

STATE OF OHIO  
DEPARTMENT OF EDUCATION

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In the Matter of Tommy Shad :  
Notice of Apparent Violation : Case No.  
and Intent to Assess : 15-1521-TR-CVF  
Forfeiture. :  
- - -

PROCEEDINGS

Before Nicholas Walstra, Attorney Examiner, held  
at the offices of the Public Utilities  
Commission of Ohio, 180 East Broad Street,  
Hearing Room 11-D, Columbus, Ohio, on Tuesday,  
January 26, 2016, at 10:00 A.M.

- - -

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APPEARANCES:

Mr. Steven L. Beeler  
Assistant Attorney General  
180 East Broad Street, 6th Floor  
Columbus, Ohio 43215

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

Mr. Tommy Shad  
4171 Marks Road  
Medina, Ohio 44256

Appearing Pro se.

- - -

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1 Tuesday Morning,  
2 January 26, 2016.

3 - - -

4 ATTORNEY EXAMINER: The Public  
5 Utilities Commission of Ohio has called for  
6 hearing at this time and place Case No.  
7 15-1521-TR-CVF being in the matter of Tommy Shad  
8 Notice of Apparent Violation and Intent to  
9 Assess Forfeiture.

10 My name is Nick Walstra, I am the  
11 Attorney Examiner assigned by the Commission to  
12 hear this case. I will begin by taking  
13 appearances of the parties. On behalf of Staff.

14 MR. BEELER: Thank you, your Honor.  
15 On behalf of the Staff of the Public Utilities  
16 Commission of Ohio, Steven Beeler, Ohio Attorney  
17 General, Mike DeWine's office, 180 East Broad  
18 Street, Columbus, Ohio.

19 ATTORNEY EXAMINER: Thank you. Mr.  
20 Shad, if you could just give your name and  
21 address.

22 MR. SHAD: Tommy Shad, 4171 Marks  
23 Road, Medina, Ohio 44256.

24 ATTORNEY EXAMINER: Thank you.  
25 Before we get started are there any procedural

1 matters to discuss?

2 MR. BEELER: No, your Honor.

3 ATTORNEY EXAMINER: Mr. Shad, since  
4 you are not an attorney you can't practice law,  
5 so there are limits on some things that you can  
6 do here. Staff is supposed to present their  
7 case against you and provide enough evidence for  
8 the Commission to make their decision. And the  
9 burden is on them to do that.

10 They can put witnesses on the stand  
11 to question them. I will give you an  
12 opportunity to ask those witnesses questions if  
13 you like.

14 Then when they are concluded I will  
15 give you a chance to, I will swear you in, and  
16 you can kind of give your side of the story.  
17 And then Staff can question you on anything.  
18 Any questions?

19 MR. SHAD: No, sir.

20 ATTORNEY EXAMINER: All right. Mr.  
21 Beeler, go ahead.

22 MR. BEELER: Thank you, your Honor.  
23 Staff would call Inspector Bell to the stand.

24 (WITNESS SWORN)

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RICHARD DAVID BELL

called as a witness, being first duly sworn,  
testified as follows:

DIRECT EXAMINATION

By Mr. Beeler:

Q. Good morning.

A. Good morning.

Q. Please state your name for the  
record.

A. My name is Richard David Bell.

Q. Where are you employed?

A. Ohio State Patrol, Motor Carrier  
Enforcement.

Q. And is that your full title for your  
position within the Patrol?

A. Yes. Federal Motor Carrier  
Enforcement, yes.

Q. How long have you been with  
the Patrol?

A. Going on 22 years.

Q. Have you been, in that 22 years,  
have you always been a Federal Motor Carrier  
inspector?

A. No. I started out as a license  
examiner. I did that for 15 years. And while a

1 license examiner I became a bioptic specialist.  
 2 Somebody that deals with people that's visually  
 3 impaired. And also I traveled, I worked in  
 4 eight counties. And also I am assigned for the  
 5 hearing impaired. I sign for people that came  
 6 in for a driving test, whether it's written or  
 7 driving.

8 Q. And how long have you been with the  
 9 Motor Carrier Enforcement Division?

10 A. Going on seven years, sir.

11 Q. Okay. What are your duties in your  
 12 capacity as a Motor Carrier inspector?

13 A. Basically we check the compliance of  
 14 vehicles 26,001 pounds, or we can check  
 15 compliance of safety regulations for vehicles  
 16 10,001 pounds, the trailer.

17 We look for violations, obvious,  
 18 that's the lights, lights on the vehicle not  
 19 working. Then we have after we stop the vehicle  
 20 go up under and check for safety compliance as  
 21 far as the mechanics, make sure the U-bolts are  
 22 tight, steering mechanism is working, the brakes  
 23 work, whether manual, or excuse me, hydraulic or  
 24 air brakes.

25 And basically overall the truck



1 almost like glorified mechanic to make sure  
2 everything is in compliance so the vehicles  
3 comply with the safety rules and regulations.  
4 So actually they are safe and the people that is  
5 coming through the State of Ohio is safe also.

6 Q. What sort of training do you have in  
7 the area of motor carrier enforcement?

8 A. We train for up to six weeks down in  
9 Columbus at the Academy going through North  
10 American training where they teach us all about  
11 the trucks and mechanics and how the truck  
12 operates.

13 And also we train for hazmat  
14 vehicles and tractor-trailer with doubles and  
15 triples. And then school buses and tankers,  
16 stuff like that.

17 Q. Do you do continuing yearly training  
18 as well?

19 A. Yes. We have what you call  
20 in-service. Twice a year we go back down to  
21 Columbus and do like refresher doing in-service,  
22 any new laws that the PUCO or any regulations  
23 that we need to learn about, we do that.

24 Then once a month they send videos  
25 and anything that is new within the commercial

1 travel, commercial vehicles, we have to train,  
2 they send us some videos or read, sign that you  
3 read, sign that we completed that training.

4 Q. How many inspections on average do  
5 you perform in a year?

6 A. I would say between 1,200 to 1,400  
7 inspections per year.

8 Q. And those motor carrier inspections,  
9 they are conducted to protect the safety of the  
10 Ohio traveling public and the traveling public  
11 through Ohio; correct?

12 A. Yes, sir.

13 MR. BEELER: May I approach  
14 the witness, your Honor?

15 ATTORNEY EXAMINER: You may.

16 MR. BEELER: I have here what's  
17 marked as Staff Exhibit 1, the Driver/Vehicle  
18 Examination Report with an inspection date of  
19 July 8th, 2015.

20 (EXHIBIT MARKED FOR THE PURPOSE OF  
21 IDENTIFICATION)

22 Q. Take a moment to look that over.  
23 Do you recognize this document?

24 A. Yes.

25 Q. Is this document a patrol record?

1           A.    Yes.  The only difference is the top  
2 header is just a little different.  Where ours  
3 has the Highway State Patrol this one has the  
4 Public Utilities Commission of Ohio.  But all  
5 the information is exactly the same.

6           Q.    Are these reports kept in your  
7 ordinary course of business?

8           A.    Yes.

9           Q.    It's the practice of the Patrol to  
10 make these reports; correct?

11          A.    Yes.

12          Q.    Do you report on matters observed  
13 pursuant to a duty imposed by law which there  
14 was a duty to report?

15          A.    Yes.

16          Q.    And again you said that this  
17 document is in the same condition, similar  
18 condition, as it was when you prepared it?

19          A.    Correct.

20          Q.    And the reason for you producing  
21 this report was an inspection of a motor carrier  
22 vehicle operated by Bridge Terminal Transport  
23 Services, Inc?

24          A.    Correct.

25          Q.    Do you remember the inspection?

1 A. Yes, I do.

2 Q. Okay. Who is the driver listed on  
3 the report?

4 A. Tommy L. Shad.

5 Q. Is Mr. Shad here today?

6 A. Yes.

7 Q. Does the driver get a copy of the  
8 report at the stop?

9 A. Yes.

10 Q. Are there any violations noted on  
11 this report?

12 A. Yes, there are.

13 Q. What are they?

14 A. First one under Section 338.23  
15 (a)(2) is operating a CMV with a CDL restriction  
16 as driving an international move with an  
17 intrastate restriction on the license or the  
18 CDL.

19 Q. Okay. And the other one?

20 A. And the other one is under 392.82  
21 (a)(1), using a hand held mobile telephone while  
22 operating a CMV, driving while using a hand held  
23 communication device.

24 Q. Okay. Starting with the 49 CFR  
25 338.12 (a)(2), which is operating CMV with an

1 improper CDL. So to start, you did observe Mr.  
2 Shad operating a commercial vehicle; correct?

3 A. Correct.

4 Q. Have you inspected this type of  
5 violation before?

6 A. Yes.

7 Q. Please explain how Mr. Shad violated  
8 this section.

9 A. Well, it was a violation because his  
10 CDL had intrastate only, meaning he can operate  
11 a motor vehicle with products that's produced in  
12 the State of Ohio, and deliver in the State of  
13 Ohio.

14 He is in violation of this law  
15 because he was driving not intrastate but by  
16 continuation of a international move, meaning  
17 the product came from outside the United States,  
18 came into the United States, and then he picked  
19 it up and continued the international move to  
20 Akron, Ohio actually from China.

21 Q. And his CDL did have an intrastate  
22 restriction on it?

23 A. Yes.

24 Q. And you were able to look up on your  
25 computer in your car if Mr. Shad's CDL was

1 limited to only intrastate moves?

2 A. Right.

3 Q. And we will come back to that, but  
4 first how did you know that this was an  
5 interstate load?

6 A. International load. What I did was  
7 I looked at the manifest, and by looking at the  
8 manifest I had to cut the seal on the intermodal  
9 to verify that it was an international move.

10 That product was not produced in the  
11 State of Ohio, and shipped within the State of  
12 Ohio. It was actually produced in China,  
13 shipped over here, and then continuation of the  
14 international move.

15 Q. Was there a label on the packaging  
16 in the trailer that showed that it was an  
17 international move?

18 A. Yes.

19 MR. BEELER: May I approach, your  
20 Honor?

21 ATTORNEY EXAMINER: You may.

22 MR. BEELER: Thank you. I have  
23 marked as Staff Exhibit 2 a photograph.

24 (EXHIBIT HEREBY MARKED FOR  
25 IDENTIFICATION PURPOSES)

1 ATTORNEY EXAMINER: Thank you.

2 Q. Do you recognize this picture?

3 A. Yes.

4 Q. Did you take this picture?

5 A. Sure. Yes.

6 Q. Does this picture accurately  
7 represent the scene at the day of the  
8 inspection?

9 A. Yes.

10 Q. What does this picture show?

11 A. It shows the origin of the product  
12 and then where it's going, the destination,  
13 where it's shipped to.

14 Q. And the origin is Guangdong  
15 Province, China?

16 A. Correct.

17 Q. And then the destination or the to  
18 is Imperial Electric in Akron, Ohio?

19 A. Correct.

20 Q. So it is your testimony that this  
21 picture supports your statement in your report  
22 that the driver had a limitation on his CDL for  
23 intrastate moves only; correct?

24 A. Correct.

25 MR. BEELER: Okay. May I approach,

1 your Honor?

2 ATTORNEY EXAMINER: You may.

3 MR. BEELER: Previously marked as  
4 Staff Exhibit 3, another photograph.

5 (EXHIBIT HEREBY MARKED FOR  
6 IDENTIFICATION PURPOSES)

7 Q. Do you recognize this photograph?

8 A. Yes.

9 Q. Did you take this photograph?

10 A. Correct.

11 Q. Does this photograph accurately  
12 represent the scene the day of the inspection?

13 A. Yes.

14 Q. What does this photograph show?

15 A. This shows the restriction on  
16 the actual license from the LEADS, where we type  
17 in the LEADS. It pulls up all the information  
18 on the particular driver. And this time it  
19 shows he had a restriction of intrastate only.

20 We normally find out when we first  
21 pull someone over, we take their license back to  
22 the patrol car, you run the information through  
23 LEADS to find out, make sure their license is  
24 valid and to see if there are any type of  
25 restrictions on it.



1                   Once this comes up it lets you know  
2                   how far to do your investigation to find out if  
3                   he is hauling product, is it intrastate or is it  
4                   interstate or international.

5                   Q.     So this is a photograph of the  
6                   actual screen in your vehicle?

7                   A.     Yes.   Computer in my patrol car,  
8                   yes.

9                   Q.     And the restriction there about  
10                  mid-way down the page it says restriction for  
11                  intrastate only?

12                  A.     Correct.

13                  Q.     So it's your testimony that this  
14                  picture supports your statement that the driver  
15                  had a limitation on his CDL; correct?

16                  A.     Yes.

17                  Q.     You are familiar with the FMCSA  
18                  guidelines; correct?

19                  A.     Correct.

20                  Q.     And according to those guidelines  
21                  you distinguish between an intra and an  
22                  interstate commerce by looking at the essential  
23                  character of the movement; is that correct?

24                  A.     That's correct.

25                  Q.     And that is manifested by the

1 shipper's fixed and persistent intent at the  
2 time of the shipping which is ascertained from  
3 all the facts and circumstances surrounding the  
4 transportation; correct?

5 A. Correct.

6 Q. Okay. And in Staff Exhibit 2, if  
7 you look at it, that's the label, make sure the  
8 label says China to Akron in one move; correct?

9 A. Correct.

10 Q. According to your report, Staff  
11 Exhibit 1, you state on the report that the  
12 cargo seal was removed; is that correct?

13 A. That's correct.

14 Q. Where do you state that on the  
15 report?

16 A. If you look where it says Vehicle  
17 Information, Vehicle Identification, excuse me,  
18 it has "Cargo seal removed and then seal  
19 replaced."

20 Q. So you both removed it and then you  
21 replaced it at the end of the inspection?

22 A. Yes.

23 Q. Okay. Does the cargo seal, does  
24 that typically indicate an interstate or an  
25 international load?

1           A.    Not necessarily. A lot of people  
2    seal the products for security reasons. But in  
3    this particular case you had to -- once we  
4    finally had the restriction we asked where the  
5    product come from. We had to make sure the  
6    product actually did come from China or  
7    overseas, or make sure that he wasn't in  
8    violation of his restriction of intrastate only.

9                        So at that point that's why I had to  
10   cut the seal of the intermodal so I could go in  
11   there and check the manifest or the product to  
12   make sure that is what we had a violation of.

13           Q.    So based on your observations and  
14   from some of the photos that you took it's your  
15   opinion that this was an interstate or  
16   international move; correct?

17           A.    Correct.

18           Q.    Okay. Then as a result of those  
19   observations you cited Mr. Shad for  
20   the violation; correct?

21           A.    That's correct.

22           Q.    Okay. Now turning to the second  
23   violation, that is 49 CFR 392.82 (a)(1). You  
24   observed Mr. Shad using a hand held  
25   communication device; correct?

1           A.    That's correct.

2           Q.    How did you observe that?

3           A.    I sit where I can see truckers come  
4 down the road. I use binoculars at this  
5 particular time because a lot of times I look to  
6 see if they are in violation of seat belt  
7 violation, because unfortunately a lot of  
8 commercial drivers don't drive with their belt  
9 on.

10                   So as I am sitting with my  
11 binoculars watching the vehicles approach I  
12 observed him on his cell phone, using a hand  
13 held communication devise

14           Q.    Was he talking on his cell phone or  
15 just using it?

16           A.    Using it. He had it in his hand.

17           Q.    Okay. For a violation of a hand  
18 held communication device, does it necessarily  
19 have to be a cell phone?

20           A.    No. It can be any communication  
21 device that you have in your hand trying to  
22 utilize it, texting or trying to dial a number,  
23 or even putting coordinates in your GPS.

24           Q.    Okay. Did you have a conversation  
25 about this violation with the driver at the

1 stop?

2 A. Yes.

3 Q. What did you discuss?

4 A. I asked the driver, I ask all what  
5 is the company's policy on using the hand held  
6 as a communication device. And a lot respond I  
7 am trying to talk to the company, I am trying to  
8 talk to my wife, trying to text someone.

9 The reason I am doing that is  
10 because there is different violations you can  
11 utilize. If it's the company calling the driver  
12 there is a different violation for that. So I  
13 am establishing what violation am I going to  
14 utilize for that particular driver.

15 Q. What was your exact conversation  
16 with Mr. Shad that day?

17 A. I asked him was he aware that, I  
18 mean, what was your company's policy you using a  
19 hand held communication device.

20 Q. What did he respond?

21 A. He said, yes, he was trying to text  
22 his boss, trying to talk to his boss.

23 Q. Okay. Again you said you had  
24 binoculars; correct?

25 A. Correct.

1           Q.   And binoculars would make it easier  
2 to observe the violation; correct?

3           A.   See a lot that way, yes.

4           Q.   Okay. Can you read just the  
5 inspection notes from your report, that's about  
6 three-quarters of the way down, Staff Exhibit 1?

7           A.   Okay. It says "OBVI: Driving while  
8 using a hand held communication device, driving  
9 a international load with a intrastate  
10 restriction on the driver's CDL."

11          Q.   And I notice you have OBVI listed  
12 there. What does that mean, why did you put it  
13 there?

14          A.   Obvious violation. That is  
15 the reason code why I stopped, it was an obvious  
16 violation I observed.

17          Q.   And you might have said it, but I  
18 might have missed it, the obvious violation here  
19 was your observation of the --

20          A.   Hand held communication device.

21          Q.   And the notes that we just  
22 referenced, those were completed at the same  
23 time or contemporaneously with the vehicle stop;  
24 correct?

25          A.   Yes. With the inspection, at the

1 time of the inspection.

2 Q. So commonly as part of your job you  
3 look specifically for drivers using hand held  
4 devices; correct?

5 A. Right. Had seat belt on, other  
6 obvious violations. Light, various lights out,  
7 stuff like that.

8 Q. Sure. The stop was at 1:16 in the  
9 afternoon; correct?

10 A. Correct.

11 Q. So nothing weather related would  
12 have impeded your vision?

13 A. No.

14 Q. So as a result of these observations  
15 you cited the driver for the violation; correct?

16 A. Correct.

17 Q. Again, it is your testimony here  
18 today that you observed Mr. Shad using a hand  
19 held communication device while operating a  
20 commercial motor vehicle; correct?

21 A. Yes.

22 Q. Anything else important to note that  
23 we have not discussed here today that you feel  
24 the Commission would like to know for the  
25 record?

1           A.    Yes.  I guess I would add that using  
2   a hand held, use of the hand held communication  
3   device because that includes you calling, trying  
4   to put the GPS coordinates or you are texting.  
5   A lot of times if you are texting you won't have  
6   a -- if we come up you won't have a chance to  
7   complete your text, or of you are calling, most  
8   people I pull beside them, I give them a chance  
9   to put the phone down.  I motion to them if they  
10  are on the phone and normally they put the phone  
11  down.

12                   It's still a violation, yes, but I  
13  still stop them and charge them with a  
14  violation, sure I do.  And that is why, like I  
15  said, that is why I utilize this, using hand  
16  held communication device.  That is not just  
17  limited to cell phones, it's any electronic  
18  device you use while operating a motor vehicle.

19           Q.    Anything else?

20           A.    No.

21                   MR. BEELER:  No further questions,  
22  your Honor.

23                   ATTORNEY EXAMINER:  Thank you.

24                   MR. BEELER:  At this time though I  
25  would move for admission of Staff Exhibits 1, 2



1 and 3 subject to cross-examination by Mr. Shad.

2 ATTORNEY EXAMINER: Okay. I have a  
3 couple questions, sir.

4 EXAMINATION

5 By the Attorney Examiner:

6 Q. First, on the CDL restriction, is  
7 that a restriction of what he can drive, or is  
8 that about the load specifically?

9 A. Yes. That is the load, and that is  
10 to limit the driver. So, in other words, he  
11 only can operate something that is  
12 manufactured -- manufactured in the State of  
13 Ohio, in that particular state, and then  
14 delivered within that state. That is the  
15 intrastate restriction.

16 If it comes from another state  
17 across the line it becomes interstate move.  
18 If you have a restriction, although you may pick  
19 up in the State of Ohio and deliver it within  
20 the State of Ohio, that is still a continuation  
21 of an intrastate move.

22 So you can operate that, you can  
23 haul that move, that load. And it comes from  
24 out of this country that is the continuation of  
25 the international move. So you can't haul that

1 particular load.

2 Q. Even if he did all his driving  
3 within Ohio it's still a violation?

4 A. It would be a violation if  
5 the product didn't originate in Ohio. Now, add  
6 this, say, for instance, steel, if they brought  
7 steel here from China and it sat in a steel yard  
8 until GM ordered it and they moved it to a steel  
9 yard, that is still a continuation of  
10 the international move. They haven't touched  
11 the steel.

12 But if they bring the steel, say  
13 take it to where they stamp doors out of it, now  
14 the actual product was actually made in Ohio.  
15 Now he can deliver it, he or she, whoever the  
16 driver is.

17 ATTORNEY EXAMINER: Okay. Thank  
18 you. Mr. Shad, any questions for Mr. Bell?

19 MR. SHAD: Yes, I do.

20 CROSS-EXAMINATION

21 By Mr. Shad:

22 Q. The pull over, you took my  
23 paperwork, went back to your vehicle?

24 A. Yes.

25 Q. Come back, your statement was, "Mr.

1 Shad, you are in violation of intrastate and  
2 interstate." Is that correct?

3 A. You are in violation of  
4 international or intrastate because you have an  
5 intrastate restriction.

6 Q. True. Is that correct?

7 A. Yes.

8 Q. And your next comment was, or  
9 accusation, or accusing, you said "And you were  
10 on your phone too." Is that correct?

11 A. You were on your cell phone, yes.

12 Q. Is that correct?

13 A. That's the first thing I said to  
14 you.

15 Q. That is completely different than  
16 what you just --

17 MR.BEELER: Objection, your Honor.  
18 Ask questions, but he can't testified.

19 ATTORNEY EXAMINER: Mr. Shad, you  
20 will have a chance to testify, but if you have  
21 questions --

22 MR. SHAD: All right. No, no  
23 further.

24 ATTORNEY EXAMINER: Nothing further?

25 MR. SHAD: No, sir.

1 ATTORNEY EXAMINER: Any cross or  
2 redirect?

3 MR. BEELER: Can I have 30 seconds  
4 to just check with him?

5 ATTORNEY EXAMINER: Sure.

6 (RECESS TAKEN)

7 MR. BEELER: No redirect.

8 ATTORNEY EXAMINER: Okay. Thank  
9 you. You may step down.

10 MR. BEELER: At this time, your  
11 Honor, I would reserve Inspector Bell for  
12 rebuttal if necessary.

13 ATTORNEY EXAMINER: Okay.

14 MR. BEELER: And then I would renew  
15 my motion for the admission of Staff Exhibits 1,  
16 2 and 3.

17 ATTORNEY EXAMINER: Okay. And all  
18 three of those will be admitted.

19 (EXHIBITS ADMITTED INTO EVIDENCE)

20 MR. BEELER: At this time, your  
21 Honor, the Staff would call its second witness,  
22 Thomas Persinger.

23 (WITNESS SWORN)

24 - - -

25 THOMAS PERSINGER

1 called as a witness, being first duly sworn,  
2 testified as follows:

3 DIRECT EXAMINATION

4 By Mr. Beeler:

5 Q. Good morning.

6 A. Good morning.

7 Q. Please state your name for the  
8 record.

9 A. My name is Thomas Persinger.

10 Q. Where are you employed?

11 A. I am employed with the Public  
12 Utilities Commission of Ohio in the  
13 Transportation Department, Compliance Division.

14 Q. What is your position?

15 A. My position is Compliance Officer.

16 Q. How long have you been in that  
17 position?

18 A. About four and a half years.

19 Q. What are your duties?

20 A. My duties include determining fines  
21 on roadside inspections that are submitted, as  
22 well as trying to resolve those at the  
23 conference stage.

24 Q. Okay.

25 A. Any disputes arising from there.

1 Q. What are your expert qualifications  
2 on the subject matter of violations, your  
3 certification, your continuing education?

4 A. I have taken the North American  
5 Standard Part A and Part B classes as well as  
6 general hazmat, other bulk package and bulk  
7 package or cargo tank classes.

8 And I do approximately 50  
9 inspections a year to keep my certifications and  
10 all of that.

11 Q. Any training on how calculations are  
12 performed for the forfeitures?

13 A. Within the Department, yes.

14 Q. Explain just generally how you  
15 determine amounts for forfeitures.

16 A. For non-hazardous material  
17 violations, violations are determined from an  
18 assessment chart, depending upon what group  
19 the violation is, what specifically  
20 the violation is, a set fine amount is  
21 determined.

22 Q. Does the Commission apply this  
23 process uniformly to everyone?

24 A. Yes, sir.

25 MR. BEELER: May I approach

1 the witness, your Honor?

2 ATTORNEY EXAMINER: You may.

3 MR. BEELER: I have what has  
4 previously been marked as Staff Exhibit 4, a  
5 Notice of Preliminary Determination sent to Mr.  
6 Tommy Shad with the date of August 28th, 2015.

7 (EXHIBIT MARKED FOR IDENTIFICATION)

8 Q. Take a second to look at that. Do  
9 you recognize this document?

10 A. Yes, sir.

11 Q. What is it?

12 A. This is a Notice of Preliminary  
13 Determination letter.

14 Q. Was it prepared by you or under your  
15 direction?

16 A. Yes, sir.

17 Q. Is this document a Commission  
18 record?

19 A. Yes, sir.

20 Q. Is it kept in the ordinary course of  
21 business?

22 A. Yes, sir.

23 Q. Is it the practice of the Commission  
24 to make this determination?

25 A. Yes, sir.

1           Q.    Is this document in the same or  
2 similar condition as when you prepared it or it  
3 was prepared under your direction?

4           A.    Yes, sir.

5           Q.    Explain how the civil forfeiture was  
6 derived in this case.

7           A.    The civil forfeiture was derived  
8 from as Group 4 violations on the chart, on the  
9 civil forfeiture chart. And for these  
10 particular Group 4 violations \$250 forfeitures  
11 were assigned to both fines.

12          Q.    And the total for both violations  
13 was \$500; is that correct?

14          A.    Correct.

15          Q.    Is this penalty consistent with the  
16 recommended fine schedule in recommended civil  
17 penalty procedure adopted by the Commercial  
18 Motor Vehicle Alliance?

19          A.    Yes, sir.

20          Q.    And again forfeiture amount is \$500?

21          A.    Yes, sir.

22          Q.    And is that the correct forfeiture  
23 amount for this case?

24          A.    Yes, sir, it is.

25          Q.    Would you recommend this amount to



1 the Commission?

2 A. Yes, I do.

3 Q. One other thing just to clear up for  
4 the record, I notice on the Notice of  
5 Preliminary Determination, it says the vehicle  
6 operated by XPO Drayage Incorporated, whereas  
7 the carrier on the Driver/Vehicle Examination  
8 Report, which is Staff Exhibit 1, is Bridge  
9 Terminal Transport Services, Inc. Do you know  
10 why that is the case?

11 A. It's likely affiliated with the DOT  
12 number on the inspection.

13 Q. So it's a possibility that the DOT  
14 number, the name assigned to the DOT number,  
15 could have changed since the time of the stop?

16 A. Yes, sir.

17 Q. So from your understanding as an  
18 expert in the field it's possible that a  
19 different name could be on the Driver/Vehicle  
20 Examination Report than can be on the Notice of  
21 Preliminary Determination?

22 A. Correct. Company names can an do  
23 change. DOT number does not.

24 Q. But from what you understand in this  
25 case these are both driver violations, so the

1 carrier name wouldn't necessarily be relevant  
2 here; correct?

3 A. Yes, sir.

4 Q. Anything else you think would be  
5 important to note that the Commission would like  
6 to know and be in the record?

7 A. Not that I can think at this time.

8 MR. BEELER: Thank you. Your Honor,  
9 no further questions.

10 ATTORNEY EXAMINER: Thank you. Mr.  
11 Shad, do you have any questions?

12 MR. SHAD: Yes, I do.

13 ATTORNEY EXAMINER: Go ahead.

14 CROSS-EXAMINATION

15 By Mr. Shad:

16 Q. As far as the intrastate and  
17 interstate, the driver's license Bureau, the  
18 folks that sent the letter out, they are not so  
19 educated on this interstate and intrastate; is  
20 that true? Or do they get -- do they have a  
21 full training for that?

22 MR. BEELER: I am going to object at  
23 this time, Your Honor. Mr. Persinger is  
24 testifying as to the calculation of the  
25 forfeiture in this case. That question would

1 have been better directed at Inspector Bell.

2 ATTORNEY EXAMINER: Your question is  
3 as to the fines?

4 MR. SHAD: As to the rules of  
5 the interstate and intrastate. Are the people  
6 that are recording this, and when you declare  
7 yourself, are they well trained, completely  
8 trained, as far as directing what the driver is  
9 asking?

10 MR. BEELER: May I respond, your  
11 Honor?

12 ATTORNEY EXAMINER: Yes.

13 MR. BEELER: Again, these would have  
14 been great questions for Inspector Bell when he  
15 was on the stand, but Mr. Persinger is not here  
16 to testify as to the facts of the violation and  
17 what occurred on that day and the interpretation  
18 of the violation itself. He is mainly here to  
19 discuss how the forfeiture was derived.

20 MR. SHAD: But I object to his  
21 objection because he is in charge of issuing  
22 these rules. Am I wrong?

23 ATTORNEY EXAMINER: I think the  
24 violations you were charged with came from what  
25 Mr. Beeler is saying is from the Inspector, and

1     they just issue the fines based on  
2     the inspections that come in.

3                 MR. SHAD: I understand.

4                 ATTORNEY EXAMINER: So, based on --

5                 MR. SHAD: Can I call Mr. Bell up to  
6     the --

7                 ATTORNEY EXAMINER: At this point  
8     you cannot. That would have been good on the  
9     first round.

10                MR. SHAD: I understand.

11                ATTORNEY EXAMINER: Any other  
12     questions for Mr. Persinger?

13                MR. SHAD: No, there is no need in  
14     asking him anything. Thank you.

15                ATTORNEY EXAMINER: Thank you.

16                MR. BEELER: No redirect, your  
17     Honor.

18                ATTORNEY EXAMINER: Thank you. You  
19     may step down.

20                MR. BEELER: At this time I will  
21     move for the admission of what's been previously  
22     marked as Staff Exhibit 4 into the record.

23                ATTORNEY EXAMINER: And that will be  
24     admitted.

25                (EXHIBIT HEREBY ADMITTED INTO

1 EVIDENCE.

2 MR. BEELER: That is all I have.

3 MR. SHAD: Sir, who can I ask these  
4 questions to? I mean, Mr. Bell obviously I  
5 can't now. But my thoughts are when I declared  
6 myself nobody knew --

7 ATTORNEY EXAMINER: Right now, now  
8 is your time to present your case. So I can  
9 call you to the stand, swear you in, and then  
10 you can basically give your opinion of the facts  
11 of how you understand them.

12 MR. SHAD: Thank you.

13 ATTORNEY EXAMINER: So if you want  
14 to come up here.

15 (WITNESS SWORN)

16 - - -

17 TOMMY SHAD  
18 called as a witness, being first duly sworn,  
19 testified as follows:

20 ATTORNEY EXAMINER: So as I was  
21 saying you can basically give your testimony of  
22 how you see things and how you understand  
23 things. And then Mr. Beeler will have a chance  
24 to ask you questions after that.

25 MR. SHAD: Okay. My thoughts are

1 when I got the letter from the Ohio Public  
2 Commission as to interstate and intrastate.  
3 And I didn't know what they were talking about.

4 Drove a truck for 20 years or  
5 better, and I called them on the phone and said  
6 I got this letter, I don't know what this means,  
7 interstate and intrastate. My license I thought  
8 were intact.

9 What can I do? I had hazmat, I had  
10 double, triples, everything but tanker. And all  
11 I do is drive in Ohio. I don't go out of state.  
12 So what is this -- what's the difference?

13 And they said, well, if you just  
14 drive in Ohio all you need is intrastate, with  
15 no explanation on product be produced in Ohio or  
16 delivered in Ohio. No explanation of those  
17 boundaries at all.

18 And Mr. Bell looked at me, actually  
19 looked and said to me "You look confused." And  
20 I said "I sure am confused."

21 And at the mercy of the Court, not  
22 even the people at the motor vehicle Bureau, the  
23 next day after we had our meeting, they didn't  
24 have any idea what I was talking about. And  
25 the lady that helped me, I explained to her, she

1 said "My God, my husband is a truck driver.

2 I am going to tell him about this."

3 I told other truck drivers that I  
4 know, hey, declare yourself intrastate, or if  
5 you do declare yourself intrastate you are in  
6 trouble if you are driving containers, you  
7 better get it straightened out.

8 And as I say, I didn't do that out  
9 of arrogance or ignorance is what happened.  
10 I had no idea of intrastate or interstate  
11 product only in Ohio, delivered only in Ohio.  
12 It was nothing but confusion.

13 And I thought with me talking to an  
14 official over the phone that they cleared it up  
15 for me. I only drive in Ohio, that is all I  
16 needed.

17 I have a medical card, I had no  
18 intentions on snobbing the system. And this, I  
19 am wondering when did this law come, when did  
20 this become -- when did this change? I am  
21 not -- I never got a -- never had to declare  
22 myself, I guess I might say, before this. Did  
23 this just come about?

24 ATTORNEY EXAMINER: We can't answer  
25 your questions, unfortunately.

1 MR. SHAD: Okay. I got you. Not  
2 understanding. And, like I say, I am at the  
3 mercy of the court on it.

4 I have my phone records. I don't  
5 know who I present this to.

6 ATTORNEY EXAMINER: Do you want to  
7 present this as an exhibit?

8 MR. SHAD: Sure. Who do I present  
9 it to?

10 ATTORNEY EXAMINER: Actually it goes  
11 into my record. Mr. Beeler gets a copy. Do you  
12 need to keep that copy? Do you have it?

13 MR. SHAD: Are you who I talked to  
14 on the phone, by the way? Okay.

15 ATTORNEY EXAMINER: Thank you. I  
16 will mark this as Respondent's Exhibit 1.

17 (EXHIBIT MARKED FOR THE PURPOSE OF  
18 IDENTIFICATION)

19 MR. SHAD: I wasn't texting on my  
20 phone driving down the road. It's an incredible  
21 thought. Crazy thought. But, as I said, the  
22 record speaks for itself. I wasn't talking to  
23 my company on the phone, or anybody.

24 Nor did I have a conversation with  
25 Mr. Bell about talking to my company on the



1 phone, or texting on my phone to my company.  
 2 That conversation between him and I was never --  
 3 I don't remember one word about talking -- you  
 4 and I talking about talking to my company on the  
 5 phone, or texting my company on the phone.

6 ATTORNEY EXAMINER: Anything else?

7 MR. SHAD: I have nothing else to  
 8 say. I apologize to the State about the  
 9 intrastate and interstate. I would say that.  
 10 And I learned a big lesson there.

11 ATTORNEY EXAMINER: Mr. Beeler, do  
 12 you have any questions?

13 MR. BEELER: Yes, just a few, your  
 14 Honor.

15 CROSS-EXAMINATION

16 By Mr. Beeler:

17 Q. So, you don't have a copy of your  
 18 phone records up there?

19 ATTORNEY EXAMINER: He can look at  
 20 mine.

21 Q. Who is Chadsky Inc?

22 A. That is the owner of the phone  
 23 and the truck I was driving.

24 Q. So is that your work phone?

25 A. It was.

1 Q. Do you have a personal phone too?

2 A. No.

3 Q. And you don't have a personal --

4 A. I have -- I used that as my personal  
5 phone.

6 Q. As your personal cell phone?

7 A. Yes, yes.

8 Q. From what you see on this report  
9 that just shows phone calls; correct?

10 A. I don't know to be honest. I just  
11 asked for records.

12 Q. Okay. But if you look, I guess I  
13 don't know how many columns over, but it says  
14 minutes; right?

15 A. Yes.

16 Q. And then below all those minutes are  
17 just, you know, amounts of time; right?

18 A. Right. Wouldn't texting show up in  
19 that category as far as minutes go?

20 Q. You tell me.

21 A. I don't --

22 Q. I don't believe that this shows  
23 texts or not.

24 A. I just show usage in my thoughts.

25 Q. And usage, and you do admit that

1     there is a column there that says minutes with  
2     minutes listed there?

3             A.     Yes.

4             Q.     And those correspond with the  
5     numbers of incoming and outgoing calls in the  
6     other columns?

7             A.     Yes, sir. It doesn't say -- it  
8     doesn't categorize, it just says usage. And if  
9     you are on the phone in any form or fashion it's  
10    going to be recorded in my view.

11            Q.     Okay. And turning just to the  
12    other -- the intra and interstate, did  
13    the Inspector tell you anything that you could  
14    do to fix the restriction on your CDL?

15            A.     No, sir. I went -- I directly went  
16    to the, as far as I remember, I went directly  
17    the next day to the motor vehicle Bureau, Bureau  
18    of vehicles in Parma, and went back to  
19    interstate.

20            Q.     So the day after the inspection you  
21    went to the --

22            A.     Yes, sir.

23            Q.     The Parma Bureau of Motor Vehicles?

24            A.     Yes, sir.

25            Q.     You went and you got the restriction

1 changed from intrastate to interstate?

2 A. Correct. Because in my view that  
3 wasn't -- intrastate or interstate wasn't doing  
4 me any good as far as making my job easier or  
5 making my job quick. I was interstate prior to  
6 proclaiming I was intrastate, and I just -- I  
7 don't drive out of the state, and I am thinking,  
8 well, that was what it accomplished. I don't  
9 drive out of state.

10 I already had a physical card and I  
11 presented it to Mr. Bell. And I never  
12 thought -- and I pick up the equipment in the  
13 rail yard. Product, I don't know what's in  
14 there. I am not allowed to pop the seal unless  
15 authority has me do it. Got to wait until I get  
16 to the customer.

17 MR. BEELER: No further questions,  
18 your Honor. Thank you.

19 ATTORNEY EXAMINER: Thank you. Do  
20 you have any response to the questions you were  
21 just asked?

22 MR. SHAD: Who would I ask?

23 ATTORNEY EXAMINER: Just anything  
24 you want to say after being asked those  
25 questions.

1 MR. SHAD: Intrastate, interstate?  
 2 Really asking for the mercy of the Court. I  
 3 truly wasn't trying to be getting over on the  
 4 State because it didn't cost me -- it cost, it's  
 5 going to cost me, but it didn't help me in my  
 6 job whatsoever in my views. I wasn't trying to  
 7 be sly there or whatever you want to put in it.  
 8 I wasn't trying to get over on the State.

9 ATTORNEY EXAMINER: All right.  
 10 Thank you. You may step down. Mr. Shad, would  
 11 you like this phone record made an official part  
 12 of this court record?

13 MR. SHAD: Well, if you don't need  
 14 them. I mean --

15 MR. BEELER: No objection.

16 ATTORNEY EXAMINER: Okay. It will  
 17 be admitted.

18 (EXHIBIT HEREBY ADMITTED INTO  
 19 EVIDENCE)

20 ATTORNEY EXAMINER: Anything  
 21 further?

22 MR. BEELER: One moment. Nothing  
 23 further, your Honor. Thank you.

24 ATTORNEY EXAMINER: Thank you. The  
 25 Commission will take everything under

1 advisement. I will get a copy of  
2 the transcript, which the transcript will be  
3 available on the website within a few weeks  
4 usually.

5 The Commission will look over  
6 everything and issue a ruling as soon as they  
7 can. We are adjourned. Thank you.

8 MR. SHAD: Thank you for listening  
9 to me.

10 MR. BEELER: Thank you.

11 (At 10:50 A.M. the hearing was  
12 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  
January 26, 2016, and carefully compared with my  
original stenographic notes.

\_\_\_\_\_  
Michael O. Spencer,  
Registered Professional  
Reporter.

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**in**

**Case No(s). 15-1521-TR-CVF**

Summary: Transcript in the matter of the Tommy Shad hearing held on 01/26/16 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Spencer, Michael O. Mr.