

1 BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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3
4 In the Matter of the Request :
5 of John R. Schneider for an : Case No.
6 Administrative Hearing. : 08-379-TR-CVF

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8 PROCEEDINGS

9 Before Dick Bulgrin, Attorney Examiner, held at
10 the offices of the Public Utilities Commission
11 of Ohio, 180 East Broad Street, Hearing Room
12 11-D, Columbus, Ohio, on Monday, February 14,
13 2011, at 10:00 A.M.

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 - - -

1 APPEARANCES:

2 Mr. Werner L. Margard, III
3 Assistant Attorney General
4 180 East Broad Street
5 Floor 6
6 Columbus, Ohio 43215

7 On behalf of the Staff of the
8 Public Utilities Commission
9 of Ohio.

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1 Monday Morning,
2 February 14, 2011.
3 11:00 A.M.
4 - - -

5 ATTORNEY EXAMINER: Good morning.
6 This is the hearing in Case No. 08-379-TR-CVF
7 being in the matter of John R. Schneider, notice
8 of apparent violation and attempt to assess
9 forfeiture, Inspection Report No. OH3296004432.
10 My name is Dick Bulgrin, I am the
11 Attorney Examiner assigned by the Commission to
12 conduct this hearing.

13 And I would note for the record that
14 Mr. Schneider is not present and I have not
15 received any word from him. Mr. Margard, would
16 you put in an appearance?

17 MR. MARGARD: Thank you, Your Honor.
18 Good morning. On behalf of the Transportation
19 Staff of the Public Utilities Commission of
20 Ohio, Ohio Attorney General Michael DeWine,
21 Public Utilities Section Chief William L.
22 Wright, by Assistant Attorney General Werner L.
23 Margard, 180 East Broad Street, 6th Floor,
24 Columbus, Ohio 43215.

25 ATTORNEY EXAMINER: Thank you. And

1 you have not heard from Mr. Schneider either?

2 MR. MARGARD: I have not, Your
3 Honor. And in his absence I would respectfully
4 request and move that a default judgment be
5 entered against Mr. Schneider. We are
6 nonetheless prepared to go forward with our case
7 in this matter.

8 ATTORNEY EXAMINER: Okay. Let's go
9 ahead and do that.

10 MR. MARGARD: Thank you, Your Honor.
11 And for my first witness I would call Officer
12 Mark Lambert to the stand, please.

13 (WITNESS SWORN)

14 - - -

15 MARK LAMBERT
16 called as a witness on behalf of the Staff,
17 being first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 By Mr. Margard:

20 Q. Good morning. Will you state your
21 name and business address for me, please?

22 A. Mark Lambert. Business address is
23 Massillon District Headquarters. I don't
24 remember the street address.

25 Q. And by who are you employed?

1 A. State of Ohio, State Highway Patrol,
2 Motor Carrier Enforcement.

3 Q. And how long have you been employed
4 in that capacity?

5 A. Since May of '83.

6 Q. Do you have any special training to
7 conduct motor vehicle inspections?

8 A. Right. I have the North American
9 Standard Course. Certified in that.

10 Q. Officer Lambert, were you on duty on
11 Valentines Day 2006?

12 A. I was.

13 Q. Do you recall what your assignment
14 was on that day?

15 A. I was in Summit County.

16 Q. Just regular road patrol?

17 A. Road patrol.

18 Q. And in the course of your duties
19 that day did you have an opportunity to inspect
20 a vehicle being operated by the Respondent in
21 this matter, John Schneider?

22 A. Yes, I did.

23 Q. And as a result of that inspection
24 did you generate an examination report, Report
25 No. OH3296004432?

1 A. Yes, I did.

2 Q. Before I discuss your report, do you
3 have an independent recollection at all today as
4 you sit here of that examination?

5 A. No.

6 MR. MARGARD: Your Honor, may I
7 approach?

8 ATTORNEY EXAMINER: Yes.

9 Q. Officer Lambert, you have before you
10 what is marked for purposes of identification as
11 Staff Exhibit No. 1, a two-page document that
12 appears to be that examination report; is that
13 correct?

14 A. Yes.

15 Q. And have you had an opportunity to
16 review this document?

17 A. Yes.

18 Q. And is this a true and accurate copy
19 of the report that you generated on that day?

20 A. Yes.

21 Q. And can you tell me how you
22 conducted your inspection and what you found,
23 please?

24 A. I was in the cross-over and observed
25 this vehicle driving by me southbound. And I

1 saw a flat tire. I was about 145, at 142 there
2 was a rest area.

3 So I activated the lights, pulled in
4 the rest area and did the inspection. And
5 during the inspection I found a few out of
6 service. Two flat tires, U-bolt assembly loose,
7 three brakes out of adjustment.

8 Which he was put out of service for
9 the flat tire, U-bolt assembly and brakes. And
10 some lighting violations also.

11 Q. And the out of service violations
12 were all noted in the violations section of this
13 report in the column noted OOS designating out
14 of service, and each of those is denoted by a Y;
15 is that correct?

16 A. Yes.

17 Q. Could you tell me briefly how you
18 inspected the brakes?

19 A. I had the driver get to 100 psi and
20 release all the brakes. I went under there and
21 took my measurements. And I had him apply one
22 time and took measurements from the release to
23 the applied position.

24 Q. Very good. There is also a column
25 on this report that says verified. Do you know

1 what that is for?

2 A. Yes.

3 Q. And what is this here for?

4 A. That would be like say if I had a
5 turn signal out and I could fix it during
6 the inspection I will put an A that it was
7 repaired and it would say verified, yes.

8 Q. In this column there are Ns and Us.
9 I would assume the N means no. What does the U
10 signify?

11 A. Unknown at the time of the
12 inspection.

13 Q. Does that then indicate that you
14 left the scene prior to whatever repairs being
15 completed?

16 A. Yes.

17 Q. So, at the time that you were done
18 with your examination you generated this report,
19 I presume a copy was given to the driver; is
20 that correct?

21 A. Yes.

22 Q. And a copy was ultimately uploaded
23 here to the Commission; is that correct?

24 A. Yes.

25 Q. And was any kind of a sticker or

1 designation put on the vehicle to indicate that
2 it was out of service?

3 A. Right there out of service sticker
4 placed on both the tractor and the trailer.

5 Q. And at the time that you left the
6 driver was out of service in the rest area and
7 was informed that he was not to move the vehicle
8 until the repairs had been made; is that
9 correct?

10 A. Correct.

11 Q. And you have no further personal
12 knowledge of what happened to that vehicle after
13 your inspection; is that correct?

14 A. Correct.

15 Q. Let me just for the sake of
16 completeness here note that at the time this
17 driver was hauling cargo designated as other,
18 and the shipper was Cargill Incorporated. And
19 he was on his way to Navarre, Ohio; is that
20 correct?

21 A. Correct.

22 MR. MARGARD: Your Honor, I have no
23 further questions of Inspector Lambert.

24 ATTORNEY EXAMINER: Okay. Thank
25 you. You can step down.

1 MR. MARGARD: Your Honor, I would
2 respectfully call Inspector Doug Bell to the
3 standing, please.

4 (WITNESS SWORN)

5 - - -

6 DOUG BELL

7 called as a witness on behalf of the Staff,
8 being first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 By Mr. Margard:

11 Q. Will you please state your name
12 and business address?

13 A. Douglas A. Bell, District
14 Headquarters, Massillon State Highway Patrol.

15 Q. And you are employed by the State
16 Highway Patrol?

17 A. Yes, sir.

18 Q. And in what position?

19 A. I am a Motor Carrier Inspector.

20 Q. And how long have you been doing
21 that job?

22 A. About 25 years.

23 Q. And do you also have specialized
24 training to conduct motor vehicle inspections?

25 A. Yes, sir. North American.

1 Q. Thank you, sir. With respect to the
2 inspection that has already been testified to by
3 Inspector Lambert, you were not present for that
4 inspection; is that correct?

5 A. No, sir.

6 Q. Were you on duty on February 15th,
7 2006?

8 A. Yes, sir.

9 Q. That is the day following Inspector
10 Lambert's inspection?

11 A. Yes, sir.

12 Q. And in the course of your duties on
13 that date did you have an opportunity to inspect
14 this same vehicle operated by this same driver?

15 A. Yes, sir.

16 Q. And as a result of that inspection
17 did you generate an inspection report,
18 specifically report No. OH3274004506?

19 A. Yes, sir.

20 MR. MARGARD: May I approach, Your
21 Honor?

22 ATTORNEY EXAMINER: Yes.

23 Q. Inspector Bell, you have before you
24 a two-page exhibit marked for purposes of
25 identification as Staff Exhibit No. 2.

1 A. Yes, sir.

2 Q. Is this a copy of that examination
3 report?

4 A. Yes, sir.

5 Q. Now, again, before we talk about the
6 report, do you have an independent recollection
7 of what happened at the time of this inspection?

8 A. Vaguely.

9 Q. Have you had an opportunity to
10 review this report?

11 A. Yes, sir.

12 Q. And is this a true and accurate copy
13 of the report that you generated on that date?

14 A. Yes, sir.

15 Q. And did reviewing this report help
16 to fresh your recollection of the events of that
17 date?

18 A. Yes, sir.

19 Q. Can you briefly explain to us how
20 you came to inspect this vehicle and what your
21 findings were?

22 A. I was in Stark County doing a random
23 rolling patrol of the county and randomly pulled
24 over this vehicle northbound on State Route 421.

25

1 Q. This was strictly a random
2 inspection? This was not an obvious violation?

3 A. Yes, sir.

4 Q. Okay. And in the course of
5 inspecting this vehicle what did you discover?

6 A. I approached the vehicle and
7 the driver told me that he was just inspected
8 the day before. And he gave me a copy of the
9 report that was generated the day before, which
10 showed some out of service items.

11 So I just went around and verified
12 that the out of service was taken care of and
13 going to get him out of there without doing
14 another report. And when I was checking the out
15 of service violations I noticed that the front
16 brakes were out of adjustment. Therefore, I
17 went ahead and did a whole new inspection report
18 on him.

19 Q. And you also found a number of out
20 of service violations, specifically the brake
21 violations; is that correct?

22 A. Yes, sir.

23 Q. Now, have you had an opportunity to
24 review the inspection report conducted by or
25 completed by inspector Lambert?

1 A. Yes, sir.

2 Q. And what was your conclusion with
3 respect to the brake adjustment measurements?

4 A. They were the exact same. The
5 driver had told me that the mechanic -- that
6 the mechanic didn't have a wrench with him when
7 he came down to fix that stuff, and he was going
8 to fix it after he got done with this load that
9 they had to get in the morning here.

10 Q. The driver acknowledged to you that
11 the brakes had not in fact been fixed after the
12 inspection?

13 A. Yes, sir.

14 Q. And just to be clear, this
15 particular load was a dry bulk commodities load
16 shipped on behalf of Allied Corporation.

17 A. Yes, sir.

18 Q. This is a different load?

19 A. Yes, sir. The driver stated that in
20 the morning he got there and he had to get to
21 Massillon to get that load because it needed
22 picked up. And that the mechanic was going to
23 adjust the brakes when he got back.

24 Q. And so you completed this report,
25 gave a copy of this report to the driver and

1 uploaded a copy to the Commission?

2 A. Yes, sir.

3 Q. And I assume that when you placed
4 him out of service you also placed a sticker on
5 the vehicle?

6 A. Yes, sir.

7 Q. And I note that the verification
8 column on your report also indicates a U. Do I
9 presume that that means that after you gave him
10 the report you also left the scene without
11 verifying that in fact the brake repairs had
12 been completed?

13 A. Yes, sir. The mechanic wasn't on
14 the scene yet.

15 Q. Is there anything else regarding
16 this inspection that you think the Commission
17 needs to know to be able to make a determination
18 that Mr. Schneider operated this vehicle without
19 having completed the repairs while the vehicle
20 was out of service?

21 A. Just that he acknowledged that he
22 knew that they weren't fixed. They needed to
23 get that load. Other than that, no.

24 MR. MARGARD: Your Honor, I have no
25 further questions for Inspector Bell.

1 ATTORNEY EXAMINER: Thank you. You
2 can step down.

3 MR. MARGARD: Your Honor, I
4 respectfully call Mr. Jonathan Frye to the
5 stand, please.

6 (WITNESS SWORN)

7 - - -

8 JONATHAN FRYE
9 called as a witness on behalf of the Staff,
10 being first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 By Mr. Margard:

13 Q. And will you please state your name
14 and business address?

15 A. Jonathan Frye, F-R-Y-E, Public
16 Utilities Commission of Ohio, 180 East Broad
17 Street, Columbus, 4th Floor.

18 Q. And what do you do at the
19 Commission, Mr. Frye?

20 A. I supervise the Compliance Officers.
21 Compliance Officers assess fines against
22 carries, shippers and drivers who are found in
23 violation.

24 Q. You are familiar with the evaluation
25 process and how assessments are determined?

1 A. Yes.

2 Q. Have you had an opportunity to
3 review the Commission file or portions of the
4 Commission's file with respect to this case?

5 A. Yes.

6 Q. Can you, please, describe for me how
7 the violation was assessed in this matter?

8 A. Yes. When the inspection report is
9 uploaded into our system the violations are
10 grouped into one of four groups, 1, 2, 3 and 4.

11 Group 4 violations are typically
12 violations that are assessed against drivers.
13 And in this particular case the driver was
14 issued a violation for operating an out of
15 service violation. And as a result there is a
16 \$1,000 fine that is assessed against the driver.

17 Q. And where does that fine come from?
18 Where does that number come from?

19 A. It's based upon the Commercial Motor
20 Vehicle Safety Alliance recommended fine
21 schedule.

22 Q. And this is a schedule that has been
23 adopted by the Commission and is used in such
24 matters?

25 A. Yes.

1 MR. MARGARD: Your Honor, may I
2 approach?

3 ATTORNEY EXAMINER: Yes.

4 Q. Mr Frye, I have handed you a
5 multi-page document that has been marked for
6 purposes of identification as Staff Exhibit No.
7 3. Is that a copy of the fine schedule?

8 A. Yes, it is.

9 Q. Can you identify for us where on
10 this fine schedule the fine assessed in this
11 matter appears?

12 A. Yes. On page 2 of the fine schedule
13 under Group 4 as violations. And the last
14 violation under Group 4, violation of out of
15 receive notice. And it indicates that the fine
16 amount is \$1,000.

17 Q. Now, no fine was assessed for the
18 actual brake violations; is that correct?

19 A. Not against the driver.

20 Q. Okay. Can you explain what happens
21 after the forfeiture amount has been determined?

22 A. Yes. After the forfeiture amount is
23 determined we will mail via certified mail a
24 copy of the fine, and with payment instructions
25 on how to pay for the forfeiture. And also how

1 to make a request for a conference if the
2 Respondent wants to dispute it.

3 And in this particular case the
4 Respondent indicated that he would like to
5 contest the violation.

6 Q. And a conference was held?

7 A. Yes. A Compliance Officer conducted
8 the conference with the driver, listened to the
9 information that the driver presented, were
10 unable to reach a resolution of the case.

11 And as a result we issued a notice
12 of preliminary determination to the driver which
13 is a letter advising the driver that he could
14 either pay the fine or can go through the next
15 step in the hearing process, which is an
16 administrative hearing.

17 MR. MARGARD: May I approach, Your
18 Honor?

19 ATTORNEY EXAMINER: Yes.

20 Q. Mr. Frye, I have handed you a
21 two-page document that has been marked for
22 purposes of identification as Staff Exhibit No.
23 4. Can you identify that document for us,
24 please?

25 A. Yes. It's the notice of preliminary

determination letter. It's the letter that is sent to the driver at the conclusion of a settlement conference if we are unable to reach a resolution. Again it provides the driver with information on how to pay the fine, and it also provides him with information on how to contest the violation at the next step in the hearing process.

Q. Mr Frye, in your opinion was the forfeiture in this case properly determined?

A. Yes.

Q. And in your opinion is it reasonable and was it properly assessed?

A. Yes.

Q. And in your opinion did the Respondent receive all notices required by law in this matter?

A. Yes.

MR. MARGARD: Your Honor, I have no further questions for Mr Frye.

ATTORNEY EXAMINER: You may step down. Thank you.

MR. MARGARD: Your Honor, at this time I would respectfully move for the admission of Staff Exhibits No. 1, 2, 3 and 4.

1 And I would renew my motion for
2 default judgment in this case.

3 ATTORNEY EXAMINER: The exhibits
4 will be admitted. And the motion will be noted
5 for the Commission. Anything further?

6 MR. MARGARD: I have nothing
7 further, Your Honor. Thank you.

8 ATTORNEY EXAMINER: Okay. This
9 hearing will be concluded then. Thank you very
10 much.

11 - - -

12 (At 11:30 A.M. the hearing was
13 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 on
February 14, 2011, and carefully compared with
my original stenographic notes.

Michael O. Spencer,
Registered Professional
Reporter.

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Summary: Transcript Transcript of John Schneider for Administrative Hearing held on 02/14/11. electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Spencer, Michael O. Mr.