

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In Re: Juan A. Lopez : Case No.
: 13-2441-TR-CVF

- - -

PROCEEDINGS

Before Kerry Sheets, Attorney Examiner, held at
the offices of the Public Utilities Commission
of Ohio, 180 East Broad Street, Hearing Room
11-C, Columbus, Ohio, on Wednesday, March 12,
2014, at 10:00 A.M.

- - -

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1 APPEARANCES:

2 Mr. Thomas G. Lindgren
3 Assistant Attorney General
4 180 East Broad Street
5 6th Floor
6 Columbus, Ohio 43215

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

10 Mr. Michael J. Yemc, Jr.
11 600 South High Street
12 Suite 200
13 Columbus, Ohio 43215

14 On behalf of the Respondent.

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Wednesday Morning,
March 12, 2014.

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ATTORNEY EXAMINER: The Public
Utilities Commission of Ohio as set for hearing
at this time and place Case No. 13-2441-TR-CVF
In the Matter of Juan A. Lopez.

My name is Kerry Sheets, I am an
Attorney Examiner for the Commission and I have
been assigned to hear this case. Can I now have
the appearances of the parties, please? Start
with the Staff.

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

ATTORNEY EXAMINER: Thank you. The
Respondent?

MR. YEMC: Yes. Thank you. On
behalf of the Respondent, Juan Lopez, my name is
Michael Yemc, Supreme Court No. 0065390. And I
believe he has the balance of my information.

ATTORNEY EXAMINER: Thank you. Any
preliminary matters to take care of this

1 morning?

2 MR. LINDGREN: Yes, Your Honor. Mr.
3 Yemc and I have agreed to stipulate that the
4 Respondent, Mr. Lopez, was placed out of service
5 at an initial inspection, and we have also
6 agreed that should the Commission find that Mr.
7 Lopez violated the regulation at issue that
8 \$1,000 would be the appropriate forfeiture
9 amount.

10 ATTORNEY EXAMINER: Very good. Is
11 that correct?

12 MR. YEMC: That's correct.

13 ATTORNEY EXAMINER: Do you have any
14 witnesses to call?

15 MR. LINDGREN: Yes, Your Honor. The
16 Staff calls Inspector D. A. Bell to the stand.

17 (WITNESS SWORN)

18 - - -

19 INSPECTOR DOUGLAS A. BELL
20 called as a witness on behalf of the State,
21 being first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 By Mr. Lindgren:

24 Q. Good morning, Mr. Bell. Can you
25 please give your full name for the record?

1 A. Douglas Alan Bell.

2 Q. Thank you. And what is your
3 business address? For your Post.

4 A. It would be the Medina Post, Medina
5 County.

6 Q. Do you happen to know the address?

7 A. The District Headquarters is -- I
8 don't know the address right off the top of my
9 head, no.

10 Q. That is fine. Thank you. And where
11 are you employed?

12 A. State of Ohio, State Highway Patrol.

13 Q. What is your position with the State
14 Highway Patrol?

15 A. Motor Carrier Enforcement Inspector.

16 Q. How long have you been in that
17 position?

18 A. Twenty-eight years.

19 Q. And what are your duties as a Motor
20 Carrier Inspector?

21 A. To inspect commercial motor vehicles
22 for the federal regulations and the state.

23 Q. Thank you. What sort of training
24 have you had in preparation for your duties?

25 A. Just in-services constantly. I had

1 the North America Motor Carrier classes, the
2 federal hazardous material classes.

3 Q. Thank you. Do you hold any
4 certifications?

5 A. As what?

6 Q. Do you hold any certifications in
7 connection with your duties?

8 A. Yes. The North American Level 1
9 certifications.

10 Q. Thank you. And are you familiar
11 with the out of service standards?

12 A. Yes, sir.

13 Q. Thank you. Were you on duty on
14 September 3rd of 2013?

15 A. Yes, sir.

16 Q. And do you recall inspecting a
17 vehicle driven by the Respondent, Juan Lopez, on
18 that date?

19 A. Yes, sir.

20 Q. Did you prepare a report as a result
21 of that inspection?

22 A. Yes, sir.

23 Q. Thank you.

24 MR. LINDGREN: May I approach
25 the witness?

1 ATTORNEY EXAMINER: You may.

2 MR. LINDGREN: Let the record
3 reflect that I am handing the witness what has
4 been marked as Staff Exhibit 1.

5 (EXHIBIT HEREBY MARKED FOR
6 IDENTIFICATION PURPOSES)

7 ATTORNEY EXAMINER: Starting with
8 1?

9 MR. LINDGREN: 1, yes.

10 ATTORNEY EXAMINER: Thank you.

11 Q. Mr. Bell, do you recognize this
12 document?

13 A. Yes, sir.

14 Q. Can you explain what it is?

15 A. A vehicle inspection report that I
16 did.

17 Q. When did you prepare this?

18 A. It would be September 3rd at 1:00
19 o'clock. 1:01 in the afternoon.

20 Q. Thank you. And what inspection does
21 this pertain to?

22 A. This inspection goes back to a
23 previous inspection that I did on the motor
24 carrier.

25 Q. And was Juan Lopez the driver of

1 this vehicle at the time of your inspection?

2 A. Yes, sir.

3 Q. Does this report accurately reflect
4 the results of your inspection?

5 A. Yes, sir.

6 Q. And what did you do with this report
7 after you prepared it?

8 A. Gave Mr. Lopez a copy.

9 Q. Thank you. Did you then send this
10 report anywhere after you prepared it?

11 A. We uploaded it to the Safenet, to
12 the PUCO.

13 Q. Thank you. Does this report appear
14 to have been altered at all since you prepared
15 it?

16 A. No, sir.

17 Q. Thank you. Did you find any
18 violations that are reflected on this report?

19 A. Yes, sir. The driver violation.
20 The driver was driving when he was placed out of
21 service previously.

22 Q. How did you know he had been placed
23 out of service previously?

24 A. Because I had placed him out of
25 service previously on an earlier inspection.

1 Q. Thank you. What caused you to
2 perform this second inspection?

3 A. I noticed Mr. Lopez get in his
4 vehicle and start driving out of the rest area.

5 Q. Thank you. So did you stop him at
6 that point?

7 A. Yes, sir. I went after him and
8 stopped him, yes, sir.

9 Q. Thank you. Did he give you any
10 explanation as to why he was driving?

11 A. Well, he said that we couldn't
12 expect him to stay in the rest area for 10 hours
13 without any food.

14 Q. Thank you. Now, when you had
15 initially placed him out of service did you
16 explain to him that he was being placed out of
17 service?

18 A. Yes, sir.

19 Q. And how long was he placed out of
20 service?

21 A. For 10 hours.

22 Q. Thank you. And how much time had
23 elapsed between that time and the time you
24 observed him driving?

25 A. Two hours.

1 MR. LINDGREN: Thank you. I have
2 no further questions for this witness.

3 ATTORNEY EXAMINER: Do you have any
4 questions?

5 MR. YEMC: Yes. Thank you.

6 CROSS-EXAMINATION

7 By Mr. Yemc:

8 Q. Now, Inspector Bell, you originally
9 placed the Respondent out of service for two
10 different violations. One was a brakes were out
11 of service, and failure to maintain the prior
12 seven days of logs; is that correct?

13 A. Yes, sir.

14 Q. Okay. And I saw in your second
15 inspection report that you indicated that you
16 saw the mechanic finishing up the fixing the
17 brakes on the truck; is that correct?

18 A. Yes, sir.

19 Q. And then you saw the Respondent go
20 into the rest area, because he was parked at the
21 rest area, you saw him go into the rest area
22 building?

23 A. He was parked -- the inspection, he
24 was parked on the on ramp portion of the rest
25 area. When the mechanic got done then I saw him

1 pull into the rest area parking area and then go
2 into the building, yes, sir.

3 Q. Okay. So did you place a sticker on
4 his truck indicating that he was out of service?

5 A. Yes, sir.

6 Q. Did he remove that sticker at all?

7 A. Yes, sir.

8 Q. He did remove that sticker? Are you
9 sure about that?

10 A. I didn't see one on the second
11 inspection.

12 Q. Is that indicated in your report
13 that it had been taken off?

14 A. It would have been indicated if it
15 was still on there.

16 Q. Why wouldn't it indicate if it was
17 taken off?

18 A. No reason.

19 Q. It would just to me make more
20 logical sense that if it's on there and you
21 wouldn't even note it, but if somebody removes
22 it you would make a note of it.

23 A. I don't get this too often.

24 Q. Okay. Now, after you pulled Mr.
25 Lopez over did you escort him to get something

1 to eat?

2 A. We inspected the vehicle, and then I
3 said you need to go to a safe place to be parked
4 for 10 hours, yes, sir.

5 Q. Where was that safe place?

6 A. It was -- I took him up to a
7 McDonald's restaurant.

8 Q. So he could get something to eat?

9 A. Yes, sir.

10 Q. Okay. Now, the rest area that he
11 stopped at, that is a typical rest area with
12 just junk food, candy, chips?

13 A. Correct.

14 Q. Okay. And you said you had North
15 America Level 1 certification. Can you give me
16 a little more detail with regards to that
17 certification?

18 A. They train us on the federal
19 regulations and how to inspect vehicles.

20 Q. You have to go through the normal
21 academy at the Highway Patrol first?

22 A. No, sir. They send us to the
23 courses.

24 Q. So, you just get federally trained
25 and then that is it?

1 A. Correct.

2 Q. Now, ultimately you did the second
3 inspection and the brakes were fixed; is that
4 correct?

5 A. Correct.

6 Q. So really we are dealing with the
7 missing the seven days of logs?

8 A. Correct.

9 Q. Now, my reading of the statute,
10 there is an exemption or exception in that
11 statute if the driver is just two days back on
12 their logs that they can go ahead and make those
13 up and they wouldn't be placed out of service
14 for that.

15 A. It would be --

16 MR. LINDGREN: Excuse, me, sir. I
17 object. We had already stipulated to the first
18 inspection and the violation.

19 MR. YEMC: I am not trying to say
20 that wasn't a legitimate reason, at all.

21 ATTORNEY EXAMINER: I will let him
22 go ahead and finish the question.

23 MR. YEMC: I am not getting into
24 that aspect at all. I am just getting into the
25 reason why there was the second issue. The

1 first issue is --

2 ATTORNEY EXAMINER: Okay. Do you
3 have a question, please?

4 MR. YEMC: Yes. Sorry. My train of
5 thought was blown there.

6 Q. Ultimately there is an exception
7 under the rules if the driver is only a day, a
8 day and a half, two days behind in their log?

9 A. Correct. They would be allowed to
10 catch up their log entries. They are allowed to
11 be behind the day that we stop them, and the
12 previous day. But, they have to be up to
13 midnight. So it could be a day and a half.

14 Q. Okay. So as long as it's a day and
15 a half it's not a problem. Get more than a day
16 and a half to two days then that becomes a
17 problem?

18 A. Yes. He would have had to have been
19 up to September 1st at midnight for us not to
20 place him out of service.

21 Q. Now, did Mr. Lopez explain to you
22 why he didn't have those few days up to date?

23 A. He told me he was at home in
24 Tennessee.

25 Q. So he wasn't working, at least

1 according to Mr. Lopez?

2 A. Correct.

3 MR. YEMC: Okay. I have no further
4 questions.

5 ATTORNEY EXAMINER: Do you have any
6 redirect?

7 MR. LINDGREN: Excuse me, Your
8 Honor. No questions, Your Honor.

9 ATTORNEY EXAMINER: Very good. You
10 are excused.

11 THE WITNESS: Thank you.

12 MR. LINDGREN: Your Honor, I would
13 like to move for admission of Staff Exhibit 1.

14 ATTORNEY EXAMINER: Very good. It
15 will be admitted into evidence at this time.

16 (EXHIBIT ADMITTED INTO EVIDENCE)

17 ATTORNEY EXAMINER: Do you have any
18 other witnesses?

19 MR. LINDGREN: No. Staff rests its
20 case.

21 MR. YEMC: Thank you, Your Honor.
22 We will call Mr. Lopez to the stand.

23 (WITNESS SWORN)

24 - - -

25 JUAN LOPEZ

called as a witness on behalf of the Respondent,
being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Yemc:

Q. Good morning, Mr. Lopez. Would you
please state your full name and address for
the record?

A. My name is Juan Lopez. My address
is 104 Lisa Circle, Lebanon, Tennessee 37087.

Q. Mr. Lopez, what is your occupation?

A. I am a truck driver.

Q. And how long have you been driving a
truck?

A. Seventeen years.

Q. Okay. And on September 3rd of 2013
did you happen to be driving a truck in
the State of Ohio?

A. Yes, sir.

Q. Okay. Did you get pulled over on
that day?

A. Yes, sir.

Q. For an inspection?

A. Yes, sir.

Q. Could you tell me what happened
during that inspection?

1 A. Well, I get pulled over and then get
2 the inspection.

3 ATTORNEY EXAMINER: I will ask you
4 to speak up just a bit.

5 A. My brakes was unadjusted and I
6 called my company, my company called a road
7 service and they send somebody to do the job.

8 Q. They sent somebody out to the rest
9 area?

10 A. Yes, sir. And that person came and
11 fixed, but before that guy come and the officer
12 had pulled me over and put a sicker on my truck.

13 Q. And where did he put the sticker?

14 A. On my window.

15 Q. Okay.

16 A. And he say when this road service
17 coming, and he fixed the brakes. He can take
18 the sticker and move up there.

19 So, that is what I did when he
20 finished the fixing the brakes, just was
21 adjusted. And just one light on the side that
22 was broken, a little wire, and I fixed it up so
23 the light worked.

24 I take the sticker out and then go
25 park it up there.

1 Q. Then what did you do after you
2 parked your truck?

3 A. After I parked my truck I go to the
4 restroom, which is past about an hour and 45
5 minutes.

6 Q. An hour and 45 minutes after the
7 first inspection?

8 A. Yes, sir.

9 Q. Okay.

10 A. So, then I park and wherever he says
11 I can park it. And then I realize I feel
12 hungry, but where that rest area is nothing,
13 just junk food like chips, sodas, and that kind
14 of stuff.

15 And I am diabetic, I cannot eat any
16 flour, any chips, anything like that.

17 Q. Mr. Lopez, on that note let me -- I
18 am going to approach you with what is marked as
19 Exhibits 1 and 2.

20 (EXHIBITS HEREBY MARKED FOR
21 IDENTIFICATION PURPOSES)

22 Q. Okay. Mr. Lopez, Respondent's
23 Exhibit No. 1, could you explain to me what that
24 is?

25 A. Where is No. 1?

1 Q. Sorry. This is now No. 1. And this
2 is now No. 2.

3 Is that the lab report, Mr. Lopez?

4 A. Yes, sir.

5 Q. Okay. And does that lab report show
6 your glucose levels?

7 A. Yes, sir.

8 Q. That is your lab report. You are
9 the Juan Lopez listed on that lab report?

10 A. Yes, sir.

11 Q. And now Exhibit 2, that is also from
12 your doctor, is that correct, Mr. Lopez?

13 A. Yes, sir.

14 Q. And does that show that you have
15 diabetes?

16 A. Yes, sir.

17 Q. Okay. Now, are you insulin
18 dependent?

19 A. No, sir.

20 Q. So you don't take insulin at all?

21 A. No.

22 Q. Because that would disqualify you
23 from driving a truck; right?

24 A. Yes, sir.

25 Q. Okay. So you are diabetic, you are

1 at a rest area that doesn't have food you can
2 eat. So what do you then do?

3 A. Then I decide to go the next exit,
4 which is every exit has got something that I can
5 find correctly diet for me. So, when I pulled
6 over I got the police car behind me. As soon as
7 I pulled over I got the police car behind me.

8 He said where are you going? I
9 said, well, I am hungry. Okay. He say now I
10 got to go make another inspection. I said,
11 well, how can you expect me to stay there
12 without nothing to eat? He make the inspection
13 and then he escort me to the McDonald's, made me
14 park in there and then buy my corrected diet at
15 McDonald's which is vegetable, salad, like a
16 garden salad, where my diet is.

17 Q. That is what your doctor requires
18 you to eat?

19 A. Yes.

20 Q. Because of your diabetes? Can you
21 eat chips and candy bars for your diabetes?

22 A. No, sir. No.

23 Q. So you couldn't survive at the rest
24 area for 10 hours on chips and candy?

25 A. No, because my sugar level is going

1 down, and if go down my body starts shaking.
 2 Then I have to for a diet, I got to sleep on
 3 time, I got to eat on time. And I got to eat
 4 the correct food to keep my level sugar
 5 balanced.

6 Q. Now, Mr. Lopez, going back to one of
 7 the reasons why you were initially put out of
 8 service, you didn't have your last seven days
 9 worth of logs up to date. Why was that?

10 A. Well, I was home, and I guess when
 11 we get home I am lazy, but just one day before,
 12 you know.

13 Q. So it wasn't like you were off
 14 driving somewhere, you were just at home and
 15 just didn't --

16 A. Yes.

17 Q. We are not dealing with a true
 18 safety issue here, we are dealing with just you
 19 were home and just didn't update you logs.

20 A. Yes, sir, that's correct.

21 MR. YEMC: I have nothing further.

22 ATTORNEY EXAMINER: Do you have any
 23 on cross?

24 MR. LINDGREN: Yes, Your Honor.

25 Thank you.

CROSS-EXAMINATION

By Mr. Lindgren:

Q. Good morning, Mr. Lopez.

A. Good morning, sir.

Q. You knew you had been placed out of service at the time of the first inspection and you had to wait for 10 hours before driving again; right?

A. Yes, sir.

Q. Thank you. Did you at any time explain to the inspector that you were diabetic and had to get some food?

A. No, sir, that did not even cross my mind because I just got that three months, I discover that I got diabetes. Before that I don't know. So, I don't tell him that I was diabetic first of all because I don't see why he cares, because he is doing his job. He is doing his job, you know. It's not his fault, not my fall, but if don't do my sugar level coming down.

I be paralyzed half of my body.
And maybe, who knows, you know, your body can react one way or other way.

Q. Thank you. You could have carried

1 food on your truck in your cooler or other
2 container; right?

3 A. I don't have anything, and you can't
4 put vegetable for long on your truck. It's one
5 thing I got to buy every time I got to eat. I
6 got to stop in some right place to find the
7 correct food for my body.

8 Q. You could have carried some form of
9 food on the truck though; right?

10 A. Like I said, it's hard to keep it.
11 You can't keep the vegetable, green stuff, that
12 thing I eat, I have to stop every time.

13 Q. Thank you. Well, when you are
14 driving it's possible for you to be stopped on
15 the road because of an accident or construction;
16 right?

17 A. I don't get it. What do you mean?

18 Q. If you are driving from point A to
19 point B you could be held up on the road because
20 of an accident, for example, up ahead; right?

21 A. Yes.

22 Q. So at that point --

23 A. That accident not going past 4 or 5
24 hours.

25 Q. You could be held up on a road for

1 an hour or more; correct?

2 A. Yes.

3 Q. So at that point you would not be
4 able to go to the next exit to get food; right?

5 A. Yes.

6 Q. So even though you knew you did not
7 have permission to drive, you chose to get into
8 your truck and leave the rest area; is that
9 correct?

10 A. Yes.

11 MR. LINDGREN: I have no further
12 questions.

13 ATTORNEY EXAMINER: Any redirect?

14 MR. YEMC: Yes.

15 REDIRECT EXAMINATION

16 By Mr. Yemc:

17 Q. Now, Mr. Lopez, you drove in order
18 to get food; is that correct?

19 A. Yes.

20 MR. YEMC: Nothing further, Your
21 Honor, for this witness.

22 ATTORNEY EXAMINER: I have got a
23 couple questions.

24 EXAMINATION

25 By the Attorney Examiner:

1 Q. For your diabetes, do you take
2 medication?

3 A. Yes.

4 Q. And you have --

5 A. I got to drink two pills a day. One
6 in the morning, one at afternoon.

7 Q. I see. About how far was it to the
8 McDonald's?

9 A. About a mile and a quarter.

10 ATTORNEY EXAMINER: I have nothing
11 further. Anyone else have any further
12 questions?

13 MR. LINDGREN: Nothing, Your Honor.

14 MR. YEMC: Nothing, Your Honor.

15 ATTORNEY EXAMINER: You are
16 excused.

17 MR. YEMC: Your Honor, just move to
18 have Respondent's Exhibits 1 and 2 admitted.

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

21 (EXHIBITS ADMITTED INTO EVIDENCE)

22 MR. YEMC: I have no further
23 witnesses.

24 ATTORNEY EXAMINER: Is there
25 anything else?

1 MR. LINDGREN: Nothing, Your Honor.

2 ATTORNEY EXAMINER: Well, I will
3 consider this case submitted on the record. I
4 thank you all for coming.

5 MR. YEMC: Thank you, Your Honor.

6 - - -

7 (At 10:30 A.M. the hearing was
8 concluded)

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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 March
12, 2014, and carefully compared with my
original stenographic notes.

Michael O. Spencer,
Registered Professional
Reporter.

- - -

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in

Case No(s). 13-2441-TR-CVF

Summary: Transcript in the matter of Juan A. Lopez hearing held on 03/12/14 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Spencer, Michael O. Mr.