

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of :
: Case No. 09-290-TR-CVF
Rick Tomlison Trucking :
- - -

PROCEEDINGS

Before Kerry Sheets, Hearing Examiner, at the Public
Utilities Commission of Ohio, 180 East Broad Street,
Room 11-B, Columbus, Ohio, called at 10:00 a.m. on
Tuesday, June 30, 2009.

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ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-4620
(614) 224-9481 - (800) 223-9481
Fax - (614) 224-5724

- - -

1 APPEARANCES:

2 Richard Cordray, Ohio Attorney General
3 By Thomas G. Lindgren, Esq.
4 Sarah J. Parrot, Esq.
5 Assistant Attorneys General
6 180 East Broad Street, 9th Floor
7 Columbus, Ohio 43215

8 On behalf of the Staff of the PUCO.

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Tuesday Morning Session,
June 30, 2009.

- - -

HEARING EXAMINER SHEETS: The Public
Utilities Commission of Ohio has set for hearing at
this time and place Case No. 09-290-TR-CVF in the
matter of Rick Tomlison Trucking. My name is Kerry
Sheets. I'm an Attorney Examiner for the Commission,
and I've been assigned to hear this case.

May I now have the appearances for the
parties, please?

MR. LINDGREN: On behalf of the Staff of
the Public Utilities Commission, Ohio Attorney General
Richard Cordray, Section Chief Duane Luckey, by Thomas
B. Lindgren and Sarah Parrot, Assistant Attorneys
General. The address is 180 East Broad Street, 9th
Floor, Columbus, Ohio 43215.

HEARING EXAMINER SHEETS: Very good. Let
the record show there are no other parties in the
hearing room. Do you have witnesses to call?

MR. LINDGREN: Yes, Your Honor.

HEARING EXAMINER SHEETS: Proceed.

MR. LINDGREN: Shall I proceed?

HEARING EXAMINER SHEETS: Yes.

MR. LINDGREN: At this time, the Staff

1 calls Inspector O.R. Adkins.

2 HEARING EXAMINER SHEETS: Very good.

3 Raise your right hand.

4 INSPECTOR OWEN R. ADKINS,
5 being by the Hearing Examiner first duly sworn, as
6 hereinafter certified, testifies and says as follows:

7 DIRECT EXAMINATION

8 By Mr. Lindgren:

9 Q. Inspector Adkins, please state and spell
10 your full name for the record, please.

11 A. Owen, O-w-e-n, middle initial R., Adkins,
12 A-d-k-i-n-s.

13 Q. Thank you. What is your business address?

14 A. Jackson, Ohio, Post 40, Highway Patrol.

15 Q. Where are you employed?

16 A. Pardon me?

17 Q. Where are you employed?

18 A. State Highway Patrol, Motor Carrier
19 Enforcement.

20 Q. What is your position there?

21 A. Inspector, conduct commercial vehicle
22 inspections.

23 Q. Thank you. How long have you been in that
24 position?

25 A. Twenty-six years three months.

1 Q. And what are your duties as a commercial
2 motor vehicle inspector?

3 A. Check for safety of the vehicles, driver's
4 qualifications and so forth.

5 Q. What sort of training have you gone
6 through for your employment?

7 A. MCSAP, hazardous material inspections,
8 about all of it.

9 Q. What was the first term you used?

10 A. MCSAP.

11 Q. Can you explain what that is?

12 A. Well, it's Federal Motor Carrier rules and
13 regulations for commercial vehicles.

14 Q. So are you familiar with the Federal Motor
15 Carrier Safety Regulations?

16 A. Yes.

17 Q. Is the enforcement of these regulations a
18 regular part of your job?

19 A. Yes, it is.

20 Q. Thank you. Do you recall inspecting a
21 vehicle operated by or owned by Richard E. Tomlison and
22 driven by David Leeth on November 18th, 2008?

23 A. Yes, I do.

24 Q. Do you remember what -- what the
25 circumstances were that caused you to perform this

1 inspection?

2 A. He was involved in a crash, which he was
3 not at fault, but when they're involved in a crash, we
4 normally just conduct a vehicle inspection on the
5 vehicle.

6 Q. Did someone call you to the scene of the
7 crash?

8 A. Yes, dispatched by the Highway Patrol to
9 go to the scene.

10 MR. LINDGREN: Your Honor, may I approach
11 the witness?

12 HEARING EXAMINER SHEETS: You may.

13 MR. LINDGREN: Let the record show I'm
14 handing the witness what has been marked as Staff
15 Exhibit 1 (indicating).

16 Q. Inspector Adkins, do you recognize this
17 document?

18 A. Yes, I do.

19 Q. Did you prepare this document?

20 A. Yes, I did.

21 Q. And can you explain what it is?

22 A. It's just the inspection report, the
23 violations you have, make of vehicle, driver, address,
24 and the motor carrier.

25 Q. Does this accurately reflect the findings

1 of your inspection on the vehicle owned by Richard E.
2 Tomlison?

3 A. Yeah, and the violations, the defects I
4 had found.

5 Q. Thank you. Did you prepare this report
6 immediately following your inspection?

7 A. Yes, I did.

8 Q. Thank you. Did you give a copy of this to
9 the driver?

10 A. Yes, I did.

11 Q. Can you explain what violations are noted
12 on this report?

13 A. Yes. 393.51 is low air warning device for
14 the braking system. The second violation is no license
15 plate light. It was broken off, missing. That's the
16 only violations I found on the vehicle.

17 Q. Thank you. For the violation on the
18 defective brake warning device, what sort of brake
19 warning device or devices did this vehicle have?

20 A. It didn't have none working at the time of
21 inspection. It's got to be audible or visible, such as
22 a light or a buzzer.

23 Q. Was either the light or the buzzer
24 working?

25 A. No, it was not.

1 Q. Did you check both the light and the
2 buzzer?

3 A. Yes, I did. If I recall, I had him build
4 the air back up and pump the brake system out twice,
5 and I was looking at the dashboard. There was no light
6 and no buzzer operative at that time.

7 Q. So you performed a check twice?

8 A. Uh-huh.

9 Q. Thank you. What did you do with this
10 report after you prepared it?

11 A. Give the driver a copy, and then I leave
12 the other in my computer and then upload usually every
13 day or every other day.

14 Q. Does this report appear to have been
15 altered since the time that you uploaded it?

16 A. No, sir.

17 Q. Thank you. Is everything in it accurate,
18 to the best of your knowledge?

19 A. Yes, it is.

20 Q. Thank you.

21 I have no further questions for this
22 witness.

23 HEARING EXAMINER SHEETS: You're excused
24 as a witness.

25 (Witness excused.)

1 MR. LINDGREN: Miss Parrot will call the
2 next witness.

3 MS. PARROT: Your Honor, at this time the
4 Staff calls Mr. Tom Forbes to the witness stand.

5 THOMAS FORBES,
6 being by the Hearing Examiner first duly sworn, as
7 hereinafter certified, testifies and says as follows:

8 DIRECT EXAMINATION

9 By Ms. Parrot:

10 Q. Good morning, Mr. Forbes. Would you
11 please state your full name and spell your last name
12 for the record.

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

14 Q. What is your business address?

15 A. 180 East Broad Street, 14th Floor,
16 Columbus, Ohio 43215.

17 Q. And your employer?

18 A. Public Utilities Commission of Ohio,
19 Transportation Department, Compliance Division.

20 Q. And what is your role with the Compliance
21 Division here at the Public Utilities Commission?

22 A. I'm a Compliance Officer.

23 Q. And how long have you been employed as a
24 Compliance Officer?

25 A. Roughly four years.

1 Q. Have you received any special training to
2 enable you to perform your job as a Compliance Officer?

3 A. Yes. I've been through the North American
4 Standards Driver and Vehicle Inspection, hazardous
5 material inspection, cargo tank and bulk package
6 inspection, radioactive material inspection, attended
7 in-service training, and I work under the direction of
8 a Senior Compliance Officer for the first few months to
9 learn how to assess forfeitures.

10 Q. Would you please tell us a little bit
11 about what your job duties involve?

12 A. I assess forfeitures from motor vehicle
13 inspections performed by members of the Highway Patrol
14 and the Public Utilities Commission. I answer
15 technical questions from the regulated industry,
16 reference the regulations. I hold telephone
17 conferences to attempt to settle the violations and
18 forfeitures, testify at hearings, inspect motor
19 vehicles to the extent I can keep my certifications
20 current.

21 Q. Thank you. You mention that you assess
22 civil forfeitures. Would you please tell us a little
23 bit about how that process works?

24 A. There are two types. There are hazardous
25 material and nonhazardous material. On the hazardous

1 material civil forfeitures are manually assessed.
2 They're calculated by hand. On the nonhazardous
3 material violations, they're electronically assessed.
4 The computer generates the fine, and then the
5 Compliance Officers handle the settlement conferences
6 based on those fines.

7 Q. Have you had the opportunity to review the
8 file that's been compiled for the case involving the
9 inspection of Mr. Tomlison's vehicle?

10 A. Yes, ma'am.

11 MS. PARROT: May I approach, Your Honor?

12 HEARING EXAMINER SHEETS: You may.

13 Q. Mr. Forbes, I've handed you what's been
14 marked for identification as Staff Exhibit 1. Do you
15 recognize this document?

16 A. Yes, ma'am.

17 Q. And would you please tell us what it is?

18 A. It's a vehicle inspection report created
19 by officer -- or Inspector Adkins on 11/18/2008 in a
20 vehicle owned or operated by Richard E. Tomlison and
21 driven by David S. Leeth.

22 Q. Is this report regularly maintained by the
23 Compliance Division Staff in the course of its
24 business?

25 A. Yes, ma'am.

1 Q. Would you please tell us how this report
2 reaches the Compliance Division Staff?

3 A. The inspecting officer uploads this report
4 into SAFETYNET, and weekly or biweekly they are
5 transferred to the Compliance Division Civil Forfeiture
6 Program called Datatrieve, and we maintain them
7 electronically.

8 Q. And what happened at that point?

9 A. On this being a non-hazmat inspection, the
10 computer generates a civil forfeiture letter for
11 violations that the Commission assesses forfeitures
12 for, and the forfeiture is mailed to the driver or
13 carrier, whoever is responsible for that particular
14 violation.

15 Q. If you would, please direct your attention
16 to the middle of the report there marked as Staff
17 Exhibit 1 and the violations section. Do you see that?

18 A. Yes, ma'am.

19 Q. And there were two violations assessed
20 here by the inspector. What action did the Compliance
21 Division Staff take in response to these two
22 violations?

23 A. A Notice of Apparent Violation letter was
24 sent to Mr. Tomlison for the 393.51 out-of-service
25 violation for no or defective brake warning device.

1 Q. With respect to the second one, the
2 license plates --

3 A. No action was taken by the Compliance
4 Division.

5 Q. And why is that?

6 A. It's not a violation we assess or send a
7 notice or violation letter for.

8 Q. Is that because this is not an
9 out-of-service violation?

10 A. Yes.

11 Q. So the first one, the warning device
12 inoperative, that's an out-of-service violation; is
13 that correct?

14 A. That is correct.

15 Q. And just to be clear, was a civil
16 forfeiture assessed with respect to that violation in
17 this case?

18 A. No.

19 Q. And why is that?

20 A. Because for that particular violation it
21 is a Group 2 violation, and our chart states that there
22 must be two or more Group 2 violations before a fine is
23 assessed.

24 Q. Thank you.

25 May I approach again, Your Honor?

1 HEARING EXAMINER SHEETS: You may.

2 Q. Mr. Forbes, I've handed you what's been
3 marked for identification as Staff Exhibit 2. Do you
4 recognize this document?

5 A. Yes, ma'am.

6 Q. And would you identify it?

7 A. It is our fine schedule for violations of
8 the nonhazardous material inspections.

9 Q. And is this document regularly maintained
10 by the Compliance Division Staff in the course of its
11 business?

12 A. Yes, ma'am.

13 Q. Was this fine schedule in effect for
14 inspections occurring on November 18, 2008?

15 A. Yes. This fine schedule went into effect
16 October 1, 2008.

17 Q. Would you please explain for us how the
18 fine schedule was used in this case to determine what
19 the penalty would be?

20 A. The fines are broken up into four groups.
21 Group 1, Group 2, and Group 3 violations must be out of
22 service. Group 4 violations are not required to be out
23 of service. You do get a fine assessed. Under Group 2
24 violations you will see the low air warning device is
25 listed on the left-hand side.

1 Q. And you're on Page 1 of Staff Exhibit 2?

2 A. Page 1, yes. Let me go to Page 8 of Staff
3 Exhibit 2, and the very top violation shows 393.51, and
4 the two means it's a Group 2 violation and then the
5 description of low air warning device. Back to Page 1
6 under the Group 2 violations, the note attached to the
7 bottom says, "Fines will only be issued for a
8 combination of two or more violations from Group 2 or
9 Group 3." So for that reason there was a violation,
10 but there was not a fine.

11 Q. So, in this case where there is no fine,
12 what is the penalty? What's at stake in this case?

13 A. The carrier is notified that there is an
14 out-of-service violation on their record.
15 Out-of-service violations can affect your safety
16 performance rating.

17 Q. Thank you for explaining that. Is this
18 fine schedule used consistently by the Compliance
19 Division Staff for all carriers and drivers?

20 A. Yes, for non-hazmat violations.

21 Q. Are the procedures and the penalties
22 that you've talked about, are those consistent with
23 the standards of the Commercial Vehicle Safety
24 Alliance?

25 A. Yes.

1 Q. And the penalty that's been assessed here,
2 the fact that this will be on the carrier's record, is
3 that the proper penalty for this case?

4 A. Yes.

5 Q. And do you feel that that penalty is
6 reasonable and recommended to the Commission?

7 A. Yes.

8 Q. Mr. Forbes, I think you mentioned you
9 send letters to carriers and drivers; is that
10 correct?

11 A. Yes.

12 Q. And that's to notify them if a
13 forfeiture or other penalty has been assessed; is that
14 correct?

15 A. Right.

16 MS. PARROT: May I approach again, Your
17 Honor?

18 HEARING EXAMINER SHEETS: You may.

19 Q. Mr. Forbes, I've provided what's been
20 marked as Staff Exhibit 3. Do you recognize this
21 document?

22 A. Yes, I do.

23 Q. What is it, please?

24 A. It is a Notice of Apparent Violation
25 letter that was sent to the carrier in this case, Mr.

1 Richard E. Tomlison. It was sent on November 28, and
2 it informs the carrier on November 18th he had a
3 vehicle inspected, the violation that was discovered,
4 the out-of-service violation that was discovered, and
5 it has a statement, "At this time no fine will be
6 issued for the violation described in this notice."
7 With this also went an instruction sheet on how to
8 request a conference.

9 MS. PARROT: May I approach again, Your
10 Honor?

11 HEARING EXAMINER SHEETS: You may.

12 Q. Mr. Forbes, this is what's been marked for
13 identification as Staff Exhibit 4. Do you recognize
14 this document?

15 A. Yes, ma'am.

16 Q. And what is it, please?

17 A. It is a Notice of Preliminary
18 Determination letter sent to the same Respondent,
19 reference the same case, and basically says a
20 conference was held reference this matter and no
21 resolution was came to at the conference. Also with
22 this was an instruction sheet that would explain how to
23 request an administrative hearing should the Respondent
24 wish to do so.

25 Q. Thank you. Are Staff Exhibits 3 and 4

1 accurate representations of the letters that were, in
2 fact, sent to Mr. Tomlison?

3 A. Yes, they are.

4 Q. And are these exhibits, Staff Exhibits 3
5 and 4, are these letters regularly maintained by the
6 Compliance Division Staff in the course of its
7 business?

8 A. Yes.

9 MS. PARROT: I have no further questions
10 for this witness, Your Honor.

11 HEARING EXAMINER SHEETS: You are excused.

12 (Witness excused.)

13 MR. LINDGREN: Your Honor, the Staff rests
14 its case, and I move for the admission of Staff
15 Exhibits 1 through 4.

16 HEARING EXAMINER SHEETS: Very good. I'll
17 admit those into evidence at this time. And we'll take
18 a brief recess here.

19 (EXHIBITS ADMITTED INTO EVIDENCE.)

20 (Recess taken.)

21 HEARING EXAMINER SHEETS: Let's go back on
22 the record. We'll state Respondent, Mr. Tomlison, is
23 still not in the hearing room.

24 Do you have any motions to make?

25 MR. LINDGREN: Yes. I would move for

1 default judgment. Under the Commission's rules,
2 failure to appear at a hearing is grounds for a default
3 judgment.

4 HEARING EXAMINER SHEETS: Very good. The
5 recommendation will stand on the record and the
6 Commission will consider it, and I thank you all for
7 coming at this time. Thank you.

8 MR. LINDGREN: Thank you.

9 (Thereupon, the hearing was concluded at
10 10:32 a.m.)

CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings taken
by me in this matter on Tuesday, June 30, 2009, and
carefully compared with my original stenographic notes.

Valerie J. Sloas, Registered
Professional Reporter and Notary
Public in and for the State of
Ohio.

My commission expires June 8, 2011.

(VJS-650)

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Summary: Transcript Tomlinson Trucking 6/30/09 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Sloas, Valerie J. Mrs.