

1 BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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3 In the Matter of the :
4 Notice of Apparent :
5 Violation and Intent : Case No. 08-596-TR-CVF
6 to Assess Forfeiture :
7 Against James P. :
8 Matheny, Jr. :

9 - - -

10 PROCEEDINGS

11 Before Dick Bulgrin, Hearing Examiner, taken at
12 the Public Utilities Commission of Ohio, 180
13 East Broad Street, Columbus, Ohio, Hearing Room
14 11G, on Tuesday, January 20, 2009, at 2:00 p.m.

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20
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 - - -

1 APPEARANCES:

2 Richard Cordray, Attorney General of
3 Ohio and
4 Duane Luckey, Chief of the Public
5 Utilities Section,
6 By Thomas Lindgren
7 Assistant Attorney General
8 180 East Broad Street, 9th Floor
9 Columbus, Ohio 43215

10 On behalf of the Staff of the Public
11 Utilities Commission of Ohio.

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1 Tuesday Afternoon Session,
2 January 20, 2009.

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4 HEARING EXAMINER BULGRIN: This is
5 in the matter of the notice of apparent
6 violation and intent to assess forfeiture
7 against James P. Matheny, Jr., Case No.
8 08-596-TR-CVF which is inspection report No.
9 OH3271003440D as in David.

10 My name is Dick Bulgrin. I'm the
11 Attorney Examiner assigned by the Commission to
12 conduct the hearing and I will first note for
13 the record that Mr. Matheny is not present at
14 this time. Mr. Lindgren?

15 MR. LINDGREN: Yes, Your Honor. On
16 behalf of the Staff of the Commission, Ohio
17 Attorney General Richard Cordray and Dwayne
18 Luckey, chief of the Public Utilities section.
19 I am Thomas Lindgren, Assistant Attorney
20 General. My address is 180 East Broad Street,
21 9th Floor, Columbus, Ohio 43215.

22 HEARING EXAMINER BULGRIN: Thanks.
23 Are you ready to proceed?

24 MR. LINDGREN: Yes, Your Honor. The
25 Staff is ready, and the Staff calls Lew

1 DiRosario to the stand.

2 (witness sworn.)

3 HEARING EXAMINER BULGRIN: Please
4 be seated. Mr. Lindgren.

5 MR. LINDGREN: Thank you, Your
6 Honor.

7 - - -

8 LEWIS DIROSARIO
9 called as a witness on behalf of the Staff,
10 being first duly sworn, testifies as follows:

11 DIRECT EXAMINATION

12 By Mr. Lindgren:

13 Q. Mr. DiRosario, can you state and
14 spell your full name for the record, please.

15 A. Lewis John DiRosario,
16 D-i-R-o-s-a-r-i-o.

17 Q. Thank you. And what is your
18 business address?

19 A. I'm field representative in the
20 Delaware/Franklin County unit, but our main
21 office is on East Dublin-Granville Road.

22 Q. Thank you. And who is your
23 employer?

24 A. The Department of Public Safety, the
25 State of Ohio.

1 Q. And did you say your position was
2 field representative?

3 A. Yes, inspector, motor carrier
4 inspector, the Department of Commercial Motor
5 Vehicles.

6 Q. How long have you been in that
7 position?

8 A. Since 1986.

9 Q. And what are your duties in that
10 position?

11 A. The duties include, but are not
12 limited to, stopping random motor vehicles and
13 inspecting for compliance with the Federal Motor
14 Carrier Safety Regulations.

15 Q. What sort of training have you
16 received for your job duties?

17 A. Numerous classes throughout the
18 year, and some include level 1 CVSA, Commercial
19 Vehicle Safety Alliance, Driver Commercial
20 Vehicle Safety Alliance, and hazardous material
21 courses, and inspector and officer safety
22 classes, and constantly being updated.

23 Q. Do you hold any certifications in
24 connection with your job?

25 A. Yes. I am certified to conduct, to

1 stop and conduct inspections under Commercial
2 Vehicle Safety Alliance for my certification.

3 Q. Thank you. Do you recall being on
4 duty on August 16 of 2007?

5 A. Yes, I do.

6 Q. And do you recall inspecting a
7 vehicle driven by James Matheny on that date?

8 A. I do recollect the configuration of
9 the vehicle and the location of the stop and
10 inspection, and through the inspection, the
11 violation. I do remember the stop. As to the
12 specific person, I don't.

13 Q. Do you recall at all what prompted
14 you to stop and inspect this vehicle?

15 A. A random safety inspection for
16 compliance with the Federal Motor Carrier Safety
17 Regulations.

18 Q. Okay. Was this at a weigh station
19 or was it on the roadside?

20 A. It was on a roadside which I very
21 frequently check that area on Interstate 71 and
22 I pull them into the rest area to do the safety
23 inspection and that's where this one was
24 located, in the rest area.

25 Q. Thank you.

1 MR. LINDGREN: May I approach the
2 witness?

3 HEARING EXAMINER BULGRIN: Yes.
4 (EXHIBIT HEREBY MARKED.)

5 MR. LINDGREN: Let the record show
6 I'm handing the witness what has been marked as
7 Staff Exhibit 1.

8 Q. Mr. DiRosario, do you recognize this
9 document?

10 A. Yes, I do.

11 Q. And can you explain what it is?

12 A. This was an inspection that was
13 procured out of my lap top on Interstate 71 in
14 the rest area on said date, the 16th of August
15 of '07, on a random safety inspection, and
16 according to the violation detail, the driver
17 was disqualified at that instance in time; and
18 through normal practice, I run the driving
19 record through NCIC on the lap top in the
20 vehicle and follow up with a call to the
21 dispatcher on call to do a hand check or a file
22 check or an Ohio driver's license to ensure that
23 this was a proper placement out-of-service
24 driver.

25 Q. Did you prepare this report?

1 A. Yes, I did, sir.

2 Q. And is everything in it accurate?

3 A. To the best of my knowledge, it is.

4 Q. You used the term NCIC; is that
5 correct?

6 A. Yes, that.

7 Q. Can you explain what that is?

8 A. It would be a database which permits
9 an inspector to run a driver's license for the
10 exclusive use of a safety inspection to ensure
11 that that driver is qualified to drive that
12 motor vehicle by definition at that instance in
13 time.

14 Q. Did you use that database for the
15 driver in this case?

16 A. Yes, I did, as well as all the other
17 stops that I do throughout the work day.

18 Q. And what was the result of your
19 searching in this case?

20 A. The computer screen noted that the
21 driver was disqualified for an FRA suspension
22 from January 19 of that year to indefinite, and
23 I also followed up with a call to the dispatcher
24 on call to make sure that that information was
25 valid and accurate at that instance in time.

1 Q. And did the -- what was the result
2 of that call?

3 A. They did concur with the findings in
4 the vehicle that the computer NCIC was updated
5 and the driver was disqualified.

6 Q. Thank you. You used the term FRA
7 suspension. Can you explain what that means?

8 A. Through my conversations with the
9 state troopers in the field and at the post,
10 after reviewing the driver's license, the said
11 subject needed to file his insurance with the
12 BMV and post a bond to the situation that it
13 expired and it was suspended on January 19 of
14 '07; and according to the report in
15 conversations with the state troopers, the
16 driver went ahead and paid the bill, filing
17 posting on the next day, and his driver's
18 license was reinstated.

19 Q. Thank you. Did you give a copy of
20 this report to the driver following your
21 inspection?

22 A. Yes, I did, as well as all the other
23 stops that I make, the driver receives a copy of
24 the inspection report.

25 Q. Thank you.

1 MR. LINDGREN: May I approach the
2 witness again?

3 HEARING EXAMINER BULGRIN: Yes.

4 (EXHIBIT HEREBY MARKED.)

5 MR. LINDGREN: Let the record show
6 I'm handing the witness what has been marked as
7 Staff Exhibit 2.

8 Q. Mr. DiRosario, do you recognize
9 this document?

10 A. Yes, I do.

11 Q. And can you explain what it is?

12 A. To the best of my knowledge, it is
13 Mr. Matheny's current driving record for today
14 and the prior years in which this was used upon
15 the initial stop that showed that the driver was
16 disqualified; and this is the document that was
17 used to confer with my colleagues and
18 supervisors of the disqualification of the
19 driver.

20 Q. Where is the source of this
21 document?

22 A. I do believe that this would be the
23 BMV, Bureau of Motor Vehicles driving record,
24 and NCIC check for misdemeanor and felony
25 warrants for this driver throughout the whole

1 United States.

2 Q. Did you print out this document or
3 did someone else?

4 A. Initially, when I made the stop, I
5 used my computer screen with voice radio. The
6 document was printed last Wednesday at the local
7 patrol post which has the authority to run the
8 NCIC check to prepare for a proceeding or
9 litigation or to clarify any issues.

10 Q. Thank you. Can you explain what
11 this document shows about Mr. Matheny's license
12 on the date of the inspection which was August
13 16, 2007?

14 A. Correct. This document also shows
15 that Mr. Matheny was disqualified January 19 of
16 '07 indefinitely for failing to pay a fee, and
17 this document also shows that the fee was paid
18 the following day on August 17 of '07 in which
19 the driving privileges were reestablished and
20 reinstated.

21 Q. So he paid the fee the day after you
22 inspected his vehicle?

23 A. Correct, according to this document.

24 Q. Thank you.

25 MR. LINDGREN: I have no further

1 questions for this witness.

2 HEARING EXAMINER BULGRIN: Mr.
3 DiRosario, does it show -- looking at Staff
4 Exhibit 2, can you tell whether he currently is
5 authorized to or qualified, I should say, to
6 drive?

7 THE WITNESS: Through numerous
8 discussions with state highway patrol personnel,
9 supervisors and myself, we can say that on 02-28
10 of year 2008 he was again disqualified for
11 failure to pay a fee, from 2-28 of '08 to
12 indefinite. To the best of our ability he now
13 has no driving privileges.

14 HEARING EXAMINER BULGRIN: So if you
15 stopped him today on the road he would --

16 THE WITNESS: On a random safety
17 inspection and we followed the same procedures
18 of running NCIC and asking a dispatcher for time
19 checks and hand checks, it would be my belief,
20 to the best of my ability, that he would not
21 have driving privileges.

22 HEARING EXAMINER BULGRIN: Thank
23 you. Anything further?

24 MR. LINDGREN: No, thank you. The
25 Staff now calls Thomas Forbes to the stand.

1 WILLIAM THOMAS FORBES

2 called as a witness on behalf of the Staff,
3 being first duly sworn, testifies as follows:

4 DIRECT EXAMINATION

5 By Mr. Lindgren:

6 Q. Good afternoon, Mr. Forbes.

7 A. Good afternoon.

8 Q. Can you state and spell your name
9 for the record, please.

10 A. William Thomas Forbes, F-o-r-b-e-s.

11 Q. What is your business address?

12 A. 180 East Broad Street, 14th Floor,
13 Columbus, Ohio 43215.

14 Q. And who is your employer?

15 A. The Public Utilities Commission of
16 Ohio.

17 Q. What position do you have with the
18 Public Utilities Commission?

19 A. I'm a compliance officer in the
20 civil forfeiture section.

21 Q. How long have you been in that
22 position?

23 A. Roughly three and a half years.

24 Q. And what are your duties in that
25 position?

1 A. I review field inspection reports
2 and compliance review and prepare assessments.
3 I mail out the fines, enter the fine amounts in
4 the computers. I conduct settlement conferences
5 with the respondents, answer technical questions
6 dealing with the Federal Motor Carrier Safety
7 regulations as well as the hazardous material
8 regulations. I also conduct roadside
9 inspections to keep my certifications current
10 and attend hearings and in-service training.

11 Q. Thank you. Have you reviewed the
12 case file for this case?

13 A. Yes, sir.

14 Q. Thank you.

15 MR. LINDGREN: May I approach the
16 witness?

17 HEARING EXAMINER BULGRIN: Yes.

18 (EXHIBIT HEREBY MARKED.)

19 MR. LINDGREN: Let the record show
20 I'm handing the witness what has been marked as
21 Staff Exhibit 3.

22 Q. Mr. Forbes, do you recognize this
23 document?

24 A. Yes.

25 Q. Can you explain what it is?

1 A. Is is a letter that the compliance
2 division sends to the responsible party, in this
3 case Mr. Matheny, of a notice of a violation, an
4 apparent violation, and an intent to assess a
5 civil forfeiture.

6 Q. What was the violation and the
7 forfeiture noted here?

8 A. The violation noted was Code 391.15A
9 and it was driving a commercial motor vehicle
10 while disqualified. The forfeiture amount
11 proposed was \$500.

12 Q. Thank you.

13 MR. LINDGREN: May I approach the
14 witness again?

15 HEARING EXAMINER BULGRIN: Yes.

16 (EXHIBIT HEREBY MARKED.)

17 MR. LINDGREN: Let the record show
18 that I'm handing the witness what has been
19 marked as Staff Exhibit 4.

20 Q. Mr. Forbes, do you recognize this
21 document?

22 A. Yes, sir.

23 Q. Can you explain what this is?

24 A. This is a notice of preliminary
25 determination letter that is sent to the

1 respondent and, again, in this case Mr. Matheny,
2 after a settlement conference was held with a
3 compliance officer in the civil forfeiture
4 division, and this letter indicates that a
5 settlement was not reached, that at the end of
6 the settlement conference the respondent wanted
7 to further contest the violation. So no
8 reduction or settlement of the forfeiture was
9 reached and the fine remained at \$500.

10 Q. Thank you. Can you explain how the
11 forfeiture amount of \$500 was calculated?

12 A. The violation for non-hazmat
13 violations are broken up into four categories.
14 Categories 1, 2 and 3 are violations that
15 require being out of service and are typically
16 equipment violations. Category 4 violations
17 deal more with driving qualifications, medical
18 cards, authority for carriers, alcohol
19 violations, and this was a category 4 violation
20 and in category 4 violations, there is a set
21 forfeiture assigned to each violation code, and
22 this Code 391.15A has a set forfeiture of \$500
23 assigned to it.

24 Q. So is that the amount you typically
25 assess for this type of violation?

1 A. Yes, sir.

2 Q. Are these forfeiture amounts based
3 on any guidelines of any organization?

4 A. They are consistent with the CVSA
5 standard for fines.

6 Q. And is this fine consistent with
7 the CVSA standards for this violation?

8 A. Yes.

9 Q. Is the forfeiture of \$500 the
10 amount you would recommend to the Commission if
11 they find that the driver in this case committed
12 the violation he was cited for?

13 A. Yes, sir.

14 MR. LINDGREN: Thank you. I have no
15 further questions for this witness.

16 HEARING EXAMINER BULGRIN: Thank
17 you. You may step down.

18 MR. LINDGREN: The Staff has no
19 other witnesses and at this time I would like to
20 move the admission of Staff Exhibits 1 through 4.

21 HEARING EXAMINER BULGRIN: They will
22 be so admitted.

23 (EXHIBITS HEREBY ADMITTED.)

24 MR. LINDGREN: And the Staff rests
25 its case.

1 HEARING EXAMINER BULGRIN: Okay.
2 And I would again note for the record that Mr.
3 Matheny did not appear and we've not heard from
4 him, so the record in this case will be
5 submitted to the Commission. Thank you.

6 MR. LINDGREN: Thank you.

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8 Thereupon, at 2:30 p.m. the case was
9 concluded.

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CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter before the Public
Utilities Commission of Ohio on Tuesday, January
20, 2009.

Iris I. Dillion, Registered
Professional Reporter.

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This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 08-0596-TR-CVF

Summary: Transcript James Matheny 1/20/09 electronically filed by Mrs. Jennifer D. Duffer on behalf of Armstrong & Okey, Inc.