

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of: :
Ace Doran Hauling & :
Rigging Co. : Case No.09-383-TR-CVF
:
Notice of Apparent :
Violation and Intent to :
Assess Forfeiture. :

- - -

PROCEEDINGS

before Mr. Kerry H. Sheets, Attorney Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-G, Columbus, Ohio, called at 10:00
a.m. on Tuesday, September 29, 2009.

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5 Pro se.

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13 On behalf of the Transportation Staff of
14 the Public Utilities Commission.

15 - - -

INDEX

- - -

WITNESS

PAGE

Douglas Hostetler wit

Direct Examination by Mr. Jones 4

Cross-Examination by Mr. Nelson 21

Redirect Examination by Mr. Jones 28

Thomas Forbes

Direct Examination by Mr. Margard 30

Gary Diuk

Direct Examination by Mr. Nelson 34

Cross-Examination by Mr. Jones 36

Redirect Examination by Mr. Jones 43

Recross-Examination by Mr. Nelson 44

- - -

STAFF EXHIBITS

IDFD ADMTD

1 - Driver/Vehicle Examination Report 8 29

2 - Copy of Photograph 10 29

3 - Copy of Photograph 10 29

4 - Copy of Photograph 10 29

5 - Copy of Photograph 10 29

6 - Out of Service Fine Schedule 33 29

7 - Notice of Preliminary Determination 33 33

- - -

Tuesday Morning Session,
September 29, 2009.

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THE ATTORNEY EXAMINER: The Public
Utilities Commission of Ohio has set for hearing at
this time and place Case No. 09-383-TR-CVF, In the
Matter of Ace Doran Hauling & Rigging Co. My name is
Kerry Sheets, an attorney-examiner for the
Commission, and I have been assigned to hear the
case.

May I now have appearances of the parties
please, starting with staff.

MR. JONES: Good morning, your Honor. On
behalf of the staff of the Public Utilities
Commission of Ohio, Vern Margard, John Jones,
assistant attorneys general, 180 East Broad Street,
Columbus, Ohio.

THE ATTORNEY EXAMINER: Very good.

Now for the respondent, your name and
address, please.

MR. DIUK: My name is Gary Diuk. My
address is 621 28th Street NW, Massillon, Ohio.

THE ATTORNEY EXAMINER: Is that the
company address?

MR. DIUK: No, sir, it is my home

1 address.

2 THE ATTORNEY EXAMINER: Could you give
3 the company address.

4 MR. NELSON: I will do it. My name is
5 Denis Nelson. The address is 1601 Blue Rock Street,
6 Cincinnati, Ohio, 45223.

7 THE ATTORNEY EXAMINER: Very good. Are
8 there any preliminary matters to take care of?

9 MR. JONES: No, your Honor.

10 THE ATTORNEY EXAMINER: Do you have a
11 witnesses to call?

12 MR. JONES: Yes, we do, your Honor. We
13 would like to call Officer Hostetler to the stand,
14 please.

15 - - -

16 DOUGLAS HOSTETLER
17 being first duly sworn, as prescribed by law, was
18 examined and testified as follows:

19 DIRECT EXAMINATION

20 By Mr. Jones:

21 Q. Please state your full name for the
22 record?

23 A. Douglas W. Hostetler, H-O-S-T-E-T-L-E-R.

24 Q. And where you employed?

25 A. I am employed with the Ohio State Highway

1 Patrol and assigned to patrol at the Massillon
2 District Headquarters, State Route 172, Massillon,
3 Ohio.

4 Q. And how long have you been employed in
5 that capacity.

6 A. In the current capacity I am for
7 approximately six years, but I have been with the
8 Ohio State Highway Patrol since 1986.

9 Q. And what training and certifications do
10 you have to do your job?

11 A. My career training started with Ohio
12 Peace Officer Training Council, which I was a
13 certified peace officer. Upon employment with Ohio
14 State patrol I was trained as a dispatcher. Then six
15 years ago accepting the promotion, I was trained in
16 North American level 1 training course offered
17 through the federal government, also hazardous
18 material inspector training, both cargo tank and
19 noncargo tank hazmat vehicles. I am also familiar
20 with training in the Ohio Revised Code in addition to
21 the Federal Motor Carrier Safety regulations.

22 Q. And what equipment is issued to do your
23 job?

24 A. I am issued a uniform similar to the one
25 I'm wearing today. Also a patrol car with a light

1 bar, siren, door insignias that say Ohio State
2 Highway Patrol Motor Carrier Enforcement.

3 I am given equipment to help conduct my
4 inspections, coveralls, creepers, an Aspen computer
5 to electronically record our inspections and create a
6 legal document as a result of our inspections, and
7 various other type of things to conduct those
8 inspections, equipment used in the course of that.

9 Q. And what is your area that you're
10 assigned to?

11 A. I'm assigned to the Ohio Patrol,
12 Massillon District 3, which consists of Lorain,
13 Medina, Ashland, Wayne, Holmes, Stark, Summit County
14 area of Ohio. I do have jurisdiction throughout
15 Ohio.

16 Q. Very good. Very good. And so as part of
17 your job responsibilities you conduct roadside
18 inspections of commercial motor vehicle carriers?

19 A. That's correct.

20 Q. And from those inspections it is your
21 testimony that you generate a report to document that
22 inspection?

23 A. Yes, I do. I have a computer laptop
24 computer mounted in my cruiser with a program labeled
25 Aspen program, which generates a computerized report

1 of my findings on my inspections.

2 Q. Okay. Do you have any exhibits in front
3 of you up there?

4 A. No, I don't.

5 MR. JONES: Your Honor, may I approach
6 the witness?

7 THE ATTORNEY EXAMINER: You may.

8 Q. Officer Hostetler, I have handed you a
9 packet of material there. Would you identify what is
10 on top there as State's Exhibit 1?

11 A. This is a copy of the Aspen report that I
12 generated the day of the inspection. At the top
13 right corner is a unique identifying number. It has
14 OH3256005785. That indicates it was generated by
15 Ohio 3256, which is my unit number. The remaining
16 number is a sequential number generated for each
17 inspection I have that document one from another.

18 Q. Okay. So this report was generated in
19 relation to the inspection that occurred on
20 August 14, 2008 in Stark County; is that correct?

21 A. That's correct, Stark County Ohio on
22 August 14, 2008. The inspection started at 2:18 in
23 the afternoon and concluded at 2:46 in the afternoon
24 that day.

25 Q. And the inspection took place involving

1 what carrier, what driver?

2 A. The inspection is for Ace Doran Hauling &
3 Rigging of 1601 Blue Rock Street, Cincinnati Ohio
4 452333. This was generated by entering the DOT
5 number into my Aspen report. Many of my fields are
6 captioned where you fill in the blank and it
7 populates automatically. The result of the DOT
8 number displayed on the outside of the truck
9 populated that screen and the response was also
10 documented by the door marking.

11 Q. And why did this inspection take place?

12 A. This was the result of an obvious
13 violation I observed. The truck that was inspected
14 in this report was operating on US 30 in Stark
15 County. I noticed some strapping that was loose as
16 the vehicle traveled down US 30, and I initiated a
17 traffic stop and a subsequent inspection as a result
18 of that observation.

19 Q. Okay. And as pattern of your inspection
20 that took place then with Ace Doran Hauling &
21 Rigging, were you able to take pictures of this
22 inspection?

23 A. Yes. I am issued a digital camera as
24 part of my equipment issued by the Highway Patrol. I
25 try to document, especially in cargo securement,

1 pictures of the inspected vehicle and the type of
2 securement devices used. Yes, on this particular
3 inspection I took advantage of the equipment
4 available and did document the vehicle and the cargo.

5 Q. I'd like to have you then identify Staff
6 Exhibits 2, 3, 4, and 5. Why don't you start with
7 Exhibit 2 and tell us what that shows.

8 A. Exhibit 2 is the picture of the side door
9 of the truck that I inspected that the day. The
10 intent of this picture is to document one of the
11 tools I used to obtain an ID of the carrier on that
12 particular day. And that's the door markings showing
13 the company name as well as the DOT markings.

14 On Exhibit 3 is a copy of the bill of
15 lading presented to me that day. The bill of lading
16 has unique numbers on it that identified this
17 particular load and it captures in there where they
18 are coming and going to. The reason I collect that
19 is I have to identify the commodity, as well as the
20 origin destination and the shipper on the loads, and
21 they are recorded in the Aspen report as part of my
22 report findings.

23 Exhibit No. 4 is a view from the right
24 rear corner of the truck, just kind of to show the
25 cargo, the straps that were in use at the time, to

1 document the number used and so forth like that.

2 Another view again, Staff Exhibit 5, from
3 the rear is something that the patrol likes us to do,
4 too. It is another way of documenting the vehicles
5 involved to capture the license plate number. We
6 have the ability then if need to for identification
7 purposes run that and obtain information on the
8 trailer by the license plate number.

9 Q. Okay. So then information that can be
10 seen there from Staff Exhibit 2 as to identification
11 of the carrier, Staff Exhibit 3, the bill of lading,
12 that information is consistent with the information
13 contained in your driver examination report?

14 A. That's correct.

15 Q. Okay. And these pictures, Staff Exhibits
16 2, 3, 4, and 5, are these accurate representations of
17 what you observed that day when you conducted the
18 inspection?

19 A. Yes, sir. This is pictures as I saw it
20 that day.

21 Q. And why don't you go ahead and describe
22 then -- first of all, looking at Staff Exhibit 3,
23 what was the weight of this load as indicated?

24 A. According to the bill of lading
25 53,290 pounds.

1 Q. Now please give us a description here
2 looking at Staff Exhibit 4 what we see here for the
3 cargo.

4 A. 4 is what I refer to as steel rods being
5 transported on the bed of this flatbed truck and
6 trailer.

7 Q. Okay. And go ahead and describe here
8 exactly how many straps are showing there for that
9 load.

10 A. Well, the total number of straps on the
11 load appears to be seven. My particular concern that
12 day was the top layer that had a couple loose straps
13 of which the top layer, not being against the header
14 board, had a total of five straps present that day.

15 Q. Okay. So these steel rods, they're not
16 up against the header board?

17 A. No, sir.

18 Q. Either the bottom layer or the top layer.

19 A. No, they're not against the header board.

20 Q. And what is the approximate length of
21 these rods?

22 A. The length is 22.75 feet.

23 Q. And did you measure those rods?

24 A. I measured them that day and also
25 subsequent questioning occurred from the carrier. So

1 I called and talked to the shipper that day and
2 confirmed that the length was 22.75 feet. That's per
3 the shipper.

4 Q. Okay. All right. So, now, when you saw
5 this obvious violation, looking at Staff Exhibit 4,
6 what did you see that was loose for those straps?

7 A. While in transport the top cargo had
8 straps over it, and the picture shows five. Two
9 straps were loose, and you can see as air goes down
10 the road and beneath the straps, you can see them
11 move, physically move, at times even raised. That's
12 what I observed that day, and that's why I initiated
13 the stop.

14 Q. So you're saying that two of the five
15 straps swung over the top of the load were loose, and
16 that was obvious to you as you observed the truck
17 going by you; is that correct?

18 A. Yes; while the truck was in transport.
19 Yes.

20 Q. Okay. After you had made the stop of the
21 driver for this load, then what was done in regards
22 to securement of that load?

23 A. Ultimately at the conclusion of the
24 inspection, the Level II inspection, the driver then
25 exited the truck and tightened both the straps.

1 Q. Okay. And these pictures were taken in
2 relation to when the straps were tightened.

3 A. He had already made his corrections of
4 the loose straps. My intent on this picture was to
5 document the number of securement devices used and
6 also just for identification of the truck for further
7 purposes if needed.

8 Q. Okay. So it's your testimony that you
9 took these pictures after such time as the driver had
10 tightened down the two straps that you observed to be
11 loose.

12 A. Yes.

13 Q. That were over the top of the load.

14 A. Yes, sir.

15 Q. All right. And as to -- let's go back to
16 Staff 1 then and fill in the information for your
17 report. What other information did you then
18 incorporate into your report from this inspection?

19 A. Well, beneath the carrier identification
20 line there's a caption that identifies the location
21 of the inspection, which was roadside on US 30,
22 milepost 7, in Stark County, which is near the State
23 Route 21 area. The next block below that is called
24 the Vehicle Identification block, which unit 1, which
25 is a power unit identified by documents presented and

1 also markings on the truck, license plate and so
2 forth. It was a Freightliner 1997 make, Ohio plated
3 with Ohio plate PUZ6098. Has a company ID on it of
4 4835.

5 I also recorded the VIN number, and this
6 is populated also off the cab card. We actually have
7 scanners, you click on and it populates those fields.
8 The gross weight rating that the Bureau of Motor
9 Vehicles has for the power unit is 80,000.

10 No. 2 is the trailer. It's a
11 semi-trailer, 2008. I don't recall the make on this
12 one. There are formatted makes on the trailer codes
13 and Aspen does not offer every make that are out
14 there, so if it doesn't have that in the populated
15 format screen, I list generic "other" as the make,
16 Ohio plate TNZ7566. There again the VIN and gross
17 vehicle weight rating is recorded

18 The next block below is violations that I
19 observed as a result of the inspection, just two in
20 this case. One was the -- on the power unit was left
21 tail lamp, inoperative. Second was the cargo
22 securement violation, which is listed under
23 392.9(a)(1). On there it does become an
24 out-of-service violation with the number of straps
25 involved.

1 Also off to the side there it says
2 Verify. There's an A. That means I verified and
3 observed the driver making the corrections to remedy
4 this problem.

5 The next group of boxes here are
6 different special inspections, which this does not
7 apply to that. The following box there is the notes
8 that I have. At the conclusion of my inspection, I
9 always myself write down the reason for the stop.
10 O-B-V-I means obvious, and strapping is the reason
11 why I stopped them.

12 The next line is a series of
13 abbreviations, how I determined the identity of the
14 carrier that day. The driver indicated that's who
15 he was driving for. It also had the markings, the
16 registration for the truck, bill of lading, and
17 also the logbook. He was logging under this carrier
18 also.

19 At the bottom is some more information
20 listed that the Aspen report generates as a result of
21 various boxes that I had to answer questions or
22 populate, and it puts together a brief statement here
23 at the bottom, including the driver's address and so
24 on.

25 The second page is generated by the

1 computer there. It is nothing unique, other than
2 the driver information. There is formatted
3 instructions that's listed here on the Aspen report
4 so the driver and the carrier has instructions in
5 regards to making corrections and returning this
6 report back to the Commission, the Public Utilities
7 Commission of Ohio, notifying them that the
8 corrections had been made, and it also lists the time
9 that they have to do so.

10 Q. So how soon then after the inspection do
11 you generate the report?

12 A. The report is generated after I do my
13 walkaround inspection and I talk to the driver,
14 obtain information, his CDL, medical card,
15 registration, bill of lading, logbook. I take that
16 back to my car and generate the inspection.

17 At the conclusion I print out a copy of
18 it, return to the driver, give him his copy, have him
19 sign it, return it to the carrier. It's concluded
20 then.

21 At the end of my shift all the ones
22 generated that day I update to the Public Utilities
23 Commission of Ohio, and then they handle the rest
24 from there.

25 Q. Staff Exhibit 1 is not the actual one

1 that was issued to the driver that day but it's an
2 accurate representation of the report you would have
3 generated that day with the information and served on
4 the driver; is that correct?

5 A. That's correct.

6 Q. And going back to the violation itself
7 here, what does the code require, the Federal Motor
8 Carrier Safety regulations when you have the length
9 of these rods being 22.75 feet in length and the type
10 of cargo that we have here, what does the code
11 require as to how many straps would be needed to have
12 that load secure?

13 A. There's two different variables you have
14 to enter into that equation. One is securing for the
15 weight, which he was in compliance of that. So the
16 remaining is how do you determine the number of
17 straps required. And according to 393.110 of the
18 Federal Motor Carrier safety regulations, that is
19 broken down into two aspects, whether it is against
20 the cargo or a bulkhead or some type of bracing or
21 not.

22 In this particular case the application
23 is not, so to determine the amount, two for the first
24 10 foot of cargo; one strap for each additional
25 section of 10 or part thereof 10-foot section. And

1 in this particular case we have 0 to 10 requiring two
2 straps, 10 to 20 another strap, and slightly over 20
3 requiring a final strap.

4 Q. So for this load particularly the two
5 bundles of steel rods on the top required four straps
6 to be secured, to secure that part of the load; is
7 that correct?

8 A. That's correct. Four properly secured
9 straps would have been sufficient for length.

10 Q. And on this occasion for this inspection
11 there were actually five straps but two of the straps
12 were loose as what you testified; is that correct?

13 A. That's correct. Two were loose, so that
14 pulls it down to three working securement devices.
15 So that was one short of the requirement for this top
16 tier there.

17 Q. And you observed the driver to then
18 tighten those straps in your presence at the time of
19 the inspection?

20 A. Right. While I typing out my Aspen
21 report, the corrections were made, just prior to the
22 photograph.

23 Q. And then he was placed back in service
24 and allowed to go on?

25 A. Yes, sir.

1 Q. Okay. So as to Staff Exhibit 1 is this a
2 record kept in the ordinary course of business? This
3 is a report you generate for every inspection you
4 conduct; is that correct?

5 A. Yes, every inspection.

6 Q. Okay. And you also testified that Staff
7 Exhibits 2, 3, 4 and 5, they were accurate
8 representations that you observed from your
9 inspection, that you took these pictures and you
10 generated these pictures; is that correct?

11 A. That is correct.

12 Q. And it is further your testimony that you
13 had electronically submitted a copy of this
14 inspection report to the Public Utilities Commission;
15 is that correct?

16 A. That's correct.

17 Q. And is it also then, Officer Hostetler,
18 your opinion based on what you observed and based on
19 what the Federal Motor Carrier Safety regulations
20 required that this load was not secure; is that
21 correct? Is that your opinion?

22 A. Not while it was in transport prior to my
23 contact, but it was corrected upon completion of my
24 inspection.

25 MR. JONES: Your Honor, if I could have

1 one second.

2 THE ATTORNEY EXAMINER: Yes.

3 MR. JONES: I have no other questions,
4 your Honor.

5 THE ATTORNEY EXAMINER: Which one wants
6 to speak? Do you have any questions?

7 MR. NELSON: I will, sir.

8 THE ATTORNEY EXAMINER: Do you have
9 questions for the witness?

10 MR. NELSON: Yes, I do.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Nelson:

14 Q. Officer Hostetler, how are you this
15 morning?

16 A. Good.

17 Q. You talked about the Aspen program and
18 how some are populated automatically by the system.
19 Is in the violation code in question here, is that
20 automatically populated by the Aspen, or do you enter
21 those items?

22 A. No. The 392.9(a)(1) is the cargo
23 securement code you type in, and it populates the box
24 off to the extreme right. We do have the ability to
25 add additional comments on that. In this particular

1 case when I hit 392.9(a)(1), it would show failure to
2 secure cargo specified in 49 CFR 393.100 through 142.
3 It would end there. From that point on it is my
4 personal modifications to the description of the
5 offense.

6 Q. Okay. So anything past the population of
7 393.100 through 393.142 is automatically done when
8 this 392.9 is placed there?

9 A. When 392(a)(1), what you just read, is
10 populated in there, the part that I added to this
11 inspection, this particular violation is: "2 of 5
12 straps loose (4 required) in violation of
13 393.104(f)(3)," and I wrote the words "Out of
14 Service."

15 Q. Okay. Now I'm confused with
16 392.9(A)(1) having anything to do with load
17 securement. Would you enlighten us on how operating
18 authority has anything to do with the load
19 securement?

20 A. 392.9 is load securement. There was also
21 a subsection for operating authority that falls under
22 that, too. But for cargo securement the Ohio Patrol
23 directed us to write it under 392.9. This pops up
24 when you populate that. They want it all listed
25 under "generic" which defaults to, it says a cargo

1 has to be secured as specified in 49 CFR
2 393.100 through 393.142.

3 Q. So what specifically is the charge that
4 you are asserting today?

5 A. I am asserting that the cargo was not
6 secured as required by the Federal Motor Carrier
7 cargo regulations, specifically the section that
8 requires the strapping to be snug on there and
9 properly fitted.

10 Q. Okay. Which you referred to as 393.110?

11 A. 393.110 tells you how you determine the
12 number. There are several issues when you haul cargo
13 you have to take into consideration, weight, length,
14 how you determine the number. They actually say for
15 393.110, it gives you a whole bunch of different
16 scenarios: Cargo over 5 feet, cargo under 5 feet,
17 cargo over 1,100 pounds, cargo under, long cargo. It
18 gives you a whole bunch of different scenarios.

19 If your driver were to ask me, how do you
20 know how many straps, I would tell them to go to
21 393.110 and it will explain to you how many you have
22 to have.

23 Q. You are specifically asserting that
24 393.110 is the violation you wrote up here?

25 A. No. I am saying that's how I determined

1 how many straps. I determined he needs to have four
2 straps on that top tier. However, he had in excess
3 of that. He had five, two of which were loose, and
4 according to 393.104(f)(3), the straps are not
5 allowed to be loose. The cargo has to be firmly
6 immobilized, and that's said in 393.106.

7 But loose straps are not permitted as a
8 form of cargo securement. He had two loose, which
9 drops him down to three, which you asked me how do I
10 determine if someone is out of service or not, do
11 they have the minimum number that 393.110 says you
12 have to have. My answer is no because two are not
13 working and not considered legal cargo securement, is
14 what I'm trying to articulate on that.

15 Q. Okay. Where did you articulate in the
16 violation description that you were referring to the
17 top two bundles?

18 A. No. There are only so many characters
19 you're allowed to put in there. I couldn't do it all
20 there. Top cargo or any part thereof is cargo not
21 secured. I don't normally say that this is okay,
22 this is not okay. I deal with what is not working,
23 and I explained to the driver that day on the
24 roadside what I had in mind was incorrect.

25 Q. Okay. Which straps specifically are you

1 saying were loose on the load, sir?

2 A. That I don't remember in sequential order
3 from front to back which ones. The important thing
4 to me was it was not present. I don't know the
5 particular placement that particular day. It's been
6 over a year and I can't remember whether it was strap
7 1 or 3, but I do know two of the five that were
8 present that day were not properly used.

9 Q. Well, in actuality is there not seven
10 straps on this load?

11 A. From the total load but not on the top
12 tier. I'm worried about the securement of the top
13 tier, sir.

14 Q. Okay. So you're insinuating or implying
15 that two of the top five straps were not.

16 A. Yes, sir.

17 Q. But you can't remember which two.

18 A. Not which two of the five, which
19 placement, no.

20 Q. Okay.

21 A. It doesn't matter. You have to have four
22 there working and there wasn't. That was my
23 intention of that.

24 Q. Is it not your normal operation to make
25 notes to this effect so you can testify?

1 A. No. It doesn't matter if you don't have
2 the minimum number, how many you could have. I don't
3 document how many straps he has in his cab that
4 should be used, no, or how many aren't used. All I
5 know he is required to have four. I determined there
6 wasn't four working. That's what I documented, that
7 he was in violation of the minimum strapping
8 requirement. I don't go how many excessive straps he
9 had or so forth like that, but I did document he
10 didn't have the required amount.

11 Q. You don't think that's an important issue
12 here in the forum right here to determine --

13 A. The important issue was you have to have
14 four working straps on that, and they were not
15 present. That what I'm articulating in this. That's
16 what I want to make correct today.

17 Q. So it's not important to document what
18 ones were and what ones weren't?

19 A. Just the total number versus you meet
20 requirements or not, whether you're in compliance
21 with the law or not. I don't say you're 150 percent
22 compliant. That doesn't matter. You either are or
23 you're not. In this particular case what I want to
24 say it doesn't meet this requirements of the federal
25 government and did not that day.

1 Q. Okay. Did you take a measuring tape and
2 measure these bars?

3 A. Yes, sir.

4 Q. Okay. And did you put that in your
5 notes?

6 A. That is not in there.

7 Q. So the fact of the matter is you actually
8 took the length off the bills and you didn't measure
9 them; is that right?

10 A. No, sir. I testified I measured them,
11 and that's where my record will stand. It was
12 measured that day. When you had a question later in
13 the process here, my intention of taking bills is
14 to -- pictures of the bills is also to document
15 length in the event of something like this today.

16 Upon closer examination of the bill, it
17 didn't show the length that I was hoping to establish
18 on it so I called the carrier. It was a unique bill
19 of lading number. I talked to their shipping
20 department, and he says: Oh, yes, I got it here on
21 the computer. The length of these rods is 22.75.

22 I can tell from you my violation and the
23 requirement to have four straps, that means I can
24 testify for sure that the cargo is in excess of 20
25 but yet less than 30 feet in length for the

1 four-strapping requirement. And I did determine that
2 day the number of straps required, and I reconfirmed
3 with the shipper to make sure the actual length of
4 the load, which they indicated was 22.75 feet.

5 MR. NELSON: I don't think I have any
6 further questions.

7 THE ATTORNEY EXAMINER: Do you have any
8 redirect?

9 MR. JONES: Just one, your Honor.

10 - - -

11 REDIRECT EXAMINATION

12 By Mr. Jones:

13 Q. Officer, you did indicate in your report
14 that two of the five straps were loose and four were
15 required, and that was referring to the top two
16 bundles on the load.

17 A. Yes. If you look at the picture there,
18 it will show there's two layers of bundles. I have
19 no issue with the four sets of bundles on the bottom.
20 They have their own unique securement devices as well
21 as some on the top can be applied as cargo securement
22 devices, and you have the weight of the top cargo,
23 too. No issue on the bottom layer. The top layer,
24 though, is not in compliance with the Federal Motor
25 Carrier regulation.

1 Q. You did note what part of this load you
2 were referring to, is that correct, as a matter of
3 what was not secure?

4 A. Right. I explained to the driver that
5 day and he understood.

6 Q. And you saw the driver tighten up those
7 straps, right?

8 A. Yes, sir.

9 MR. JONES: No other questions, your
10 Honor.

11 THE ATTORNEY EXAMINER: Any other
12 recross?

13 MR. NELSON: Can I have just a moment,
14 please?

15 THE ATTORNEY EXAMINER: Yes.

16 MR. NELSON: No questions.

17 THE ATTORNEY EXAMINER: You're excused.

18 MR. JONES: Your Honor, at this time the
19 staff would move for admission of Staff Exhibits 1,
20 2, 3, 4 and 5.

21 THE ATTORNEY EXAMINER: Very well, I will
22 admit those exhibits into evidence.

23 (EXHIBITS ADMITTED INTO EVIDENCE.)

24 MR. MARGARD: Your Honor, staff calls
25 Mr. Tom Forbes to the stand please.

1 - - -

2 THOMAS FORBES

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

5 DIRECT EXAMINATION

6 By Mr. Margard:

7 Q. Good morning, Mr. Forbes.

8 A. Good morning.

9 Q. State your name, please.

10 A. Tom Forbes, F-O-R-B-E-S.

11 Q. And by whom are you employed?

12 A. The Public Utilities Commission of Ohio,
13 Transportation Department, Compliance Division.

14 Q. And what are your duties in the
15 Compliance Division?

16 A. I'm a compliance officer, and my duties
17 involve reviewing field inspections and compliance
18 reviews and preparing assessment charts and assessing
19 forfeitures as appropriate, conducting settlement
20 conferences with respondents when they contest the
21 violation, answer technical questions from motor
22 carriers and other interested parties about the
23 regulations, conducting enough inspections to keep my
24 certifications current, and attending the in-service
25 training and testifying at hearing.

1 Q. Thank you, sir. How long have you been
2 doing that?

3 A. Four and a half years.

4 Q. Have you been present throughout the
5 hearing today?

6 A. Yes, sir.

7 Q. So you heard the testimony of Officer
8 Hostetler?

9 A. I did, yes, sir.

10 Q. Thank you. Can you describe for us how a
11 civil forfeiture is calculated for violations of the
12 Federal Motor Carrier Safety regulations?

13 A. Yes, sir. There are two separate parts
14 of the civil forfeiture. There are hazardous
15 material violations and loads that don't involve
16 hazardous materials. In this case this is a shipment
17 that does not involve hazardous materials.

18 And this civil forfeiture department has
19 those violations broken up into four groups, and they
20 refer to them as Group 1, Group 2, Group 3, and Group
21 4 violations. Group 1, 2, and 3 must be out of
22 service to receive a fine. Group 4 violations you do
23 not need to be out of service to receive a
24 forfeiture.

25 A Group 1 violation includes things like

1 inoperative brakes, logbook hours of service
2 violations, steering frame and cargo violations that
3 are not out of service

4 Group 2 violations involve things like
5 low air warning, brake adjustment violations, wheels,
6 rims, and some of the lighting violations that are
7 out of service.

8 Group 3 violations involve fuel systems,
9 windshields, tires that are out of service.

10 And Group 4 violations involve things
11 like authority, medical cards, insurance, drugs and
12 alcohol, CDL violations, seat belts and radar
13 detectors. These violations may be out of service in
14 some situations but are not required to be to receive
15 a forfeiture.

16 MR. JONES: Your Honor, if I may
17 interject, the respondent has indicated to me that
18 they would not contest how the calculation was made
19 here, the forfeiture, and would accept that evidence
20 pending disposition by the Commission of this case.

21 THE ATTORNEY EXAMINER: Is that correct?

22 MR. NELSON: Yes. I have no problems
23 with the way the fine was done. I would stipulate to
24 that.

25 THE ATTORNEY EXAMINER: Very good. You

1 are excused.

2 THE WITNESS: Thank you, your Honor.

3 MR. MARGARD: Thank you, your Honor.

4 If I may, your Honor, do you also
5 acknowledge you received proper notice of the
6 violations?

7 MR. NELSON: Yes.

8 MR. MARGARD: Do you have any difficulty
9 with those exhibits being admitted as part of the
10 record?

11 MR. NELSON: No.

12 MR. MARGARD: In that case, your Honor, I
13 would move for admission of Staff Exhibits Nos. 6 and
14 7, which is the fine schedule which determines the
15 fine that the respondent has stipulated to, and Staff
16 Exhibit No. 7, which is the Notice of Preliminary
17 Determination, and respondent has acknowledged they
18 received proper notice.

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

21 MR. MARGARD: Thank you, your Honor.

22 (EXHIBITS ADMITTED INTO EVIDENCE.)

23 MR. JONES: Staff has no other witnesses.

24 THE ATTORNEY EXAMINER: Very good. Now
25 for respondent's side of the case.

1 MR. NELSON: I would like to call
2 Mr. Diuk, the driver involved that day.

3 - - -

4 GARY DIUK
5 being first duly sworn, as prescribed by law, was
6 examined and testified as follows:

7 DIRECT EXAMINATION

8 By Mr. Nelson:

9 Q. Sir, state you name and address.

10 A. Gary Diuk, 621 28th Street, NW,
11 Massillon, Ohio.

12 Q. And what is your association with Ace
13 Doran Hauling & Rigging?

14 A. I'm owner/operator leased onto Ace Doran.

15 Q. And you were in that capacity on
16 8/14/2008?

17 A. Yes, sir.

18 Q. Do you disagree with Mr. Hostetler in the
19 location and time or any of that?

20 A. No, sir.

21 Q. Okay. And what was your activity at that
22 point in time and location? What were you doing?

23 A. I was headed west to Indiana with this
24 load.

25 Q. Okay. And you have seen the photographs

1 that were entered by the State here, in specific
2 No. 4 there, the exhibit showing the load. Is that a
3 depiction of the load that you were carrying that
4 day?

5 A. Yes, sir.

6 Q. And do you disagree with the statement of
7 Officer Hostetler that there were two straps on that
8 load that were loose?

9 A. No.

10 Q. Do you disagree with the locations of the
11 straps that were loose?

12 A. Yes, sir.

13 Q. What straps did Officer Hostetler bring
14 to your attention that day?

15 A. On the back of the trailer it was the
16 bottom strap, and then on the top it was the center
17 strap.

18 Q. Okay. All right. And do you agree with
19 the statement from Officer Hostetler as to the
20 measurement on the load and the fact that he took the
21 measurement?

22 A. No, sir, he did not measure the load.

23 MR. NELSON: I believe that's all I have
24 for this witness.

25 THE ATTORNEY EXAMINER: Do you have any

1 questions?

2 MR. JONES: Yes, your Honor. Thank you.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Jones:

6 Q. So, Mr. Diuk, do you have Staff Exhibit 4
7 in front of you up there?

8 A. Yes, sir.

9 Q. So it's your testimony that you were told
10 by the officer that there were two straps that were
11 loose.

12 A. Yes, sir.

13 Q. And you're saying that the straps that
14 were loose was the last strap on the bottom?

15 A. Yes, sir. There were two straps on the
16 bottom. The one towards the back.

17 Q. Which one?

18 A. May I approach and point it out?

19 Q. Yes. I can approach you.

20 A. This strap here on the bottom.

21 THE ATTORNEY EXAMINER: Which one is it?

22 THE WITNESS: This strap that goes across
23 the bottom. From the back it would be strap No. 2.

24 Q. And it's your testimony -- what was the
25 other strap that was identified as being loose?

1 A. The center strap on the top.

2 Q. So of the five going over top, it would
3 be the third one in from either direction.

4 A. Correct.

5 Q. So it's your testimony then that the
6 officer saw between the four bundles on the bottom
7 and two bundles on the top that a strap was loose in
8 between the two?

9 A. He didn't have to see it from between
10 them. He could see it from the side. The strap goes
11 over the side. You can see it from the side.

12 Q. Did you raise this with the officer at
13 the time?

14 A. He didn't state which straps. That was
15 never discussed. He said: You have two loose straps
16 you need to tighten up.

17 Q. So you tightened two straps?

18 A. Yes, sir.

19 Q. How many straps did you tighten?

20 A. Two.

21 Q. And did you tighten the two that you're
22 saying you just identified?

23 A. Yes, sir.

24 Q. One in the middle of five on the top and
25 one on the bottom, second from the back.

1 A. Yes, sir.

2 Q. So then after you made those two straps
3 tight, you didn't have any discussion with the
4 officer as to why you were being cited?

5 A. No, sir. He stated the taillight and the
6 straps, and, you know, that's why he stopped me.

7 Q. But you were given the copy of Staff
8 Exhibit 1, were you not, staff Exhibit 1 being the
9 report?

10 A. Yes. But I don't believe that states
11 which straps were loose.

12 Q. Okay. But you had a chance to look over
13 the report when he issued it to you, right?

14 A. Yes, sir.

15 Q. Okay. And you do see in the middle of
16 that report in bold ink where it does say: "2 of 5
17 straps loose, (4 required)"?

18 A. Yes, sir. One thing, when Officer
19 Hostetler asked me to sign that, I noticed that, but
20 he also told me that the violation -- there was no
21 ticket, that I would not receive a fine. He didn't
22 explain to me I could be here.

23 When I saw that and heard what he had to
24 say, I signed it. I shouldn't have because there
25 were seven straps on that load and five straps were

1 required.

2 Q. Well, you do see that the zone on that
3 report there is -- the information is contained under
4 violations?

5 A. Yes.

6 Q. That's unmistakable, is it not?

7 A. But when he said there was no ticket,
8 there was no fine, why should I argue with the man?

9 Q. Well, you were temporarily placed out of
10 service, correct?

11 A. Yes, sir.

12 Q. And you were observed -- in fact, the
13 officer stayed with you until such time as you
14 tightened those straps; is that correct?

15 A. That's right.

16 Q. And you were permitted to go on after you
17 made those adjustments.

18 A. That's correct.

19 Q. And you were issued this report.

20 A. Yes. Which I had to mail to Ace Doran.

21 Q. You understand what it means to be placed
22 out of service, don't you?

23 A. Yes. But it was --

24 Q. You tell me, what does it mean?

25 A. When you are out of service, a vehicle is

1 not allowed to move until the violations are
2 corrected.

3 Q. So in your mind you knew there were
4 violations, correct?

5 A. No, sir; because I disagreed with the
6 officer because I had more straps than what were
7 required for the load.

8 Q. Why didn't you contest being out of
9 service?

10 A. Why should I when he said there's no
11 fine, there's no -- it's not going -- the way I
12 understood what he explained to me, this would not go
13 on my driving record, that there was no violation.
14 There was no fine. So why should I contest? Why
15 should I fight with him? Why would I argue with the
16 man? When he stated that, it was more like, okay,
17 you fixed the problem. You're good to go. If he
18 would have told me --

19 Q. In fact, there is a report that's
20 generated that listed in that report there was a
21 violation noted for a load not being secured. You
22 didn't have any concern there was paperwork out that
23 indicated that?

24 A. No, I didn't.

25 Q. For this load?

1 A. No, I didn't. I should have because I
2 can see, you know, but, no, I didn't.

3 Q. Have you been subject to inspections
4 before?

5 A. Yes, sir.

6 Q. And prior to this date of August 14,
7 2008?

8 A. Yes, sir.

9 Q. Okay. And how many times have you been
10 subject to inspections prior to that date?

11 A. I couldn't tell you.

12 Q. More than five?

13 A. Oh, yes.

14 Q. More than 10?

15 A. Probably.

16 Q. More than 20?

17 A. No.

18 Q. More than 10?

19 A. Oh, yeah.

20 Q. Have you ever been placed out of service
21 on one of those inspections?

22 A. No, sir.

23 Q. You have been issued reports in every one
24 of those inspections, right?

25 A. Yes, sir. Of which they all have to be

1 mailed to the company.

2 Q. You testified that the officer did not
3 measure the rods for this load.

4 A. That's correct.

5 Q. How are you certain of that?

6 A. I was watching.

7 Q. You were watching everything he did?

8 A. Pretty much, from what I could see
9 through the mirrors of the cab.

10 Q. So you're saying it's not possible he
11 could have made that measurement without you
12 observing it?

13 A. No, sir.

14 Q. He also testified he had contacted the
15 shipper rep. Can you testify he didn't make that
16 call?

17 A. No, sir. I was not in the patrol car.

18 Q. So he could have made that call.

19 A. Yes, sir.

20 Q. And you just don't know.

21 A. Yes, he could have. I didn't dispute
22 that.

23 Q. Let me ask you this. Do you dispute that
24 it's 22.75 feet long for that load, this Staff
25 Exhibit 4?

1 A. No. I just dispute the fact that he
2 measured the load.

3 Q. But the fact is you don't dispute what
4 the length of those rods are.

5 A. No, sir.

6 Q. 22.75 feet long is the length of the rods
7 in the picture of Staff Exhibit 4; is that accurate?

8 A. I would say so.

9 Q. Okay.

10 MR. JONES: That's all I have, your
11 Honor.

12 THE ATTORNEY EXAMINER: Any redirect?

13 MR. NELSON: Yes.

14 - - -

15 REDIRECT EXAMINATION

16 By Mr. Nelson:

17 Q. Mr. Diuk, did you measure these bars
18 yourself?

19 A. No.

20 Q. So you don't know what length they are.

21 A. No, sir; just what was on the bill of
22 lading.

23 Q. Okay. Did you have any way of knowing
24 from this report that specifically the thing that you
25 were accused of not meeting in the regulations was

1 393.110? Was there anything that depicted any
2 conversation with this officer that that's where you
3 were falling short in your load securement?

4 A. No, sir.

5 MR. NELSON: That's all I have.

6 MR. JONES: Your Honor, I have one
7 rebuttal question to that.

8 - - -

9 RECROSS-EXAMINATION

10 By Mr. Jones:

11 Q. Sir, you say you didn't have notice of
12 that, but isn't it true if I look at the Staff
13 Exhibit report 1 for the description of the
14 violation, it says failure to secure cargo as
15 specified in 49 CFR 393.100 through 393.142? That's
16 what it says in the report; is that correct?

17 A. I don't know. May I see the report? Can
18 you repeat the question?

19 Q. Yes. In fact, the question is you were
20 on notice of violation of 393.110 because in the
21 violation description of Exhibit 1 it says: "Failing
22 to secure cargo as specified in 49 CFR
23 393.100 through 393.142." That's what it says,
24 correct?

25 A. That's correct.

1 Q. So the provision that the officer is
2 referring to is in between 393.100 and 393.142; is
3 that correct?

4 A. Yes, that's correct.

5 MR. JONES: Okay. That's all I have.
6 Thank you.

7 THE ATTORNEY EXAMINER: Very good.
8 You're excused.

9 Do you have anything you want to testify
10 to?

11 MR. NELSON: No, I'm not going to
12 testify.

13 MR. JONES: That's all we have, your
14 Honor.

15 THE ATTORNEY EXAMINER: Okay. Let's
16 discuss a briefing schedule.

17 (Discussion off the record.)

18 THE ATTORNEY EXAMINER: We agree the date
19 for simultaneous briefs will be November 13.

20 Anything further to add?

21 MR. JONES: Nothing, your Honor.

22 THE ATTORNEY EXAMINER: Very good. Thank
23 you all for coming.

24 (The hearing adjourned at 11:01 a.m.)

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, September 29, 2009, and carefully compared with my original stenographic notes.

____s/Rosemary F. Anderson_____
Rosemary Foster Anderson,
Professional Reporter and
Notary Public in and for
the State of Ohio.

My commission expires April 5, 2014.

(RFA-8340)

- - -

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