

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Thomas Overturf,                   : Case No. 15-359-TR-CVF  
Notice of Apparent Violation and Intent       : (OH0616002692D)  
to Assess Forfeiture.                               :

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

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**On behalf of the Staff of  
The Public Utilities Commission of Ohio**

June 26, 2015

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**INTRODUCTION**

While driving from Middlefield, Ohio to Columbus, Ohio on October 29, 2014, Thomas Overturf (“Respondent”) violated the Federal Motor Carrier Safety Administration (FMCSA) regulations. At the time Inspector Joel Hughes conducted his inspection, Respondent could not produce any records of duty status. Inspector Hughes of the Ohio State Highway Patrol cited Respondent under 49 C.F.R. 395.8(k)(2) for “failing to retain previous seven days records of duty status.”<sup>1</sup> As a result of that inspection, the Staff of the Public Utilities Commission of Ohio (“Staff”) assessed a civil forfeiture of \$100 for violation of 49 C.F.R. 395.8(k)(2).

At the evidentiary hearing in this case, Staff offered the testimony of a highly qualified and credible safety inspector to support the violation at issue. The hearing

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<sup>1</sup>

Driver/Vehicle Examination Report (Staff Ex. 1).

focused on two questions: (1) whether Respondent's destination was indeed Columbus; and (2) whether Respondent's trip qualified for the 100 air-mile radius exemption found in 49 C.F.R. 395.1(e)(1)(i), which would exempt him from maintaining a record of duty status for local trips.

As to the first question, Respondent's destination was Columbus. Respondent himself communicated his origin and destination to Inspector Hughes, who detailed it on the inspection report.<sup>2</sup> As to the second question, Respondent's trip does not qualify for the 100 air-mile radius exemption. The distance between Middlefield and Columbus is 168 air miles, which exceeds 100 air miles. Because Respondent's destination was in excess of 100 miles from his origin, Respondent did not qualify for the exemption and was therefore required to maintain a record of duty status. Respondent's failure to maintain and present that record to Inspector Hughes placed Respondent in violation of 49 C.F.R. 395.8(k)(2).

Even if the Commission finds that Respondent's trip on October 29 did not exceed 100 air miles, his trip to Columbus the previous day did. Because Respondent did not produce a record of duty status for his trip to Columbus on October 28, he violated 49 C.F.R. 395.8(k)(2).

Therefore, based on the evidence of record, the Commission must find Respondent violated 49 C.F.R. 395.8(k)(2) and must hold Respondent liable for the civil forfeiture of one hundred dollars.

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<sup>2</sup>

*See Staff Ex. 1.*

## STATEMENT OF THE FACTS

### 1. Procedural History

Staff served a Notice of Preliminary Determination to Respondent on January 22, 2015, as required by Ohio Adm. Code 4901:2-7-12. The Notice cited violations of 49 C.F.R. 395.8(k)(2), failing to retain previous seven days records of duty status; and 49 C.F.R. 391.41(a)-(f), operating a vehicle without possessing a valid medical certificate.<sup>3</sup> Staff moved to dismiss the violation under 49 C.F.R. 391.41(a)-(f), which is still pending. Respondent filed a request for an administrative hearing. The hearing was conducted on May 7, 2015.

### 2. Factual Background

On October 29, 2014, Inspector Hughes pulled Respondent over for speeding in a commercial motor vehicle. Inspector Hughes conducted an inspection of the driver and the vehicle.<sup>4</sup> The inspection took place about 15 miles from Respondent's reporting location.<sup>5</sup> In response to Inspector Hughes' questioning, Respondent stated that he was driving from Middlefield, Ohio to Columbus, Ohio.<sup>6</sup> Respondent explained that he was speeding because he was in a hurry to pick up a load from Columbus.<sup>7</sup> Inspector Hughes

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<sup>3</sup> Notice of Preliminary Determination (Staff Ex. 2).

<sup>4</sup> See Staff Ex. 1.

<sup>5</sup> Tr. at 48, 49.

<sup>6</sup> Staff Ex. 1.

<sup>7</sup> Tr. at 18.

asked for Respondent's log book (record of duty status), which Respondent failed to present.<sup>8</sup>

Inspector Hughes calculated the air mileage between Middlefield and Columbus on PC Miler, a system used by inspectors to determine the distance between a driver's origin and destination.<sup>9</sup> The distance between Middlefield and Columbus is 168 air miles.<sup>10</sup> Inspector Hughes showed the PC Miler calculation to Respondent at the time of the inspection so that Respondent could see the mileage himself.<sup>11</sup>

Inspector Hughes cited Respondent for, among other things, "failing to retain previous seven days records of duty status."<sup>12</sup> At the hearing, Respondent testified that he did not have a destination at the time he was pulled over by Inspector Hughes.<sup>13</sup> However, Inspector Hughes testified that it was clear to him that Respondent was traveling to Columbus.<sup>14</sup> Respondent also admitted during the trial that he picked up a load in Columbus on October 28, the day before the inspection.<sup>15</sup>

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<sup>8</sup> Tr. at 22, 54.

<sup>9</sup> *Id.* at 23.

<sup>10</sup> *Id.* at 22.

<sup>11</sup> *Id.*

<sup>12</sup> Staff Ex. 1.

<sup>13</sup> Tr. at 50.

<sup>14</sup> *Id.* at 46.

<sup>15</sup> *Id.* at 51.

## LAW AND DISCUSSION

49 C.F.R. 395.8 requires that every driver maintain a record of duty status. Section (a) specifies two methods that may be used to maintain the required records. First, the driver may record his duty status for each 24-hour period in duplicate using a log book with a specified grid, as provided by the rules.<sup>16</sup> Second, the driver may use an automatic on-board recording device.<sup>17</sup> The driver must record his duty status as “off duty” or “OFF,” “sleeper berth” or “SB,” “Driving” or “D,” or “on-duty not driving” or “ON.”<sup>18</sup> The driver must also record “the name of the city, town, or village, with State abbreviation” for each change of duty status.<sup>19</sup> “The driver shall retain a copy of each record of duty status for the previous seven consecutive days which shall be in his/her possession and available for inspection while on duty.”<sup>20</sup>

49 C.F.R. 395.1 provides several exceptions to the record of duty status requirement contained in 49 C.F.R. 395.8. Under 49 C.F.R. 395.1(e)(1)(i), “[a] driver is exempt from the requirements of § 395.8 if ... [t]he driver operates within a 100 air-mile radius of the normal work reporting location.”

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<sup>16</sup> 49 C.F.R. 395.8(a)(1).

<sup>17</sup> 49 C.F.R. 395.8(a)(2).

<sup>18</sup> 49 C.F.R. 395.8(b)(1)-(4).

<sup>19</sup> 49 C.F.R. 395.8(c).

<sup>20</sup> 49 C.F.R. 395.8(k)(2).

**1. Respondent violated 49 C.F.R. 395.8 because he did not have a record of duty status for October 29, 2014 while traveling from Middlefield, Ohio to Columbus, Ohio.**

On October 29, Respondent violated 49 C.F.R. 395.8 because he did not have a log book in his possession detailing his duty status for that day.<sup>21</sup> As stated above, the driver must maintain a record of duty status by either using a log book with a specified grid, or by using an automatic on-board recording device. On the day of the inspection, Respondent was traveling from Middlefield, Ohio to Columbus, Ohio.<sup>22</sup> When asked by the Inspector for his record of duty status, Respondent had neither a log book to present nor an on-board recording device.<sup>23</sup> Because Respondent failed to maintain a record of duty status for October 29, he violated 49 C.F.R. 395.8.

**2. Respondent's trip to Columbus on October 29, 2014 does not qualify for the 100 air-mile radius exemption under 49 C.F.R. 395.1(e)(1)(i) because the distance between his origin and destination exceeds 100 air miles.**

Respondent cannot claim the 100 air-mile radius exemption for his failure to maintain a record of duty status for October 29 because his trip from Middlefield, Ohio to Columbus, Ohio exceeds 100 air miles. The 100 air-mile radius exemption, under 49 C.F.R. 395.1(e)(1)(i), excuses the driver from the requirement to maintain a record of duty status under 49 C.F.R. 395.8. In order to qualify for the exemption, the driver must

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<sup>21</sup> Tr. at 22.

<sup>22</sup> Staff Ex. 1.

<sup>23</sup> Tr. at 22, 54.



operate within 100 air miles from his normal work reporting location.<sup>24</sup> Here, Respondent's trip from Middlefield to Columbus on October 29 was 168 air miles.<sup>25</sup> Because the distance between his origin and destination exceeds 100 air miles, Respondent's trip that day does not qualify for the exemption.

Although Inspector Hughes pulled Respondent over within 100 air miles of his origin,<sup>26</sup> the rule requires a record of duty status if the distance between the origin and destination exceeds 100 air miles, regardless of where the driver is pulled over. The United States Department of Transportation Guidance for 49 CFR 395.1 clarifies that "[a] driver must begin to prepare the record of duty status for the day immediately after he/she becomes aware that the terms of the exemption cannot be met." A driver, then, within 100 air miles of his origin must have a record of duty status prepared if he knows that his destination is more than 100 air miles from his reporting location.

Here, the Driver/Vehicle Examination Report indicates that Respondent's destination that day was Columbus.<sup>27</sup> Although not noted in the report, Inspector Hughes testified that Respondent gave him an exact location in Columbus to which he was traveling.<sup>28</sup> Inspector Hughes would have no other source for Respondent's destination if it

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<sup>24</sup> 49 C.F.R. 395.1(e)(1)(i).

<sup>25</sup> Tr. at 22.

<sup>26</sup> *Id.* at 48-49.

<sup>27</sup> Staff Ex. 1.

<sup>28</sup> Tr. at 17-18.

had not been given by Respondent himself. In fact, when Inspector Hughes asked Respondent the reason for his speeding, Respondent stated that he was in a hurry to pick up a load in Columbus.<sup>29</sup> However, today, Respondent would have the Commission believe that he was not traveling to Columbus but was simply speeding down the highway without a destination in mind.<sup>30</sup> Because Respondent knew his destination was Columbus, and was aware that it was more than 100 air miles from his origin,<sup>31</sup> the rules required him to have a record of duty status for that day, regardless of the fact that he was pulled over within the 100 air-mile radius.

Furthermore, Inspector Hughes showed Respondent the PC Miler report that indicated that the distance between Middlefield and Columbus exceeded 100 air miles.<sup>32</sup> There is no evidence here that Respondent disputed the violation at the time, or that he corrected Inspector Hughes as to his destination when shown the report. In fact, Inspector Hughes testified that it was clear to him that Respondent was traveling to Columbus that day.<sup>33</sup>

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<sup>29</sup> Tr. at 18.

<sup>30</sup> *Id.* at 50.

<sup>31</sup> *Id.* at 55.

<sup>32</sup> *Id.* at 22.

<sup>33</sup> *Id.* at 46.

**3. Respondent violated 395.8 because he did not have a record of duty status for October 28, 2014 when he traveled from Middlefield, Ohio to Columbus, Ohio.**

Even if the Commission finds that Respondent's trip on October 29 qualifies for the exemption, Respondent still violated 49 C.F.R. 395.8 when he failed to present a record of duty status for his trip to Columbus on the previous day. Under 49 C.F.R. 395.8(k)(2), a "driver shall retain a copy of each record of duty status for the previous seven consecutive days which shall be in his/her possession and available for inspection while on duty." Even if the 100 air-mile radius exemption applied for the day the driver is pulled over, the guidance provided by the FMCSA for that exemption clarifies that "[t]he driver must only have in his/her possession a record of duty status for the day he/she does not qualify for the exemption."

Here, Respondent traveled to Columbus on October 28, the day before Inspector Hughes' inspection in this case.<sup>34</sup> As stated previously, the distance between Middlefield and Columbus is 168 air miles, which exceeds the allowable distance for the 100 air-mile radius exemption. Therefore, Respondent's trip to Columbus on the 28th does not qualify for the exemption. As drivers are required to keep a copy of their record of duty status for "the previous seven consecutive days," Respondent was required to have, in his possession, a record of duty status for his trip to Columbus that day. This requirement applies even if Respondent's trip on October 29 qualified for the exemption.

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<sup>34</sup>

Tr. at 51.

The policy behind requiring drivers to maintain a record of duty status is to promote public safety by ensuring compliance with the hours of service rules. The hours of service rules prescribe the number of hours a driver can be on the road and the number of hours he must spend off duty resting. It follows logically, then, that a driver who falls under the 100 air-mile radius exemption on the day he is pulled over must still prove that he complied with the hours of service rules for any of the previous seven days where he did drive outside of 100 air miles. Interpreting the rules otherwise would endanger public safety because a driver could violate the hours of service rules on one day, but can avoid detection if he happens to be driving locally on the day of an inspection conducted within the next seven days. Such an interpretation undermines the policy underlying the hours of service rules and the safety of the public traveling on Ohio's highways.

#### **4. The Commission has authority to assess civil forfeitures.**

Under R.C. 4923.99, the Commission has statutory authority to assess monetary forfeitures against drivers for non-compliance with the FMCSA regulations. The Commission has adopted rules governing the assessment of civil forfeitures.<sup>35</sup>

The parties stipulated that the forfeiture amount of one hundred dollars is proper in this case.<sup>36</sup> As such, if Respondent is found to have violated 49 C.F.R. 395.8(k)(2), he should be assessed the full one hundred dollars as stipulated.

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<sup>35</sup> See Ohio Adm. Code 4901:2-7-01 through 22.

<sup>36</sup> Tr. at 6.

## CONCLUSION

Based on the record produced at the hearing and for the reasons stated above, Staff respectfully requests that the Commission find that Respondent violated 49 C.F.R. 395.8(k)(2) and require him to pay the forfeiture amount of one hundred dollars.

Respectfully submitted,

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Ohio Attorney General

**William L. Wright**  
Section Chief

*/s/ Natalia Messenger*

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**On behalf of the Staff of  
The Public Utilities Commission of Ohio**

## **PROOF OF SERVICE**

I hereby 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 upon Respondent, Thomas Overturf, 5162 East 112<sup>th</sup> Street, Garfield Heights, Ohio, 44125, this 26<sup>th</sup> day of June, 2015.

*/s/ Natalia Messenger*

**Natalia Messenger**  
Assistant Attorney General

**This foregoing document was electronically filed with the Public Utilities**

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**in**

**Case No(s). 15-0359-TR-CVF**

Summary: Brief Post-Hearing Brief submitted by Assistant Attorney General Natalia Messenger on behalf of the Staff of the Public Utilities Commission of Ohio. electronically filed by Kimberly L Keeton on behalf of Public Utilities Commission of Ohio