

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of: :
Tony Nelsen. : Case No. 10-601-TR-CVF
:
Notice of Apparent :
Violation and Intent to :
Assess Forfeiture. :
- - -

PROCEEDINGS

before Ms. Katie Stenman, Attorney Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-D, Columbus, Ohio, called at 10:20
a.m. on Tuesday, October 26, 2010.

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1 APPEARANCES:

2 Richard Cordray, Ohio Attorney General
3 Public Utilities Section
4 By Mr. Thomas Lindgren
5 180 East Broad Street, 9th Floor
6 Columbus, Ohio 43215-3793

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

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1 Tuesday Morning Session,
2 October 26, 2010.

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4 THE ATTORNEY EXAMINER: The Public
5 Utilities Commission of Ohio has assigned for hearing
6 at this time and place Case No. 10-601-TR-CVF, being
7 In the Matter of Tony Nelsen, Notice of Apparent
8 Violation and Intent to Assess Forfeiture.

9 I am Katie Stenman, an attorney-examiner
10 assigned to hearing this case. Before we go any
11 further, I would like to note it is about 10:20.
12 Although properly served, Mr. Nelsen as yet the
13 appear for this morning's hearing.

14 I would like to take the appearances of
15 the Staff.

16 MR. LINDGREN: On behalf of in the Ohio
17 Public Utilities Commission Staff, Ohio Attorney
18 General, Richard Cordray, and William Wright, section
19 chief, Thomas Lindgren, assistant attorney general,
20 180 East Broad Street, Sixth Floor, Columbus, Ohio
21 43215.

22 THE ATTORNEY EXAMINER: And since
23 Mr. Nelsen has not joined us, Mr. Lindgren, are you
24 ready to go forward?

25 MR. LINDGREN: Yes, your Honor. First

I'd like to move for a default judgment pursuant to Commission rule that provides for a default judgment in the event the Respondent does not appear at the hearing.

THE ATTORNEY EXAMINER: Thank you. That will be taken under advisement and a decision issued with the Commission entry in the case.

Would you like to proceed with your case.

MR. LINDGREN: Yes, your Honor. The Staff calls Trooper B. Mealer to the stand.

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TROOPER BRETT MEALER

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

DIRECT EXAMINATION

By Mr. Lindgren:

Q. Good morning. Could you please state and spell your full name for the record?

A. My name is Brett Mealer. My first name is spelled B-R-E-T-T, last name M-E-A-L-E-R.

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

A. 8891 County Road One, Swanton, Ohio, and that's located up on the Ohio Turnpike.

Q. Thank you. Where are you employed?

1 A. The Ohio State Highway Patrol.

2 Q. And what is your position with the
3 Highway Patrol?

4 A. I'm a commercial motor vehicle inspector,
5 trooper.

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

7 A. I've been a trooper for about 17-1/2
8 years, and the specialty position I believe I'm going
9 on my tenth year as an inspector.

10 Q. Thank you. What are your duties as an
11 inspector for the Highway Patrol?

12 A. To enforce the Federal Motor Carrier
13 rules and regulations of the trucking industry within
14 the Ohio Turnpike in the state of Ohio.

15 Q. Thank you. What training have you
16 received for your position?

17 A. I received training down at the Ohio
18 State Highway Patrol Academy for the Federal Motor
19 Carrier rules and regulations, basic inspections,
20 hazardous material inspections, cargo tank
21 inspections, and follow-up training for the past
22 several years.

23 Q. Trooper Mealer, do you hold any
24 certifications?

25 A. Yes, I do.

1 Q. And what are those?

2 A. My certifications are in Level I, Level
3 II, Level III basic inspections, hazardous material
4 inspections, and cargo tank inspections.

5 Q. Thank you. Do you recall inspecting a
6 commercial vehicle driven by Tony Nelsen on
7 October 15, 2009?

8 A. My recollection of that is from the
9 inspection only. It's been over a year.

10 Q. You don't independently recall that?

11 A. No.

12 Q. Thank you.

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

15 THE ATTORNEY EXAMINER: You may.

16 MR. LINDGREN: Thank you. Let the record
17 reflect I am handing the witness what will be marked
18 as Staff Exhibit 1.

19 THE ATTORNEY EXAMINER: It will be so
20 marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. Trooper Mealer, do you recognize this
23 document?

24 A. Yes, I do.

25 Q. Can you explain what it is?

1 A. It is my examination report that I
2 conducted on the 15th of October at 9:20 a.m.

3 Q. And can you explain the purpose of this
4 report?

5 A. This report was generated because of a
6 violation of the Federal Motor Carrier's rules and
7 regulations. It was observed by me and I conducted a
8 traffic stop and a walkaround Level II inspection of
9 the driver and of the vehicle.

10 Q. Who was the driver, according to this
11 report?

12 A. Tony J. Nelsen.

13 Q. Thank you. Did you prepare this report
14 immediately following your inspection?

15 A. Yes.

16 Q. And did you enter all the information
17 that's contained in this report?

18 A. Yes, I did.

19 Q. And does this report accurately reflect
20 the results of your inspection of the vehicle driven
21 by Tony Nelsen?

22 A. Yes, it does.

23 Q. Thank you. Do you know what happens to
24 this report after you prepare it?

25 A. After I prepare the report, I get a

1 secure connection through wireless Internet and I
2 send it to the Safer server.

3 Q. And what is the Safer server?

4 A. It's a large database that collects all
5 the reports and then the Public Utilities Commission
6 can receive that from that server.

7 Q. Thank you. Does this report appear to be
8 altered at all since you rendered the information?

9 A. The only difference between the
10 information I entered is the header that I have that
11 is generated on my report, and when I received the
12 subpoena to appear here, I pulled up my inspection,
13 and the information that's contained, other than the
14 header on the report that you just showed me, is
15 exactly what is on my report that I would have
16 generated.

17 Q. Thank you. Did you give a copy of this
18 report to Mr. Nelsen?

19 A. Yes, I did.

20 Q. Thank you. Does this report reflect any
21 violations of the Federal Motor Carrier regulations?

22 A. Yes, it does.

23 Q. What violation or violations does it
24 reflect?

25 A. It reflects one single violation of

1 392.16, the driver failing to use a seat belt while
2 operating a commercial motor vehicle.

3 Q. Thank you. Are there any notes on here
4 that provide any detail as to this violation?

5 A. Yes, it does. At the time I generated
6 this inspection, I also included notes, and in the
7 note section of it, it states: While operating a
8 commercial motor vehicle, a CMV, in the passing lane,
9 the driver drove past my stationary patrol car and he
10 wasn't wearing his seat belt.

11 In addition I described what I saw. He
12 was wearing a plain white crewneck T-shirt. I caught
13 up to him about two miles later as he was moving back
14 into the right-hand lane. I watched him through his
15 side mirror put on his dark colored seat belt after
16 he was changing lanes.

17 And then it states: The driver said he
18 had taken it off to get something out of his cooler.

19 Q. Thank you. Do you recall if the driver
20 said anything else to you?

21 A. No, I do not.

22 Q. Thank you.

23 MR. LINDGREN: Thank you, I have no
24 further questions for the witness.

25 THE ATTORNEY EXAMINER: Okay. Seeing as

1 I have nothing for this witness, you are excused.

2 Thank you.

3 MR. LINDGREN: The Staff next calls
4 Mr. John Canty to the stand.

5 - - -

6 JOHN J. CANTY
7 being first duly sworn, as prescribed by law, was
8 examined and testified as follows:

9 DIRECT EXAMINATION

10 By Mr. Lindgren:

11 Q. Good morning, Mr. Canty. Could you
12 please state and spell your name for the record.

13 A. John J. Canty, J-O-H-N, initial J, last
14 name C-A-N-T-Y.

15 Q. And what is your business address?

16 A. 180 East Broad Street, Columbus, Ohio
17 43215.

18 Q. And where are you employed?

19 A. The Public Utilities Commission of Ohio.

20 Q. What are your duties with the Public
21 Utilities Commission?

22 A. I'm the assistant chief of the Compliance
23 Division.

24 Q. Thank you. And what are your duties as
25 the assistant chief of the Compliance Division.

1 A. One of my duties is to supervise the
2 employees who are responsible for sending out the
3 notices that are required to be sent to the
4 respondents who are cited on reports as having
5 committed violations of commercial motor vehicle
6 regulations during the course of driving commercial
7 motor vehicles.

8 Q. Thank you. How long have you been in
9 your position as an assistant chief of the Compliance
10 Division?

11 A. About 18 years.

12 Q. Thank you. Have you had an opportunity
13 to review the forfeiture assessed to the Respondent
14 in this case, Tony J. Nelsen?

15 A. Yes:

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

18 THE ATTORNEY EXAMINER: You may.

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

22 THE ATTORNEY EXAMINER: It will be so
23 marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. Mr. Canty, do you recognize this

document?

A. Yes, I do.

Q. And can you explain what this is?

A. Yes. This is referred to as a Notice of Preliminary Determination. It's dated April 5, 2010. It's addressed to Mr. Tony Nelsen regarding case No. 0H0573004244 regarding an inspection conducted October 15, 2009. This is the notice that we are required to send to the Respondent following a conference. It was conducted with Mr. Nelsen, and this notice directs Mr. Nelsen that we intend to keep the forfeiture at \$100 as was originally assessed.

Q. Thank you. Can you explain how that forfeiture amount was calculated?

A. Yes. We have a forfeiture assessment chart that groups all of the violations into four categories and then assesses those violations based on those categories.

Q. Thank you. Does your forfeiture chart comport with any guidelines of any organization?

A. Yes. It is in compliance with the Commercial Vehicle Safety Alliance's recommendations.

Q. Thank you. Would the \$100, would that forfeiture amount be a standard amount that would be assessed to another driver for a similar violation?

1 A. Yes. That \$100 forfeiture is the amount
2 that we use to assess all seat belt violations.

3 Q. Thank you. Is that the amount you
4 recommend that the Commission assess in this case
5 should they find that the Respondent committed the
6 violation?

7 A. Yes.

8 Q. Thank you.

9 MR. LINDGREN: I have no further
10 questions.

11 THE ATTORNEY EXAMINER: Thank you,
12 Mr. Canty. You're excused.

13 MR. LINDGREN: Your Honor, at this time I
14 would move for the admission of Staff Exhibits 1 and
15 2 and then I would rest my case.

16 THE ATTORNEY EXAMINER: Staff Exhibits 1
17 and 2 will be admitted.

18 (EXHIBITS ADMITTED INTO EVIDENCE.)

19 THE ATTORNEY EXAMINER: Seeing as
20 Mr. Nelsen still hasn't appeared, is there anything
21 else to come before us?

22 MR. LINDGREN: No, thank you, your Honor.

23 THE ATTORNEY EXAMINER: Hearing nothing
24 else, the case will be adjourned. Thank you.

25 (The hearing adjourned at 10:35 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, October 26, 2010, and carefully compared with my original stenographic notes.

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

My commission expires April 5, 2014.

(RFA-8539)

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This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 10-0601-TR-CVF

Summary: Transcript Transcript of Tony Nelson hearing held on 10/26/10. electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Anderson, Rosemary Foster Mrs.