

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

STATE OF FLORIDA,)	
DEPARTMENT OF TRANSPORTATION,)	
)	
Petitioner,)	
)	
vs.)	CASE NO. 95-3897
)	
MARTIN LEASING,)	
)	
Respondent.)	
_____)	

RECOMMENDED ORDER

Notice was provided and on January 19, 1996, a formal hearing was held in this case. Authority for the conduct of the hearing is set forth in Section 120.57(1), Florida Statutes. The hearing location was Jacksonville, Florida. Charles C. Adams was the hearing officer.

APPEARANCES

For Petitioner: Murray M. Wadsworth, Jr.
Assistant General Counsel
Department of Transportation
Haydon Burns Building, Mail Station 58
605 Suwannee Street
Tallahassee, Florida 32399-0458

For Respondent: Tommy Martin, pro se
Post Office Box 624
Yulee, Florida 32097

STATEMENT OF THE ISSUES

Should Petitioner impose a fine on Respondent in the amount of \$1,902.00 for operating an over-weight motor vehicle on a bridge with weight limitations?

PRELIMINARY STATEMENT

Petitioner cited Respondent for operating an over-weight commercial motor vehicle on a low-limit bridge. Respondent contested the citation. Subsequently, the case was referred to the Division of Administrative Hearings to conduct a Section 120.57(1), Florida Statutes, hearing. The hearing took place on the aforementioned date.

At hearing, Petitioner presented witnesses, Officer Charles Hunter and Mr. Donald Duncan. Petitioner's Exhibits 1-14 were admitted. Mr. Tommy Martin, who owns Martin Leasing, and Mr. William Edward Bednar were presented as witnesses for Respondent.

A hearing transcript was filed on February 1, 1996. Petitioner submitted a proposed recommended order. Respondent did not. The fact proposals in the proposed recommended order are addressed in the Appendix to this recommended order.

FINDINGS OF FACT

1. On January 6, 1995, a truck owned by Martin Leasing was operating on State Road 520 in Orange and Brevard Counties, Florida. The driver was William Edward Bednar.

2. The truck was approximately 70 feet long, with five axles.

3. On that date, Officer Charles Hunter of the Motor Carrier Compliance Division of the Department of Transportation observed Mr. Bednar cross a low weight limit bridge leaving Orange County and entering Brevard County, Florida.

4. The weight limit for the bridge was 30,000 pounds.

5. Officer Hunter stopped the Martin Leasing vehicle and had it weighed on nearby scales that were certified. The truck weighed 68,040 pounds.

6. For that reason, Petitioner cited Respondent, pursuant to Section 316.545(3), Florida Statutes. As a consequence, a monetary assessment was levied against Respondent in the amount of \$1,902.00, which represents a penalty related to the 38,040 pounds overweight times \$.05 per pound.

7. Volume 3: Bridge Load Rating, Permitting and Posting Manual, Florida Department of Transportation, states, in pertinent part:

Weight limits to be shown on the posting signs at a bridge site, shall represent the gross vehicular weight (GVW) in tons for a maximum of three truck types. However, no more than one or two truck symbols may be needed. A graphic depiction of the general weight limit sign is shown on the Roadway and Traffic Design Standard Index No. 17357. The three truck types are as follows:

- a. Single unit trucks. (SU)
- b. Combination trucks with a single trailer. (C)
- c. Combination trucks with two trailers or a single unit truck with one trailer. (ST5)

The single unit truck case will be the lowest operating rating for two axle (SU2), three axle (SU3) and four axle (SU4) trucks. This single unit truck will be represented on the weight limit sign by a two axle single unit truck silhouette. The operating rating GVW may exceed the legal limit GVW of one or more truck types. In this case, these specific truck types would be excluded when establishing the lowest permissible operating rating. For example if the operating rating for the SU2 truck was 16,300 kg (18 tons) then the SU2 truck would not be considered for posting since the legal limit for the SU2 truck is

15,400 kg (15 tons).

The combination truck with one trailer will be the lowest permissible operating rating for three axle (C3), four axle (C4) and five axle (C5) trucks. This combination truck will be represented on the weight limit sign by a three axle combination truck silhouette (one trailer). The operating rating GVW may exceed the legal limit GVW of one or more truck types. In this case, these specific truck types would be excluded when establishing the lowest permissible operating rating. For example if the operating rating for the C3 truck was 26,300 kg (29 tons), then the C3 truck would not be considered for posting since the legal limit for the C3 truck is 25,400 kg (28 tons).

The combination truck with two trailers or a straight truck with one trailer will be governed by the operating rating for the single unit truck with one trailer (ST5). This combination truck will be represented on the weight limit sign by a silhouette of a two axle single unit truck pulling a two axle trailer.

8. Based upon the above-referenced manual, a combination truck with one trailer, such as the Martin Leasing truck, would be depicted on the posting signs for weight limits by a silhouette on the sign that shows a three axle combination truck with one trailer, whether the truck operating on the road has three axles, four axles, or five axles.

9. Rule 14-15.010, Florida Administrative Code, adopts the Manual on Uniform Traffic Control Devices, published by the United States Department of Transportation, Federal Highway Administration, 1988 Edition. That manual prescribes the size and character of the weight limit signs posted by Petitioner. Included on the sign are the three silhouettes that are referred to in the Petitioner's Manual for Bridge Load Rating, Permitting and Posting. In particular, the federal sign depicts a silhouette for the combination truck with one trailer, which silhouette has three axles.

10. In addition, Petitioner publishes a booklet through its Motor Carrier Compliance Office. That booklet is entitled: Florida Department of Transportation Trucking Manual. It is a handbook or guide for operating trucks in Florida. It refers to the low-limit roads and bridges in Florida and to the portrayal of those bridges on low-limit signs that have been described in the prior manuals. The trucking manual states:

Low Limit Roads and Bridges

Due to age, condition, or design, some roads and bridges in Florida cannot carry the load limits allowed in this manual. Signs detailing these lower limits have been posted on such roads and bridges. . . .

The maximum allowable weight is listed, in tons, beside the silhouette for each of the 3 classes of vehicles.

The SINGLE-UNIT TRUCK silhouette includes all straight trucks, cranes and other single-

unit special mobile equipment regardless of the number of axles.

The TRUCK TRACTOR SEMI-TRAILER silhouette includes all truck tractor combinations regardless of the number of axles.

The SINGLE-UNIT TRUCK WITH ONE TRAILER includes all MAXI-CUBE and TANDEM TRAILER combinations regardless of the number of axles.

Please watch carefully for all load limit signs and obey them.

11. The trucking manual gives an example of a weight limit sign with the truck silhouettes, to include the combination truck with one trailer, described in the trucking manual as a truck tractor semi-trailer. Under that description the Martin Leasing truck would be a tractor semi-trailer. Again, the trucking manual refers to the silhouette for a combination truck with one trailer to regulate any truck tractor combination in that configuration, regardless of the number of axles.

12. Notwithstanding Petitioner's intention to depict a combination truck and single trailer with three axles on its signs, to inform truckers operating that configuration, whatever numbers of axles are found on the operating truck, Respondent takes the view that the failure to depict a five-axle truck and single trailer combination means that Respondent need not comply with the posted weight limits. That is an unreasonable interpretation.

13. Respondent, through its driver, erroneously takes the view that the weight limits for the bridge in question depicted by signs with silhouettes showing single-unit trucks limited to 22,000 pounds; combination trucks with a single trailer limited to 30,000 pounds; and combination trucks with two trailers or a straight truck with one trailer limited to 36,000 pounds would not place Respondent on notice that its 68,040-pound truck, which was a combination with one trailer, should not have crossed the bridge, whatever the number of axles.

14. Adequate warning was provided to Mr. Bednar concerning the approach to the low weight limit bridge.

15. A weight limit sign, including the aforementioned information, was located nine miles prior to the bridge.

16. The nine-mile sign was located immediately before the junction of State Road 520 and State Road 528. Mr. Bednar could have exited on State Road 528.

17. A weight limit sign indicating "weight limit restriction ahead" was located closer to the bridge.

18. A weight limit sign depicting the information and describing the opportunity for last road exit from State Road 520, before entering the bridge, was provided. The last exit sign referred to the junction between State Road 520 and County Road 532. Mr. Bednar could have existed County Road 532.

19. Another weight limit sign was found within two miles of the bridge.

20. The bridge itself was posted with the weight limits that have been described.

CONCLUSIONS OF LAW

21. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties hereto pursuant to Section 120.57(1), Florida Statutes.

22. Given that Petitioner intends to impose a monetary assessment against Respondent, it must prove the allegations in the citation. See Florida Department of Transportation v. J.W.C. and Company, Inc., 396 So.2d 778 (Fla. 1st DCA 1981).

23. Section 316.640(1)(b)1., Florida Statutes, grants Petitioner the authority to enforce laws for which it is responsible on all streets and highways within the State of Florida. Section 316.555, Florida Statutes, provides, in pertinent part:

Anything in this chapter to the contrary notwithstanding, the Department of Transportation with respect to state roads . . . may prescribe, by notice hereinafter provided for, loads and weights . . . lower than the limits prescribed in this chapter and other laws, whenever in its . . . judgment any bridge . . . shall, by reason of its design, deterioration, rain, or other climatic or natural causes be liable to be damaged or destroyed by semi-trailers, if the gross weight thereof shall exceed the limits prescribed in said notice, the Department of Transportation . . . may, by like notice, regulate, or prohibit, in whole or in part, the operation of any specified class or size of . . . semi-trailers on any highways or specified parts thereof under its . . . jurisdiction, whenever in its . . . judgment, such regulation or prohibition is necessary to provide for the public safety and convenience on the highways, or parts thereof, by reason of traffic density, intensive use thereof by the traveling public, or other reasons of public safety and convenience After any such notice has been posted, the operation of any motor vehicle or combination contrary to its provisions shall constitute a violation of this chapter. . . .

24. Section 316.545(1), Florida Statutes, empowers a compliance officer for weight and safety within the Department of Transportation to require a motor vehicle to stop and submit to weighing in the event that the officer has reason to believe that the weight of the vehicle is unlawful.

25. If the weighing demonstrates that the person operating the motor vehicle has exceeded by more than 200 pounds the allowable weight, the driver is conclusively presumed to have damaged the highways of the State of Florida by reason of the overloading and is subject to an assessment, in this instance, at \$.05 per pound multiplied by 38,040 pounds, totaling \$1,902.00, pursuant to Section 316.545(3)(b), Florida Statutes.

26. Petitioner appropriately regulated the bridge weight limit, noticed truck operators concerning the limits, and provided the opportunity to exit the road before entering the bridge in question. Respondent's driver failed to abide by the requirements for weight limits, without justification. Thus, Respondent is subject to the penalty described.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a Final Order be entered which imposes a \$1,902.00 assessment against Respondent.

DONE AND ENTERED this 20th day of February, 1996, in Tallahassee, Florida.

CHARLES C. ADAMS, 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 20th day of February, 1996.

APPENDIX TO RECOMMENDED ORDER CASE NO. 95-3897

The following discussion is given concerning Petitioner's proposed findings of fact.

Paragraphs 1-11 are subordinate to facts found.

Paragraphs 12 and 13 are not necessary to the resolution of the dispute.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit to the agency written exceptions to this Recommended Order. All agencies allow each party at least ten days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact 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.