

PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Matthew Muse:

Notice of Apparent Violation: Case No.

and Intent to Assess : 20-1805-TR-CVF

Forfeiture. :

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PROCEEDINGS

Before Jesse Davis, 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, April 19,
2022, at 10:00 A.M.

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Armstrong & Okey, Inc.
222 East Town Street, 2nd Floor
Columbus, Ohio 43215
(614) 224-9481 - (800) 223-9481

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APPEARANCES:

Mr. Thomas Shepherd
Assistant Attorney General
30 East Broad Street, 26th Floor
Columbus, Ohio 43215

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

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1 Tuesday Morning,
 2 April 19, 2022.

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4 ATTORNEY EXAMINER: Good morning,
 5 everyone. Thanks for being here.

6 The Public Utilities Commission of
 7 Ohio has called today for hearing Case No.
 8 20-1805-TR-CVF. It's captioned In the Matter of
 9 Matthew J. Muse. I am Jesse Davis, I am the
 10 Attorney Examiner assigned to the case. It's
 11 currently 10:18 A.M.

12 We have been here about 18 minutes.
 13 We are going to wait, recess about another 15
 14 minutes, reconvene about 10:33 and we will see
 15 if our Respondent has arrived or going to attend
 16 or see if we can reach him. And we are in
 17 recess. Off the record.

18 (RECESS TAKEN)

19 ATTORNEY EXAMINER: We are back on
 20 the record and I am going to go ahead and take
 21 appearances from the Staff.

22 MR. SHEPHERD: Thank you, your
 23 Honor. On behalf of the Staff of the Public
 24 Utilities Commission of Ohio, Dave Yost,
 25 Attorney General of Ohio; John Jones, Section

1 Chief of the Public Utilities Section, by
2 Assistant Attorney General Thomas Shepherd, 30
3 East Broad Street, 26th Floor, Columbus, Ohio
4 43215.

5 ATTORNEY EXAMINER: And I will just
6 note for the record our Respondent hasn't
7 arrived, not attended today. So, Staff, you can
8 proceed however you like.

9 MR. SHEPHERD: Thank you. Staff
10 calls Steven Morrie to the stand.

11 (WITNESS SWORN)

12 ATTORNEY EXAMINER: You may be
13 seated.

14 - - -

15 STEVEN MOORIE
16 called as a witness, being first duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION

19 By Mr. Shepherd:

20 Q. Good morning, Mr. Moorie. How are
21 you?

22 A. I am good.

23 Q. Could you please state your full
24 name for the record and your employer?

25 A. Steven W. Moorie. Employer is

1 Public Utilities Commission of Ohio.

2 Q. And what's your position with
3 the Commission?

4 A. I am an investigator.

5 Q. And how long have you been in that
6 position?

7 A. Approximately six years.

8 Q. And what are your general duties in
9 that capacity?

10 A. I do compliance reviews, safety
11 audits, and inspections for the purpose of
12 keeping my qualifications to do the job.

13 Q. Would you say that motor carrier
14 inspections are conducted to protect the safety
15 of the Ohio traveling public?

16 A. Absolutely.

17 Q. How many inspections on average do
18 you perform in a year? And it's okay to
19 estimate here.

20 A. Approximately 45, 50.

21 Q. Thank you.

22 MR. SHEPHERD: Your Honor, May I
23 approach the witness?

24 ATTORNEY EXAMINER: You may.

25 MR. SHEPHERD: I am handing out two

1 exhibits that we will be going over, and I guess
2 we will just mark those now.

3 The first exhibit is the
4 Driver/Vehicle Examination Report, and I would
5 like to have marked as Staff Exhibit 1.

6 The second is a series of photos
7 that I would like to have marked as Staff
8 Exhibit 2.

9 And the final is a photo of the bill
10 of lading. And I would like that to be marked
11 as Staff Exhibit 3.

12 ATTORNEY EXAMINER: They are so
13 marked.

14 (EXHIBITS HEREBY MARKED FOR
15 IDENTIFICATION PURPOSES)

16 Q. Do you have in front of you what's
17 been marked as Staff Exhibit 1?

18 A. Yes.

19 Q. Okay. Do you recognize this
20 document?

21 A. I do.

22 Q. Is this document a record kept in
23 the order course of business?

24 A. It is.

25 Q. Is the information contained in this

1 report the type you are required by law to
2 report?

3 A. It is.

4 Q. Did you prepare this report because
5 of the inspection of the vehicle driven by Mr.
6 Muse, Mr. Matthew Muse?

7 A. I did.

8 Q. Do you remember the particular
9 reason you began to inspect this vehicle?

10 A. Yes. The vehicle came into a
11 stationary scale at the State line of Ohio, and
12 as it was coming down the ramp it was listing to
13 the right side severely.

14 Q. If you could look at Staff Exhibit
15 2, that's the series of photos, briefly. And
16 the first photo, it's from the rear of
17 the truck. Is that what you were looking at
18 when you said it was listing?

19 A. Yes. And, yes, you can see pretty
20 clearly it's leaning to the right side.

21 Q. Thank you. I am going to turn back
22 now to Staff Exhibit 1, the Driver Examination
23 report, and were it says violations. The very
24 first one is Violation Code 383.23A2. Do you
25 see that?

1 A. Yes.

2 Q. Can you briefly explain to me what
3 that rule requires?

4 A. That particular rule requires the
5 driver to have the appropriate endorsement based
6 on the vehicle that he is operating and
7 the freight that he is hauling.

8 Q. Okay. And do you believe that
9 violation occurred?

10 A. I do.

11 Q. Do you know what Mr. Muse was
12 hauling that day?

13 A. Yes. He was hauling --

14 Q. And you can refer to Staff Exhibit 3
15 if you would like.

16 A. It was batteries wet filled with
17 acid, Class 8 hazmat, UN No. 2794.

18 Q. And if you would briefly turn to
19 Staff Exhibit 3.

20 MR. SHEPHERD: That is the bill of
21 lading. And I will note for everybody that the
22 front of this is the picture of the full bill of
23 lading, and if you turn it around it's a version
24 that you can read it a little bit better.

25 Q. So, reviewing Staff Exhibit 3, is

1 that how you determined the type of batteries
2 that were in the truck?

3 A. It was a combination of the bill of
4 lading and opening the back of the trailer and
5 actually looking at the freight.

6 Q. And based on your inspection were
7 the batteries loaded or braced so as to prevent
8 damage?

9 A. They were not.

10 Q. How did you determine that?

11 A. They were all slid to the right side
12 of the vehicle, and they had made contact with
13 the right side of the trailer.

14 Q. And there was no strap or anything
15 to keep them from sliding around?

16 A. No. They were using what's called a
17 skid pad. And a skid pad can be a valid use for
18 blocking and bracing, but if they are not doing
19 the job then they don't -- the pallets had slid
20 out from all of the skid pads.

21 Q. Thank you. And one final question.
22 Is it your professional opinion that a violation
23 49 CF 383.23A2 occurred based on your inspection
24 of this vehicle?

25 A. Yes. He was hauling hazmat and he

1 did not have a hazardous endorsement.

2 MR. SHEPHERD: I have no further
3 questions.

4 ATTORNEY EXAMINER: Just one for
5 the sake of the record.

6 EXAMINATION

7 By the Attorney Examiner:

8 Q. Could you just for clarity of the
9 record explain what an endorsement is on the
10 CDL?

11 A. An endorsement on the CDL is
12 additional training for the driver; that it's
13 been determined by the state that the driver
14 needs extra training to be able to haul that
15 particular piece of freight.

16 And in this case it was hazmat.
17 They have to take an additional test that
18 familiarizes themselves with the process of
19 hauling the hazmat and how they are supposed to
20 document.

21 In this case the driver didn't have
22 that endorsement.

23 Q. Thank you. And I had one quick
24 question about what has been marked as Staff's
25 Exhibit 2. Just this photograph right here,

1 it's the second, I guess the second, third and
2 forth photographs. Fifth and sixth. I am
3 sorry. The measuring tape.

4 A. Okay.

5 Q. Just to make sure I understand.

6 This is just to show the listing, correct, this
7 is two inches lower on one side?

8 A. Yes. This vehicle has an air bag
9 setup that stabilizes it. And with the pallets
10 all being moved to the right side of the vehicle
11 that was the clearance on the bottom rail of the
12 trailer to the tires.

13 And if you look on the right side is
14 the first photo showing six inches on one tire,
15 four inches on the other.

16 And then the second photo is showing
17 the difference from the left to the right side.

18 Q. Then one final question I had for
19 you. I am sorry. When you were asked about how
20 you could tell this was not properly secured,
21 your second reasoning or reason was a
22 combination. You said the first thing was one
23 thing and the second thing you said that it was
24 up against the wall of the trailer.

25 What would you normally have

1 expected the material secured to look like if
 2 they were properly in the back of the trailer
 3 and secured?

4 A. Properly secured in the back of
 5 the trailer, this particular load would have
 6 been centered right down the middle of
 7 the trailer with some sort of blocking or
 8 bracing to each side to prevent from lateral
 9 movement.

10 Q. So just in totality, when you saw
 11 the listing and then actually inside the trailer
 12 and saw this was up against the wall kind of
 13 confirmed your suspicions?

14 A. Yes.

15 ATTORNEY EXAMINER: Thank you. I
 16 just wanted to make sure that I understood that
 17 correctly.

18 I have no further questions. You
 19 may step down.

20 MR. SHEPHERD: The Staff now calls
 21 Rod Moser to the stand

22 (WITNESS SWORN)

23 - - -

24 ROD MOSER

25 called as a witness, being first duly sworn,

1 testified as follows:

2 DIRECT EXAMINATION

3 By Mr. Shepherd:

4 Q. Good morning, Mr. Moser. It's good
5 to see you again.

6 Could you please state your full
7 name and who you are employed by for the record?

8 A. My name is Rod Allen Moser. I am
9 employed, I am currently the Chief of
10 the Compliance and Registration sections for the
11 Transportation Department of the Public
12 Utilities Commission of Ohio.

13 Q. And what are your duties in that
14 position?

15 A. As related to this case, I
16 administrator the civil forfeiture process for
17 Transportation.

18 Q. And did you have the opportunity to
19 review the Commission's file in this case prior
20 to today's hearing?

21 A. I did.

22 MR. SHEPHERD: Your Honor, may I
23 approach the witness?

24 ATTORNEY EXAMINER: You may.

25 MR. SHEPHERD: I am circulating a

1 document that's the Notice of Preliminary
2 Determination sent on, or dated November 3rd,
3 2020, and I would like to have that marked as
4 Staff Exhibit 4, please.

5 ATTORNEY EXAMINER: It will be so
6 marked.

7 (EXHIBIT MARKED FOR THE PURPOSE OF
8 IDENTIFICATION)

9 Q. Mr. Moser, do you recognize the
10 document I have marked as Staff Exhibit 4?

11 A. Yes, I do.

12 Q. Can you briefly explain what this
13 document is?

14 A. This document is sent to a
15 Respondent or a Respondent's representative
16 following an unsuccessful attempt at resolving
17 issues related to a Respondent's case during a
18 telephone conference.

19 Q. And this notice is required by
20 Commission rule?

21 A. Yes, it is.

22 Q. And based on your review of the
23 Commission's file which contains Staff Exhibit
24 4, the Respondent received all the notices
25 required by Commission rules?

1 A. To the best of my knowledge, yes.

2 Q. Can you please briefly explain how
3 the forfeiture amount listed was calculated?

4 A. Sure. All violations from
5 inspections whether they are hazmat or
6 non-hazmat are divided into groups based upon
7 the likelihood that the violation could cause a
8 crash.

9 Hazardous materials violations are
10 in their own group, and then mechanical
11 violations are divided into group zero, 1, 2 and
12 3. And then there is Group 4 which this
13 violation is a Group 4, that is basically driver
14 behavior violations and things like authority
15 and insurance.

16 Group zero violations never have a
17 fine. Groups 1, 2 and 3 will have a fine if
18 they are marked out of service. And then Group
19 4 violations always have a fine.

20 Q. And the process that you just
21 described was applied here in this case?

22 A. Yes. It's an automated system, so
23 in each case with this violation is noted the
24 Respondent would get this fine of \$250.

25 Q. Is it your professional opinion that

1 the forfeiture amount listed in Staff Exhibit 4
2 is accurate, just and reasonable?

3 A. It is.

4 MR. SHEPHERD: Thank you. I have no
5 further questions.

6 ATTORNEY EXAMINER: Thank you. You
7 may step down.

8 MR. SHEPHERD: And one final matter,
9 just noting that the Respondent has not appeared
10 today, Staff would move for default judgment.

11 Pursuant to Ohio Administrative Code
12 4901;2-7-14, Subsection E, "A respondent who has
13 requested an administrative hearing and fails to
14 appear for the evidentiary hearing shall be in
15 default."

16 And that has occurred today. So
17 Staff would move for default judgment.

18 And, your Honor, Staff would move
19 Staff Exhibits 1 through 4 into the record.

20 ATTORNEY EXAMINER: And just for the
21 record sake in light of the Respondent not being
22 in attendance, there is no need for any
23 opposition, so they are moved into evidence.

24 (EXHIBITS HEREBY ADMITTED INTO
25 EVIDENCE)

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ATTORNEY EXAMINER: The motion for default will be entertained and given its weight when the Commission makes its decision.

If there is nothing further from Staff then we are adjourned. It is 10:46 A.M.

We are adjourned. Thank you everyone.

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(At 10:46 A.M. the hearing was 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 April 19, 2022, and carefully compared with my original stenographic notes.

Michael O. Spencer,
Registered Professional
Reporter.

- - -

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

5/6/2022 9:26:31 AM

in

Case No(s). 20-1805-TR-CVF

Summary: Transcript in the matter of the Matthew Muse hearing held on 04/19/22 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Spencer, Michael O. Mr.