transportation?**

1 A. Mr. Buss stated that he and Ms. Vanek picked up the truck they were hauling from
2 Conklin Cars, for a friend, Steve Ayesh, who lives near Lake Afton, which was
3 approximately 45-50 miles away. I asked Mr. Buss why Mr. Ayesh would pay Mr. Buss
4 to deliver the vehicle when Mr. Ayesh could drive to Hutchinson to pick it up. Mr. Buss
5 did not know why, but indicated that Mr. Ayesh was paying Mr. Buss good money, and
6 that Mr. Ayesh was in a hurry to pick the vehicle up because he believed another party
7 was interested in purchasing the vehicle. Mr. Buss indicated that he informed Mr. Ayesh
8 that he was at home and did not want to pick up and deliver the truck, but Mr. Ayesh
9 persisted by offering to pay him, write something off, or give Mr. Buss parts, and that
10 Mr. Ayesh wanted Mr. Buss to “just go get the damn truck.”

11 I remarked to Mr. Buss that I was skeptical that he would load up his truck and
12 trailer at his home, in Newton, Kansas, drive to Hutchison to pick up the truck, deliver it
13 to the Wichita area, and then drive back to Newton, as that would use a considerable
14 amount of fuel. Mr. Buss replied, “Well, he’ll pay me for it.”

15 Based on Mr. Buss’ statement, I concluded this was a for-hire transportation.

16 **Q. After you determined this to be a for-hire transportation, what did you do next?**

17 A. Based upon the vehicle combination and the load, in addition to the statements made by
18 Mr. Buss, I concluded the vehicle and driver were subject to the Commission’s
19 jurisdiction and the Federal Motor Carrier Safety Regulations (FMCSRs) as adopted by
20 Kansas Administrative Regulations. Therefore, I conducted a Level II inspection.

21 **Q. Did you formally document the March 27, 2013, stop and inspection?**

1 A. Yes. This stop is documented in the Driver/Vehicle Examination Report Number
2 KS00QB000288. A true and correct copy of this report is attached hereto as Hoffman
3 Attachment "A." Additionally, this stop and inspection was video recorded with audio.

4 **Q. Please describe the vehicle involved in this stop.**

5 A. The power unit was a white 1996 Ford F-350 pick-up truck with Kansas tag [REDACTED]
6 with Vehicle Identification Number (VIN) [REDACTED] The truck was
7 pulling a black in color, three axle flat-bed trailer which should have been displaying
8 Kansas tag [REDACTED], with a Kansas assigned VIN of [REDACTED] The trailer was loaded
9 with a 2012 GMC 2500 HD pick-up truck.

10 **Q. Who was the driver operating the vehicle at the time of the stop?**

11 A. The driver, as identified by her Kansas driver's license, was Kelly J. Vanek.

12 **Q. Can you please explain the Kansas Highway Patrol's authority as it relates to the
13 stop and inspection of commercial motor vehicles?**

14 A. K.S.A. 74-2108 gives the Kansas Highway Patrol the authority to require the driver of
15 any motor vehicle operated by any motor carrier to stop and submit to an inspection to
16 determine compliance with the laws, rules and regulations relating to motor carriers.
17 Additionally, K.A.R. 82-4-2a gives the Kansas Highway Patrol the authority to examine
18 motor carrier equipment operating on the highways in Kansas, and examine the manner
19 of the motor carrier's conduct as it relates to the public safety and the operation of
20 commercial motor vehicles in Kansas.

21 **Q. At the time of the stop, how did you determine that the vehicle and its driver were
22 subject to the Federal Motor Carrier Safety Administration's (FMCSA) rules and
23 regulations?**

1 A. Initially, I observed the vehicle leave the area of Conklin Cars in Hutchinson with a
2 newer model pick-up truck on the trailer. I also recognized the pick-up and trailer
3 belonged to Auto Transport from a previous encounter with the same vehicle
4 combination. As the vehicle proceeded through the intersection, I observed an annual
5 inspection sticker on the driver's side front window of the truck.

6 After stopping the vehicle, I recognized the passenger as Mark Buss, the owner of
7 Auto Transport. While speaking with the vehicle's occupants, Mr. Buss indicated he left
8 Newton, drove to Hutchinson to pick up the truck, was going to deliver it to Mark Ayesh
9 near Lake Afton, then return to Newton. Again, Mr. Buss had indicated Mr. Ayesh
10 would give him some money for fuel, write off something, or give him some parts as
11 compensation for delivering the truck.

12 Additionally, the total weight rating of the combination vehicle was 16,000
13 pounds, which exceeds the 10,001 pound threshold definition of Commercial Motor
14 Vehicle under K.A.R. 82-4-1 and 49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.

15 Based upon my previous contact with the vehicle combination and passenger, the
16 size of the combination vehicle, plus the statements made during my contact with the
17 occupants, I believe the GMC pick-up was being transported from Conklin Cars in
18 Hutchinson to Wichita by Auto Transport for Steve Ayesh. Auto Transport was to be
19 compensated for the trip therefore making the vehicle and driver subject to FMCSA rules
20 and regulations.

21 **Q. Is there any additional information that helped you determine this was not a**
22 **personal trip?**

1 A. On March 28, 2013, I contacted Barry, sales manager at Conklin Cars. Barry stated they
2 sold the GMC pick-up to Mid-States Auto Sales at 4521 S. Broadway Wichita, KS.
3 Barry stated the wholesale dealer arranged transportation of the GMC from their lot.
4 Additionally, a receipt from Conklin Cars indicates the GMC, with VIN matching that of
5 the vehicle being transported by Auto Transport, was sold to Mid-States Auto Sales, Inc.,
6 and signed for by Steve Ayesh. A copy of this receipt is attached hereto as "Hoffman
7 Attachment B."

8 **Q. What were the vehicle's origin and destination?**

9 A. The trip originated in Hutchinson, Kansas, and the destination was Wichita, Kansas.

10 **Q. For the sake of clarification, where did the initial stop take place?**

11 A. The initial stop took place at the Kwik Shop at 1330 E. 30th Avenue, near 30th and
12 Lorraine Street in Hutchinson, Reno County, Kansas.

13 **Q. What type of inspection did you conduct? Please explain.**

14 A. I conducted a Level II Walk-Around inspection. This inspection includes at a minimum,
15 examination of the driver's license, medical examiner's certificate and Skills
16 Performance Evaluation Certificate (if applicable); alcohol and drugs; driver's record of
17 duty status as required; hours of service; seat belt systems; frames; fuel systems; lighting
18 devices (headlamps, tail lamps, stop lamps, turn signals and lamps/flags on projecting);
19 securement of cargo; steering mechanisms; suspensions; tires; van and open-top trailer
20 bodies; wheels, rims and hubs; windshield wipers; emergency exits and/or electrical
21 cables and systems in engine and battery compartments (buses), and Hazardous
22 Materials/Dangerous Goods (HM/DG) requirements as applicable. HM/DG required
23 inspection items will be inspected by certified HM/DG inspectors. It is contemplated that

1 the walk-around driver/vehicle inspection will include only those items, which can be
2 inspected without physically getting under the vehicle.

3 **Q. Did you identify any violations during the March 27, 2013, Level II Inspection?**

4 A. Yes, I identified six (6) violations of motor carrier safety rules and regulations. The
5 violations I identified are as follows:

- 6 1. No medical certificate in the driver's possession;
- 7 2. Driver did not have a valid operator's license for the CMV;
- 8 3. Operating a commercial motor vehicle after the effective date of an out of service
9 or cease and desist order;
- 10 4. No or improper load securement;
- 11 5. Failure to display license plate on rear of trailer;
- 12 6. Carrier name and USDOT not displayed as required.

13 **Q. How did you determine Ms. Vanek did not possess a medical certificate?**

14 A. At the beginning of the walk around inspection, I asked Ms. Vanek if she possessed a
15 medical card. Ms. Vanek replied no and was unable to produce one.

16 **Q. Please explain the rule relevant to possessing a medical certificate.**

17 A. 49 C.F.R. 391.41(a)(1)(i) as adopted by K.A.R. 82-4-3g prohibits a person subject to 49
18 C.F.R. Part 391 as adopted by K.A.R. 82-4-3g from operating a commercial motor
19 vehicle unless he or she is medically certified as physically qualified to do so, and when
20 on duty, the driver must possess a current medical examiner's certificate that he or she is
21 qualified to operate a commercial motor vehicle. 49 C.F.R. Part 391 as adopted by
22 K.A.R. 82-4-3g contains the qualification of drivers and applies to persons who drive
23 commercial motor vehicles, as well as motor carriers who employ themselves as a driver.

1 **Q. How did you determine the driver did not possess a valid operator's license for the**
2 **commercial motor vehicle?**

3 A. The driver identified herself by a Kansas Driver's License. I checked the license status
4 through my mobile data unit and also provided the License number to KHP Dispatch.
5 My mobile data unit and KHP Dispatch indicated Ms. Vanek's driving privileges were
6 suspended on March 12, 2013, for failure to maintain liability insurance.

7 **Q. Please explain the rule relevant to this violation.**

8 A. Pursuant to 49 C.F.R. 391.11(b)(5) as adopted by K.A.R. 82-4-3g, no person shall drive a
9 commercial motor vehicle unless he or she has a valid commercial motor vehicle
10 operator's license.

11 **Q. How did you determine this carrier was operating a commercial motor vehicle after**
12 **the effective date of an Unsatisfactory Rating and operational out of service order?**

13 A. During my first contact with the vehicle's occupants, Mr. Buss informed me he was
14 placed out of service. I confirmed Mr. Buss' statement by checking Auto Transport's
15 USDOT number through C-View. I also contacted Lieutenant Brent Hogelin and Captain
16 Christopher Turner via telephone who confirmed Auto Transport had been personally
17 served the out of service order. Finally, Mr. Buss stated he received the out of service
18 order from Trooper Newport.

19 **Q. Please explain the rule relevant to operating after an Unsatisfactory Rating.**

20 A. A motor carrier rated "unsatisfactory" by the FMCSA is prohibited from operating a
21 commercial motor vehicle beginning on the 61st day after the FMCSA notifies the carrier
22 of its "unsatisfactory" rating pursuant to 49 C.F.R. 385.13 as adopted by K.A.R. 82-4-3d.
23 FMCSA records indicate that on or around February 15, 2013, Mark Buss d/b/a Auto

1 Transport was served with an Order to Cease All Transportation in Interstate and
2 Intrastate Commerce and Revocation of Registration, effective February 27, 2013.

3 **Q. How did you determine the commercial motor vehicle did not have adequate load**
4 **securement?**

5 A. While conducting the walk around inspection, I observed the ramps used to load the
6 vehicle onto the trailer were resting upon the top of the trailer and were not secured in
7 any manner. Additionally, the trailer did not have any sides to contain the ramps on top
8 of the trailer.

9 **Q. What rule pertains to proper load securement?**

10 A. 49 C.F.R. 393.100 as adopted by K.A.R. 82-4-3i requires trucks, truck tractors, semi
11 trailers, full trailers, and pole trailers to be loaded and equipped with, and the cargo
12 secured to prevent the cargo from leaking, spilling, blowing or falling from the motor
13 vehicle.

14 **Q. How did you determine the license plate violation?**

15 A. Initially, I did not observe a license plate attached to the rear of the trailer. During my
16 contact with the vehicle's occupants, Mr. Buss produced the tag for the trailer, which was
17 located in the cab of the truck and not displayed on the rear of the trailer as required by
18 Kansas Statute.

19 **Q. Please explain the rule relevant to license plate display.**

20 A. 49 C.F.R. 392.2 as adopted by K.A.R. 82-4-3h requires every commercial motor vehicle
21 to be operated in accordance with the laws of the state of Kansas. K.S.A. 8-133 requires
22 license plates assigned to vehicles to be attached to and displayed on the rear of the
23 vehicle.

1 **Q. How did you determine the carrier's name and USDOT number were not properly**
2 **displayed?**

3 A. As the vehicle drove through the intersection of 11th and K-61 in Hutchinson, I did not
4 observe a USDOT number or carrier's name displayed on the driver's side of the vehicle.
5 While conducting the walk around inspection, I did not observe any marking on the truck
6 or trailer identifying the carrier's name or USDOT number.

7 **Q. What rule applies to the issuance and display of a USDOT number?**

8 A. K.A.R. 82-4-3h and 49 C.F.R. 390.21(a) as adopted by K.A.R. 82-4-3g require every
9 commercial motor vehicle subject to Federal Motor Carrier Safety Regulations to be
10 marked with a USDOT number in accordance with 49 C.F.R. 390.21(b), (c) and (d).

11 **Q. Is there anything further you wish to add to aid the Commission in its decision?**

12 A. While communicating with Mr. Buss, Mr. Buss acknowledged his operating authority
13 had been revoked, and stated he was trying to get issues straightened out with the KCC.
14 Mr. Buss then wanted to know what happened after being placed out-of service because,
15 as he stated, he figured he would run into this problem sooner or later. These statements
16 indicate that Mr. Buss knew or should have known he was not permitted to operate as a
17 motor carrier.

18 **Q. Thank you, Lieutenant Hoffman. Does this conclude your testimony?**

19 A. Yes, it does.

**HOFFMAN
ATTACHMENT "A"**

DRIVER/VEHICLE EXAMINATION REPORT

Aspen 2.14.0.1c



Kansas Highway Patrol
 MOTOR CARRIER SAFETY ASSISTANCE
 700 SW Jackson, Ste 704
 Topeka, KS 66603
 Phone: (785)296-7189 Fax: (785)296-2858

Report Number: KS00QB000288
 Inspection Date: 03/27/2013
 Start: 9:10:00 PM CT End: 10:28:00 PM CT
 Inspection Level: II - Walk-Around
 HM Inspection Type: None

MARK BUSS DBA AUTO TRANSPORT
 620 E 9TH ST
 NEWTON, KS 67114
 USDOT#: 01136740
 MC/MX#: _____
 State#: _____

Phone#: _____
 Fax#: _____

Driver: VANEK, KELLY J

 State: KS

CoDriver: _____

 State: _____

Location: RENO COUNTY - 155
 Highway: 30TH AND LORRAINE
 County: RENO, KS

MilePost: _____ Shipper: STEVE AHYSE
 Origin: HUTCHINSON, KS Bill of Lading: N/A
 Destination: WICHITA, KS Cargo: GMC PICK UP

VEHICLE IDENTIFICATION

Unit	Type	Make	Year	State	Plate #	Equipment ID	VIN	GVWR	CVSA #	CVSA Issued #	OOS Sticker
1	TR	FORD	1996	KS	_____	_____	_____	10,000			
2	ST	HMDE	1991	KS	_____	_____	_____	6,000			

BRAKE ADJUSTMENTS: No Brake Measurements Required For Level 2

VIOLATIONS

Vio Code	Section	Unit	OOS	Citation #	Verify	Crash	Violations Discovered
391.41A	391.41(a)	D	N		N	N	No medical certificate in driver's possession
391.11B5-DNL	391.11(b)(5)	D	Y		N	N	Driver does not have a valid operator's license for the CMV being operated. Driver's KS License suspended.
385.13A2	385.13(a)(2)	1	Y		U	N	Operating a commercial motor vehicle after the effective date of an Unsatisfactory rating - all other carrier types
393.100A	393.100(a)	2	Y		U	U	No or improper load securement. Two ramps laying on bed of trailer, no tie down securing ramps to trailer bed.
392.2RG	392.2	2	N		U	U	State vehicle registration or License Plate violation. K S A 8-133 fail to display trailer tag on rear of vehicle.
390.21B	390.21(b)	1	N		N	N	Carrier name and USDOT Number not displayed as required

HazMat: No HM Transported

PI: _____ No Cargo Tank:

Special Checks: No Data for Special Checks

* Pursuant to the authority contained in Title 49, CFR: K.S.A. 66-1,129; K.C.C. Reg. 82-4-3, I hereby declare KELLY VANEK "OUT OF SERVICE". No person and/or carrier shall permit and/or require this driver to operate any commercial vehicle until Has Valid Driver's License. This Out of Service condition may result in the assessment of a Civil Penalty being issued against the Carrier indicated on this report. Driver Initials _____

* Pursuant to the authority contained in Title 49, CFR: K.S.A. 66-1,129; K.C.C. Reg. 82-4-3, I hereby declare the above marked unit(s) as "OUT OF SERVICE". No person and/or carrier shall permit and/or require the removal of the "OUT OF SERVICE" stickers or the operation of this motor vehicle until ALL out of service defects have been corrected. This Out of Service condition may result in the assessment of a Civil Penalty being issued against the Carrier indicated on this report. Driver Initials _____

* NOTE TO MECHANIC: The undersigned certifies that all mechanical defects listed on this report HAVE BEEN CORRECTED at the time of signature.

Signature Of Repairer X: _____ Facility: _____ Date: _____

** DRIVER: THIS FORM IS REQUIRED TO BE RETURNED TO THE CARRIER BY REGULATION. ** * CARRIER CERTIFICATION: All defects on this sheet must be corrected or acknowledged PRIOR TO RE-DISPATCH and then certified by a responsible carrier official who must sign below. RETURN THIS FORM WITHIN 15 DAYS to the Motor Carrier, Division of the KANSAS HIGHWAY PATROL at the address listed at the top of this form.

Signature Of Motor Carrier X: _____ Title: _____ Date: _____

Report Prepared By:
 J.A. HOFFMAN

J.A. Hoffman

Badge #:
 0427

1437

Copy Received By:
 KELLY VANEK

Kelly Vaneck

Page 1 of 1



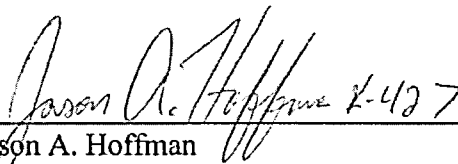
01136740 KS KS00QB000288

**HOFFMAN
ATTACHMENT "B"**

STATE OF KANSAS)
) ss.
COUNTY OF RENO)


VERIFICATION

Jason Andrew Hoffman, being duly sworn upon his oath deposes and says that he is Lieutenant for the Kansas Highway Patrol of the State of Kansas, that he has read and is familiar with the foregoing *Direct Testimony*, and that the statements contained therein are true and correct to the best of his knowledge, information and belief.



Jason A. Hoffman
Lieutenant
Kansas Highway Patrol
The State of Kansas

Subscribed and sworn to before me this 24th day of July, 2013.



Michelle R. Miller
Notary Public

My Appointment Expires: 10/20/2016



CERTIFICATE OF SERVICE

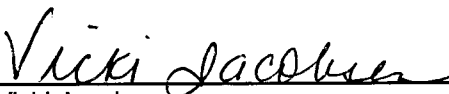
13-GIMM-702-KHP

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Direct Testimony of Lieutenant Jason Hoffman was placed in the United States mail, postage prepaid, or hand-delivered this 29th day of July, 2013, to the following:

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Vicki Jacobsen