

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF TRANSPORTATION,)	
)	
Petitioner,)	
)	
vs.)	CASE NO. 91-4390
)	
DAN INGRAM MOBILE HOME)	
TRANSPORT, INC.,)	
)	
Respondent.)	
_____)	

RECOMMENDED ORDER

Upon due notice, this cause came on for formal hearing on August 26, 1991 in Tallahassee, Florida, before Ella Jane P. Davis, a duly assigned Hearing Officer of the Division of Administrative Hearings.

APPEARANCES

FOR PETITIONER: Vernon L. Whittier, Jr.
Assistant General Counsel
Department of Transportation
605 Suwannee Street, M.S. 58
Tallahassee, Florida 32399-0458

FOR RESPONDENT: No appearance

STATEMENT OF THE ISSUE

Whether or not the penalty of \$1,000 for operating a commercial vehicle in excess of the length allowed by permit assessed Dan Ingram Mobile Home Transport, Inc. by the Department of Transportation was correct pursuant to Section 316.550 F.S.

PRELIMINARY STATEMENT

Formal hearing was convened after sounding the docket in the waiting areas of the scheduled location, and Respondent did not appear. Accordingly, this cause is subject to dismissal pursuant to Rule 22I-6.022 F.A.C.

Nonetheless, the undersigned requested that Petitioner Department of Transportation put on a prima facie case.

Petitioner presented the oral testimony of Billy R. Barry, Lawrence Victor Grondzki, and Lieutenant Donald B. Spradley and had five exhibits admitted in evidence.

Although the docket was again sounded after the Petitioner had rested, the Respondent did not appear. Accordingly, no evidence was presented by Respondent.

No transcript was provided, but all timely filed proposed findings of fact have been ruled on in the appendix to this recommended order, pursuant to Section 120.59(2) F.S.

FINDINGS OF FACT

1. The Florida Department of Transportation (DOT) issued permit 066715 to Respondent Dan Ingram Mobile Home Transport on April 4, 1990, to cover the period May 1, 1990 through April 30, 1991, to allow Respondent to travel over state highways with loads of an overall length of 85 feet. "Length" as specified on such on permits means the overall length of the power unit and trailer as defined in the "Guide for Issuance of Oversize and Overweight Hauling Permits," which has been adopted by reference in Rule 14-26.012(1) F.A.C.

2. On March 26, 1991, Respondent was transporting a mobile home and stopped at the Ellaville weight station on Interstate Highway 10. The DOT inspector checked the permit and measured the Respondent's power unit and trailer, which measured 96 feet on a tape measure laid bumper to bumper.

3. Safety violation 022741 was issued against Respondent for operating its equipment 11 feet over length in violation of permit 066715.

4. Accordingly, the DOT assessed a penalty of \$200 for each foot over the 85 feet permitted, up to a maximum fine of \$1,000 against Respondent.

5. Issuance of the safety violation/fine assessment was in accord with Section 316.550 F.S. as amended effective October 1, 1990. The law as amended authorized inspectors at weight stations to issue violations for permit infractions. It was put into effect by the DOT during February 1991 to allow time for training of departmental personnel and education of the public. Previously, only certified law enforcement officers were authorized to issue such violations.

6. The DOT set the fine by reference to its Secretary's "Directive Establishing Fines for Operation of a Vehicle Without a Permit or in Violation of a Permit 775-070-001-A," issued for employees' use from October 1, 1990 to April 1, 1991, inclusive. Reference to that directive would have allowed a penalty of \$200 a foot up to \$1,000. Although there is no evidence that this written directive or policy was ever codified in a formal rule pursuant to Section 120.56 F.S., there is evidence that it was uniformly applied by DOT personnel during the time frame when the instant violation/fine occurred, and it is also clear that in its application thereof in the instant case, the agency did not invoke a fine in excess of the permissible statutory \$1,000 cap.

CONCLUSIONS OF LAW

7. The Division of Administrative Hearings has jurisdiction of the parties and subject matter of this cause. See, Section 120.57(1) F.S.

8. The DOT has authority to issue special oversize permits and to enforce permit requirements and levy fines for violation thereof, pursuant to Section 316.550 F.S.

9. Section 316.550 F.S. [1990 Supp.] provides, in pertinent part:

316.550 Operations not in conformity with law;
special permits.--

. . . No person shall violate any of the terms
or conditions of such special permit. The
department may impose fines for the operation
of a vehicle in violation of this section, in
an amount not to exceed \$1,000 per violation. . . .

10. At all times material, DOT Directive 775-070-001-A provided for a fine of \$200 for each foot that a load was in excess of the permit length, and Section 316.550 F.S. authorized the agency to impose fines up to a maximum of \$1,000 for each violation.

11. At all times material, the DOT "Guide for Issuance of Oversize and Overweight Hauling Permits," adopted by reference in Section 14-26.012(1) F.A.C., defined "length" as "OVERALL LENGTH - The total length of the vehicle and the load."

12. On March 26, 1991, the Respondent was operating a commercial vehicle on the highways of this state with a length eleven feet in excess of its maximum permitted length. Respondent's vehicle was therefore in violation of Section 316.550 F.S. on that date. The DOT inspector was authorized to issue the violation and collect a penalty/fine within the statutory maximum. Since the penalty/fine which the agency imposed was within the statutory limits and since some reasonable basis for the amount thereof has been demonstrated by the agency, the \$1,000 fine/assessment is concluded to be a lawful assessment in the absence of any evidence refuting its reasonableness.

RECOMMENDATION

Upon the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Transportation enter a Final Order finding that the penalty/fine of \$1,000 was correctly assessed Dan Ingram Mobile Home Transport, Inc. under the provisions of Section 316.550 F.S.

DONE and ENTERED this 18th day of September 1991 at Tallahassee, Florida.

ELLA JANE P. DAVIS, Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the Division
of Administrative Hearings this 18th
day of September 1991.

APPENDIX

The following constitute specific rulings pursuant to Section 120.59(2) F.S. upon the parties' respective proposed findings of fact (PFOF):

Petitioner's PFOF:

1-2 Except for mere legal argument, accepted.

Respondent's PFOF:

None filed.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS:

All parties have the right to submit written exceptions to this Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should consult with the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.