

FILE

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In Re: : Case No.
George Ncube : 05-202-TR-CVF

PROCEEDINGS

Before Alfred P. Agler, Attorney Examiner, held
at the offices of the Public Utilities
Commission of Ohio, 180 East Broad Street,
Hearing Room 11-G, Columbus, Ohio, on Thursday,
October 26, 2006, at 10:00 A.M.

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1 APPEARANCES:

2 Mr. John L. Alden
3 One East Livingston Avenue
4 Columbus, Ohio 43215

5 On behalf of the Respondent.

6 Mr. John Jones
7 and
8 Mr. William L. Wright
9 Assistant Attorneys General
10 180 East Broad Street
11 Columbus, Ohio 43215

12 On behalf of the Staff of the
13 Public Utilities Commission of
14 Ohio.

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Thursday Morning Session,

October 26, 2006.

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ATTORNEY EXAMINER: This is the matter of George Ncube, notice of apparent violation, Case No. 05-202-TR-CVF. My name is Alfred P. Agler, I am an Attorney Examiner with the Commission and I have been assigned to hear this case. At this time I would like to take appearances on behalf of the Staff.

MR. JONES: Your Honor, on behalf of the Staff Bill Wright and John Jones, Assistant Attorneys General, 180 East Broad Street, 9th Floor, Columbus on behalf of the Staff.

ATTORNEY EXAMINER: All right. And on behalf of Mr. Ncube.

MR. ALDEN: Your Honor, may the record please show the continuing appearance of John Alden, One East Livingston, Columbus, Ohio.

ATTORNEY EXAMINER: Okay. Today's proceeding is a continuation of our earlier hearing in this matter on October 11, 2006. Are there any opening comments or are we ready to begin with Mr. Alden?

1 MR. JONES: I believe, Your Honor,
2 we are ready to begin.

3 ATTORNEY EXAMINER: All right.
4 Proceed, Mr. Alden.

5 MR. ALDEN: George.

6 (WITNESS SWORN)

7 MR. WRIGHT: Your Honor, before we
8 start I guess there is one thing I just want to
9 make sure we are all clear on. We have Officer
10 Neitzelt here today and we may present some
11 rebuttal. When Mr. Alden is done if we may have
12 five minutes to determine whether or not we need
13 to do that.

14 ATTORNEY EXAMINER: Certainly.

15 MR. WRIGHT: Thank you.

16 - - -

17 GEORGE NCUBE
18 called as a witness by the Respondent, being
19 first duly sworn, testified as follows:

20 ATTORNEY EXAMINER: Please be
21 seated, Mr. Ncube.

22 THE WITNESS: Thank you.

23 DIRECT EXAMINATION

24 By Mr. Alden:

1 Q. George, would you please tell us
2 your name and spell your last name for the
3 record?

4 A. My name is George Ncube. First name
5 G-E-O-R-G-E. Last name N-C-U-B-E.

6 Q. What is your home address?

7 A. 2007 B Parsons, Indianapolis,
8 Indiana. Zip Code 46224.

9 Q. Before this hearing did I tell you
10 what it meant to testify under oath?

11 A. Yes.

12 Q. Do you understand that the answers
13 you give here today must be truthful?

14 A. Yes.

15 Q. Okay. Have you ever testified in
16 anything like this before?

17 A. No.

18 Q. Do you currently hold a valid CDL
19 driver's license?

20 A. Yes.

21 Q. Okay. And this hearing involves a
22 notice of apparent violation involving you as a
23 driver on September 16th, 2004. You recall that
24 day?

1 A. Yes.

2 Q. Okay. The testimony at the prior
3 hearing by the officer indicated in summary that
4 he pulled you over on Interstate 70 and the end
5 result of that was he placed you out of service.
6 Do you recall that?

7 A. Yes, I do.

8 Q. And when he placed you out of
9 service did he then instruct you to get in
10 the truck and go to I believe it's the Duke
11 Travel Rest on I-70 east of Columbus?

12 A. Yes.

13 Q. Okay. What was your understanding
14 what he told you that day?

15 A. At that time he said go to --
16 pointed to the truck stop. And if I recall he
17 said go ahead and take your 10 hours off and
18 find something to eat, whatever you can do
19 there. Then at that time I thought my job -- I
20 couldn't continue going to take the load the way
21 I am supposed to go. I am off. I mean, I
22 shouldn't take that load there because I have to
23 take my 10 hours.

24 Q. So at that time your understanding

1 was you could not continue driving with
2 the business of driving?

3 A. Yes.

4 Q. Okay. At that time did you make any
5 contact with your dispatcher?

6 A. Yes, I did.

7 Q. Tell us the conversation between you
8 and the dispatcher.

9 A. I called my dispatch on my cell
10 phone then he said -- said I had been pulled
11 off. Because company policy was if you get
12 pulled off -- even the officer -- before
13 the officer ever gets done with anything you
14 call them and tell them you were pulled off.
15 Then he said okay. That load is a hot load,
16 it's supposed to be in Pennsylvania at a certain
17 time and if I miss that time it has to be
18 rescheduled. And that place where it was going,
19 it is strictly by appointment. You can't go
20 there with no appointment.

21 So they rescheduled the load.
22 Before the officer left they already rescheduled
23 the load. And then in that facility you cannot
24 do no overnight sleep, park, or do anything.

1 Q. When you say that facility are you
2 talking about the destination of the shipment?

3 A. Yes.

4 Q. What city and state is that? Do you
5 recall?

6 A. It's in Pennsylvania. I can't
7 remember the city, but it's in Pennsylvania.

8 Q. You had been there before?

9 A. It was my second time. But didn't
10 use that interstate. Came from a different
11 direction. It was my second time going there.
12 So it is situated in a toll road. As soon as
13 you exit it's right there. And you need to get
14 in there and then unload or get loaded then get
15 back on the interstate and then keep going.

16 So I understood that the officer
17 said I have to take 10 hours here and then I had
18 already called the company and they said all
19 right, go ahead and take 10 hours. They even
20 said give me more than 10 hours to reschedule
21 that load. It was 2:00 o'clock the following
22 day.

23 Then I thought, well, let me find
24 someplace to stay. And at that time it was a

1 little bit drizzling. I mean, raining. It
2 was -- the temperature was a little bit low.
3 Not too low, not too high. But the truck had no
4 heat. I was hungry. No food in the truck.
5 And, I mean, been out of my house for almost
6 three days. And didn't have money. So that is
7 why I went to that truck stop.

8 Q. You say that truck stop. Let's --

9 A. The Duke truck stop.

10 Q. The first one or second one?

11 A. That is the first one.

12 Q. Where the officer told you to go?

13 A. Yes. That is where he followed me
14 there. We went together.

15 Q. Okay.

16 A. And then he said okay. He left.

17 I mean, make sure I was there, I guess. And I
18 went inside the store and the lady at the desk
19 said they don't take these CFS checks. She said
20 they don't take CFS checks. I asked her do you
21 cash checks. Didn't, no.

22 She didn't know what kind of check I
23 was talking about. Then she said don't do
24 personal checks. I said, no, not a personal

1 check. Then she said they don't cash checks.

2 Then at that time I didn't continue to argue
3 with her, didn't even show her the check then.

4 I was thinking maybe they don't --
5 never been to Duke before. I used Flying J and
6 TA. This was my first days driving these
7 trucks. And then at that time I left. I went
8 and then to the truck and looking if I can find
9 anyplace I can cash that check.

10 And then I went back in. I asked
11 her, I said do you know any other place that I
12 can cash checks around here? She pointed
13 across the interstate and said you can go find
14 maybe someplace like Wal-Mart, they may take
15 personal checks. At that time I had a check, my
16 personal check. I said what about these? She
17 said, no. I mean, maybe Wal-Mart can take them.

18 And I said but Wal-Mart, they sell
19 food or something? Restaurant down the street.
20 I said okay. Then that is when I am thinking
21 since I am off let me just go across the street
22 and then find the Wal-Mart. When I was at
23 Wal-Mart -- found that the road that I was
24 driving on I couldn't make no turns. There was

1 sign no truck in the parking lot for Wal-Mart,
2 but there is another entrance and even went past
3 the entrance.

4 At this time I am looking for a
5 restaurant thinking if I can get to the
6 restaurant before I can maybe become back and
7 do -- I mean, go to Wal-Mart may be a good idea
8 then went to this restaurant. And this
9 restaurant, there is a big strip mall and there
10 is some kind of parking.

11 Before I pulled in there on my
12 mirror I could see the police officer come.
13 But didn't think it was the same police officer
14 that pulled me over. Like, I mean, didn't pay
15 attention. Like maybe on his way somewhere.
16 Just when I was pulling into this strip mall and
17 saw the police officer behind me. I mean, he
18 wasn't behind me, on the side with lights on.

19 And we came to a stop. And he asked
20 where I was going. I told him, I said, no, I
21 was looking for the restaurant because I needed
22 something to eat and find something to eat. He
23 said that I think three times you are lying to
24 me. I said, no, I have no reason to lie to a

1 police officer. And I said no again, I am not
2 lying, sir.

3 And then when he said it the third
4 time I just kept quiet because I didn't want to
5 argue with the officer like that. I mean, that
6 is how he feels. And at that time I think he
7 asked me why are you there? I said I went to
8 eat, find something to eat. My truck doesn't
9 have heat. They said they can't cash my check.

10 Then he called back and asking them.
11 They said they do cash checks. Because he asked
12 them in a correct manner. Now, again the way I
13 asked the lady maybe she didn't know what kind
14 of check I was talking about. But now
15 the officer asked her, probably she got what he
16 meant. They said, yes, we cash checks. CFS
17 check.

18 Then the police officer -- I mean,
19 he came back to me and said they cash checks.
20 Why did you lie to me? I said, no, I didn't
21 lie. They said they don't cash checks.
22 Personal checks. I showed him my checkbook. He
23 said you need to go back to where I said you
24 should go park. Then I said okay. I mean,

1 turned around and then went back to Duke Truck
2 Stop.

3 Q. So, you acknowledge that there was a
4 misunderstanding between you and the lady you
5 were talking with about cashing checks or what
6 type of checks?

7 A. Yes. I mean, the way I understood
8 there was two misunderstandings. The first one
9 was probably with the lady, and the second was
10 probably the first statement with the police
11 officer when he said try to find some food
12 somewhere and to stay 10 hours. To me I am
13 looking, didn't find food in this place, maybe
14 he meant find some other place. That is why he
15 asked was I lying about the food and can't cash
16 checks.

17 She pointed across the street. She
18 said across the -- my thinking was as long as I
19 am in the same area I will be fine. I don't
20 have to drive and get on the interstate. He
21 said he put me out of service, thinking I
22 shouldn't be on the interstate and shouldn't
23 continue going the way I was supposed to go, go
24 back to where I come from.

1 Well, don't do that. At the time I
2 am hungry and also a little bit cold and you
3 might do some things that you might not realize
4 they are wrong.

5 Q. So, all this time you knew that you
6 were not allowed to continue with the load?

7 A. Yes.

8 Q. Okay. Do you realize now that your
9 interpretation and understanding of out of
10 service could have been a lot better?

11 A. Yes. Yes.

12 Q. Okay. And first of all would you
13 put yourself in the same position again?

14 A. No. Not this time. I won't.

15 Q. And if for some reason the same
16 situation would happen again do you understand
17 you have a better understanding of what out of
18 service means?

19 A. Yes. I really at this time, I mean,
20 to me take it as a lesson. But sometimes I
21 wish, and really wish -- at that time people can
22 read somebody as far as intentions, the police
23 officer read something different because I had
24 no intentions in disrespect to him. His rules

1 do say do this and do this.

2 I was willing to do anything he
3 would have told me. Go back that way, I could
4 have done that. He could have said anything to
5 me. But I just didn't realize that going to --
6 driving that vehicle, moving it, that I just
7 didn't know that.

8 Q. When the officer told you to go back
9 to the original Duke location did you do that
10 right away?

11 A. Yes.

12 Q. And how long did you stay there?

13 A. I stayed there for I think 13 hours.
14 Stayed 13 hours. I woke up at -- I can't
15 remember what time it was, but, you know, it was
16 more than 13 hours.

17 Q. And at that point did you start
18 driving again?

19 A. Yes.

20 Q. And was it the same load to the same
21 destination?

22 A. Yes.

23 Q. Okay. And when you arrived at that
24 destination did you arrive within the specified

1 time? Appointment time?

2 A. Yes. I did make it to the
3 appointment time.

4 Q. You knew that you were not allowed
5 to continue to drive on duty to your destination
6 when the officer placed you out of service the
7 first time; am I correct?

8 A. Yes.

9 Q. Okay.

10 A. That I understood.

11 Q. And then you immediately before
12 the officer left called your dispatcher and had
13 them reschedule the load for the following day?

14 A. Yes.

15 Q. Okay. How did you get this
16 information that the load was rescheduled and
17 when it was rescheduled?

18 A. We have -- those trucks are
19 installed with Callcom units.

20 Q. Callcom?

21 A. Yes. Callcom units. They send
22 messages to the truck and then before -- it was
23 not maybe 30 minutes the message popped in for
24 the information when the load was supposed to be

1 there and when was the next load. I mean, all
2 this other stuff.

3 Basically if I remember the schedule
4 was the same time. Then at that time that is
5 when I took off and going to this other second
6 truck stop.

7 Q. What would have happened if you
8 would have attempted to deliver the load in
9 Pennsylvania at the originally scheduled time?

10 A. I knew from as soon as they sent
11 that message to me that the load was
12 rescheduled. I knew that very well that you
13 cannot go to that place. Even if you go early.
14 The fact I was put out of service, that load was
15 already late because of that traffic stop. So
16 there was no way. If I didn't tell them and
17 keep going to that place you cannot do
18 overnight. You cannot park the truck there.

19 They go by strictly appointments.
20 You get there, you have to deliver the load
21 and you need to keep going. So I didn't -- my
22 intention at that time was that since this load
23 was already late, rescheduled, there is no point
24 in me keep going. Let's just find someplace to

1 stay here until these 10 hours and that
2 rescheduled appointment time. Then I went.

3 Q. Where were you born? What country?

4 A. I was born in South Africa.

5 Q. And what is your native language?
6 What language were you brought up with?

7 A. My mother is Zulu. English is my
8 second language. I understand English to a
9 certain point. But there is some things I am
10 learning with this English language. And I am
11 willing to learn some more now. If you are in
12 another country you need to like understand.
13 You keep learning.

14 I understand English to a certain
15 point. Some things I am still learning. I try.
16 I mean, but it's hard and really trying to
17 understand English.

18 Q. Do you have a family either in the
19 U.S. or in South Africa?

20 A. Yes. Here I have family.

21 Q. In which location?

22 A. I have two kids in Ohio, in
23 Cleveland. And I live in Indianapolis. Other
24 two kids there. Four kids.

1 Q. And who is the support for the
2 children in the U.S. and children in Africa?

3 A. I support all my kids. I do
4 support, send money to Africa, and send -- I
5 mean, pay child support to the kids in Ohio and
6 support two that I live with them.

7 Q. You are their support then?

8 A. Yes.

9 Q. At the time of the incident you were
10 driving for whom?

11 A. I was driving for CLM Freightlines.

12 Q. And were you strictly a driver?

13 A. Yes. At that time I was just a
14 driver for them.

15 Q. Are you now driving for CLM as we
16 speak today?

17 A. No. That day was my last day at CLM
18 because I had just purchased a truck, and then
19 told them -- gave me notice to stay -- I think I
20 will be trying to live in another way. I mean,
21 my own truck now. I bought my own semi truck.
22 But, I mean, still making payments to it. Then
23 went owner-operator status now.

24 Q. So, now you are an owner-operator

1 meaning you purchased your own truck and drive
2 as well?

3 A. Yes.

4 Q. Okay.

5 A. Since that time.

6 Q. Since the time you were placed out
7 of service have you had any type of moving
8 violation whatsoever?

9 A. No.

10 Q. Okay. Did you find out, however,
11 that there was a problem with identity theft one
12 time since then?

13 A. Yes. I had identity theft and put
14 it to the police department. And then at that
15 time I went to BMV and pulled my driving record
16 and found I had a ticket in New York, but wasn't
17 on my truck and working for the company. So
18 basically somebody tried to use my information
19 in New York.

20 Q. Is the BMV taking that off of your
21 record then?

22 A. Yes. Still in the process now. I
23 talked to New York BMV, they said to fax them
24 the copy of my log book and the company contract

1 that I worked for and then all the information
2 so they can call the company and make sure I was
3 working and then take it off my record.

4 Q. So other than that identify theft
5 issue anything else since this incident that
6 went on your record?

7 A. No.

8 Q. Who are you driving for now? What
9 company?

10 A. I am in contract with Freight
11 Masters.

12 Q. And the contract called for both you
13 and your truck?

14 A. Yes.

15 Q. If you lost your license what
16 happens to the contract for your truck and for
17 you?

18 A. I mean, if I lost the driver's
19 license, I mean, for whatever period I won't be
20 able to be on that contract. And the problem is
21 going to also keep the truck because they lent
22 me some money and then I have to work until I
23 pay off that truck. And then take the truck and
24 contract and I won't be working no more.

1 Q. Before this hearing started this
2 morning you mentioned that you were willing to
3 learn more to -- tell me what you said earlier
4 about what you are, how best to describe it,
5 you realized that you had erred in your
6 judgment.

7 A. Oh, okay. I remember. What I told
8 you, I said I am willing to say to the State of
9 Ohio and the responsible authorities that my
10 intentions were not to disrespect and break
11 rules, and anything I can do as like community
12 service or any other reprimand I am more than
13 willing to take it and at least keep me working
14 in this truck and so I can support my kids and
15 at the same time show the State of Ohio no, no,
16 I really, really respect the public as a whole
17 and the responsible authorities.

18 I have no intentions to disrespect
19 no one. And I won't repeat the same mistake
20 that I have been warned about. I mean, to me
21 it's like speeding. At that time when he caught
22 me speeding the police officer pulled me over, I
23 never speeded again. I never had the speed
24 ticket and hoping in the future I wouldn't have

1 none.

2 Q. If the Commission would see fit to
3 work with you on letting you keep your license
4 would you be willing to accept future monitoring
5 as well?

6 A. Yes. I want to look at this as --
7 all I want to -- I am here to clarify my
8 misunderstanding and I need the State of Ohio to
9 understand that I am not saying the police
10 officer didn't do -- I mean, anything out of his
11 job. He did exactly what the public expects and
12 what he is expected to do. It was my error in
13 judgment, and it was my first error in judgment,
14 I hope my last one. I won't do anything again.
15 Never done this before and never do it again.

16 MR. WRIGHT: Can we go off the
17 record?

18 (DISCUSSION OFF THE RECORD)

19 MR. ALDEN: If I can have four pages
20 marked as an exhibit, please.

21 ATTORNEY EXAMINER: This will be
22 Respondent's Exhibit 1.

23 (EXHIBIT HEREBY MARKED FOR
24 IDENTIFICATION PURPOSES)

1 MR. ALDEN: I am sorry. Five pages.

2 Q. George, I will give you some
3 documents that I have marked. Did you fax those
4 documents to me sometime ago?

5 A. Yes.

6 Q. You testified that you are now
7 operating as an owner-operator and you are on
8 some type of lease-purchase agreement with
9 Freight Masters?

10 A. Yes.

11 Q. Am I correct?

12 A. Yes.

13 Q. The first page of that document, is
14 that a copy of the lease agreement that you
15 entered into with Freight Masters?

16 A. Yes.

17 Q. And I didn't see anything if I am
18 looking at it correctly where it said that you
19 are purchasing that lease-purchase, but is it a
20 lease-purchase where you end up with the vehicle
21 after you made all the payments?

22 A. I asked for money, they gave me
23 money to purchase the truck, because the truck
24 was purchased from a separate place and then

1 they owed them money on it. But if for any
2 reason if I lost the job before I pay off the
3 amount they take the truck. They keep the
4 truck.

5 Q. And the second page of what I showed
6 to you, is that a copy of the certificate of
7 title showing your name as applicant?

8 A. Yes.

9 Q. The three pages following that, did
10 I ask you to provide information to me that may
11 give the State Patrol and the Hearing Examiner
12 and the Attorney General a little bit more
13 knowledge who you are and what you are?

14 A. Yes.

15 Q. And do you know the people that
16 prepared each of those letters?

17 A. Yes, I do.

18 Q. Have you read those documents, these
19 letters, before you sent them to me?

20 A. Yes, I did.

21 Q. Are those records accurate?

22 A. Yes, they are.

23 Q. Okay. At the original hearing on
24 October 11th the officer indicated that based

1 upon his knowledge of the area where you were
2 placed out of service that there were rest areas
3 closer, or a place closer than the one you
4 found. And that is his territory, I am sure he
5 is accurate.

6 Had you ever been in this area
7 before you were stopped, meaning off of I-70?

8 A. At that time, no. I wasn't having
9 that knowledge about this interstate. It was my
10 first time using the interstate. There was a
11 truck stop based on the directions given me by
12 the lady. I thought maybe she was talking about
13 something that is closer than going to the truck
14 stop.

15 And I didn't go on the interstate
16 because at the same time he thought I was going
17 back on the interstate, the police officer was
18 pulling me over, thought I am continuing going
19 to deliver the load or continuing going back to
20 the company, which I thought that -- my
21 understanding to put me out of service, I think
22 walk around, but maybe I was wrong with that
23 part.

24 But, I just didn't go looking for

1 it, the other rest stop. I just went to the
2 other -- that strip mall based on what the lady
3 told me. It's across the street.

4 Q. Do you remember what day of the week
5 you were stopped?

6 A. It was on a Wednesday.

7 Q. Had you worked that previous
8 Saturday or Sunday?

9 A. Sunday, yes.

10 Q. Sunday?

11 A. Yes. Basically, I mean, if you look
12 at it I was not over the driving hours, but
13 there is just that didn't update the log book.
14 And the officer, I mean, pulled my over at that
15 time. I did not, that was my mistake. It was
16 the greatest mistake. He is not wrong, he was
17 right. I mean, didn't believe what I was
18 telling him because many people can lie, I
19 believe.

20 Q. You are not here to contest the fact
21 that the log book was not up to date?

22 A. No. No. I am not contesting and I
23 am not here to say that he was wrong. The
24 charges, the money that is here, I am surely

1 willing to work for it and pay, but I just want
2 instead to give -- to go back to work and work.
3 I mean, pay back whatever. I made a mistake
4 before here, that maybe remember that each time
5 I jump on the truck, I have to remember the log
6 book has to be updated at all times to make the
7 job for the police officer to be easy when they
8 have to stop you for whatever, stop and keep
9 going. They have to keep going.

10 Q. To the best of your recollection at
11 all times were you respectful to the officer?

12 A. Oh, yes. I was respectful. I mean,
13 since I came at United States I have eight
14 years. I have had contact with a police
15 officer, I have never argued with a police
16 officer, had contact maybe two or three times,
17 but each time they pulled me over I do exactly
18 what they tell me.

19 There are some mistakes in -- I
20 mean, I understand truck driving is this way.
21 It is hard to police all of them. There are
22 police officers, they are the supervisors, and
23 the public in general, you deal with them as a
24 supervisor because if you do something wrong

1 they have the right to report, I mean, file
2 complaints and do all this other stuff.
3 So, it is hard.

4 There are some mistakes that we
5 don't see until you are in it. I think this is
6 to my understanding one of them. If I knew
7 before all the mistakes that I knew I wouldn't
8 be making mistakes. I don't go there. But, for
9 those that maybe, I mean, don't see them, might
10 overlook this other side of the law and thinking
11 I am right.

12 But if somebody says go back, I
13 mean, just go back right away. And the police
14 officer pulled me over do anything, I let them
15 do their job, I don't argue with them.

16 MR. ALDEN: Your Honor, I have
17 nothing else. I would ask for the admission of
18 our exhibit subject to cross-examination.

19 ATTORNEY EXAMINER: Any cross?

20 MR. WRIGHT: Just a few questions,
21 Your Honor.

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Wright:

1 Q. Good morning, Mr. Ncube.

2 A. Good morning, sir.

3 Q. You indicated you have a valid CDL,
4 correct, Commercial Driver's License?

5 A. Yes.

6 Q. And obviously you had to pass a
7 test?

8 A. Yes.

9 Q. To obtain that?

10 A. Yes.

11 Q. And that test would have been in
12 English; correct?

13 A. Yes, it was.

14 Q. How long have you had your CDL?

15 A. If I recall very well --

16 Q. Roughly.

17 A. I think five years.

18 Q. Five years. Okay. And have you
19 been driving for most of that five-year period?

20 A. Yes. All the time.

21 Q. Okay. Have you ever had a log book
22 violation prior to this one?

23 A. The log book violation that I had,
24 yes, one time. It was an error of a line. I

1 mean, I did not draw the line right.

2 Q. Okay.

3 A. Yes. And I think I didn't have the
4 log book lesson at the school.

5 Q. Okay. And let's talk a little bit
6 about what happened.

7 A. Yes, sir.

8 Q. You understood that you were pulled
9 over for speeding by the Trooper; correct?

10 A. Yes.

11 Q. And, of course, you don't deny that
12 you were speeding?

13 A. No.

14 Q. Okay. And as a result of that stop
15 then the officer asked you for your license and
16 a number of other things you understood,
17 correct, and you complied?

18 A. Yes.

19 Q. Okay. And then he looked at your
20 log book and he found a problem in your log
21 book; correct?

22 A. Yes.

23 Q. And your last entry, if I recall
24 correctly, was three days earlier; is that

1 right?

2 A. Yes.

3 Q. I believe it was somewhere in
4 Pennsylvania. I want to say Chambersburg.

5 A. Yes.

6 Q. Is that correct?

7 A. Yes.

8 Q. Okay. Now, at that point in time
9 you had pulled off. Let's see. You were at --
10 you would be at exit 129, the Buckeye Lake exit;
11 is that right?

12 A. Yes.

13 Q. And the officer at that point
14 escorted you to the Duke truck stop; correct?

15 A. Yes, he did.

16 Q. All right. And am I correct that he
17 told you that he was placing you out of service
18 at that point in time; correct?

19 A. Yes. He said that.

20 Q. He actually handed you a copy of his
21 report and went over it with you, did he not, to
22 make sure you understood the violation?

23 A. Yes. He went over the report from
24 the stop, yes.

1 Q. And at that point in time I think
2 you testified that I guess he went over the
3 report with you; correct?

4 A. Yes.

5 Q. Okay. And he told you that you were
6 out of service for 10 hours; correct?

7 A. Yes.

8 Q. And I believe you testified that
9 that -- what did it mean to you being placed out
10 of service?

11 A. Okay. He said to me being placed
12 out of service at that time. I thought it was
13 commercially I cannot drive that vehicle to the
14 destination where I was supposed to go or go
15 back to the original place where I had come from
16 on the interstate. That is what I was thinking.
17 I shouldn't continue working at that time. I am
18 off work.

19 I can do all the other things. I
20 can maybe find something to eat or do anything,
21 but not work. No work. That is what I
22 understood because they said in school, told you
23 if you are out of service you are out of work.
24 Maybe I misunderstood it then.

1 Q. Okay. So, basically as I understand
2 your testimony you understood that you were
3 placed out of service?

4 A. Yes.

5 Q. You understood that it would for 10
6 hours?

7 A. Yes.

8 Q. You understood that the vehicle was
9 to stay at that location at the Duke truck stop
10 for ten hours; correct?

11 A. I didn't understand that I had to
12 stay at the Duke truck stop. To my
13 understanding out of service I thought maybe not
14 nothing to do with the vehicle because what he
15 said to me, go find somewhere to eat. And he
16 asked me to drive the same vehicle because I
17 didn't have a problem. The problem was my log
18 book. I thought, well, he means stay here until
19 the log book is up to date.

20 Q. Well, it's important and I want to
21 make sure I understand you.

22 A. Okay.

23 Q. Mr. Ncube, you understood that you
24 were placed out of service; correct? Not the

1 vehicle. You were?

2 A. Yes, yes.

3 Q. And you understood the 10-hour
4 restriction applied to you; correct?

5 A. Yes.

6 Q. Okay. Now, at all times the officer
7 was dealing with you I assume he was very
8 courteous as well?

9 A. Yes.

10 Q. Respectful and tried to explain
11 things to you?

12 A. Yes, he did.

13 Q. Okay. Good. Now, you basically
14 testified that you were hungry and thirsty?

15 A. Yes.

16 Q. And you were cold; correct?

17 A. Yes.

18 Q. All right. Now, first of all there
19 was food on the premises, correct, the Duke?

20 A. Yes.

21 Q. And food, was there not, also at
22 McDonald's right there as well?

23 A. I didn't pay attention.

24 Q. Okay. And it's your testimony that

1 they wouldn't take your company checks; is that
2 correct?

3 A. Yes.

4 Q. Now, did you testify earlier this
5 morning that that particular day was your last
6 day with that company?

7 A. Yes.

8 Q. You already informed them you said
9 prior to making that run that you were no longer
10 working with them?

11 A. Yes. I already told them.

12 Q. Okay. All right. Now, did the
13 officer make it pretty clear to you that --
14 well, strike that.

15 Now, your testimony is that the
16 Duke wouldn't take your company check; is that
17 correct?

18 A. Yes. They said that the first time.

19 Q. Now, this isn't the first time you
20 had ever been at Duke; is it?

21 A. It was my first time.

22 Q. It was?

23 A. Yes.

24 Q. Interesting. You indicated that

1 your preference is the Flying J?

2 A. Yes.

3 Q. Okay. Now, am I correct that you
4 are coming west to east, right, traveling
5 towards Pennsylvania on 70?

6 A. Yes.

7 Q. Coming from Indianapolis?

8 A. Yes.

9 Q. To the Pennsylvania destination?

10 A. Yes.

11 Q. Okay. So would it be correct to say
12 that you had passed the Flying J just seven
13 miles to the west of the Buckeye Lake exit?
14 That is the Baltimore, Ohio exit.

15 A. I came from it. I went in it and
16 then I asked, tried to cash -- I mean, not a
17 check this time. They give you like a credit
18 card to buy the fuel. That is where they put
19 the monies. Like \$100 they put it there. But
20 anything over 100 purchase you will have to sign
21 a CFS check.

22 Or if you run out of the credit
23 limit in that card then you ask the supervisor
24 then they put money in your CFS check. And then

1 went to Flying J and they said you are over
2 limit, they couldn't give me money out of
3 the card.

4 At that time I called the supervisor
5 then he said I am doing something with other
6 trucks, just go to the -- when you get to the
7 nearest stop, next stop, pull in there then give
8 me the truck information I will put money on
9 your CFS check. That is from the Flying J. I
10 went from the Flying J and that Duke was where I
11 was pulled over.

12 And then all that happening. Then at
13 that time I was like since I am going to be here
14 for 10 hours let me try to ask her before I ask
15 the company that they cash checks. I didn't
16 have the check. I asked the lady do you cash
17 checks up here? I mean, trucker's checks. She
18 said no. I had my checkbook in hand, probably
19 when she looked at my hand and saw that check
20 and I think maybe this guy is trying to cash his
21 personal checks.

22 Q. You said you stopped at the Flying
23 J?

24 A. Yes.

1 Q. And you weren't able to use your
2 check there. Now, are you saying you don't
3 carry any cash to buy a meal?

4 A. That was my first job. I mean,
5 driving trucks. And I had been out of my house
6 for a couple days. And now I ran out of cash.
7 Didn't have even a penny.

8 Q. But I thought you said you had been
9 driving for almost five years.

10 A. Yes, but at that time I didn't have
11 cash. The only cash I carry is when the company
12 gives me cash in advance.

13 Q. Okay.

14 A. Yes.

15 Q. So you stopped at the Flying J and
16 they wouldn't take your check. Now, between
17 exit 122 and exit 129, which is the Buckeye Lake
18 exit where you were pulled over, do you recall
19 you also passed another exit that had a TA truck
20 stop and Pilot station? Did you ever go to
21 those?

22 A. Yes.

23 Q. Pilot?

24 A. Yes.

1 Q. You didn't stop at those; did you?

2 A. Yes. Didn't stop at those because I
3 felt it was too soon because, I mean, it was
4 before I got pulled over. I was thinking I was
5 going to when maybe driving like 30 minutes or
6 an hour, then find a truck stop and pull over
7 and do that. But, I didn't have a chance to do
8 that. The ones I passed, it's not that I didn't
9 see them. I saw them, just felt it is too soon
10 since he said he was working on other trucks.

11 Q. Okay. Now, again I want to make
12 sure I understand this. So the Trooper pulled
13 you over and he escorted you back behind the
14 Duke truck stop and he said you are out of
15 service for 10 hours, you can't drive; correct?

16 A. Yes.

17 Q. And there was nothing to -- well,
18 your truck had a sleeper berth; didn't it?

19 A. It did.

20 Q. And I believe you testified that you
21 actually spent the night in that.

22 A. I didn't spend the night in that
23 truck.

24 Q. You didn't?

1 A. No.

2 Q. Okay.

3 A. Just sat in the --

4 Q. You had used the truck to spend the
5 night before?

6 A. Yes. Didn't have heat. It was a
7 little bit raining and one of the windows,
8 couldn't close it. The following morning I had
9 to call. I mean, breakdown service come and see
10 if they could turn the heat on for me.

11 Q. How long had you been without heat?

12 A. Without heat?

13 Q. In the truck?

14 A. I just found it when I was in --
15 left Indianapolis. I tried to turn the heat on
16 and just close to the state line, Ohio state
17 line and the interstate line. It was a little
18 bit now chilly. Like, I mean, can't get
19 comfortable without a jacket. Then I tried to
20 turn on the heat and it wouldn't work. I pulled
21 off and look and tried to figure out why it was
22 not coming on. Keep going and find a place to
23 fix it. Then keep on going.

24 Q. Okay. Had you driven this

1 particular cab before?

2 A. No. I have been with that truck
3 for it was maybe two weeks since I had been with
4 that unit. The unit I drove before was a
5 different one.

6 Q. Now, so how long did you stay in the
7 truck stop before you left?

8 A. I stayed maybe like 18 hours.

9 Q. You misunderstood me. After you
10 were pulled over you understood you were out of
11 service?

12 A. Yes.

13 Q. How long did you physically sit
14 there before you left to go try to find
15 something to eat, as you said?

16 A. It was like maybe 25 minutes to 30
17 minutes.

18 Q. All right. And again you didn't try
19 going to the McDonald's across the street?

20 A. At that time I didn't even -- I
21 don't know that place. It was my first time.
22 When I asked the lady at the desk where to find
23 some other place to cash the checks she told me
24 to go -- there is a Wal-Mart across the street.

1 I didn't think about McDonald's because, I mean,
2 my first intention was to cash the check and so
3 get money. And McDonald's I don't think was
4 going to take checks.

5 Q. Okay. When you say check are you
6 referring to a personal check?

7 A. Yes.

8 Q. Did you ever show the person at the
9 Duke station a com check?

10 A. No.

11 Q. Why not?

12 A. I asked her and she said we don't
13 cash checks. I just figured maybe they don't do
14 that. To my understanding I was thinking maybe
15 small truck stop sometimes don't deal with com
16 checks or CFS checks.

17 Q. So, you were there about 20 minutes
18 and decided to leave?

19 A. Yes.

20 Q. And you understood again that you
21 were placed out of service. So it was your
22 belief that you could continue to operate your
23 truck and load anywhere you want to go so long
24 as you were just going to get something to eat;

1 correct?

2 A. No, not anywhere.

3 Q. Okay.

4 A. I thought if I stay within the same
5 vicinity. Like not going to a bar, but
6 someplace that is -- shouldn't go any other way
7 other than -- not the delivery place or back to
8 the company. The statement put out of service,
9 I am thinking that would be strictly driving
10 going to a certain destination. I am out of
11 work. Couldn't do that.

12 Q. The Trooper did not tell you that
13 you could drive anywhere within a vicinity; did
14 he?

15 A. No. He didn't tell me that.

16 Q. Now, let's talk about what happened
17 then. My understanding is that when you were
18 pulled over the second time --

19 A. Yes.

20 Q. Strike that. The original load you
21 were carrying, you were headed west to east from
22 Indianapolis to your destination in
23 Pennsylvania; correct?

24 A. Yes.

1 Q. And my understanding is the second
2 time you were stopped you were stopped on Route
3 40 eastbound; correct?

4 A. I don't know what route that was.

5 Q. Well, tell me, describe for me if
6 you will where you went after you left the truck
7 stop.

8 A. After I left the truck stop I
9 went -- if you are going to Pennsylvania that
10 truck stop is on the right-hand side. So, I
11 cross the bridge right there crossing the
12 interstate. I crossed over to the other side
13 because there is the Wal-Mart and as soon as you
14 get to the little road there it would take you
15 to another country road taking you to Wal-Mart.
16 There is a Wal-Mart there, thinking maybe like a
17 mile or so.

18 Q. You agree with me that when you were
19 stopped you were at the intersection of Route 13
20 and Route 40 and you were I believe sitting at
21 the red light; correct?

22 A. Yes. I was not sitting at the red
23 light. I was --

24 Q. Near or approaching the

1 intersection?

2 A. No. I was at the parking lot. I
3 mean, I didn't see the police officer until I
4 parked thinking about getting into the
5 restaurant.

6 Q. You were on the highway; were you
7 not?

8 A. No, not the highway.

9 Q. You were not on the highway when the
10 police officer put his lights on to stop you?
11 That is what you are saying?

12 A. Yes. No. I was on the parking lot.

13 Q. Okay. Now, it's my understanding --
14 so you were traveling in a northbound direction.

15 MR. ALDEN: Can I give him a map so
16 you are both using a State of Ohio map?

17 MR. WRIGHT: I could stand with him.
18 It might be easier.

19 Q. Okay. Now, we can agree, I believe
20 we can agree, that you are pulled over initially
21 at the Buckeye Lake exit which would be exit
22 129; correct?

23 A. Yes.

24 Q. Okay. And you would be on the south

1 side below 70; correct?

2 A. Yes.

3 Q. That is where the Duke was; right?

4 A. Yes. Yes.

5 Q. Now, once the officer left you
6 proceeded, as I understand it, you proceeded to
7 cross over 70?

8 A. Right.

9 Q. Presumably you were going on 79 and
10 headed in a northbound direction; right?

11 A. Yes.

12 Q. This way (indicating)?

13 A. Yes.

14 Q. Now, I believe the prior testimony
15 that we have in this case indicates that where
16 the officer stopped you was roughly at the
17 intersection of 13 and Route 40 which would be
18 Jacksontown. Does that sound about right?

19 A. Yes. This one (indicating).

20 Q. Okay. Now, I see your finger
21 moving. This might be helpful. So what you
22 would have done was taken 79 to Route 40?

23 A. Yes.

24 Q. And then be headed in an easterly

1 direction to Jacksontown; right?

2 A. Yes.

3 Q. Okay. All right. That would have
4 been it looks roughly five miles according to
5 the map. See the little five there?

6 A. Okay.

7 Q. Okay?

8 A. Yes.

9 Q. You also agree with me that -- well,
10 you had been on Route 40 before; right?

11 A. No.

12 Q. How many times have you made the
13 trip across Ohio from Indiana to Pennsylvania?

14 A. It was my second time, but --

15 Q. You said --

16 A. Across Ohio was one time. It was my
17 first time going across 70. Usually I go in
18 Kentucky to other locations to deliver
19 something, then go to that location.

20 Q. Now, so what we established is that
21 you left the truck stop headed northbound on 79
22 then you started heading eastbound and, of
23 course, your trailer was still attached to
24 the truck; right? You didn't leave your trailer

1 behind; correct?

2 A. No. I asked the girl at the desk
3 can I drop my trailer. She said, no, you
4 cannot. So I can use the truck at least to go
5 find something and then stay there until my ten
6 hours is over.

7 Q. Would it surprise you -- I mean, you
8 had been driving for five years, it's not
9 unusual that a truck stop will not allow you to
10 leave your trailer, is it, and drive with the
11 truck?

12 A. I didn't know at that time. I had
13 not been driving for five years. Only about --
14 I think it was about two or three years at that
15 time. I didn't know much about trucks and truck
16 stops at that time like I do now.

17 Q. Okay. Well, I am sorry. I am still
18 a little confused then.

19 A. Yes.

20 Q. At the time you were stopped you had
21 been driving for nearly five years; correct?

22 A. No. I think -- sorry. I think when
23 you asked me you said how many years had you
24 been driving. I said five years. Talking about

1 until current, but at that time I had been
2 driving for I think two years or so. That was
3 2004.

4 Q. 2004?

5 A. Yes. 2004. I got my driver's
6 license in 2000.

7 Q. So in two or three years driving you
8 had never been at a truck stop?

9 A. I have been in truck stops. I have
10 been dropping trailers. You can drop trailers
11 at TA provided you ask them. You can drop
12 trailers at Pilot provided you ask them and the
13 trailer cannot stay more than two days.

14 Then at that Duke since I thought it
15 was small -- I mean, didn't pay attention to all
16 these rules. And then just asked one question
17 to that lady. I didn't continue asking. I said
18 can I drop my trailer? I mean, so I can go
19 across the street like. She says, no, you can't
20 drop trailers here. I said okay.

21 Q. Now, you indicated that you
22 contacted your dispatcher?

23 A. Yes.

24 Q. And he indicated or she indicated

1 that he was working with other trucks. And you
2 have the Callcom thing inside the truck;
3 correct?

4 A. Yes.

5 Q. You can also use that to obtain
6 truck stop information; can't you?

7 A. No. Not that one.

8 Q. No, or you don't know how to do it?

9 A. That one you can't. That thing will
10 only allow you to access your company. Not
11 anything, I mean, away from the company.

12 Q. But it allows you to get a hold of
13 the company and they can make those arrangements
14 or answer questions for you or call ahead for
15 you; can't they?

16 A. If you call the company they can
17 make arrangements.

18 Q. Right. Okay. I am still confused
19 about something here. And again going back to
20 your last log book entry. It was three days
21 earlier; correct?

22 A. Yes.

23 Q. And it was in Pennsylvania?

24 A. Yes.

1 Q. And you were headed east?

2 A. Yes.

3 Q. From Indianapolis towards
4 Pennsylvania. And I believe you indicated that
5 this stop occurred on a Wednesday; is that
6 right?

7 A. What now?

8 Q. The stop occurred on a Wednesday?

9 A. Yes. If I look at that date I think
10 it's on Wednesday.

11 Q. Well, counsel asked that question.
12 That is fine for purposes of my question. But
13 what I want to ask you is obviously you made a
14 trip west again.

15 A. To Indianapolis.

16 Q. To Indianapolis?

17 A. Yes.

18 Q. And I assume you went 70 when you
19 did that; is that correct?

20 A. No. I wasn't on 70.

21 Q. How did you go?

22 A. I was not coming from the same
23 company that I went to. I was coming from a
24 different company from Pennsylvania, but I

1 used -- I think I went all the way on 64.

2 Called 64 if I remember.

3 Q. You took I-64, Interstate 64?

4 A. Yes. Interstate 64. That is
5 the one I took all the way to Kentucky. Then
6 take 75 to 65. Got back to the city of
7 Indianapolis and I picked up that load in
8 Franklin, Indiana.

9 Q. There is an ice cream company that
10 you pick up from?

11 A. Ice cream company.

12 Q. I believe we established this, but
13 you are not denying that you were speeding;
14 correct?

15 A. Yes. I don't deny that.

16 Q. You are not denying that your log
17 book was not up to date; correct?

18 A. No.

19 Q. You are not denying that you were
20 placed, you as the driver, were placed out of
21 service for a 10-hour period by the officer
22 because your log book was not up to date;
23 correct?

24 A. No. I am not denying that.

1 Q. And you are not denying that within
2 that ten-hour period you moved that truck again;
3 correct?

4 A. Yes, I did.

5 MR. WRIGHT: Okay. Just a minute,
6 Your Honor.

7 Q. And again at the Duke truck stop
8 you are not denying that you showed them only a
9 personal check? You did not show them a company
10 check?

11 A. Yes. I didn't show them -- actually
12 to tell them like I have got this. She -- I
13 think she just looked I had my pen in my hand
14 and the CFS check was sitting there. I just
15 talked to her like did you cash checks looking
16 at them. I mean, never thought she was going to
17 be confused with the checkbook that I had.

18 Q. But you did not show her,
19 specifically ask her if they took a com check;
20 right?

21 A. No, I didn't.

22 Q. And you previously used com checks
23 at truck stops; right?

24 A. Yes.

1 Q. And that is fairly standard and
2 accepted at truck stops, correct? Based on your
3 experience they have been accepted at truck
4 stops where you tried to use them; correct?

5 A. No.

6 TROOPER NEITZELT: There are CFS
7 checks and then Comdata checks. They are
8 different. Some of these checks some truck
9 stops accept, some don't accept.

10 THE WITNESS: That is what I
11 realized at that time. Then when I asked one
12 question, do you take -- you cash checks I
13 thought maybe my question was coming from
14 thinking they might accept this CFS. On the
15 desk she had Comdata. So I figured out that
16 Comdata, probably don't take CFS.

17 Q. But you didn't ask; right?

18 A. About?

19 Q. You did not ask if they took a CFS
20 check; correct?

21 A. No.

22 Q. Okay. And you, of course, used the
23 CFS checks, you used them at other truck stops
24 and had no problem; correct?

1 A. Yes.

2 MR. WRIGHT: Okay. I believe that
3 is all we have. Thank you very much.

4 ATTORNEY EXAMINER: Redirect, John?

5 MR. ALDEN: Yes. A few questions,
6 Your Honor.

7 - - -

8 REDIRECT EXAMINATION

9 By Mr. Alden:

10 Q. George, after the officer told you
11 to go back to the Duke you understood that you
12 were still under this out of service --

13 A. Yes.

14 Q. Order?

15 A. Yes.

16 Q. And for whatever reason the officer
17 told you to drive back to the original location;
18 am I correct?

19 A. Yes.

20 Q. Okay. Whether for safety or
21 whatever he told you to go back?

22 A. Yes.

23 Q. Also at the original stop on the
24 highway I-70, you were placed out of service on

1 the interstate?

2 A. Yes.

3 Q. Correct?

4 A. Yes.

5 Q. And then the officer testified for
6 safety sake and just to me common sense he told
7 you to move your vehicle up to the Duke?

8 A. Yes. He said that.

9 Q. All right. When you returned to the
10 Duke the second time you testified you did not
11 stay in the truck?

12 A. No.

13 Q. Where did you go sleep that night?

14 A. There is a TV room. I just watched
15 TV until late and then sat there. They have got
16 a seat up there. You can just sit. I sat
17 there, just sleep. I put my jacket on me
18 because there was no heat at that time in that
19 place. I just slept there.

20 Q. Also when you returned to Duke did
21 you then try to cash a check the second time?

22 A. I tried. They wouldn't.

23 Q. Now, which type of check did you
24 show them the second time?

1 A. I showed her the second time because
2 when the officer talked to -- I guess he called
3 my supervisor because my supervisor called me.
4 He said that police officer is angry. And I
5 said why was the police officer angry? He
6 wasn't like that talking to me.

7 Then he said what did you do to him?
8 I said, no, I didn't do nothing. I mean, he
9 said you were lying to him. I said, no, not
10 lying.

11 Then at that time the supervisor
12 said, okay, I am going to give you -- how much
13 money do you want? I said put \$50, that would
14 be fine with me. Then he put \$50 on the check
15 and gave me the numbers and everything.

16 I went back to the desk. This time
17 a different lady. She said to me, I mean,
18 continue, can't take it. She still didn't take
19 it.

20 Q. What did you show her the second
21 time specifically?

22 A. I showed the check there, CFS check
23 now because I filled it out and showed it to
24 her. And she said, no, can't take it. I said

1 the police officer asked somebody here. She
2 said I don't know what you are talking about.
3 I don't know. I like, I mean, I just put the
4 checkbook in my pocket.

5 I went there to see -- I was hungry
6 the whole night. I didn't eat. I went to
7 McDonald's to try to see if I can maybe have
8 somebody to give me some food, but didn't get
9 none. I walk outside. I mean, went back. It
10 was raining, went back sitting there in the
11 living room.

12 I sat there until morning, then I
13 left there to the second nearest stop where I
14 stopped and bought some food and ate at that
15 time.

16 Q. When you say you moved, this is
17 whatever, the 10 hours or 13 hours are over?

18 A. It was after I was eligible to
19 drive.

20 Q. Last question. Did you have any
21 intention of violating the out of service?

22 A. No.

23 Q. Did you have any intention of trying
24 to deliver your load at that time?

1 A. No. I wouldn't have been even
2 eligible to deliver that load the way I
3 understood the out of service thing that can't
4 be at work. Wasn't going to do it. And I had
5 no intentions.

6 That is why first I said I wish the
7 police office would have an open mind and find
8 my good intentions and he would find something
9 different. Because I had no intentions in
10 defying his rule and going against traffic rules
11 as far as CDL. I would like to keep my job.

12 To me it is a serious thing; that I
13 wouldn't take it lightly, and didn't take it --
14 him for granted.

15 MR. ALDEN: Thank you, George.

16 MR. WRIGHT: Your Honor, just a
17 couple. I just want to make sure I am clear on
18 something.

19 - - -

20 RECROSS-EXAMINATION

21 By Mr. Wright:

22 Q. Although you were pulled over
23 along the interstate and cited for speeding and
24 the officer may have said that you were out of

1 service at that point, but he clearly escorted
2 you to the truck stop, right, and told you ten
3 hours right there; correct?

4 A. Yes.

5 Q. Okay. Now, where did you say you
6 slept? In the TV room?

7 A. There was a --

8 Q. At Duke?

9 A. Yes. At Duke.

10 Q. Okay. All right. And you said that
11 they denied -- well, first of all we are using
12 two different acronyms on these checks.

13 A. CFS.

14 Q. Well, the report says TCH.

15 MR. ALDEN: I don't know.

16 A. On top it states TCH.

17 Q. So talking about the same thing?

18 A. Yes. But somewhere saying CFS.

19 I don't know what that means.

20 TROOPER NEITZELT: If I may, please,
21 it's like a car. TCH is the brand. They all
22 serve the general purpose which truckers use.

23 ATTORNEY EXAMINER: Thank you,
24 Officer.

1 Q. Mr. Ncube, why did you suppose the
2 officer escorted you to the Duke truck stop to
3 put you out of service?

4 A. I didn't understand. I don't know.
5 I mean, what does it mean to him? I mean, I
6 didn't know what it means. At this time maybe
7 coming there to make sure I get there.

8 Q. When he pulled you over and stopped
9 you for speeding did he do a walk-around
10 inspection at that time?

11 A. Inspection of that truck?

12 Q. Yes.

13 A. No, didn't inspect the truck.
14 Talking about the general walk-around?

15 Q. Yes.

16 A. Yes, he did walk around to make
17 sure. I mean --

18 Q. I thought --

19 A. Visual marks in the truck. I mean,
20 yes, he did that. But actually an inspection, I
21 mean, that thinking maybe scaling the truck or
22 do you mean going underneath? No, he didn't do
23 that. Just walked around the truck to make sure
24 probably you can see nothing hanging or whatever

1 he was thinking.

2 Q. All right.

3 A. Then he went, came back and said,
4 because it was a little bit cold there, I mean,
5 cold here, we went back to his car. We sat in
6 his car because there was no -- that truck
7 didn't have heat. And it was a little bit
8 raining. I remember, I mean, rain coming. So,
9 we sat there until he was done. At that time
10 we, I mean, I was -- didn't argue with him. He
11 didn't disrespect me, I didn't disrespect him.
12 I mean, didn't do nothing wrong.

13 Q. That is fine. And no one suggested,
14 no one suggested that you were rude to the
15 officer. So that wasn't the intent of my
16 question. But --

17 A. Okay.

18 Q. But, it is correct, is it not, that
19 the truck stop offered a safe place for
20 the vehicle, it offered food and at least in
21 this case shelter in terms of a TV room. It was
22 a place where you could bring your vehicle
23 safely off the road; right?

24 A. Yes.

1 Q. Okay. Now, you said after you
2 fulfilled your ten hours out of service you then
3 I guess got on the road and bought some food
4 later?

5 A. Yes.

6 Q. Would it be correct that you used
7 one of your com checks?

8 A. Yes, I did.

9 Q. Where did you get food?

10 A. I got my food at -- it was Pilot.
11 Went to Pilot at that time.

12 Q. Okay. You were still headed
13 eastbound on 70?

14 A. Yes. I was still going to deliver
15 the same load.

16 Q. How far roughly do you think you
17 drove before you got to the Pilot?

18 A. I can't remember, but it was not in
19 Ohio anyway. It was -- what was that place.

20 Q. That is fine. That is fine.

21 A. Maybe look at the map I can tell.
22 But, that has been a long time. I can't
23 remember where.

24 Q. And after you were pulled over that

1 day, that evening -- or excuse me, that day, I
2 guess, where did you eat? Where did you finally
3 eat?

4 A. I didn't eat.

5 Q. You didn't eat until you stopped at
6 that Pilot the next day?

7 A. Yes.

8 Q. So, you were hungry, you were
9 thirsty, but you drove beyond the state line to,
10 actually the next day, to get food; is that
11 right?

12 A. Yes.

13 MR. WRIGHT: Fine. That is all we
14 have. Thank you.

15 ATTORNEY EXAMINER: All right. Just
16 one question, Mr. Ncube. You were stopped for
17 speeding. Did you pay that fine?

18 THE WITNESS: Yes.

19 ATTORNEY EXAMINER: How much did you
20 pay?

21 THE WITNESS: I paid it was 95, but
22 paid them \$100. Just sent \$100.

23 ATTORNEY EXAMINER: All right.
24 Thank you, Mr. Ncube.

1 MR. WRIGHT: Can I have one minute
2 to confer just to see if we have anything
3 further?

4 (RECESS TAKEN)

5 ATTORNEY EXAMINER: Back on the
6 record.

7 MR. WRIGHT: Your Honor, we have --
8 after caucusing we decided that we have no need
9 to put the officer back on the stand. So we
10 rest our case.

11 ATTORNEY EXAMINER: All right. Any
12 objection to the admission of Respondent's
13 Exhibit 1?

14 MR. WRIGHT: No, Your Honor.

15 (EXHIBIT ADMITTED INTO EVIDENCE)

16 ATTORNEY EXAMINER: Okay. Any final
17 remarks? Any comments you people want to make
18 for the record?

19 MR. WRIGHT: Just to wish you a
20 happy retirement.

21 ATTORNEY EXAMINER: Thank you very
22 much. There being nothing further then this
23 matter will be deemed submitted on the record.

24 - - -

1 (At 12:45, P.M. the hearing was
2 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 October 26, 2006, and carefully compared with my original stenographic notes.

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

- - -

EXHIBITS

PLEASE SIGN AND FAX BACK SIGNED PAGES ONLY ASAP!!!

FREIGHT MASTERS SYSTEMS, INC.
3760 GUION ROAD
INDIANAPOLIS, INDIANA 46222
(317) 788-0166

LEASE AGREEMENT

This Agreement entered into this day 3/21/06, at 12:00 o'clock p.m. by and between FREIGHT MASTERS SYSTEMS, INC., (here-in-after referred to as "Carrier"), and (here-in-after referred to as "Contractor")

WITNESSETH THAT:

WHEREAS, the Carrier is a contract and common carrier by motor vehicle, holding authority from the Interstate Commerce Commission, and:

WHEREAS, the contractor now owns or controls, certain motor vehicle(s) and motor vehicle equipment, and is engaged in the business of hauling commodities by motor vehicle(s), pursuant to contracts with motor carriers, and is an independent contractor paying his own payroll and expenses, including withholding taxes, insurance and fuel, and:

WHEREAS, the Carrier desires to enter into an agreement with the Contractor for the hauling of certain commodities and the Contractor desires to contract with the Carrier for the hauling of such commodities:

IDENTIFICATION OF CONTRACTOR:

Phone: 317-413-5124

Independent Contractor: NCUBE, GEORGE

SS# or Federal ID # 316194810

Address: 1883 PARSON DR APT A

City, State & Zip: INDIANAPOLIS, IN 46224

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, THE CARRIER AND THE CONTRACTOR AGREE AS FOLLOWS:

Neither the Contractor nor its employee(s), driver(s), agent(s), or servant(s), are to be considered employees of the Carrier at any time, under any circumstances, or for any purpose. Neither party is the agent of the other, and neither party shall have the right to bind the other by contract or otherwise, except as herein specifically provided.

I. CONTRACTOR SHALL FURNISH TO CARRIER, exclusively and continuously, during the term of this Agreement, the following described equipment:

IDENTIFICATION OF EQUIPMENT:

<u>MAKE</u>	<u>YR</u>	<u>SERIAL NO.</u>	<u>AXLES</u>	<u>UNIT #</u>
FRT	1996	1FUYDCB7TH658816	3	4801

TERM OF AGREEMENT: This Agreement shall be for one year at which time it is renewable until terminated by either party. This Agreement may be terminated by either party after thirty (30) days without cause by giving ten (10) days written notification from one party. Contractor is not required to purchase or rent any

APPLICATION FOR CERTIFICATE OF TITLE - STATE OF INDIANA - BUREAU OF MOTOR VEHICLES

State Form 205 (R7 / 8-04)

Approved by State Board of Account 1997

TO BE COMPLETED BY A POLICE OFFICER, BMV OFFICIAL OR BMV CERTIFIED DEALER BEFORE OR OUT OF STATE TITLES. I HEREBY CERTIFY THAT I PERSONALLY EXAMINED THE FOLLOWING VEHICLE AND FIND THE IDENTIFICATION NUMBER TO BE AS FOLLOWS.

VEHICLE IDENTIFICATION NUMBER

MAKE MODEL TYPE DATE

SPECTOR'S PRINTED NAME & TITLE

CITY

SPECTOR'S SIGNATURE

BADGE, BRANCH OR
DEALER PLATE NO.

I/WE THE UNDERSIGNED SWEAR OR AFFIRM THAT THE INFORMATION ENTERED ON THIS FORM IS CORRECT. I/WE UNDERSTAND THAT MAKING A FALSE STATEMENT ON THIS FORM MAY CONSTITUTE THE CRIME OF PERJURY. FURTHERMORE, I/WE AGREE TO INDEMNIFY AND HOLD HARMLESS THE INDIANA BMV FROM ANY LIABILITY ARISING FROM THIS TRANSACTION.

X

X

DATE:

The law requires that you apply for Certificate of Title within thirty-one days from the date of purchase of a motor vehicle. There is a delinquency fee of \$21.00 per failure to do so. Attach Certificate of Title assigned by seller. On endorsed Titles, fees must be submitted. Supporting documents surrendered with this application cannot be returned to the applicant. State fee for applying for Title is \$16.00, in accordance with Federal Code 563.

1. TITLE NUMBER 03210654000040		BRANCH NO 540		INVOICE NO		BMV USE ONLY TRANSFER-MV-NON DEALER-PREVIOUS TITLE	
2. *SOC. SEC./FEDERAL I.D. NO 316-19-4810		APPLICANT'S NAME GEORGE NCUBE					BMV USE ONLY
3. STREET ADDRESS 1883 PARSONS DR APT A			CITY INDIANAPOLIS		STATE IN	ZIP CODE 46224-4411	
4. VEHICLE I.D. NUMBER 1FUUDCYB7TH658816		VEH. YEAR 1996	VEH. MAKE FRT	VEH. MODEL NO. FLD	VEH. TYPE TC	ODOMETER 0 M	EXEMPT
5. FORMER TITLE NUMBER 02241171188		PURCHASE DATE 03/15/2006	LIEN 0	SPEED Yes	PICK UP No	MAIL Yes	DEALER NO. BMV USE ONLY
6. FIRST LIEN'S NAME OR SPECIAL MAILING ADDRESS				STREET ADDRESS			
7. CITY		STATE	ZIP CODE		BMV USE ONLY		
8. SECOND LIEN'S NAME				STREET ADDRESS			
9. CITY		STATE	ZIP CODE	LICENSE NUMBER	LICENSE YEAR	FORMS USED	BMV USE ONLY KH
GROSS RETAIL & USE TAX AFFIDAVIT - I/WE HEREBY CERTIFY THAT SALES OR USE TAX ON THIS VEHICLE WAS PAID AS INDICATED BELOW							
0. SELLING PRICE \$ 2,500.00		LESS TRADE-IN / DISCOUNT \$ 0.00		0.00	AMOUNT SUBJECT TO TAX \$ 2,500.00	AMOUNT OF TAX \$ 150.00	DEALER X
					BRANCH EXEMPT N	IF EXEMPT PLACE PARA.#	

DO NOT TYPE IN THIS AREA

*Your Social Security number / Federal I.D. Number is being requested by this agency under IC 4-1-8-1. Disclosure is mandatory and this document cannot be processed without it.

APPLICANT RESPONSIBLE FOR ACCURACY OF INFORMATION

APPLICATION FOR CERTIFICATE OF TITLE - STATE OF INDIANA - BUREAU OF MOTOR VEHICLES

ATT - MR JOHN L. ALDEN

re: George Ncube

Whom it may concern:

My name is Enock Sibbs and I have known George Ncube since April 2000. He attends the same church as myself and my family. We attend Tabernacle of Hope Seventh-Day Adventist Church. Mr Ncube is a wonderful son, he helps out in a lot of volunteer work the church and within the community. George drives the church bus sometimes. He also teaches kids during our Sabbath School. He has two wonderful daughters which he takes well good of. He is very polite and he works so well with people of all ages. I am one of the church elders.

Thank you.

Yours truly,
Sibbs.

Re: GeorgeTo whom it may concern

Don Mammmya is my name a father of two
nd a respectable member of the family. I know
Mr. NCube Personally as a friend and a
co-worker, He is a loving husband and a
dependable friend who is known to go out
of his way many times to give a helping
hand, a very reliable person and from
views of many a good example to the
society around him, Me and my family
are so proud to know him and hope to
even enjoy some more of his caring thoughts,
always.

Sincerely

Don Mammmy

Florentin N'Gbesso
6078 Southbay Drive
Indianapolis, In 46250
317-797-6861

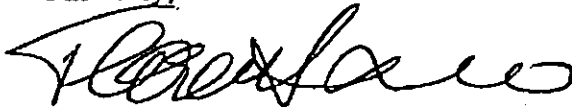
Re: George Ncube

To Whom It May Concern:

I have met George Ncube in 2001 as I was visiting my business partner who is actually George's Cousin. Since then, George and I became good friends. He has been fixing most of my car problems because he is a good mechanic. He is someone you can rely on.

George's native language is Zulu. Like me, He may have some problems with the English language because we speak English as a second language. George is a very intelligent and nice person to deal with, and it a pleasure being his friend. Please feel free to contact me if you have any question.

Sincerely,



Florentin N'Gbesso