

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. SA – 49 – 2011
:
vs. :
:
ROY STRUBLE TRUCKING, INC., :
Defendant : Summary Appeal

OPINION AND ORDER

Before the Court is Defendant’s appeal from the summary criminal conviction entered by Magisterial District Judge C. Roger McRae on May 18, 2011, in which he found Defendant guilty of the offense formally designated as “Unlawful Activities”, the gist of which was the driving of one of Defendant’s tractor trailers by an employee in violation of the “14 hour rule”.¹ A hearing on the appeal was held August 17, 2011.

The “14 hour rule” is a Federal Motor Carrier Safety Regulation which sets a limit on the number of hours a truck driver may drive and/or be on duty. There are several exceptions to the rule, and in this case, Defendant claims its driver, who was hauling sand to a gas well site, was not in violation of the regulations based on the exemption contained in Section 395.1(d)(2) of the regulations, which provides, in pertinent part:

(2) In the case of specially trained drivers of commercial motor vehicles which are specially constructed to service oil wells, on-duty time shall not include waiting time at a natural gas or oil well site; provided, that all such time shall be fully and accurately accounted for in records to be maintained by the motor carrier. ...

The Commonwealth agrees that if the Court applies this exemption, the conviction cannot stand as the time recorded on the driver’s log book as “off duty – well site” would not be included in calculating on duty time and thus the driver would not have been in violation of the rule..

Further, the Commonwealth does not dispute that the time was accurately accounted for. The only issues, therefore, are whether the driver was specially trained and whether the vehicle was

¹ It was explained at trial by the arresting officer that the citation was issued to the company rather than the driver because the driver indicated that the way he recorded his time in his log book was pursuant to company policy.

specially constructed, within the meaning of the regulation.

In support of its argument that the exemption applies, Defendant offered the testimony of Roy Struble, President of the company, respecting the modifications he has made to the tractor trailers driven by his drivers to the gas well sites, including the addition of tow hooks front and rear, elevation of the fifth wheel, the addition of longer hoses, and enhancement of the motor used to pump the sand from the tank on the trailer to the hopper at the well site. He also described the training provided to the drivers which enables them to operate the pump, as well as monitor the process of unloading. Mr. Struble explained that the modifications and training were designed to facilitate the delivery of the sand to the well sites. Defendant thus argues that the vehicles are specially constructed to service gas wells and that the drivers are specially trained, so as to bring the situation in the case at hand within the exemption.

Further clarification of what constitutes a specially trained driver or a specially constructed vehicle is not found in the regulations themselves, and there appears to be no case which has addressed this issue. Defense counsel did provide the Court with a copy of a decision by the Interstate Commerce Commission issued March 29, 1962, however, which, in addressing certain exceptions filed by various interests to various proposed changes to the regulations, does provide some insight into the exemption.² Specifically, the Commission noted the make-up of the trade association which had filed exceptions to the regulation at issue, and which would benefit from application of the exemption, as “three groups of companies: those which manufacture equipment for oil companies; those which deliver the equipment to the well sites; and those which provide specialized services at the well sites which are directly involved in the project.” 89 M.C.C. 19, 28. The Commission went on to note that “[t]he specialized service companies offer a variety of services to the petroleum drilling and producing industry, including testing, mudfilling, cementing, hydraulic fracturing, voltage, logging, and resistivity measurements, and cleaning of industrial equipment”, and that “[t]his group of specialized companies utilizes a number of unique types of mobile equipment, or rigs, in its operations”, which “normally consist of heavy machinery permanently mounted on

² In ruling on the exceptions before it, the Commission amended the regulations to allow the exemption with respect to motor vehicles engaged in the “servicing of the field operations of the natural gas and oil industry.” The

specially designed semitrailer chassis, designed to fill a specific need.” The Commission also noted that “[t]he drivers of these vehicles are specially trained in the operation of the various types of equipment used, and are regarded as equipment operators rather than as drivers by their employers.” *Id.* The Commission found that the equipment-operating duties of these drivers justified the exemption they sought.

In the instant case, the tractors and trailers, even though modified, do not provide specialized services at the well site; as important as the sand may be to the process, it is still simply a matter of delivering sand. The Defendant’s trailers are not specially designed to fill a specific need; they can be used to deliver other types of material. There is no equipment on the tractor trailers which is used in the well-drilling process; the equipment is used only to unload the trailer. The driver’s specialized training goes only to the unloading of the trailer and not to the well-drilling process. It thus appears that the tractor trailer at issue here is not specially constructed, and the driver is not specially trained, within the meaning of the regulation.

The Court finds further support for its position in the concluding explanatory statement of the Commission that “the exemption applies only to those driver-technicians who are employed exclusively in the transportation of *equipment* for use in servicing the well operations of the natural gas and oil developers, in the manner heretofore described. Any drivers used in ordinary over-the-road transportation operations in interstate commerce will fall within the provisions of the proposals and are not eligible for the exemption expressed.” *Id.* at 30 (emphasis added). The Court believes that the transportation of sand to the well site is more properly classified as an ordinary over-the-road transportation operation than the transportation of specialized equipment which is directly involved in the well-drilling project.

Accordingly, since the exemption does not apply in this instance, Defendant’s appeal will be dismissed.

regulation at present reads “constructed to service oil wells”. The Court believes that this slight change in the language does not affect the applicability of the Commission’s report to the issue at hand.

ORDER

AND NOW, this 18th day of August 2011, for the foregoing reasons, Defendant's appeal is hereby DISMISSED. Defendant is found guilty of one count of Unlawful Activities, 75 Pa.C.S. Section 4107(b)(2), a summary offense. Defendant shall pay a fine of \$500.00 and costs and fees totaling \$92.50, as detailed magisterial district judge's docket transcript.³

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
Dwight L. Koerber, Jr., Esq., 110 North Second Street, Clearfield, PA 16830
Gary Weber, Esq.
Hon. Dudley Anderson

³ It appears from the docket transcript that the fine, costs and fees have already been paid.