

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of: :
 Patricia Holt, Notice of :
 Apparent Violation and : Case No. 10-869-TR-CVF
 Intent to Assess Forfeiture :
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PROCEEDINGS

Before Scott E. Farkas, Hearing Examiner, at the Public
 Utilities Commission of Ohio, 180 East Broad Street,
 Room 11A, Columbus, Ohio, called at 10:00 a.m. on
 Thursday, October 7, 2010.

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1 APPEARANCES:

2 Richard Cordray, Ohio Attorney General
3 By Thomas G. Lindgren, Esq.
4 Assistant Attorney General
5 180 East Broad Street, Sixth Floor
6 Columbus, Ohio 43215

7 On behalf of the Staff of the Public
8 Utilities Commission of Ohio.

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Thursday Morning Session,
October 7, 2010.

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HEARING EXAMINER FARKAS: Let's go on the record. The Commission has called for hearing at this time and place the matter of Patricia Holt, Notice of Apparent Violation and Intent to Assess Forfeiture, Case No. 10-869-TR-CVF. My name is Scott Farkas. I'm the Attorney Examiner assigned to hear this case.

I'll take appearances, first on behalf of Staff.

MR. LINDGREN: Your Honor, on behalf of the Staff of the Commission, Ohio Attorney General, Richard Cordray, by William Wright, Section Chief, Thomas G. Lindgren, Assistant Attorney General. The address is 180 East Broad Street, Sixth Floor, Columbus, Ohio 43215.

HEARING EXAMINER FARKAS: Thank you. I'll note for the record that Miss Holt is not present in the hearing room.

Mr. Lindgren, you had an opportunity to speak with Ms. Holt?

MR. LINDGREN: Yes, Your Honor. I spoke with her at the prehearing conference, and she informed me that she did not intend to appear at this hearing.

1 HEARING EXAMINER FARKAS: I will note also
2 for the record that service of entry scheduling the
3 hearing was made in accordance with the rules.

4 At this time, you can call your first
5 witness.

6 MR. LINDGREN: The Staff calls Trooper D.N.
7 Rack to the stand.

8 HEARING EXAMINER FARKAS: Raise your right
9 hand.

10 TROOPER DONALD N. RACK,
11 being first duly sworn, as prescribed by law, was
12 examined and testified as follows:

13 DIRECT EXAMINATION

14 By Mr. Lindgren:

15 Q. Good morning, sir.

16 A. Good morning, sir.

17 Q. Could you please state and spell your full
18 name for the record.

19 A. Trooper Donald Rack, D-o-n-a-l-d R-a-c-k.

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

21 A. 950 Rombach Avenue, Wilmington, Ohio 45177.

22 Q. Where are you employed, sir?

23 A. At the Wilmington State Highway Patrol Post.

24 Q. And what is your position with the Highway
25 Patrol?

1 A. I am a trooper with the License and
2 Commercial Standards Section.

3 Q. What are your duties in that position?

4 A. I do truck inspections, truck enforcement,
5 PUCO enforcement.

6 Q. Thank you. How long have you been in that
7 position?

8 A. Seven years.

9 Q. Thank you. And what type of training have
10 you received to qualify for that position?

11 A. Gone through my academy training to become a
12 trooper as well as North American Standards classes and
13 all that to be a DOT Enforcement Officer.

14 Q. So are you certified in the North American
15 Standards?

16 A. Yes, I am.

17 Q. Thank you. Trooper Rack, do you recall
18 inspecting a vehicle driven by the Respondent, Patricia
19 Holt, on February 22nd of 2010?

20 A. Yes, I do.

21 Q. Thank you. Where did this inspection take
22 place?

23 A. I stopped Mrs. Holt on Interstate 71
24 Southbound at Mile Post 56. I then, at that point,
25 made my initial contact, asked for all her

1 documentation, and then I took her down to the
2 southbound scales on 71 at Mile Post 54 to do the
3 inspection.

4 Q. Do you recall what prompted you to stop this
5 vehicle?

6 A. As she went -- as the vehicle went by, I
7 heard the thumping of her tires, indicating that it had
8 low spots on the tires; so that's what I stopped her
9 for. Upon contact with the vehicle, I noticed that a
10 couple of her tires were -- had low spots on them, so
11 that's why I took her down to the scale house to do the
12 inspection.

13 Q. Thank you. What happened after you took her
14 down to the scale house?

15 A. While going down to the inspection, I ran her
16 license and everything and found out that she had a
17 suspended license, and when we got to the scale house,
18 I performed the inspection, found that she had three
19 tires, the fifth axle left outside tire, fifth axle
20 right outside tire, fourth axle right inside tire, that
21 had spots less than 2/32nds, and like I said, I found
22 out that she was under suspension.

23 Q. How did you determine that her license had
24 been suspended?

25 A. Ran her through LEADS.

1 Q. What is LEADS?

2 A. Law Enforcement Administrative -- or -- it's
3 a data --

4 HEARING EXAMINER FARKAS: What is LEADS?

5 THE WITNESS: It's a system that does all the
6 licensing and everything else, tells whether or not a
7 license is valid and everything. It just gives us data
8 like that on people's licenses as well as vehicle
9 registrations and everything else.

10 Q. Do you know who maintains the LEADS system?

11 A. State of Ohio.

12 Q. Thank you. Is this system something you
13 continually rely on in the course of your work?

14 A. Yes.

15 Q. Thank you. After running her license through
16 the LEADS system, did you do anything else with regard
17 to her license?

18 A. I had the dispatcher run a -- we run it
19 through our computer terminal in the car, and it gives
20 one thing, and it just said that she was suspended. It
21 didn't say as to why. Our dispatchers can run a
22 different query through LEADS and it will give more in
23 depth as to why. The reason why her license was
24 suspended, I believe, was from a major, I'm guessing,
25 traffic offense or something like that, major moving

1 offense through that state.

2 Q. The dispatcher confirmed that her license had
3 been suspended?

4 A. Yes.

5 Q. Thank you. Have you had occasion since that
6 time to inquire into the status of her license?

7 A. Yes. This morning before I came up here I
8 had them run her license through LEADS again, and it
9 still showed her regular license as well as -- her
10 non-CDL license as well as her CDL license still
11 showing suspended.

12 Q. What state issued her license?

13 A. Tennessee.

14 Q. Thank you. Trooper Rack, did you have
15 occasion to prepare a report after your inspection of
16 the driver and her vehicle?

17 A. Yes, I did.

18 MR. LINDGREN: May I approach the witness?

19 HEARING EXAMINER FARKAS: Yes.

20 MR. LINDGREN: Let the record reflect I'm
21 handing the witness what I marked for identification as
22 Staff Exhibit 1.

23 HEARING EXAMINER FARKAS: So marked.

24 Q. Trooper Rack, do you recognize this document?

25 A. Yes.

1 Q. What is it?

2 A. It's a copy of my inspection, Driver/Vehicle
3 Examination Report.

4 Q. Does it reflect your inspection of the
5 vehicle operated by Patricia Holt?

6 A. Yes, it does.

7 Q. Is everything in it accurate?

8 A. Yes.

9 Q. What happens to this report after you enter
10 the data?

11 A. After I enter the data, I upload it to SAFER,
12 and it comes up to the PUCO. I give a copy of it to
13 the driver, have him sign off on it, and they're
14 required to turn it into their company, have them sign
15 off on that after the repairs have been made, and turn
16 it back into the PUCO.

17 Q. Does any of the data on this report appear to
18 have been altered since you entered the data?

19 A. No.

20 Q. Thank you. Does this report reflect the
21 violations that you found in the course of your
22 inspection?

23 A. Yes.

24 Q. Was one of those violations the driving while
25 under suspension?

1 A. Yes.

2 Q. Thank you.

3 I have no further questions for this
4 witness.

5 HEARING EXAMINER FARKAS: You're excused.
6 Thank you.

7 (Witness excused.)

8 HEARING EXAMINER FARKAS: Call your next
9 witness.

10 MR. LINDGREN: Thank you. Staff calls
11 Jonathan Frye to the stand.

12 JONATHAN FRYE,
13 being first duly sworn, as prescribed by law, was
14 examined and testified as follows:

15 HEARING EXAMINER FARKAS: Mr. Lindgren.

16 DIRECT EXAMINATION

17 By Mr. Lindgren:

18 Q. Good morning, sir.

19 A. Good morning.

20 Q. State and spell your name for the record.

21 A. Jonathan, J-o-n-a-t-h-a-n, Frye, F-r-y-e.

22 Q. Where is your business address?

23 A. 180 East Broad Street, Columbus, Ohio 43215.

24 Q. Thank you. Where are you employed, sir?

25 A. Public Utilities Commission of Ohio,

1 Transportation Department.

2 Q. What is your position with the Transportation
3 Department of the Public Utilities Commission?

4 A. I'm the Chief of the Compliance Division. My
5 duties include reviewing fine assessments that have
6 been issued to a driver, carriers, and shippers.

7 Q. Thank you. How long have you been the Chief
8 of that section?

9 A. Approximately seven years.

10 Q. What sort of training have you received in
11 connection with your employment?

12 A. I've gone through the North American
13 Out-of-Service Training, Compliance Review Training, as
14 well as Supervisory Training.

15 Q. Thank you. Could you briefly explain how
16 your section goes about assessing forfeitures to
17 drivers for violations of safety regulations?

18 A. Yes. Once the Vehicle Inspection Report is
19 downloaded into our agency, each one of the violations
20 that are detected out on the roadway, the violations
21 are broken up into one of four groups, depending upon
22 the severity of the violations, and as a result of the
23 code section that's written, a dollar amount is
24 assigned to each of the code violations that are
25 written.

1 Q. Are your forfeitures consistent with the
2 guidelines of any organizations?

3 A. Yes, it is. It's consistent with the
4 Commercial Motor Vehicle Safety Alliance guidelines.

5 Q. Are you familiar with the forfeiture assessed
6 against the Respondent in this case?

7 A. Yes, I am.

8 Q. Thank you.

9 MR. LINDGREN: May I approach the witness?

10 HEARING EXAMINER FARKAS: Yes.

11 MR. LINDGREN: Let the record reflect I'm
12 handing the witness what I marked for identification as
13 Staff Exhibit 2.

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

15 A. Yes.

16 Q. Can you explain what it is?

17 A. It's a letter from the State of Tennessee,
18 Department of Public Safety. The letter is addressed
19 to Patricia Holt, advising her that -- or notifying her
20 of the conviction for excessive speeding, and that as a
21 result of her excessive speeding, that her driving
22 privileges have been revoked.

23 Q. Was this document contained in the files of
24 your division?

25 A. Yes, that's correct.

1 Q. How did it come into your possession?

2 A. When Patricia Holt made a request for a
3 conference, she provided the documentation to us.

4 Q. Thank you.

5 MR. LINDGREN: May I approach the witness
6 again?

7 HEARING EXAMINER FARKAS: Yes.

8 MR. LINDGREN: Let the record reflect I'm
9 handing the witness what I marked for identification
10 purposes as Staff Exhibit 3.

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

12 A. Yes.

13 Q. Can you explain what it is?

14 A. Yes. It's a Notice of Preliminary
15 Determination letter. If the Compliance Division is
16 unable to resolve the case with the Respondent, we
17 issue this Notice of Preliminary Determination letter
18 advising the Respondent that they can pursue their case
19 through the next level of our hearing process. It
20 provides them with instructions on how to go about
21 making their request for a hearing and disputing it
22 further.

23 Q. Thank you. What is the forfeiture stated in
24 this notice?

25 A. It's in the middle of the page. It indicates

1 that the total forfeiture assessed is \$500.

2 Q. Was this forfeiture amount correctly
3 calculated?

4 A. Yes.

5 Q. And is it consistent with the guidelines of
6 the Commercial Motor Vehicle Safety Alliance that you
7 referred to earlier?

8 A. Yes.

9 Q. And is this the amount to be assessed against
10 other drivers for similar violations?

11 A. Yes.

12 Q. Is this the amount you would recommend that
13 the Commission assess against the Respondent in this
14 case if they find that the driver committed the
15 violation?

16 A. Yes.

17 Q. Thank you.

18 I have no further questions.

19 HEARING EXAMINER FARKAS: I have no
20 questions. Thank you.

21 (Witness excused.)

22 HEARING EXAMINER FARKAS: Do you have any
23 further witnesses?

24 MR. LINDGREN: No, Your Honor, and I would
25 move for the admission of Staff's Exhibits 1, 2, and

1 3.

2 HEARING EXAMINER FARKAS: Those will be
3 admitted.

4 (EXHIBITS ADMITTED INTO EVIDENCE.)

5 HEARING EXAMINER FARKAS: Anything further?

6 MR. LINDGREN: Nothing, Your Honor. The
7 Staff rests its case.

8 HEARING EXAMINER FARKAS: This is submitted
9 on the record. Thank you.

10 (Thereupon, the hearing was concluded at
11 10:17 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 Thursday, October 7, 2010, 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-868)

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Summary: Transcript Transcript of Patricia Holt hearing held on 10/07/10. electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Sloas, Valerie J. Mrs.