

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of: :
: Case Nos. 09-184-TR-CVF
Matthew E. Hauenstein. : 09-185-TR-CVF

- - -

PROCEEDINGS

before Mr. Kerry K. Sheets, Attorney Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-G, Columbus, Ohio, called at 10 a.m.
on Tuesday, August 25, 2009.

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1 APPEARANCES:

2 Richard Cordray,
3 Ohio Attorney General
4 By Mr. Duane W. Luckey,
5 Senior Deputy Attorney General
6 Public Utilities Section
7 By Mr. Thomas G. Lindgren
8 Assistant Attorney General
9 180 East Broad Street, 9th Floor
10 Columbus, Ohio 43215

11 On behalf of the Staff of the PUCO.

12 Mr. Matthew Hauenstein
13 5705 Madden Road
14 Cridersville, Ohio 45806

15 On his own behalf.

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1 Tuesday Morning Session,

2 August 25, 2009.

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4 ATTORNEY EXAMINER: The Public Utilities
5 Commission of Ohio has set for hearing at this time
6 and place Case Nos. 09-184, 09-185-TR-CFV, Matthew E.
7 Hauenstein. My name is Kerry Sheets. I am an
8 Attorney Examiner for the Commission, and I have been
9 assigned to hear this case.

10 May I now have the appearances of the
11 parties, please.

12 MR. LINDGREN: Your Honor, on behalf of
13 the Staff of the Commission, Ohio Attorney General
14 Richard Cordray's Office by Thomas G. Lindgren,
15 Assistant Attorney General. The address is 180 East
16 Broad Street, 9th Floor, Columbus, Ohio 43215.

17 ATTORNEY EXAMINER: Very good. Is
18 Mr. Hauenstein here?

19 MR. HAUENSTEIN: Yes, sir.

20 ATTORNEY EXAMINER: Why don't you come
21 over and sit at the table.

22 MR. HAUENSTEIN: Sure.

23 ATTORNEY EXAMINER: Give your name and
24 address for the reporter.

25 MR. HAUENSTEIN: My name is Matthew

1 Hauenstein. Address is 5705 Madden, M-A-D-D-E-N,
2 Road, Cridersville, Ohio 45806.

3 ATTORNEY EXAMINER: Very good. Do we
4 have any preliminary matters to take care of today?

5 MR. LINDGREN: None, your Honor.

6 ATTORNEY EXAMINER: Do you have witnesses
7 to call?

8 MR. LINDGREN: Yes, your Honor. The
9 Staff would like to call Rob Divjak to the stand.

10 - - -

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

14 DIRECT EXAMINATION

15 By Mr. Lindgren:

16 Q. Good morning, Mr. Divjak.

17 A. Good morning.

18 Q. Can you state and spell your full name
19 for the record, please.

20 A. Robert Divjak, R-O-B-E-R-T D-I-V-J-A-K.

21 Q. Thank you. And what is your business
22 address?

23 A. I work out of District Headquarters
24 Findlay.

25 Q. Do you happen to know their street

1 address?

2 A. Not offhand.

3 Q. Okay. Where are you employed?

4 A. State Highway Patrol.

5 Q. And what is your position with the State
6 Highway Patrol?

7 A. Motor Carrier Enforcement Inspector.

8 Q. What are your duties in that position?

9 A. Regulate the trucking industry, safety
10 and economics, anything pertaining to the trucking
11 industry, commercial vehicles.

12 Q. Thank you. How long have you been a
13 commercial motor vehicle inspector?

14 A. Since 1986.

15 Q. Thank you. And have you been trained in
16 applying the Federal Motor Carrier Safety
17 Regulations?

18 A. Yes.

19 Q. Thank you. Do you recall inspecting a
20 motor vehicle operated by respondent Mr. Hauenstein
21 on August 22 of 2008?

22 A. Yes.

23 Q. And do you recall what prompted you to
24 inspect that vehicle?

25 A. Yes.

1 Q. And what was that?

2 A. I was called to do an inspection by
3 Trooper Francendorf for safety violations he seen on
4 the vehicle.

5 Q. And where did this inspection take place?

6 A. It was Defiance County, I believe. The
7 truck was on U.S. 127, Mile Post 9.

8 Q. Okay. So was it just on the side of the
9 road?

10 A. Correct. I believe the truck was moved
11 to a different location to be weighed.

12 Q. Thank you.

13 MR. LINDGREN: May I approach the
14 witness?

15 ATTORNEY EXAMINER: You may.

16 MR. LINDGREN: Let the record reflect
17 that I have previously given the witness a document
18 marked as Staff Exhibit 1.

19 Q. Mr. Divjak, do you recognize this
20 document?

21 A. Yes.

22 Q. And can you explain what it is?

23 A. It's an inspection report of the
24 defendant's stop.

25 Q. Did you compile this report following

1 your inspection of respondent's vehicle?

2 A. Correct.

3 Q. And is everything in it accurate to the
4 best of your knowledge?

5 A. Yes.

6 Q. What did you do with this report
7 following your completion of it?

8 A. I gave the copy of the inspection to the
9 driver, explained that, and then I sent a copy to the
10 PUCO.

11 Q. Thank you. Does anything in it appear to
12 have been altered since you sent it to the PUCO?

13 A. Not to my knowledge.

14 Q. Thank you. Mr. Divjak, do you recall
15 what sort of cargo respondent's vehicle was carrying
16 on the day of your inspection?

17 A. It was I believe to be stone or sand. It
18 was a dump truck.

19 Q. Thank you. Did you determine the origin
20 of this cargo?

21 A. Yes.

22 Q. And what was that?

23 A. Stoneco and it came out of Oakwood, Ohio.

24 Q. Thank you. Do you know what -- what
25 Stoneco is?

1 A. It's a quarry, stone quarry.

2 Q. Thank you. And did you determine what
3 the vehicle's destination was?

4 A. Bryan, Ohio.

5 Q. Thank you. And how did you get that
6 information?

7 A. From the shipping paper.

8 Q. Thank you. Did the respondent provide
9 you with the shipping paper then?

10 A. Yes.

11 Q. Thank you. Did you find any safety
12 violations in the course of your inspection?

13 A. Yes.

14 Q. And are they noted on this report?

15 A. Yes.

16 Q. Thank you. Can you summarize what those
17 violations were?

18 A. The left front steering tire the tread
19 depth was 0/32.

20 Q. Thank you. Were there any other
21 violations?

22 A. Yes.

23 Q. Please go ahead.

24 A. Inoperable headlamps, the left front turn
25 signal was inoperative, and there was cracks in the

1 right front frame area for the dump box. The driver
2 had no CDL.

3 Q. And what is a CDL?

4 A. Commercial driver's license.

5 Q. And can you explain why he was cited for
6 not having a CDL?

7 A. Anything over 26,000 gross vehicle rating
8 needs to have a CDL license, and his gross vehicle
9 weight rating was 55,000.

10 Q. Thank you. How did you determine that
11 vehicle weight?

12 A. I believe it was on the door or the
13 registration. At this time I don't recall whether it
14 was on the door or the registration.

15 Q. Thank you. Were there any other
16 violations you found?

17 A. No. Did I say the company markings? No
18 company markings on the vehicle.

19 Q. Thank you. What about a medical
20 certificate, did he have a medical certificate?

21 A. No.

22 Q. Was he required to have one?

23 A. Yes.

24 Q. Is that similar to the CDL requirement?

25 A. Similar.

1 Q. Yes. Is that also based on the vehicle's
2 gross weight rating?

3 A. Yes. And anything over 26,000 in the
4 state of Ohio is under these regulations.

5 Q. Thank you. Were any of these violations
6 out of service violations?

7 A. Yes.

8 Q. And which ones were out of service?

9 A. The tire.

10 Q. Pardon?

11 A. The tire violation and operating a
12 commercial vehicle without a commercial driver's
13 license.

14 MR. LINDGREN: Thank you. I have no
15 further questions for this witness.

16 ATTORNEY EXAMINER: Mr. Hauenstein, do
17 you have questions for this witness?

18 MR. HAUENSTEIN: Yeah. Can I ask it now?

19 ATTORNEY EXAMINER: Yes.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Hauenstein:

23 Q. Mr. Divjak, how -- how do they determine
24 in the state of Ohio a farm-applied vehicle versus a
25 commercial vehicle?

1 A. It goes what you are doing with the unit
2 at the time. At the time of this stop you was using
3 your truck commercially. You wasn't hauling anything
4 off the farm, to or from a farm. You was hauling
5 stone coming from a quarry in Oakwood going to a
6 jobsite in Bryan, Ohio. So you was using this
7 commercially. If you use your vehicle for your own
8 farm, to or from a farm, then that would be your farm
9 exemption is what you are speaking of.

10 Q. Is a farmer allowed to haul stone in his
11 own truck?

12 MR. LINDGREN: Objection. That calls for
13 a legal conclusion.

14 ATTORNEY EXAMINER: I will let him answer
15 the question if he knows the answer.

16 A. Can he use it -- a truck for the farm and
17 to use it commercially; is that your question?

18 Q. Can -- can a -- yeah.

19 A. You can use that truck for your farm use,
20 and then you can use it commercially also. But when
21 you use it commercially, then you have to go by the
22 regulations set forth.

23 MR. HAUENSTEIN: I guess I have nothing
24 further.

25 ATTORNEY EXAMINER: Do you have any

1 questions?

2 MR. LINDGREN: No, your Honor.

3 ATTORNEY EXAMINER: You're excused.

4 MR. LINDGREN: At this time the Staff
5 calls Jonathan Frye to the stand.

6 - - -

7 JONATHAN FRYE

8 being first duly sworn, as prescribed by law, was
9 examined and testified as follows:

10 DIRECT EXAMINATION

11 By Mr. Lindgren:

12 Q. Mr. Frye, can you state and spell your
13 full name for the record, please.

14 A. Yes. Jonathan, that's J-O-N-A-T-H-A-N,
15 Frye, F-R-Y-E.

16 Q. Thank you. And what is your business
17 address?

18 A. 180 East Broad Street, Columbus, Ohio,
19 Public Utilities Commission of Ohio.

20 Q. And where are you employed?

21 A. With the Public Utilities Commission of
22 Ohio, Transportation Department, Civil Forfeiture
23 Division.

24 Q. And what is your position with the Public
25 Utilities Commission?

1 A. I am the Chief of the Civil Forfeiture
2 Division.

3 Q. And what are your duties in that
4 position?

5 A. To assess civil fines to carriers,
6 shippers, and drivers who are found to allegedly be
7 in violation of the Federal Motor Carrier Safety
8 Rules and Regulations.

9 Q. How long have you been the Chief of the
10 Civil Forfeiture Division?

11 A. Approximately six years.

12 Q. Thank you. Are you familiar with the
13 forfeitures assessed to the respondent in this case?

14 A. Yes.

15 Q. Thank you.

16 MR. LINDGREN: May I approach the
17 witness?

18 ATTORNEY EXAMINER: You may.

19 MR. LINDGREN: Let the record reflect
20 that I am handing the witness what has been marked as
21 Staff Exhibit 2 for identification.

22 Q. Mr. Frye, do you recognize this document?

23 A. Yes.

24 Q. And can you explain what it is?

25 A. It is a Notice of Preliminary

1 Determination Letter. This letter is sent to a
2 respondent after the conclusion of a settlement
3 conference with one of our compliance officers on
4 staff. In the event that compliance staff is unable
5 to reach a resolution in a case we will issue this
6 Notice of Preliminary Determination Letter advising
7 the respondent that they can either pay the fine or
8 they can request an administrative hearing to pursue
9 their case further.

10 Q. Thank you. And where is the forfeiture
11 amount stated in this notice?

12 A. Forfeiture notice stated this \$350.

13 Q. Now, is that amount correctly calculated?

14 A. The -- the amount of \$350 wasn't
15 correctly calculated in this particular case.

16 Q. And can you explain -- explain that
17 further?

18 A. Yes. When an inspection occurs out on
19 the roadway and in this particular case you'll note
20 that on this Notice of Preliminary Determination
21 there are two violations that are listed, one being
22 operating a CMV without a CDL and the second
23 violation no medical certificate on driver's
24 possession, the computer will automatically generate
25 a fine letter based upon the violations that are

1 discovered, and in this particular case the computer
2 generated the \$350 fine. However, in the inspection
3 report itself and in talking with the respondent, we
4 had noted -- or he had noted and we had noted on the
5 report that he was cited into local court for the CDL
6 violation but nowhere in the inspector's report was
7 there any indication that the driver was cited into
8 local court for the CDL violation. So as a result of
9 the driver being cited into local court for the CDL
10 violation, the fine should have gone out as \$100 just
11 for the medical violation itself.

12 Q. So \$100 would be the correct amount
13 assessed for -- to the driver for these violations?

14 A. For the CDL violation for the inspection
15 report OH3265005213D as in David.

16 Q. Thank you. Now, when assessing your
17 forfeitures, do you follow any guidelines?

18 A. Yes, we do. We follow the guidelines
19 that are established by the Commercial Motor Vehicle
20 Safety Alliance. It's a working group of industry
21 and government officials who have come together to
22 determine what the fine amount should be, and we base
23 our fines upon their guidelines.

24 Q. And is the \$100 amount consistent with
25 those guidelines?

1 A. Yes.

2 Q. Thank you.

3 MR. LINDGREN: May I approach this
4 witness again?

5 ATTORNEY EXAMINER: You may.

6 MR. LINDGREN: Let the record reflect I
7 am handing the witness what has been marked as Staff
8 Exhibit 3 for identification.

9 Q. Mr. Frye, do you recognize this document?

10 A. Yes.

11 Q. And can you explain what this is?

12 A. Yes. This is a Notice of Preliminary
13 Determination Letter. Again, it's a letter that's
14 sent to a respondent after the conclusion of a
15 settlement conference. When we are unable to reach a
16 resolution of a case, we will issue this Notice of
17 Preliminary Determination Letter giving the
18 respondent notice that he can pursue his case through
19 the administrative hearing process and providing him
20 with an opportunity to -- to contest it further.
21 This particular note -- Notice of Preliminary
22 Determination, the case number has a C at the end
23 which would indicate that these were violations that
24 were assessed against the company as opposed to Staff
25 Exhibit 2 which has a D at the end which were

1 violations that were assessed against the driver.

2 Q. In this case it appears the carrier and
3 the driver were one and the same; is that correct?

4 A. That's correct, yes.

5 Q. Thank you. And what forfeiture is stated
6 in this exhibit?

7 A. The total forfeiture assessed was \$200.
8 There were two violations that were noted, first
9 violation being tire tread depth was less than 4/32
10 of an inch and the second violation being no company
11 markings on the vehicle itself.

12 Q. And was this forfeiture amount correctly
13 calculated?

14 A. Yes, it was.

15 Q. And is this amount consistent with the
16 guidelines of the Commercial Motor Vehicle Safety
17 Alliance?

18 A. Yes.

19 Q. So is it your recommendation that the
20 Commission assess one forfeiture of \$100 against the
21 respondent as driver and one forfeiture of \$200
22 against the respondent as the carrier?

23 A. That's correct.

24 MR. LINDGREN: Thank you. I have no
25 further questions for this witness.

1 ATTORNEY EXAMINER: Do you have any
2 questions?

3 MR. HAUENSTEIN: Well, a statement more
4 so than a question.

5 ATTORNEY EXAMINER: Excuse me?

6 MR. HAUENSTEIN: A statement more so than
7 a question.

8 ATTORNEY EXAMINER: You will have a
9 chance to make a statement when you testify.

10 MR. HAUENSTEIN: Okay.

11 ATTORNEY EXAMINER: But do you have any
12 questions of this witness?

13 MR. HAUENSTEIN: No, no, sir.

14 ATTORNEY EXAMINER: Very good. You're
15 excused. Does that conclude your?

16 MR. LINDGREN: Yes, your Honor, the case.
17 Staff rests its case, and I would like to move the
18 admission of Staff Exhibits 1, 2, and 3.

19 ATTORNEY EXAMINER: I will admit those
20 into evidence at this time.

21 (EXHIBITS ADMITTED INTO EVIDENCE.)

22 ATTORNEY EXAMINER: Mr. Hauenstein, do
23 you wish to present testimony?

24 MR. HAUENSTEIN: Yeah.

25 ATTORNEY EXAMINER: Take the stand.

1 - - -

2 MATTHEW E. HAUENSTEIN

3 being first duly sworn, as prescribed by law, was
4 examined and testified as follows:

5 DIRECT EXAMINATION

6 ATTORNEY EXAMINER: You can go ahead and
7 give your story.

8 THE WITNESS: Well, your Honor, I guess
9 the -- I don't know how to start. I guess as far as
10 the medical certificate on the driver's possession,
11 my question is -- I guess am I allowed to ask a
12 question?

13 ATTORNEY EXAMINER: This is where you --

14 THE WITNESS: Just a statement.

15 ATTORNEY EXAMINER: -- you present your
16 testimony.

17 THE WITNESS: Well, the Defiance
18 Municipal Court, I went to court after Mr. Divjak and
19 the State Highway Patrolman inspected the truck and I
20 went to court in Defiance, Ohio, in the local court
21 but anyways they -- they -- I guess they dropped the
22 charge with operating a commercial vehicle without a
23 CDL. And if they have dropped that charge, how can
24 you guys charge me with no medical certificate on the
25 driver's possession if they said I am not driving a

1 commercial vehicle?

2 And as far as the tire on the front tread
3 depth, I will fess up to that. He is right. That
4 was -- that was my fault but the -- I guess as far as
5 having company markings, that truck is not I guess
6 owned by a company. It -- just has like Mr. Divjak
7 said the gross vehicle weight, you know, was on the
8 door. And, you know, and maybe it's not big enough
9 or it's not correct to the Public Utilities
10 Commission of Ohio, but it has Hauenstein Farms on
11 the door. Maybe that's not right, you know, and I
12 don't know. But I don't -- I don't know. I don't
13 agree with that.

14 But, I mean, the tire, on the front tread
15 depth he didn't use a gauge to check it but by
16 looking at it, you know, it probably could have been
17 less. I mean, it's a gray area, but it could have
18 been. And I will -- I will fess for that but I
19 don't. I don't know.

20 I guess as far as a commercial vehicle
21 goes, I was under the impression that, well, using it
22 for commercial use I guess I interpret that as being
23 paid for using your vehicle. That may not be the
24 case but I don't know if that's, you know, right or
25 wrong. But, I mean, that truck probably doesn't see

1 I am going to say probably 7,000 miles a year. It's
2 mostly local use and I don't know. Like I said, I am
3 a farmer by trade. I don't run that truck
4 commercial. I have switched it over to commercial
5 tags on account of this hearing because I was told by
6 Mr. Lindgren that, you know, you can't do -- he
7 basically said you can only run corn or soybeans on
8 the truck if you are claiming farm exemption and not
9 that I use it for more than that, but I thought it
10 would, I don't know, clear up some gray areas later
11 on if I were to get pulled over again, and I do have
12 a CDL now, medical certificate.

13 But, like I say, I don't -- my CDL stays
14 on me. My medical certificate stays in the truck,
15 but I don't drive it often, like I say, about 7,000
16 miles a year. It's not a -- I don't make money with
17 it is what I am getting at but I don't know. I just
18 don't know the medical certificate part of it is
19 right and the company markings but, like I say, I
20 don't know. I don't know if the company markings are
21 in the right spot or if they are correctly made on
22 the side of the truck or, you know, that could be --
23 that could be why -- why Mr. Divjak wrote that the
24 way it was, but it's just a disagreement between him
25 and I and you guys but I don't know. I don't think

1 that that's the -- the company markings is right.
2 Like I say, it's not owned by a company. It's owned
3 by me, but it's a farm vehicle. And, I mean, that's
4 what I -- that's basically what I use it for.

5 ATTORNEY EXAMINER: Does that conclude
6 your testimony?

7 THE WITNESS: Yes.

8 ATTORNEY EXAMINER: Mr. Lindgren.

9 MR. LINDGREN: Thank you, your Honor,
10 just a couple of questions.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Lindgren:

14 Q. Mr. Hauenstein, you were -- you were
15 carrying stone in your truck on the day it was
16 inspected, right?

17 A. Yeah, yeah.

18 Q. Would you agree with me that stone is not
19 either an agricultural product or agricultural
20 supply?

21 A. Can I answer that honestly? Yes and no.
22 I guess as far as an agricultural product, if you are
23 looking at strictly agriculture, you are probably
24 interpreting it as corn, soybeans, sugar beats, hay,
25 straw, et cetera. With this -- with this truck here

1 I have put stone in my driveway at home, different
2 farms that we farm and stuff, and I guess I think
3 that that's all right, but I guess you don't think
4 that it is which is fine.

5 MR. LINDGREN: Thank you, your Honor. I
6 have no further questions.

7 - - -

8 EXAMINATION

9 By Attorney Examiner:

10 Q. Let me just ask you a little bit more
11 detail what you were doing with your truck on
12 August 22 of 2008.

13 A. Well, I guess that -- well, my -- I will
14 just tell you straight up, my uncle had a heart
15 attack probably four months prior to this
16 particular -- well, maybe five months prior to this
17 particular violation in August. And he -- he needed
18 some help getting a few things done around the house,
19 so we had worked around his place and put a driveway
20 and stuff in at his house. And I will say for the
21 most -- for the most part I took some stone to his
22 house and then other stone I would take and drop off
23 at a drop site for him, you know, for him personally,
24 like I say, not getting paid for it but that -- that
25 particular load -- that particular load there

1 actually went to his -- his house.

2 Mr. Divjak cited me for a tire violation.
3 I got ahold of him. We brought a brand new tire on a
4 different rim out. We put it on the truck and then,
5 you know, they put it out of service so he -- he
6 drove the pickup truck and I drove the pickup truck
7 back to his house and after we had the tire fixed, we
8 put the tire in the back of his pickup and we took
9 the truck back to his place.

10 ATTORNEY EXAMINER: Thank you. Anything
11 other?

12 MR. LINDGREN: I have nothing further,
13 your Honor.

14 ATTORNEY EXAMINER: Okay. Very good.
15 You're excused.

16 Do you have anything more to address
17 today?

18 MR. LINDGREN: Nothing, your Honor.

19 ATTORNEY EXAMINER: Very good. With that
20 said I'll consider the case submitted on the record.
21 I thank you all for coming.

22 (Thereupon, the hearing was concluded at
23 10:39 a.m.)

24 - - -
25

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, August 25,
2009, and carefully compared with my original
stenographic notes.

s/Karen Sue Gibson
Karen Sue Gibson, Registered
Merit Reporter.

(KSG-5090)

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Case No(s). 09-0184-TR-CVF

Summary: Transcript Matthew Hauenstein 8/25/09 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.