

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Paul D. Massie :
Notice of Apparent Violation : Case No.
and Intent to Assess : 18-1811-TR-CVF
Forfeiture :

- - -

PROCEEDINGS

Before Megan Addison, Attorney Examiner, held at
the Public Utilities Commission of Ohio, 180
East Broad Street, Hearing Room 11-C, Columbus,
Ohio, on Tuesday, February 26, 2019, at 11:00
A.M.

- - -

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- - -

1 APPEARANCES:

2 Ms. Jodi J. Bair
3 Senior Assistant Attorney General
4 30 East Broad Street, 16th Floor
Columbus, Ohio 43215

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

7 Mr. Paul C. Massie
8 2043 Shorewood Lane
9 Lima, Ohio 45806

10 Appearing Pro se.

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Tuesday Morning,
February 26, 2019.
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ATTORNEY EXAMINER: The Public
Utilities Commission calls for hearing at this
time and place cause No. 18-1811-TR-CVF being In
the Matter Paul C. Massie Notice of Apparent
Violation and Intent to Assess Forfeiture.

My name is Megan Addison, and I will
be the Attorney Examiner presiding over today's
hearing. We will begin by taking appearances of
the parties beginning with Staff.

MS. BAIR: Thank you, Your Honor.
On behalf of the Staff of the Public Utilities
Commission Ohio, Dave Yost, Attorney General,
Jodi Bair, Assistant Attorney General, 30 East
Broad Street, Columbus, Ohio 43215.

ATTORNEY EXAMINER: Thank you, Ms.
Bair. And Mr. Massie, if you could just state
your name and address for the record.

MR. MASSIE: Paul C. Massie, 2043
Shorewood Lane, Lima, Ohio 45806.

ATTORNEY EXAMINER: Thank you very
much. Ms. Bair, are you prepared to proceed?

MS. BAIR: Yes. Thank you, Your

1 Honor. I would like to call Mr. Barrett to the
2 stand.

3 (WITNESS SWORN)

4 ROBERT JAMES BARRETT
5 called as a witness, being first duly sworn,
6 testified as follows:

7 DIRECT EXAMINATION

8 By Ms. Bair:

9 Q. Could you please state your full
10 name for the record?

11 A. Yes. Robert James Barrett.

12 Q. And by whom are you employed?

13 A. State of Ohio, Public Utilities
14 Commission.

15 Q. And what is your job with
16 the Commission?

17 A. My job is a Hazardous Materials
18 Specialist 2.

19 Q. And long have you had that job?
20 For how long have you been at the Commission?

21 A. I have been at the Commission for
22 just over 17 years. 33 years with the State
23 altogether.

24 Q. And what are your duties in that job?

25 A. As a Hazardous Materials Specialist

1 I am part of our field staff. I work out of the
2 Auglaize County western Ohio area. And at that
3 location I conduct compliance reviews at motor
4 carriers, hazardous material shipper reviews,
5 driver/vehicle inspections, roadside
6 inspections, and fixed site inspections. Do
7 outreach with the industry, transportation
8 industry. And also conduct new entrant safety
9 audits.

10 Q. Do you have specific training in
11 that area? What type of training do you have?

12 A. Yes. I have maintained all of my
13 federal mandated certifications throughout my
14 employment with the Commission.

15 MS. BAIR: May I approach the
16 witness, Your Honor?

17 ATTORNEY EXAMINER: You may.

18 MS. BAIR: I would like to have this
19 marked as Staff Exhibit 1.

20 ATTORNEY EXAMINER: It will be so
21 marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION)

23 Q. Do you recognize this document?

24 A. Yes. This is a copy of a compliance
25 review printed from our Capre software which is

1 our federal software that we use to conduct CRs
2 or DOT audits.

3 Q. Is this document kept in the records
4 of the Commission?

5 A. I am sorry. Could you repeat your
6 question?

7 Q. Is this kept in the regular course
8 of the business at the Commission?

9 A. Yes.

10 Q. And is it the practice of the
11 Commission employees such as yourself to make
12 this report?

13 A. Yes, it is.

14 Q. Is this document in the same
15 condition or substantially when you prepared it?

16 A. Yes. It appears that it is in the
17 condition it was when I prepared it.

18 Q. And what's the date that you
19 prepared this document?

20 A. It was June 26th of '18.

21 Q. What was the reason that you
22 prepared this document?

23 A. I was assigned by the PUCO central
24 office here to conduct a compliance review on a
25 motor carrier based in my area, Paul Massie, as

1 a result of a roadside inspection that was done
2 earlier in the year.

3 Q. Is Mr. Massie here today?

4 A. Yes, he is.

5 Q. Did he receive a copy of this report
6 when you did it?

7 A. Yes.

8 Q. And could you please start by going
9 through and noting the first violation that you
10 found in the compliance review?

11 A. The first violation cited, there
12 were only four that were noted. The first one
13 is for failing to implement a controlled
14 substances and alcohol testing program.

15 Q. Is that a requirement of the CFR?

16 A. Yes, it is.

17 Q. And what number CFR is that a
18 violation of?

19 A. Part 382.

20 Q. And what other violations did you
21 note?

22 A. The second violation was failing to
23 keep minimum records of inspection pertaining to
24 vehicles, trucks, trailers and such.

25 Q. And another violation that you

1 noted?

2 A. Yes. Mr. Massie is self-employed
3 and he is required to maintain an employment
4 application.

5 Q. Was there also a violation of
6 391.23, failing to investigate the drivers'
7 background?

8 A. Correct. That pertains to the
9 pre-employment driving record.

10 Q. Thank you. Does this report also
11 note the weight of the vehicle that Mr. Massie
12 was driving?

13 A. The compliance review that we are
14 looking at doesn't necessarily pertain. It's in
15 my narrative at the end of it.

16 Q. Could you direct us to where you
17 have written that in your notes?

18 A. I guess the copy took off the page
19 number.

20 Q. Was it in Part C?

21 A. Yes. Part C, yes.

22 Q. Okay.

23 A. Vehicle was 28,900 pounds gross
24 weight.

25 Q. I would like to go through the

1 violations again. If I can direct your
2 attention to the four that were assessed.

3 A. Yes.

4 Q. First one was 382.115(a).

5 A. Correct.

6 Q. And can you tell me, that was a
7 violation of what?

8 A. Failing to implement a drug and
9 alcohol, or a controlled substance and alcohol
10 testing program.

11 Q. And how did you make that
12 determination?

13 A. Based on the inspection, the
14 roadside inspection, that was conducted by
15 the Patrol, which opened the path to this
16 review, the driver was found to be operating a
17 vehicle in excess of 26,001 pound gross vehicle
18 weight, which then required the driver to
19 possess a CDL.

20 To operate a vehicle in interstate
21 or intrastate requires a CDL, the employer or
22 motor carrier is required to implement a
23 controlled substance or alcohol testing program.

24 Q. And Mr. Massie did not do that?

25 A. He did not provide any records of

1 any attempt or test done in requirement of 382.

2 Q. And then going on down 391.23. That
3 was a failure to do what?

4 A. When a motor carrier hires a driver
5 they are required to check the driver's motor
6 vehicle record with the state that issued their
7 license to ensure that the license is in good
8 standing from the state that issued it, and that
9 the driver is properly classed with the proper
10 endorsements for the type of vehicle that they
11 are going to operate.

12 And they are required to run that
13 MVR within 30 days of the driver's date of hire.
14 And it's required to be maintained as part of
15 the driver's qualification file for the life of
16 the employment for that driver in the period
17 thereafter.

18 Q. Did you request to see that for Mr.
19 Massie?

20 A. I requested a driver file and
21 the associated documents, yes.

22 Q. And he did not produce any?

23 A. No.

24 Q. Thank you. And violation 391.21(a).
25 What was that a violation of?

1 A. As a commercial driver the carrier
2 is required and the driver is required to
3 prepare an employment application. And there is
4 no exception to the regulation if you employ
5 yourself as the only driver or as the motor
6 carrier because I don't know the driver. We
7 utilize that as some insight into their
8 background.

9 And so Mr. Massie was required to
10 prepare an application, and he failed to do so.

11 Q. And another violation, 396.3. How
12 did you determine that violation?

13 A. A motor carrier operating commercial
14 vehicles are required to maintain a maintenance
15 file for each commercial vehicle whether it be a
16 power unit or trailer or combination thereof,
17 which would include all records of preventative
18 maintenance, repairs, replacements of components
19 and parts and accessories.

20 Q. And you asked Mr. Massie for those
21 records?

22 A. Yes, I did.

23 Q. And he did not produce them?

24 A. That's correct.

25 MS. BAIR: Thank you. I have no

1 more questions for this witness, Your Honor.

2 ATTORNEY EXAMINER: Thank you, Ms.
3 Bair. Mr. Massie, do you have any questions for
4 this witness at this time?

5 MR. MASSIE: Yes. Just one.

6 ATTORNEY EXAMINER: Sure.

7 CROSS-EXAMINATION

8 By Mr. Massie:

9 Q. Is it common practice to issue a DOT
10 number to a person and audit them on the same
11 exact day?

12 A. A DOT number is required as a
13 tracking number, and in order for the compliance
14 review to be uploaded through the required
15 channels it has to have that number as a
16 tracking number.

17 To continue to answer your question,
18 as a one truck or one driver company it's not
19 uncommon for us to have contact with that
20 individual or business and request and get a DOT
21 number and conduct the entire review on the same
22 day.

23 Q. Okay.

24 A. I believe I answered your question.

25 MR. MASSIE: Yes.

1 ATTORNEY EXAMINER: Any additional
2 questions, Mr. Massie?

3 MR. MASSIE: No, ma'am.

4 ATTORNEY EXAMINER: Thank you. I
5 have no additional questions at this time. You
6 may be excused, Mr. Barrett.

7 MS. BAIR: And, Your Honor, I would
8 like to move Staff Exhibit 1 into evidence.

9 ATTORNEY EXAMINER: Are there any
10 objections?

11 MR. MASSIE: No.

12 ATTORNEY EXAMINER: It will be
13 admitted.

14 (EXHIBIT HEREBY ADMITTED INTO
15 EVIDENCE)

16 ATTORNEY EXAMINER: Ms. Bair, you
17 may proceed.

18 MS. BAIR: Yes. I would like to
19 call Mr. Moser as the Staff's second witness to
20 the stand.

21 (WITNESS SWORN)

22 - - -

23 ROD MOSER

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

1 DIRECT EXAMINATION

2 By Ms. Bair:

3 Q. Could you please state your full
4 name for the record?

5 A. My name is Rod Allan Moser.

6 Q. By whom are you employed and in what
7 capacity?

8 A. I am the Compliance Chief within
9 the Transportation Department for the Public
10 Utilities Commission of Ohio.

11 Q. How long have you held that
12 position?

13 A. Approximately two years.

14 Q. What was your job before that?

15 A. Most recently prior to that I was a
16 Sergeant with the Highway Patrol in the Columbus
17 area.

18 Q. How long were you with the Patrol?

19 A. Twenty-nine years and 49 weeks.

20 Q. And at the Commission, what are your
21 duties here at the Commission?

22 A. My job is to basically oversee the
23 civil forfeiture process for inspections and
24 compliance reviews.

25 Q. And what are your expert

1 qualifications having to do with the subject
2 matter?

3 A. Certified in several areas of
4 federal regulations. North American Standards
5 Part A and B; Motor Coach; Hazardous Materials;
6 Cargo Tank.

7 Q. And could you explain how you make a
8 determination on a forfeiture?

9 A. Sure. The forfeiture process is
10 automated. Depending on the nature of the
11 violation the fines are assigned to a group and
12 then they are run through our, for lack of a
13 better word, they are run through our system,
14 and the whole process is really automated.

15 Q. Does the Commission apply this
16 process uniformly to everyone?

17 A. Yes, everyone is treated the same.

18 MS. BAIR: Your Honor, may I
19 approach?

20 ATTORNEY EXAMINER: You may.

21 MS. BAIR: I would like to have this
22 marked as Staff Exhibit 2.

23 ATTORNEY EXAMINER: It will be so
24 marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION)

1 Q. Do you recognize this document?

2 A. I do.

3 Q. What is it?

4 A. It's a copy of the letter that we
5 call the Notice of Preliminary Determination.

6 Q. Is the document sent to the
7 Respondent?

8 A. Yes, ma'am.

9 Q. And is this a Commission record that
10 is kept regularly?

11 A. Yes, it is.

12 Q. Okay. And could you tell me in this
13 specific case how the civil forfeiture was
14 derived?

15 A. Sure. The violations that are
16 listed in order of 382.115(a), that is regarding
17 an alcohol program. That is an acute violation.
18 Acute violations are \$1,000 for the first
19 offense, and \$250 for subsequent offenses.

20 There was one offense in this case
21 so the total violation or total fine was \$1,000

22 391.23(a) for failure to
23 investigate the driver's background. That is
24 what is known as a critical violation. First
25 offense is \$400. There was just one offense in

1 this case, so \$400 was the total.

2 319.21(a) for not having a
3 employment application on file is what we call a
4 NAV which essentially means there is no fine for
5 that. So there is zero dollars assigned to it
6 in the right-hand column.

7 And then 396.3, failure to keep
8 minimum records of inspection and vehicle
9 maintenance is a critical violation. The first
10 offense 400 and subsequent offenses are \$25. So
11 in this case there were two violations and total
12 of \$425.

13 Q. What's the total amount of
14 forfeiture for all four?

15 A. The total amount was \$1,825.

16 Q. Do you believe that is the correct
17 forfeiture amount in this case?

18 A. I do, yes.

19 Q. Would you recommend this amount to
20 the Commission?

21 A. Yes, I would.

22 Q. Are these fines assessed compatible
23 with the applicable requirements of the U.S.
24 Department of Transportation?

25 A. They are consistent with those

1 regulations, yes.

2 MS. BAIR: I have nothing further.

3 ATTORNEY EXAMINER: Thank you, Ms.
4 Bair. Mr. Massie, any questions?

5 MR. MASSIE: No.

6 ATTORNEY EXAMINER: Thank you. I
7 have no additional questions. Thank you. Mr.
8 Moser, you are excused.

9 THE WITNESS: Thank you.

10 MS. BAIR: Your Honor, I would like
11 to move Staff Exhibit 2 into evidence.

12 ATTORNEY EXAMINER: Any objections?

13 MR. MASSIE: No.

14 ATTORNEY EXAMINER: It will be
15 admitted.

16 (EXHIBIT HEREBY ADMITTED INTO
17 EVIDENCE)

18 ATTORNEY EXAMINER: Can we go off
19 the record for a moment?

20 (DISCUSSION OFF THE RECORD)

21 ATTORNEY EXAMINER: We will go back
22 on the record. Ms. Bair, did you have anything?

23 MS. BAIR: I moved both exhibits
24 into evidence.

25 ATTORNEY EXAMINER: Correct. So you

1 have concluded the presentation of your case.

2 Thank you.

3 Mr. Massie, at this time if you
4 would like to provide a statement under oath I
5 will invite you up to the witness stand. And
6 again I will instruct you to bring any exhibits
7 or documents you would like to have marked up
8 with you.

9 (WITNESS SWORN)

10 - - -

11 PAUL D. MASSIE

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

14 ATTORNEY EXAMINER: And, Mr.
15 Massie, when you are providing testimony I will
16 just allow you to simply tell your story. I may
17 interject with some questions if I feel that the
18 record could use a little clarity at any point.
19 And again, when you have concluded your
20 statement I will allow Ms. Bair an opportunity
21 to ask any additional questions as well.

22 You may proceed whenever you are
23 ready.

24 MR. MASSIE: On February 8th, 2018 I
25 hauled scrap to one, get rid of it, and just

1 collect the money off of it. I have no scale
2 where I loaded the material. So I crossed the
3 26,000 pound threshold.

4 I got pulled over, I had a day in
5 court, I paid the fines that DOT assessed me at
6 that time on that day.

7 And I have not done any such thing
8 since. I am not a business, I am not a
9 transportation business to haul materials to and
10 from locations. I do not get paid for that.

11 I have since be assigned a ODOT
12 number. I have deactivated that. I have not
13 gotten my CDL in this past year because to prove
14 I do not drive and carry commercial loads. I
15 don't need one at the current time. I would
16 like to eventually get one, but since that is
17 not what I currently do and to help prove that I
18 don't need it, it's not a common thing, I have
19 not gotten it.

20 I think that is it.

21 EXAMINATION

22 By the Attorney Examiner:

23 Q. Mr. Massie, when you said the
24 hauling of commercial loads is not currently
25 something that you do, have you ever been

1 employed in that capacity?

2 A. I have never been employed to haul
3 commercially.

4 Q. Have you ever worked for yourself to
5 haul commercially as you put it?

6 A. No. I have never be paid to move
7 something down the road.

8 Q. Have you ever held a CDL?

9 A. No. I have held a permit for a
10 short time, and I did not get the CDL for
11 multiple reasons, mainly being I knew I wasn't
12 ready for it. And the wise thing to not force
13 myself to act like I was where I shouldn't be.

14 ATTORNEY EXAMINER: Thank you. I
15 will turn it over to Ms. Bair at this point.
16 She may have some questions.

17 MS. BAIR: Your Honor, may I
18 approach the witness?

19 ATTORNEY EXAMINER: You may.

20 CROSS-EXAMINATION

21 By Ms. Bair:

22 Q. Do you recognize this picture?

23 A. Yes, ma'am.

24 Q. Is that your truck?

25 A. That is my truck. That is my

1 trailer sitting on the scales.

2 ATTORNEY EXAMINER: I am sorry, Ms.
3 Bair. Before we proceed, will you be marking
4 this?

5 MS. BAIR: Yes. I will mark this as
6 Staff Exhibit 3, please.

7 ATTORNEY EXAMINER: Thank you very
8 much. It shall be so marked.

9 (EXHIBIT MARKED FOR THE PURPOSE OF
10 IDENTIFICATION)

11 Q. Do you recognize your truck?

12 A. Yes.

13 Q. And what are you hauling on the
14 trailer?

15 A. Scrap.

16 Q. What is that?

17 A. It used to be a piece of equipment.

18 Q. Made out of what type of material?

19 A. Steel.

20 Q. And in that picture do you see the
21 truck being weighed on the scales?

22 A. Yes.

23 Q. And do you recall the specific
24 weight that it was?

25 A. It's recorded in Exhibit A. 28-5.

1 Q. So you accept that it was --

2 A. Yes. I was past the 26,000 pounds.

3 I understand I made a mistake.

4 Q. Were there other violations besides
5 the weight?

6 A. Quite a few.

7 Q. And would one of them have been
8 width?

9 A. Yes.

10 Q. Which you can see from the picture?

11 A. You have --

12 Q. By the tires protruding?

13 A. The tires are protruding. I believe
14 you have a leeway, so by the picture you cannot
15 guarantee that is over width. But, yes, I was
16 violated for over width.

17 I don't know the exact dimensions of
18 what the leeway is either.

19 Q. And other violations were assessed
20 besides the one that we are here talking about
21 today, correct, because of this?

22 A. Yes, ma'am.

23 Q. And you have paid those violations?

24 A. I paid those fines. I was wrong in
25 that instance, and even though I didn't know

1 that I was wrong when I went down the road, I
2 decided that I still did the wrong thing, so I
3 had no problem with paying those violations.

4 Q. Do you still haul things on that
5 yellow trailer?

6 A. No. It is parked behind my house
7 and it hasn't moved.

8 Q. So you have paid the forfeiture for
9 the other violations regarding this same stop?

10 A. Yes.

11 MS. BAIR: Okay. I have nothing
12 further.

13 ATTORNEY EXAMINER: Thank you. And,
14 Mr. Massie, I will just ask given Ms. Bair's
15 questions on cross-examination do you have
16 anything to add to the record at this time?

17 MR. MASSIE: No.

18 ATTORNEY EXAMINER: Okay. Thank you
19 very much. Let's briefly go off the record
20 again.

21 (DISCUSSION OFF THE RECORD)

22 ATTORNEY EXAMINER: We will go back
23 on the record at this time.

24 Ms. Bair, before we proceed did you
25 want to move Staff Exhibit 3 into the record?

1 MS. BAIR: Yes, Your Honor. I would
2 like to move Staff Exhibit 3 into the record.

3 ATTORNEY EXAMINER: Any objection?

4 MR. MASSIE: No.

5 ATTORNEY EXAMINER: It will be
6 admitted.

7 (EXHIBIT ADMITTED INTO EVIDENCE)

8 ATTORNEY EXAMINER: Following a
9 quick discussion with the parties they have
10 agreed that we will not require closing
11 statements or briefs in this particular
12 proceeding. And we will allow the record to
13 stand as presented today during the hearing.

14 One quick note. We discovered that
15 Mr. Massie's Social Security number was
16 inadvertently listed in Staff Exhibit 1. We
17 will be redacting that to ensure that that
18 information is not displayed in the docket.
19 That is the only portion of that document that
20 will be redacted.

21 Anything further before we adjourn
22 for today?

23 MS. BAIR: I believe we have a
24 redacted version here, just double checking to
25 make sure it's the exact same Staff Exhibit 1.

1 ATTORNEY EXAMINER: Wonderful. If
2 we could allow Mr. Massie to take a look at that
3 before we present it to the court reporter.

4 Go off the record a quick minute.

5 (DISCUSSION OFF THE RECORD)

6 ATTORNEY EXAMINER: I will just
7 note the court reporter has been provided a
8 corrected Staff Exhibit 1 with the appropriate
9 redaction made.

10 Is there anything further before we
11 adjourn for today?

12 MS. BAIR: Nothing from me.

13 ATTORNEY EXAMINER: Mr. Massie.

14 MR. MASSIE: Nothing.

15 ATTORNEY EXAMINER: Wonderful. Then
16 we will consider this hearing concluded. The
17 Commission will issue it's Opinion and Order
18 following its review of the evidence presented
19 today and a Opinion and Order will be issued
20 within due time. Thank you all.

21 (At 11:35 A.M. the hearing was
22 concluded)

23 - - -

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 26, 2019, and carefully compared with
my original stenographic notes.

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

- - -



This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 18-1811-TR-CVF

Summary: Transcript In the Matter of Paul D. Massie Notice of Apparent Violation and Intent to Assess Forfeiture, hearing held on February 26th, 2019. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Spencer, Michael O. Mr.