

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Chicago Air Freight, Inc.	:	Case No.	14-235-TR-CVF
and Sasa Pavlovic Notice of Apparent	:		(OH3293006440C)
Violation and Intent to Assess Forfeiture,	:		(OH3293006440D)
	:		(OH3293006442D)
Respondent.	:		

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**POST-HEARING BRIEF**  
SUBMITTED ON BEHALF OF THE STAFF OF  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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**INTRODUCTION**

When a Motor Carrier Enforcement Inspector places a driver out-of-service, the driver must obey that order. It is a matter of public safety that he do so. Mr. Pavlovic violated two out-of-service orders placed on him. First, the inspector placed his vehicle out-of-service because one of its brake hoses was chafed and cut. Ignoring the out-of-service order, he drove the vehicle before the brake hose was repaired. Second, the inspector found Mr. Pavlovic falsified his log book and therefore declared him out-of-service for ten hours. Mr. Pavlovic drove off well before his out-of-service order expired. Mr. Pavlovic's actions were risky and violated motor carrier safety regulations. Therefore, the Commission should find that Mr. Pavlovic committed the violations cited by the Staff of the Public Utilities Commission of Ohio (Staff) and that he should pay the forfeiture amounts assessed.

## STATEMENT OF THE FACTS

On August 21, 2013, Inspector Bob G. Walker, a Motor Carrier Enforcement Inspector with the Ohio State Highway Patrol, was sitting in the median of Interstate 70 in Madison County. Tr. at 6-7, 14. Inspector Walker saw a commercial tractor-trailer traveling down the berm of the road, going about the same speed as traffic, with the vehicle's hazard lights on. Tr. at 10. Inspector Walker pulled out of the median and followed the vehicle to see if the vehicle was pulling over. *Id.* When it seemed as though the vehicle was not pulling over, Inspector Walker stopped the vehicle. *Id.*

Inspector Walker discovered that the carrier of the vehicle was Chicago Air Freight Incorporated and the driver was Sasa Pavlovic. Tr. at 13. Inspector Walker asked Mr. Pavlovic why he was driving with the vehicle's hazard lights on. Tr. at 14. Mr. Pavlovic responded that it was because the suspension system on the vehicle had lost air pressure and was not functioning. Tr. at 14; Staff Ex. 1. Inspector Walker then escorted Mr. Pavlovic and his vehicle from the side of the road to a nearby rest area to conduct an inspection at a safe location. Tr. at 15.

During the inspection, Inspector Walker discovered three violations that required Mr. Pavlovic and the vehicle to be placed out-of-service. First, Inspector Walker confirmed that the vehicle had lost air pressure in the second axle left air bag, second axle right air bag, third axle left air bag, and third axle right air bag. Staff Ex. 1. Inspector Walker cited Mr. Pavlovic with 49 C.F.R. 393.207(f), which requires a commercial vehicle to maintain air pressure to the suspension. *Id.* Inspector Walker also noted on the

Inspection Report that the suspension violations were out-of-service violations and that the vehicle could not be driven until the vehicle's suspension had been repaired. *Id.*

Inspector Walker also discovered a second out-of-service violation on the vehicle. One of the vehicle's brake tubes/hoses had been rubbing on the vehicle's frame and had worn through the outer reinforcement ply of the brake hose. Tr. at 16, 18; Staff Ex. 1. Consequently, Inspector Walker cited Mr. Pavlovic with 49 C.F.R. 393.45, which requires that brake hoses and tubes be secured against chafing and other mechanical damage. Staff Ex. 1. Inspector Walker also informed Mr. Pavlovic that the brake hose violation was an out-of-service violation and that the brake hose had to be repaired before the vehicle could be driven. *Id.*

The third out-of-service violation that Inspector Walker discovered was a false report of the driver's record of duty status. Tr. at 20. All commercial motor vehicle drivers, including Mr. Pavlovic, must maintain a record of duty status.<sup>1</sup> 49 C.F.R.395.8(a). The driver must have an accurate record of duty status for the current day and each of the seven previous days. Tr. at 20-21. On August 14, 2013, seven days prior to Inspector Walker's inspection of Mr. Pavlovic, Mr. Pavlovic's log book indicated that it took him eleven hours to drive from Bensenville, IL to Higginsville, MO. Tr. at 22; Staff Ex. 2. Inspector Walker calculated the time it would take for Mr. Pavlovic to make that trip and found that it takes twelve hours and thirteen minutes. Tr. at 29. Inspector

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<sup>1</sup> The terms "record of duty status" and "log book" may be used interchangeably in this brief.

Walker informed Mr. Pavlovic that there was an hour and thirteen minute discrepancy between what Mr. Pavlovic's log book stated and his calculation. *Id.* In response, Mr. Pavlovic told Inspector Walker that he was not in the cities that were logged, but was close so he put those cities in his log book entry. Staff Ex. 1. Mr. Pavlovic then admitted to falsifying his log book and asked Inspector Walker to help him with his log book so that he did not lose his job. Tr. at 30; Staff Ex. 1. Due to the violation, Inspector Walker placed Mr. Pavlovic out-of-service for ten hours. Staff Ex. 1.

After Inspector Walker inspected Mr. Pavlovic's vehicle, Inspector Walker conducted an inspection on another vehicle. Tr. at 44. While on that next inspection, Inspector Walker saw the vehicle that he placed out-of-service, driven by Mr. Pavlovic, leave the rest area. *Id.* Inspector Walker then drove to Mr. Pavlovic's destination, found Mr. Pavlovic at that location, and performed a second inspection of the vehicle. Tr. at 45.

Inspector Walker's second inspection of Mr. Pavlovic began at 3:27 p.m., well before Mr. Pavlovic's ten hour out-of-service order expired. Tr. at 47. During this inspection, Inspector Walker found the air suspension on the vehicle had been repaired, but the brake hose was in the same condition as during the first inspection.<sup>2</sup> Tr. at 48, 53. Mr. Pavlovic did not repair the brake hoses or wait for ten hours to drive the vehicle. Consequently, the Staff of the Public Utilities Commission cited Mr. Pavlovic with (1) driving after being declared out-of-service without repairing the damaged brake hose, (2)

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<sup>2</sup> Inspector Walker testified that a driver would be able to fix the air suspension on the side of the road and Mr. Pavlovic testified that he adjusted the valve lever to fix the vehicle's suspension. Tr. 48, 78.

creating a false log book report, and (3) driving after being declared out-of-service for ten hours. Staff Ex. 8-9.

## **ARGUMENT**

The Staff of the Public Utilities Commission of Ohio (Staff) argues that Mr. Pavlovic violated three motor carrier safety regulations: (1) he was declared out-of-service for damage to his vehicle's brake hose and drove the vehicle before he had the brake hose repaired, (2) he made a false report of his record of duty status, and (3) he drove before his ten hour out-of-service order expired.

**A. Mr. Pavlovic violated federal motor carrier regulations when he continued to drive a commercial motor vehicle without repairing a damaged brake hose that had caused the vehicle to be declared out-of-service.**

An inspector shall declare any vehicle out of service if the mechanical condition of the vehicle “would likely cause an accident or a breakdown.” 49 C.F.R. 396.9(c)(1).

Brake tubes and hoses “must be secured against chaffing, kinking, or other mechanical damage.” 49 C.F.R. 393.45.<sup>3</sup> Brake tubes and hoses supply air to a tractor-trailer's brakes so the brakes can function. Tr. at 16. A damaged brake hose or tube may be too weak to function or could burst and cause the vehicle's braking system to fail. Tr. at 17.

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<sup>3</sup> Under Ohio Admin. Code 4901:2-5-03(A), the Public Utilities Commission of Ohio (Commission) has adopted provisions of the motor carrier safety regulations contained in 49 C.F.R. 390 to 397, among other parts. That rule further states that all motor carriers operating in intrastate commerce within Ohio shall conduct their operations pursuant to the regulations and the provisions of that chapter.

During Inspector Walker's inspection of Mr. Pavlovic's vehicle, Inspector Walker discovered that one of the vehicle's brake hoses had been rubbing on the vehicle's frame. Tr. at 18; Staff Exhibit 1. A brake hose is comprised of three layers. The brake hose was "very badly" chafed through the outer reinforcement ply of the brake hose and the damage to the hose extended through the second layer of the brake hose. Tr. at 18, 49-50; Staff Ex. 1. Inspector Walker showed Mr. Pavlovic the damage to the brake hose. Tr. at 19; Staff Ex. 1. Mr. Pavlovic responded that the hose used to rub on the vehicle's frame, but it did not rub anymore because he moved the hose. *Id.* However, Mr. Pavlovic said he never repaired the damage to the hose. *Id.* Therefore, Inspector Walker cited Mr. Pavlovic with 49 C.F.R. 393.45, which requires brake hoses to be secured against chafing and other mechanical damage and placed the vehicle out-of-service until the vehicle's brake hose was repaired. Staff Ex. 1.

Inspector Walker gave Mr. Pavlovic notice that he must repair the vehicle's brake hose before he could operate the vehicle. At hearing, Mr. Pavlovic argued that Inspector Walker did not tell him that he must fix the brake hose to drive the vehicle. Tr. 86-87. The evidence in this case demonstrates that this is not true. The inspection report that Inspector Walker gave to Mr. Pavlovic indicates that Mr. Pavlovic was placed out-of-service because of problems with the vehicle's brake hose. Staff Ex. 1, 4. Inspector Walker read through that inspection report with Mr. Pavlovic and explained to Mr. Pavlovic that he was placed out-of-service until all repairs to the vehicle were made. Tr. at 39-40; Staff Ex. 4. Inspector Walker also placed a sticker on the vehicle that stated the vehicle was out-of-service. Tr. at 42.



Soon after Inspector Walker left the rest area where he inspected Mr. Pavlovic's vehicle, he watched Mr. Pavlovic drive out of the rest area. Tr. at 44. Inspector Walker called the carrier to confirm it was Mr. Pavlovic who had left the rest area and that he was going to his destination. Tr. at 44-45. The carrier confirmed both of these facts. *Id.* Inspector Walker then drove to the destination where Mr. Pavlovic was dropping off his load, found Mr. Pavlovic at that location, and performed a second inspection of the vehicle.

During Inspector Walker's second inspection of Mr. Pavlovic, Inspector Walker discovered the brake hose was in the same condition as when he made the first stop of Mr. Pavlovic. Tr. at 48. Inspector Walker took photographs of the brake hose during the second inspection. Tr. at 49; Staff Ex. 6-7. The photographs indicate the brake hose was still chafed and cut through the outer reinforcement ply of the hose. Tr. at 49-50; Staff Ex. 6-7. During the second inspection, Mr. Pavlovic produced no evidence the brake hose had been repaired. Tr. at 52. Also, another officer who was present during the second inspection, Lee Darden, saw the damage to the brake hose during the second inspection. Tr. at 65. Officer Darden found the brake hose was chafed and cut through the outer portion of the hose. *Id.* Officer Darden confirmed this cut was a violation of federal regulations because it was through the outer ply of the hose. Tr. at 66; Staff Ex. 6-7. At hearing, Mr. Pavlovic offered no evidence to refute that the hose was damaged and in violation of the motor carrier safety rules.

Mr. Pavlovic drove the vehicle that Inspector Walker placed out-of-service without repairing the vehicle. Consequently, Inspector Walker cited Mr. Pavlovic for

“driving after being declared out-of-service for HOS violations(s) – 2nd axle right brake chamber hose.”<sup>4</sup> Staff Ex. 5. The Commission should find Mr. Pavlovic violated motor carrier safety regulations.

**B. Mr. Pavlovic violated federal motor carrier regulations when he made a false report of record of duty status. Mr. Pavlovic again violated motor carrier regulations when he was placed out-of-service for ten hours and then drove a commercial vehicle without waiting ten hours.**

**1. Mr. Pavlovic violated federal motor carrier regulations because he made a false record of duty status.**

As a commercial motor vehicle driver, Mr. Pavlovic is subject to restrictions on the amount of time he may drive in a given period of time. A driver cannot drive more than eleven hours in a fourteen hour period. Tr. at 24; 49 C.F.R. 395.3(a)(3)(i). After that fourteen hour period, the driver must take ten hours off duty. 49 C.F.R. 395.3(a)(2). Mr.

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<sup>4</sup> It should be noted that a more precise regulation the officer could have cited was 49 C.F.R. 396.9(c)(2), which states no person shall “operate any motor vehicle...declared and marked “out-of-service” until all repairs required by the “out-of-service notice” have been satisfactorily completed.” However, this distinction should not impact the Commission’s decision in this case. As the Commission has stated in the past, “in issuing our decision...the Commission is not restricted to the violations alleged by the Staff or the forfeitures proposed by the Staff.” *In the Matter of the Request of Hanko Farms, Inc., for an Administrative Hearing*, Case No. 05-153-TR-CVF, (Opinion and Order at 5) (Sept. 19, 2007). Furthermore, no due process concerns exist as a result of this alternate regulation being cited. Both the inspection report and notice of preliminary determination provide notice that Mr. Pavlovic violated an out-of-service order because of the condition of his brakes. Furthermore, Mr. Pavlovic had an opportunity to contest this violation during a telephone conference with Staff, during a prehearing conference with both Staff and Staff’s counsel, and at hearing. *See* Staff Exhibit 5, 8.

Pavlovic is required to maintain a log book to record his activities.<sup>5</sup> A driver's log book essentially keeps track of the driver's every movement. Tr. at 20. It records the cities and states where the driver has been, the times the driver was in those locations, and when and where the driver was sleeping or active. *Id.* A driver's log book must be accurately maintained and current "on the day of examination and for the prior seven consecutive days." 49 C.F.R. 395.13(b)(2).

During his first inspection of Mr. Pavlovic, Inspector Walker found that Mr. Pavlovic falsified his log book. To discover this falsification, Inspector Walker performed a straightforward analysis, the same analysis Inspector Walker uses every time he suspects a driver may have falsified his or her log book. Tr. at 31. First, Inspector Walker looked through Mr. Pavlovic's log book entries for the last seven consecutive days and looked for any trips that were close to eleven hours long. Tr. at 24. Inspector Walker looks for trips that take about eleven hours because eleven hours is the maximum amount a driver can drive in a twenty-four hour period. Also, Inspector Walker has found that drivers sometimes write an eleven hour driving time on their log book entry to make it appear like they satisfied this regulation when they have actually driven more than eleven hours. *Id.* Inspector Walker found an entry in Mr. Pavlovic's log book from August 14, 2013 that indicated he had driven eleven hours in a twenty-four hour period from Bensenville, IL to Higginsville, MO. Tr. at 22; Staff Ex. 2. Therefore, Inspector

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<sup>5</sup> Under 49 C.F.R. 395.8(a), "every motor carrier shall require every driver used by the motor carrier to record his/her duty status for each 24 hour period."

Walker used a computer program called PC Miler to determine how long it actually takes to drive the route that the Mr. Pavlovic drove on that day. Tr. at 24.

PC Miler is a program the Ohio State Highway Patrol uses to calculate the time it takes a driver to get from one location to another. Tr. at 26-27. PC Miler allows inspectors to specify the route used to calculate the trip's time so that it exactly matches the route the driver took. Tr. at 31. PC Miler does not take into account traffic, rush hours, or construction. Tr. at 30. Consequently, Inspector Walker has found that it typically takes a driver longer to drive a route than what PC Miler says it should take. *Id.*

If Inspector Walker enters the driver's route into PC Miler and there is inconsistency between the PC Miler calculation and the driver's log book entry, then Inspector Walker explains the issue to the driver, shows the driver the route he entered into PC Miler, and confirms the route with the driver. Tr. at 31. Inspector Walker then asks the driver if there may be any other reason for the inconsistency between PC Miler and the driver's log book entry. Tr. at 32. Inspector Walker also asks the driver for any receipts the driver may have for fuel, food, or tolls that could help corroborate the times the driver recorded in the log book and verify they are correct. Tr. 31. Inspector Walker always takes a photo of any receipts the driver gives him. Tr. at 32. Mr. Pavlovic did not give Inspector Walker any receipts to confirm his driving route. *Id.*

The PC Miler calculation that Inspector Walker made for Mr. Pavlovic's trip on August 14, 2013, which did not take into account traffic or construction, stated that it takes twelve hours and thirteen minutes to make the trip that Mr. Pavlovic's log book said took eleven hours. Tr. at 29. Inspector Walker informed Mr. Pavlovic that there was an

hour and thirteen minute discrepancy between what Mr. Pavlovic's log book stated and the PC Miler calculation. Tr. at 29. In response, Mr. Pavlovic told Inspector Walker that he was not in the cities that were logged, but he was close so he put those cities in his log book entry. Staff Ex. 1. Mr. Pavlovic then "admitted to falsifying his log" book and asked Inspector Walker to "help him on his log book" so that he did not "lose his job." *Id.*

Inspector Walker then cited Mr. Pavlovic with 49 C.F.R. 395.8(e) for making a false report of his record of duty status. *Id.* Inspector Walker also placed Mr. Pavlovic out-of-service for ten hours for falsifying his log book. *Id.* To ensure that Mr. Pavlovic knew he was out of service for ten hours, Inspector Walker wrote the time that Mr. Pavlovic could drive again, 11:00 pm ET, on the top of the inspection report and in the list of violations. Tr. at 39-40; Staff Ex. 4. He also read the entire inspection report to Mr. Pavlovic, which stated that Mr. Pavlovic was out-of-service and he underlined the portions of the report that stated Mr. Pavlovic was out-of-service. *Id.* Further, during the second inspection, Inspector Walker recalled that Mr. Pavlovic had said at the rest stop, "You mean I have to stay here for ten hours?" and Inspector Walker replied, "yes." Staff Ex. 5.

**2. Mr. Pavlovic violated federal motor carrier regulations because Inspector Walker declared him out-of-service for ten hours and Mr. Pavlovic drove a commercial vehicle without waiting ten hours.**

Soon after Inspector Walker left the rest area where he inspected Mr. Pavlovic's vehicle, he watched Mr. Pavlovic drive out of the rest area. Inspector Walker drove to Mr. Pavlovic's location and performed a second inspection of the vehicle. Under the out-

of-service order Inspector Walker issued to Mr. Pavlovic, Mr. Pavlovic was not allowed to drive a commercial motor vehicle until 11:00 p.m. ET . Staff Ex. 4, 5. But, Mr. Pavlovic drove well before that time. After catching up to Mr. Pavlovic, Inspector Walker's second inspection of Mr. Pavlovic began at 3:27 p.m. Staff Ex. 5. Mr. Pavlovic violated his out-of-service order.<sup>6</sup> Consequently, the Commission should find that Mr. Pavlovic violated commercial motor vehicle regulations when he falsified his log book and drove after being declared out-of service for ten consecutive hours.

**C. The case against the carrier, Chicago Air Freight Incorporated, should be dismissed.**

The Commission need not rule on the violation against the carrier in this case. The carrier has paid the forfeiture amount assessed against it.

## **CONCLUSION**

In sum, the Commission should find that Mr. Pavlovic violated federal motor carrier regulations because 1) he was declared out-of-service for damage to his vehicle's brake hose and drove the vehicle before he repaired the brake hose, 2) he made a false

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<sup>6</sup> Even if the Commission finds that Mr. Pavlovic did not create a false report of his record of duty status, the Commission should find that he nevertheless violated the out-of-service order. Inspector Walker declared Mr. Pavlovic out-of-service. Mr. Pavlovic cannot decide for himself that he has not violated any regulations, disregard the inspector's order, and continue to drive. Similarly, a person who is being pulled over cannot just decide to keep driving because he or she believes a violation has not been committed. "No driver who *has been declared out of service* may operate a commercial motor vehicle until the driver has been off duty for the appropriate number of consecutive hours." 49 C.F.R.395.13(d)(2).

report of his record of duty status, and 3) he was declared out-of-service for ten hours and drove before those ten hours expired.

Respectfully submitted,

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## **PROOF OF SERVICE**

I certify that a true copy of the foregoing **Post-Hearing Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served via electronic mail upon counsel for Respondent, Anthony E. Palmer, Alden Law, One East Livingston Avenue, Columbus, Ohio, 43215, [tpalmer@aldenlaw.net](mailto:tpalmer@aldenlaw.net), on December 5, 2014.

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