

1 BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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3 In the matter of :
4 John J. Riley, Notice of : 11-5454-TR-CVF
5 Apparent Violation and :
6 Intent to Assess Forfeiture:

7 - - -

8 PROCEEDINGS

9 before Ms. Katie Stenman, Hearing Examiner, at the
10 Public Utilities Commission of Ohio, 180 East
11 Broad Street, Room 11-D, Columbus, Ohio, called at
12 10:00 a.m. on Monday, December 12, 2011.

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APPEARANCES:

Mike DeWine, Ohio Attorney General
Public Utilities Section
By Mr. Thomas G. Lindgren
Assistant Attorney General
180 East Broad Street, 6th Floor
Columbus, Ohio 43215-3793

On behalf of the staff of the Public
Utilities Commission of Ohio.

Mr. John J. Riley
1246 Route 20 East
Norwalk, Ohio 44857

On behalf of the himself.

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Monday Morning Session,
December 12, 2011.

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HEARING OFFICER STENMAN: On the record.

The Public Utilities Commission of Ohio
is assigned for hearing at this time and place
Case No. 11-5454-TR-CVF being in the matter of
John J. Riley, Notice of Apparent Violation and
Intent to Assess Forfeiture.

My name is Katie Stenman and I am the
Attorney Examiner assigned by the Commission to hear
this case.

At this time I will take the appearances
starting with the staff.

MR. LINDGREN: Your Honor, on behalf of
the Commission Staff, Ohio Attorney General Mike
DeWine, by Thomas Lindgren, Assistant Attorney
General. The address is 180 East Broad Street, 6th
Floor, Columbus, Ohio 43215.

HEARING OFFICER STENMAN: Thank you.

Mr. Riley, will you state your name and
address for the record.

MR. RILEY: My name is John Riley.
My address is 1246 Route 20 East, Norwalk, Ohio
44857.

1 HEARING OFFICER STENMAN: Thank you.

2 And, Mr. Riley, I just want to confirm
3 with you at this time that you are choosing to go
4 forward without an attorney.

5 MR. RILEY: That's correct.

6 HEARING OFFICER STENMAN: And that you
7 know you could have retained counsel if you so wish.

8 MR. RILEY: Yes, I understand.

9 HEARING OFFICER STENMAN: Thank you.

10 Is there anything we need to discuss
11 before we get started?

12 MR. LINDGREN: Nothing, Your Honor.

13 HEARING OFFICER STENMAN: All right.
14 Mr. Lindgren, please proceed.

15 MR. LINDGREN: Thank you. The staff
16 calls Trooper Jason Allison to the stand.

17 - - -

18 JASON S. ALLISON
19 being duly sworn, as prescribed by law, was examined
20 and testified as follows:

21 DIRECT EXAMINATION

22 By Mr. Lindgren:

23 Q. Good morning, sir. Could you please
24 state and spell your name for the record.

25 A. Trooper Jason Allison, J-a-s-o-n,

1 A-l-l-i-s-o-n.

2 Q. Thank you. And where are you employed,
3 sir?

4 A. Ohio State Highway Patrol.

5 Q. What is your position there?

6 A. I'm a commercial motor vehicle trooper.

7 Q. And what are your duties as a commercial
8 motor vehicle trooper?

9 A. To stop and inspect commercial vehicles
10 abiding by the Federal Motor Carrier Rules and Ohio
11 PUCO rules.

12 Q. And how long have you been in that
13 position?

14 A. About six years.

15 Q. Thank you. And what sort of training
16 have you received for that position?

17 A. We go through the North American class
18 for level 1 inspections, and then we have updates
19 annually and maintain 32 level 1 inspections and
20 hazmat training.

21 Q. Thank you. And what certifications do
22 you hold in relation to your position?

23 A. We have the North American level 1
24 inspection, bulk packaging, non-bulk packaging,
25 hazmat.

1 Q. Are you familiar with the regulations
2 that require drivers to have medical certificates?

3 A. Yes, I do.

4 Q. Thank you. Trooper Allison, do you
5 recall inspecting a vehicle driven by the Respondent,
6 John J. Riley, on July 21 of this year?

7 A. Yes, I do.

8 Q. Thank you. And do you recall what
9 prompted you to inspect this vehicle and the driver?

10 A. I was setting stationary on U.S. 33 in
11 Fairfield County. Mr. Riley was westbound on 33. I
12 noticed that he had taillight issues on his trailer.
13 I proceeded to stop him around mile post 9 and Coon
14 Path exit, and then proceeded in my inspection from
15 there after we had him stopped.

16 He was driving a white -- I believe it
17 was a F450 pickup truck pulling a trailer.

18 How in-depth do you want me to go with
19 this, I guess?

20 Q. That's fine. Thank you.

21 After you stopped the vehicle, did you
22 approach Mr. Riley and ask him any questions or ask
23 him to give you any documents?

24 A. Yeah. I walked up to his right-side door
25 there and asked where he's coming from, going to,

1 what the equipment was.

2 When I spoke with him, he said he was
3 coming from Athens. He had mechanical troubles. The
4 trailer unit came from Charleston, West Virginia, an
5 employee brought it to him there. He was just on his
6 return trip back to his shop.

7 It was a drilling unit for his business.

8 Q. Thank you.

9 A. I asked for a driver's license, truck
10 registration, medical card. I believe I even asked
11 for a log book, then, at that point.

12 Q. Did he present you with a medical card?

13 A. Yes. And it was expired.

14 Q. It was expired on by -- before this date?

15 A. Yes.

16 Q. And do you recall when it had expired?

17 A. My notes on the thing -- I think it was
18 6-25 of 2011.

19 Q. Thank you. Did you prepare any report
20 following your inspection on this date?

21 A. We did a standard level 2 commercial
22 inspection on the Aspen program.

23 Q. What is the Aspen program?

24 A. It's the way of documenting our
25 inspections. It's a standardized form for, I think,

1 the United States.

2 Q. Thank you.

3 MR. LINDGREN: May I approach the
4 witness?

5 HEARING OFFICER STENMAN: You may.

6 MR. LINDGREN: Let the record reflect I'm
7 handing the witness what I have marked for
8 identification as Staff Exhibit 1.

9 (EXHIBIT IDENTIFIED FOR THE RECORD.)

10 HEARING OFFICER STENMAN: It will be so
11 marked.

12 Q. (By Mr. Lindgren) Trooper Allison, do
13 you recognize this exhibit?

14 A. Yes, I do.

15 Q. And is this the report you were just
16 referring to?

17 A. Yes.

18 Q. And does it accurately reflect the
19 results of your inspection of Mr. Riley's vehicle?

20 A. Yes.

21 Q. Thank you. Is this a type of report
22 that's ordinarily used in the course of your
23 business?

24 A. Yes.

25 Q. Thank you. Does anything in this report

1 appear to have been altered since you entered the
2 information?

3 A. No.

4 Q. Thank you. And can you explain the
5 violations you have noted on this report?

6 A. The first violation was the 391.45(b),
7 driving a commercial vehicle with an expired medical
8 certificate, and it expired on 6-25-2011. That's the
9 driver violation.

10 And also a violation of 393.9(a) which is
11 a trailer violation which was inoperable required
12 lamp-left stop lamp.

13 Q. Thank you. Trooper Allison, do you have
14 an opinion as to why having a current medical
15 certificate would be important for the safety of
16 drivers and motorists?

17 A. Well, it's a liability thing for
18 businesses and stuff to make sure their drivers are
19 physically fit to handle their equipment. I would
20 include that for the owner as well. Don't want a
21 driver out there driving a company vehicle that
22 shouldn't be for health reasons.

23 Q. Thank you. Did Mr. Riley at any time
24 dispute the fact that his medical certificate had
25 expired?

1 A. I don't recall that.

2 Q. Thank you. Is there anything else about
3 this particular stop and inspection that you think
4 would be important to bring to the Commission's
5 attention?

6 A. Not that I recall.

7 MR. LINDGREN: Thank you. I have no
8 further questions for this witness.

9 HEARING OFFICER STENMAN: Mr. Riley, do
10 you have any questions?

11 MR. RILEY: Yes. I have just a couple
12 questions.

13 - - -

14 CROSS EXAMINATION

15 By Mr. Riley:

16 Q. Officer Allison, of course it was just
17 me and you that day and that sort of thing, and
18 wouldn't you think that the reason that you stopped
19 me might have been just for a routine inspection more
20 so than a turn signal out, because I really wasn't
21 turning. I was just going straight down the highway.
22 And you probably discovered that more likely after
23 you stopped me than when we were traveling down the
24 road.

25 A. I stop vehicles every day for like

1 violations.

2 Q. Yes, I understand that. Yeah.

3 And so if you recall on that -- with that
4 turn signal thing, I was working it operable after
5 you stopped me, and the problem was just it wasn't
6 plugged in quite right or something. I wiggled the
7 plug on it. Does that seem right to you?

8 A. I know you worked on them while I was
9 entering the computer. I really wasn't paying
10 attention to what you were --

11 Q. Okay. Sure.

12 A. -- jiggling or wiggling.

13 Q. Right. But I think when I left there
14 that light was working. Maybe you don't recall that,
15 I don't know.

16 A. I don't recall.

17 Q. That's fine. And also, you know, I
18 recall you bringing up this medical card issue with
19 me, and to be honest with you, I did not look at the
20 dates, but I do remember you telling me at the time
21 that I was two weeks expired on it, that it was
22 expired by two weeks.

23 Does that seem right to you maybe or not
24 really?

25 A. Maybe I stated it was expired. I don't

1 know if I would say two weeks or not.

2 Q. Right. Well, just --

3 A. Maybe I might have said a couple weeks.

4 Q. And see -- and that stuck with me just
5 because I thought, well, you know, it ain't right.
6 I'm not here to say that that's not proper, because
7 it's not.

8 But on the other hand, it was just a
9 two-week expiration problem that created this
10 citation.

11 That's possible, wouldn't you agree?

12 It could have just been expired by two
13 weeks?

14 A. Right, it's possible.

15 Q. Yeah.

16 MR. RILEY: And so that's really all the
17 questions I have for him.

18 HEARING OFFICER STENMAN: All right.
19 Thank you. Any redirect?

20 MR. LINDGREN: No, thank you.

21 HEARING OFFICER STENMAN: Okay. Thank
22 you.

23 MR. LINDGREN: The staff next calls John
24 Canty to the stand.

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JOHN J. CANTY

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

DIRECT EXAMINATION

By Mr. Lindgren:

Q. Good morning, Mr. Canty. Can you please
state and spell your full name for the record.

A. Yes, John J. Canty, C-a-n-t-y.

Q. Mr. Canty, where are you employed?

A. The Public Utilities Commission of Ohio.

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

A. I'm the assistant chief of the compliance
division.

Q. How long have you been in that position?

A. Approximately 20 years.

Q. And what are your duties in that
position?

A. Among other things, I supervise the
employees who are responsible for sending out the
notices when violations are discovered on commercial
motor vehicle inspections.

Q. Thank you. What sort of training have
you received for that position?

A. Over the years I've taken many courses

1 including North American standard course, hazardous
2 materials inspections, several other courses along
3 the way dealing with federal regulations.

4 Q. Thank you. Are you familiar with the
5 case filed for Mr. Riley with the forfeiture that was
6 assessed to him?

7 A. Yes, I am.

8 Q. Thank you.

9 MR. LINDGREN: May I approach the
10 witness?

11 HEARING OFFICER STENMAN: You may.

12 MR. LINDGREN: Let the record reflect
13 that I'm handing the witness what I've marked as
14 Staff Exhibit 2.

15 HEARING OFFICER STENMAN: It will be so
16 marked.

17 (EXHIBIT IDENTIFIED FOR THE RECORD.)

18 MR. LINDGREN: Thank you.

19 Q. (By Mr. Lindgren) Mr. Canty, do you
20 recognize that document?

21 A. Yes, I do.

22 Q. And can you explain what it is?

23 A. Yes. This is a notice of preliminary
24 determination dated October 3, 2011, addressed to
25 Mr. John Riley, regarding an inspection that occurred

1 on July 21st of this year.

2 This is the notice that we send following
3 a conference with the driver. This is to let the
4 driver know that as a result of the conference, we
5 are making a preliminary determination to recommend
6 to the Commission that the civil monetary assessment
7 of \$100 should stand.

8 Q. And how was this \$100 forfeiture
9 calculated?

10 A. We have a schedule of fines for all the
11 various violations that can be discovered during
12 commercial motor vehicles and on the fine schedule,
13 the medical card is just a straight \$100 fine.

14 Q. Thank you. Was there any forfeiture
15 assessed for the light being out on the vehicle?

16 A. No.

17 Q. Thank you. Mr. Canty, does it make any
18 difference for assessment purposes whether the
19 medical card had been expired for only a few weeks or
20 a longer period? Does that make any difference?

21 A. No, it does not.

22 Q. Thank you. Was this \$100 -- is that
23 consistent with any standards or any guidelines you
24 follow?

25 A. Yes, that's consistent with the

1 Commercial Vehicle Safety Administration's
2 recommended fine schedule.

3 Q. Is that a national organization?

4 A. Yes, that's a national organization of
5 many states who also assess fines for similar
6 penalty -- for similar violations.

7 Q. Thank you. So would this \$100 be the
8 amount that would typically be assessed against a
9 driver for a similar violation?

10 A. Yes. This is a very standard case.

11 Q. Thank you. And would you today still
12 recommend that the Commission assess this \$100 if it
13 finds that the driver committed the violation?

14 A. Yes, I would.

15 Q. Thank you.

16 MR. LINDGREN: I have no further
17 questions.

18 HEARING OFFICER STENMAN: Mr. Riley, do
19 you have any questions?

20 MR. RILEY: I have just maybe one or two,
21 yes.

22 - - -

23 CROSS EXAMINATION

24 By Mr. Riley:

25 Q. I was just curious to know, and maybe you

1 can't answer these questions, but if you can, I'd
2 like to know how many trucks get pulled over every
3 day, would you say, in the state of Ohio?

4 A. I don't know the answer to that, sir.

5 Q. Could you just give us a rough guess,
6 just ballpark or anything, just a wild idea?

7 A. I would hate to make an inaccurate
8 assessment. I just don't know.

9 Q. Okay. Would you know approximately --
10 and here, again, I don't expect you to come up with
11 the right answer, but just maybe some idea of a
12 percentage as to how many of these trucks are
13 fined -- are found they have a violation and they
14 come with -- and then that produces a fine?

15 A. The percentage?

16 Q. Just a percentage, yeah. Just if you had
17 to guess. Nothing I'd look it up and --

18 A. Yeah, again, I wouldn't want to make a
19 wild assessment.

20 Q. Wouldn't you say that would be a higher
21 percentage, though? Wouldn't you say?

22 MR. LINDGREN: Objection. I believe he
23 said he can't answer those questions.

24 HEARING OFFICER STENMAN: I think he's
25 asking another question. Mr. Canty can answer that

1 as well.

2 Go ahead with your question.

3 Q. Could you just give us a rough idea on
4 that?

5 A. What was your second question, a higher
6 percentage?

7 Q. Just give me a rough guess as to what you
8 think might be the percentage of trucks that are
9 pulled over and leave with a citation.

10 A. I would not want to hazard a guess, and I
11 could be off by as much as 50 or 80 percent. I
12 wouldn't want to make a wild guess.

13 Q. Would you think it would be more than
14 60 percent?

15 A. I would have no idea, sir.

16 Q. Okay. Thank you.

17 MR. RILEY: I have no further questions.

18 HEARING OFFICER STENMAN: Thank you. Any
19 redirect?

20 MR. LINDGREN: Nothing, Your Honor.

21 HEARING OFFICER STENMAN: Thank you,
22 Mr. Canty.

23 MR. LINDGREN: Your Honor, the Staff has
24 no further witnesses at this time.

25 I'd like to move the admission of Staff

1 Exhibits 1 and 2.

2 HEARING OFFICER STENMAN: Any objections,
3 Mr. Riley?

4 MR. RILEY: No.

5 HEARING OFFICER STENMAN: Staff
6 Exhibits 1 and 2 will be admitted.

7 (EXHIBITS ADMITTED INTO THE RECORD.)

8 HEARING OFFICER STENMAN: Mr. Riley, do
9 you want to make a statement at this time?

10 If you do, you can come on up here to the
11 witness stand and I'll put you under oath.

12 Just so you know, Mr. Lindgren will now
13 have the opportunity to ask you questions.

14 (Witness sworn.)

15 HEARING OFFICER STENMAN: You can start
16 your statement when you're ready.

17 - - -

18 JOHN J. RILEY

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

21 DIRECT EXAMINATION

22 MR. RILEY: Okay. I'd like to start by
23 saying that this patrolman, Jason, I thought was very
24 respectful and he was -- he has a boss and he's
25 taking his orders from his boss, and I had no problem

1 with him pulling me over that morning and assessing
2 my situation that led to this charge.

3 What I do have a problem with, though, is
4 the PUCO and their system for setting fines and their
5 system for pulling people over.

6 I really do feel that the patrolman
7 really had -- other than I was a commercial vehicle
8 and that's his job, he had no reason to pull me over.

9 I don't think I was speeding. I don't
10 think I was doing anything that should have caused
11 him to pull me over. It was just a routine random
12 inspection which you told me that when you pulled me
13 over, and I believe that's all it was.

14 But I do feel that the Public Utilities
15 Commission is stepping above and beyond their bounds,
16 and it's almost a form of harassment the way they
17 pull over truckers all the time and cite them. And
18 certainly this isn't a major violation, this is a
19 simple little paperwork that I was not up to speed
20 on. I'm not arguing that. I'm not a hundred percent
21 innocent here, but I don't really feel that that
22 medical card and the condition that I was in -- I
23 seem perfectly healthy. I think that's just like I
24 am today. I think that there could have been a
25 simple little warning to that effect. It did not

1 have to lead to a hundred dollar fine.

2 The Public Utilities Commission is
3 getting a rightfully deserved bad wrap because they
4 do pull over a lot of truckers and they hit them
5 with -- this is a real typical situation.

6 I was unable to acquire any information
7 as to how often this happens, but I see it all the
8 time.

9 Of course, I'm not an everyday truck
10 driver. I drive a truck once a month maybe just to
11 fill in. It's not something I really use to make my
12 living at.

13 But, of course, I am involved with
14 trucks. I do have my own construction business, and
15 I do see trucks alongside the road with PUCO all the
16 time.

17 It's something I take notice of and not
18 that that's just terribly bad, but it's getting out
19 of hand.

20 And the other day I left our town and I
21 had the same exact rig that I had when you pulled me
22 over except instead of hauling the equipment I was
23 hauling, I had the same trailer, but I was hauling a
24 farm tractor. It was a blue tractor. The PUCO
25 purposely was coming at me and they purposely did a

1 U-turn to -- and his job was just another normal
2 routine.

3 But I think that that blue tractor give
4 it away that maybe that's a farm tractor and so he
5 drove up behind me for a ways, then he pulled up
6 beside me and then he let me go. He didn't -- he
7 never really stopped me.

8 Here again I think maybe the fact that I
9 had a farm vehicle on my rig might have pertained to
10 that.

11 But here again I just look at that as a
12 little bit of a form of harassment that here I am, I
13 haven't done anything wrong. I haven't given them
14 any reason to do a U-turn, but it just scares me to
15 death to go out on the road with a truck anymore
16 because of these kinds of situations.

17 Of course, I'm in business. I do talk to
18 other business owners and other people that are
19 involved with trucks, and they can all set right here
20 at this desk and tell you the same story about how
21 they feel that everything's about a hundred bucks,
22 you know.

23 And I just -- I'm not upset with this
24 officer whatsoever. I am very upset with the system.
25 I don't think it's right, and I think it has to be

1 changed.

2 For a hundred dollars, nobody can come
3 down here and argue their case. I might as well just
4 pay that hundred dollars and go on with life and get
5 over it, but it's just getting way too common. And I
6 really feel that it's a form of highway robbery. I
7 really feel that it's not about safety, it's really
8 about money. And that's what our system -- that's
9 what our government's coming to.

10 And whether you people realize it or not,
11 but Ohio is hurting for business. And this sort of
12 thing here is chasing business out of Ohio. It's
13 just -- everybody wants a little piece of you, you
14 know.

15 PUCO's got to have a little bit of you,
16 OSHA's got to have a little bit of you, the IRS, the
17 EPA, it's all -- everybody's just after you a little
18 bit, and it's got to stop. It's got to -- how is it
19 going to stop unless somebody complains, and that's
20 what I'm here today for.

21 That's all I have to say.

22 HEARING OFFICER STENMAN: Thank you. Any
23 questions?

24 MR. LINDGREN: Just one, Your Honor.

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CROSS EXAMINATION

By Mr. Lindgren:

Q. Mr. Riley, you're not disputing the fact that your medical card was expired on the day of inspection?

A. I'm disputing a hundred dollars for a medical card that's in violation by two weeks is ridiculous. That's my dispute.

Q. Well, actually, Mr. Riley, I believe on Staff Exhibit 1, I gave you a copy of it, it states that your medical card had expired on June 25, and you were inspected on July 21, so that is actually more than two weeks.

A. You can call me a liar for that. That's okay.

Q. I'm not. I'm not. In any event your card was expired?

A. Oh, absolutely.

MR. LINDGREN: Thank you. I have no further questions.

HEARING OFFICER STENMAN: All right. Anything else you want to add, Mr. Riley?

MR. RILEY: I do not.

HEARING OFFICER STENMAN: All right. Thank you very much.

1 MR. RILEY: Thank you.

2 HEARING OFFICER STENMAN: All right.

3 Does anybody have anything else?

4 MR. LINDGREN: Nothing further from the
5 Staff, Your Honor.

6 HEARING OFFICER STENMAN: Nothing from
7 further, Mr. Riley?

8 MR. RILEY: No, Your Honor.

9 HEARING OFFICER STENMAN: Hearing nothing
10 else, this case will be submitted on the record and
11 the hearing is adjourned. Thank you.

12 (Thereupon, the hearing was concluded at
13 10:25 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Monday, December 12, 2011, and carefully compared with my original stenographic notes.

Deborah J. Guzzo, Registered
Professional Reporter and
Notary Public in and for the
State of Ohio.

My commission expires June 25, 2012.
(2827-DJG)

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Commission of Ohio Docketing Information System on

12/28/2011 3:42:28 PM

in

Case No(s). 11-5454-TR-CVF

Summary: Transcript Transcript of John Riley hearing held on 12/12/11 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Guzzo, Deborah Mrs.