

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Notice :
of Apparent Violation :
and Intent to Assess :
Forfeitures Against : Case No. 09-170-TR-CVF
Marvin Speiser, :
Respondent. :

- - -

PROCEEDINGS

before Dick Bulgrin, Hearing Examiner, at the Public
Utilities Commission of Ohio, 180 East Broad Street,
Room 11-G, Columbus, Ohio, called at 11:00 a.m. on
Friday, May 1, 2009.

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1 APPEARANCES:

2 Richard Cordray, Ohio Attorney General
3 Duane W. Luckey,
4 Senior Deputy Attorney General
5 Public Utilities Section
6 By Mr. Werner L. Margard III and
7 Mr. William L. Wright
8 Assistant Attorney General
9 180 East Broad Street, 9th Floor
10 Columbus, Ohio 43215-3793

11 On behalf of the staff of the Public
12 Utilities Commission of Ohio.

13 Mr. Marvin Speiser,

14 On behalf of himself.

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1 Friday Morning Session,

2 May 1, 2009.

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4 HEARING EXAMINER BULGRIN: Good morning.

5 This is the hearing in the matter of the notice of
6 apparent violation and intent to assess forfeitures
7 against Marvin Speiser, case number 09-170-TR-CVF.

8 My name is Dick Bulgrin. I'm the
9 Attorney Examiner assigned by the Commission to
10 conduct the hearing this morning, and we'll begin
11 with the appearances by the parties. Mr. Margard.

12 MR. MARGARD: Thank you, Your Honor. On
13 behalf of the transportation staff of the Public
14 Utilities Commission of Ohio, Richard Cordray, Ohio
15 Attorney General, by Duane W. Luckey, Section Chief
16 and Assistant Attorneys General, Warner L. Margard
17 and William L. Wright, 180 East Broad Street, 9th
18 Floor, Columbus, Ohio 43215.

19 HEARING EXAMINER BULGRIN: Thank you.
20 And, Mr. Speiser, if you could just state your name
21 and spell your name.

22 MR. SPEISER: Marvin Speiser, 23445
23 Kammeyer Road, Defiance, Ohio 43512.

24 HEARING EXAMINER BULGRIN: And you are
25 not represented by an attorney in this matter.

1 MR. SPEISER: No, sir.

2 HEARING EXAMINER BULGRIN: Okay. Any
3 questions you have?

4 MR. SPEISER: No.

5 HEARING EXAMINER BULGRIN: Mr. Margard.

6 MR. MARGARD: Thank you, Your Honor.

7 For staff's first witness, I would like
8 to call Officer Rob Divjak to the stand.

9 - - -

10 ROBERT D. DIVJAK
11 being first duly sworn, as prescribed by law, was
12 examined and testified as follows:

13 DIRECT EXAMINATION

14 By Mr. Margard:

15 Q. Please state your full name.

16 A. Robert D. Divjak.

17 Q. And by whom are you employed?

18 A. Ohio State Highway Patrol.

19 Q. And what's your title please.

20 A. Motor carrier enforcement inspector.

21 Q. And what are your duties as a motor
22 carrier inspector?

23 A. To inspect commercial vehicles for safety
24 and economic regulations, Federal and State.

25 Q. And were you on duty in that capacity on

1 August 25 of 2008?

2 A. Yes, sir.

3 Q. And do you remember what your job
4 assignment was that day?

5 A. Williams County.

6 Q. And, in the course of your duties on that
7 date, did you have an opportunity to inspect the
8 motor vehicle being operated by Mr. Speiser?

9 A. Yes, sir.

10 Q. And, as a result of that inspection, did
11 you note any violations?

12 A. Yes, sir.

13 Q. And as a result of that inspection, did
14 you generate a report of your findings?

15 A. Yes, sir.

16 MR. MARGARD: May I approach, Your Honor?

17 HEARING EXAMINER BULGRIN: Sure.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 Q. Inspector Divjak, you have before you a
20 document that's been marked for purposes of
21 identification as Staff Exhibit Number 1.

22 A. Yes, sir.

23 Q. Can you tell us what that is please.

24 A. It's an inspection report.

25 Q. And is this the inspection report that

1 you prepared after your inspection of the vehicle
2 driven by Mr. Speiser?

3 A. Yes, sir.

4 Q. Now, how do you prepare this report?
5 What do you actually do after your inspection?

6 A. After the inspection?

7 Q. Yes, sir.

8 A. Enter the violations and information,
9 that I went up and gathered, into the computer in the
10 car.

11 Q. So you have a computer with you that you
12 put information into, and it generates this report?

13 A. Correct.

14 Q. And a copy of this report would have been
15 given to Mr. Speiser?

16 A. Yes.

17 Q. And would have been signed by him to
18 acknowledge his receipt?

19 A. Yes.

20 Q. Have you had an opportunity to review
21 this document prior to the hearing today?

22 A. Yes.

23 Q. And is this an accurate copy of the
24 report that you prepared at the time of the
25 inspection?

1 A. Yes, it is.

2 Q. Now, I note this particular document is
3 not signed. What happens to the report after you put
4 it into the computer?

5 A. It goes to Columbus here, and then a copy
6 is given to the driver, turned in to the carrier, and
7 the carrier signs it, and sends it back.

8 Q. So this is something that you would have
9 uploaded to the --

10 A. Correct.

11 Q. -- Commission?

12 A. Yes.

13 Q. So this is an electronic copy of the
14 report that you prepared, not of the document that
15 was signed by Mr. Speiser?

16 A. This is -- it's prepared. It's not the
17 same.

18 Q. Not exactly the same piece of paper, but
19 it is the same report; is that correct?

20 A. Correct.

21 Q. And to the best of your recollection,
22 Mr. Speiser did receive a copy of this report?

23 A. Yes.

24 Q. And he did sign it?

25 A. Yes.

1 Q. Now, do you have an independent
2 recollection, before reviewing this document, did you
3 remember this inspection?

4 A. No, sir.

5 Q. After reviewing this report, did that
6 help to refresh your recollection? Do you have a
7 better recollection now of this inspection?

8 A. No, sir.

9 Q. What can you tell me about your
10 inspection based on your review of this report?

11 A. With it being -- referring to the
12 seatbelt violation?

13 Q. Whatever you may have observed in the
14 course of your inspection. Try to walk through the
15 inspection as best you can recall from reviewing the
16 report.

17 A. After I stopped the truck, walked up to
18 the cab, and observed he didn't have a seatbelt on,
19 and I said, "Make sure you wear your seatbelt." And
20 from that point, I don't recall what the conversation
21 was after that, but I was --

22 Q. Do you know why you stopped the vehicle?

23 A. Yes. For an inspection, the ISS rating.

24 Q. And so you would have approached the
25 driver?

1 A. Correct.

2 Q. Had you had an opportunity to see him as
3 he was driving? Was he driving toward you or away
4 from you?

5 A. He was driving westbound, and I was
6 sitting eastbound, and I turned around and stopped
7 him.

8 Q. So was -- again, just so I'm clear, would
9 he have been driving toward you?

10 A. Correct.

11 Q. You would have seen him as he was driving
12 toward?

13 A. Correct.

14 Q. And you turned around and followed him?

15 A. Correct.

16 Q. And then pulled him aside.

17 Do you have a recollection of having seen
18 him as he was driving toward you?

19 A. Yes.

20 Q. You have a recollection of having seen
21 whether he was wearing a seatbelt as he was driving
22 toward you?

23 A. No, sir, I don't recall.

24 Q. So your first observation of whether he
25 was wearing a seatbelt was as you walked up to the

1 cab; is that correct?

2 A. Correct.

3 Q. And it's your testimony today that,
4 please correct me if I'm wrong, when you walked up to
5 the cab, he was not at that moment wearing his
6 seatbelt; is that correct?

7 A. Correct.

8 Q. Now, what is your usual practice when you
9 walk up to a cab and notice a driver not wearing a
10 seatbelt?

11 A. I always say to them make sure you wear
12 your seatbelt, and from that point, it's different
13 each time whether they say, well, I forgot to put it
14 on, or, oh, okay. Yeah. I'll make sure I wear it
15 from this point, or whatever the case may be. It's
16 different for each stop.

17 Q. What determination do you use, then, in
18 deciding to write a violation of the seatbelt
19 regulation? How is it you decide to fine a
20 violation?

21 A. If the driver tells me one way or the
22 another whether he was wearing it or not. Sometimes
23 they say, well, I took it off, you know, okay. I was
24 getting this or that.

25 So I always have a conversation with them

1 about it. It's just not a simple thing as to say
2 whether or not they was wearing it.

3 I always come up and say make sure you
4 wear your seatbelt, and then they, in turn, have a
5 chance to tell me their story whether they was
6 wearing it or not, and it goes accordingly to what
7 they tell me.

8 Q. Let's try to follow that up a little bit.
9 If a driver tells you, I was wearing my seatbelt, but
10 took it off, what do you do?

11 A. Tell them make sure you leave it on until
12 I see you wearing it next time you get pulled off.

13 Q. Do you write a violation in circumstance?

14 A. No, sir.

15 Q. Have you ever written a violation for a
16 seatbelt for somebody who tells you they had it on,
17 but took it off?

18 A. No, sir.

19 Q. If a driver says I wasn't wearing my
20 seatbelt, what do you do?

21 A. I write it down as a violation.

22 Q. How many seatbelt violations do you think
23 you typically write?

24 A. I would say not more than five in a
25 year's time.

1 Q. So just so that I'm clear, you don't
2 recall seeing Mr. Speiser without his seatbelt until
3 you walked up to the window?

4 A. Correct.

5 Q. You don't specifically recall a
6 conversation with him, but it is your practice to
7 mention that, in fact, to the driver, and you, in all
8 likelihood, would have done that with Mr. Speiser.

9 A. Correct.

10 Q. And if he had told you he was wearing his
11 seatbelt, you would not have issued the violation,
12 correct?

13 A. Correct.

14 Q. So, consequently, we can surmise that he
15 did not say anything to you about having been wearing
16 his seatbelt when you mentioned the seatbelt to him?

17 A. Correct.

18 Q. Is that your understanding?

19 A. Yes.

20 Q. And you would have then written up the
21 violation and given him a copy of this report; is
22 that correct?

23 A. Yes.

24 Q. So anything else about this inspection
25 that you recall?

1 A. No, sir.

2 Q. And you did not fine any other
3 violations; is that correct?

4 A. No, sir.

5 MR. MARGARD: Thank you, Your Honor.
6 That's all the questions I have for Inspector Divjak.

7 HEARING EXAMINER BULGRIN: Mr. Speiser?

8 MR. SPEISER: I have no questions.

9 HEARING EXAMINER BULGRIN: Just one
10 clarifying thing.

11 - - -

12 EXAMINATION

13 By Hearing Examiner Bulgrin:

14 Q. What reason did you have for pulling him
15 over? This was a roadside stop?

16 A. Yes, sir.

17 Q. And what reason did you have for pulling
18 him over?

19 A. ISS, or score was high.

20 Q. Can you explain that a little bit.

21 A. What's that stand for exactly?

22 MR. SPEISER: Safety rating.

23 A. The safety rating was high. I can't
24 remember what the exact wording is for the safety
25 rating, but the safety rating was --

1 Q. That would have been going to the safety
2 rating of the carrier or driver?

3 A. Correct. The carrier, and the carrier
4 owned the vehicle.

5 HEARING EXAMINER BULGRIN: Anything
6 further?

7 MR. MARGARD: Not for this witness.
8 Thank you, Your Honor.

9 HEARING EXAMINER BULGRIN: You're
10 excused. Thank you.

11 MR. MARGARD: Your Honor, the staff would
12 like to call Mr. Tom Forbes.

13 - - -

14 TOM FORBES
15 being first duly sworn, as prescribed by law, was
16 examined and testified as follows:

17 DIRECT EXAMINATION
18 By Mr. Margard:

19 Q. State your full name for us please.

20 A. Tom Forbes, F-o-r-b-e-s.

21 Q. And by whom are you employed, Mr. Forbes?

22 A. The Public Utilities Commission of Ohio,
23 Transportation Department Compliance Division.

24 Q. And what is your title?

25 A. Compliance officer.

1 Q. And what are your job duties as
2 compliance officer?

3 A. I review inspection reports and complete
4 assessments, forfeitures, mail those forfeitures to
5 the carriers, drivers, and shippers as appropriate,
6 hold settlement conferences, to negotiate
7 settlements. I answer technical questions from the
8 regulating community, and I conduct enough
9 inspections to keep my certification current.

10 Q. Let me just follow up with that last note
11 about conducting inspections.

12 You yourself conduct inspections; is that
13 correct?

14 A. Yes, sir.

15 Q. And, in the course of the inspections
16 that you've conducted, have you had opportunity to
17 observe seatbelt violations?

18 A. Yes, sir.

19 Q. Both observing drivers as they're
20 operating, and after they have been stopped; is that
21 correct?

22 A. Yes.

23 Q. And you were present during the testimony
24 of Inspector Divjak; is that correct?

25 A. I was.

1 Q. And is that pattern and practice typical
2 in your experience and understanding for how these
3 violations are found and noted?

4 A. I can only speak for myself, and when I
5 write a seatbelt violation, I observe the driver
6 going by without their seatbelt on, and make the stop
7 for whatever the reason is to stop the vehicle, and
8 then list the violation at that time.

9 Q. In your experience in reviewing
10 inspection reports, you do have occasion to note
11 seatbelt violations where actual observations are not
12 made though; is that correct?

13 A. Yes.

14 Q. That's not uncommon here?

15 A. Right.

16 Q. Did you have an opportunity to review the
17 file at the Commission with respect to this
18 inspection prior to your testimony today?

19 A. Yes, sir.

20 Q. And did you have an opportunity to review
21 the forfeiture that is being assessed in this case?

22 A. I did.

23 Q. And can you briefly tell us how those
24 forfeitures are determined, how the amounts for the
25 forfeiture is determined?

1 A. For the non-hazardous materials and
2 inspections, the violations that receive forfeitures
3 are broken up into four groups.

4 Group 1 includes things like brake
5 violations, log book hours of service violations.

6 Group 2 would be things like brake
7 adjustments, lower air warnings.

8 Group 3 would be windshields, fuel
9 systems.

10 And Group 4 involves things like medical
11 cards, insurance, drugs and alcohol, CDL violations,
12 seatbelts, radar detectors. Group 4 does not have to
13 be out of service.

14 For groups 1, 2 and 3, they must be
15 out-of-service violations to receive a forfeiture.

16 There is a matrix of violations and tells
17 which group they are in, and if they are in group 4,
18 tells the specific forfeiture for that violation.

19 392.16 is the violation for seatbelt, and
20 it is a group 4 violation, and is listed on the
21 matrix as a \$100 fine.

22 MR. MARGARD: May I approach, Your Honor?

23 HEARING EXAMINER BULGRIN: Yes.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. Mr. Forbes, I've handed you a multi-page

1 document that has been marked for purposes of
2 identification as Staff Exhibit Number 2. Do you
3 have that document before you?

4 A. Yes, sir.

5 Q. And is that the matrix to which you were
6 referring?

7 A. Yes, sir.

8 Q. And can you please point to us where in
9 this matrix the violation found in this case is
10 located?

11 A. On page 2 under the group 4 violation,
12 it's six up from the bottom. Says not using
13 seatbelt, \$100.

14 Q. And that's the amount of the forfeiture
15 that was assessed in this case; is that correct?

16 A. Yes, sir.

17 Q. And the schedule that you have as Staff
18 Exhibit Number 2, this is the schedule that is used
19 by the Commission staff to determine the assessments
20 in motor vehicle carrier violation cases?

21 A. Yes.

22 Q. And are the dollar amounts indicated in
23 that schedule consistent with those recommended by
24 the Commercial Vehicle Safety Alliance?

25 A. Yes, sir.

1 Q. And the procedure that you've described
2 for us, is that procedure also one that's been
3 adopted or recommended by the Commercial Vehicle
4 Safety Alliance?

5 A. Yes, sir.

6 Q. And this procedure is the same for all
7 carriers and all drivers for whom violations are
8 written in the State of Ohio?

9 A. For non-hazmat cases, yes.

10 Q. Thank you. Now, did you reach any
11 conclusions as a result of reviewing the inspection
12 report in the fine schedule that's been marked as
13 Staff Exhibit Number 2?

14 A. The forfeiture that was assessed was the
15 correct forfeiture for the violation that was listed.

16 Q. Correct and reasonable; is that correct?

17 A. Yes, sir.

18 Q. Is that your opinion?

19 Did you, in your review of the Commission
20 file, did you observe whether notices of this
21 forfeiture were sent to Mr. Speiser?

22 A. They were. Mr. Speiser received a notice
23 of apparent violation and intent to assess
24 forfeiture.

25 MR. MARGARD: May I approach, Your Honor?

1 HEARING EXAMINER BULGRIN: Yes.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. Mr. Forbes, I've handed you a multi-page
4 document that has been marked for purposes of
5 identification as Staff Exhibit Number 3.

6 Have you had an opportunity to review
7 this document prior to this hearing today?

8 A. Yes, sir.

9 Q. And what is this document please?

10 A. The top page is the notice of apparent
11 violation and intent to assess forfeiture that was
12 mailed to Mr. Speiser on September 3rd of 2008,
13 reference the August 25, 2008 inspection.

14 It notifies Mr. Speiser that the
15 Commission intends to assess a \$100 forfeiture. With
16 this document would have been an instruction sheet on
17 how to either pay the forfeiture or request a
18 conference.

19 Shortly thereafter, Mr. Speiser did
20 request a conference, and a conference was later held
21 on this case.

22 At the conclusion of conference, a
23 resolution was not reached at conference, and
24 Mr. Speiser was sent a notice of preliminary
25 determination, which is pages 2 and 3 of this

1 document. Along with that, would have been an
2 instruction sheet to explain how to either pay the
3 forfeiture or, within 30 days, to request an
4 administrative hearing.

5 Based on the fact that we're here today,
6 Mr. Speiser requested an administrative hearing.

7 Q. Based on your review of the Commission's
8 file in this case, did Mr. Speiser receive all of the
9 notices required by the Ohio Administrative Code?

10 A. Yes, sir.

11 Q. And based on your understanding, has he
12 made all of the appropriate requests for the
13 protection of his rights that result in this
14 proceeding today?

15 A. Yes, sir.

16 Q. And just to be clear, it is your opinion
17 that the \$100 forfeiture that has been requested to
18 be assessed in this case is both the correct amount
19 and is reasonable?

20 A. That's correct.

21 MR. MARGARD: I have no further questions
22 of Mr. Forbes.

23 MR. SPEISER: I have no questions.

24 HEARING EXAMINER BULGRIN: You may be
25 excused.

1 MR. MARGARD: Your Honor, I respectfully
2 request the admission of Staff Exhibits Number 1, 2
3 and 3.

4 HEARING EXAMINER BULGRIN: Any objection?

5 MR. SPEISER: No.

6 HEARING EXAMINER BULGRIN: They will be
7 so admitted.

8 (EXHIBITS ADMITTED INTO THE RECORD.)

9 MR. MARGARD: And staff rests, Your
10 Honor.

11 HEARING EXAMINER BULGRIN: Mr. Speiser,
12 do you want to come up here.

13 If you just go ahead and tell us your
14 side of the story.

15 - - -

16 MARVIN SPEISER
17 presented himself as a public witness, and being
18 first duly sworn, testified as follows:

19 DIRECT TESTIMONY

20 MR. SPEISER: Okay. I remember the date
21 clearly because all the papers I've had to register
22 and phone conversations I've had with this, and I
23 departed DNP in Defiance approximately 6:00 a.m. I
24 was headed toward Elkhart, Indiana.

25 On the CB I heard about the officer

1 setting there, which is neither here nor there,
2 sorry. I made sure I had all my ducks in a row just
3 in case because of our safety rating.

4 I always wear my seatbelt. I seen him
5 setting there. I was at a red light. I went past
6 him. The officer pulls me over approximately two
7 miles down the road. It's on Highway 6. It's kind
8 of a busy area that time of morning.

9 Make things easy, I shut the truck off
10 because fuel was \$4 a gallon. Set the parking
11 brakes, jump over to the passenger seat, grab my
12 stuff out of the glove box I need, get my medical
13 card out, try to make things quick and easy as
14 possible.

15 The officer eventually approached the cab
16 of the truck. He told me make sure you wear your
17 seatbelt. I said yes, sir. Never said I didn't have
18 it on. Never said I had it on. I'll admit I said
19 yes, sir. I wasn't operating the motor vehicle at
20 that time.

21 Got the registration out for the trailer
22 and everything, did a level 3 inspection like he
23 testified to. Came back up to the truck. After all
24 the information, told me he was giving me a violation
25 for seatbelt. I tried to explain to him I had it on

1 when I was operating the motor vehicle. Explained to
2 him that it was kind of dark outside. Most generally
3 I wear a black T-shirt. I had one on that day. My
4 truck is black. The seatbelt's black.

5 Officer stated you didn't have it on when
6 I got to the cab.

7 No, I did not have it on when you got to
8 the cab. At that point, the truck was shut off. The
9 parking brake was set. I was not operating the motor
10 vehicle and trying to make the stop as efficient as
11 possible because of the traffic. That's my story.

12 HEARING EXAMINER BULGRIN: Okay.

13 MR. MARGARD: I don't think I have any
14 questions.

15 HEARING EXAMINER BULGRIN: I don't think
16 I have anything for you either. You're excused.
17 Thank you.

18 If there is nothing further, then, this
19 hearing will be concluded, and this matter will be
20 submitted to the Commission.

21 (Thereupon, the hearing was concluded at
22 11:30 a.m.)

23 - - -
24
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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 Friday, May 1, 2009, and carefully compared with my original stenographic notes.

____s/Deborah J. Guzzo_____
Deborah J. Guzzo, Registered
Professional Reporter and
Notary Public in and for the
State of Ohio.

My commission expires June 25, 2012.

(1864-DJG)

- - -

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/18/2009 8:09:12 AM

in

Case No(s). 09-0170-TR-CVF

Summary: Transcript Marvin Speiser 5/1/09 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Guzzo, Deborah Mrs.