

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of FMT :
Trucking, LLC, Notice of :
Apparent Violation and : Case No. 14-2180-TR-CVF
Intent to Assess :
Forfeiture. :

- - -

PROCEEDINGS

before Mr. Kerry K. Sheets, Attorney Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-C, Columbus, Ohio, called at 10 a.m.
on Thursday, March 5, 2015.

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1 APPEARANCES:

2 Mike DeWine, Ohio Attorney General
3 By Mr. William L. Wright
4 Public Utilities Section
5 Mr. Thomas Lindgren
6 and Ms. Natalia V. Messenger,
7 Assistant Attorneys General
8 180 East Broad Street, 6th Floor
9 Columbus, Ohio 43215

10 On behalf of the Staff of the PUCO.

11 Freund, Freeze & Arnold
12 By Mr. Sean A. Graves
13 Fifth Third Center
14 1 South Main Street, Suite 1800
15 Dayton, Ohio 45402

16 On behalf of the FMT Trucking, LLC.

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Staff Exhibit	Identified	Admitted
1 Driver/Vehicle Examination Report	7	20
2A Driver's Daily Log 8-15-14	9	20
2B Driver's Daily Log 8-16-14	9	20
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Thursday Morning Session,

March 5, 2015.

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EXAMINER SHEETS: The Public Utilities Commission of Ohio has set for hearing at this time and place Case No. 14-2180-TR-CVF, FMT Trucking, LLC. My name is Kerry Sheets. I am an Attorney Examiner for the Commission. I have been assigned to hear this case.

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

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

EXAMINER SHEETS: Respondent.

MR. GRAVES: Your Honor, Sean Graves on behalf of FMT Trucking, Freund, Freeze & Arnold in Dayton, Ohio.

EXAMINER SHEETS: Thank you. Do we have any preliminary matters to take care of this morning?

MR. LINDGREN: No, your Honor.

EXAMINER SHEETS: Do you have a witness to call?

1 MR. LINDGREN: Yes, thank you, your
2 Honor. The Staff calls Mike Frye to the stand.

3 (Witness sworn.)

4 EXAMINER SHEETS: Be seated.

5 - - -

6 MICHAEL R. FRYE
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, sir. Could you please
12 state and spell your full name for the record.

13 A. Michael R. Frye, M-I-C-H-A-E-L R F-R-Y-E.

14 Q. And what is your business address?

15 A. 3751 North Glenn Highway, Cambridge,
16 Ohio.

17 Q. And where are you employed?

18 A. State Highway Patrol.

19 Q. What is your position with the State
20 Highway Patrol?

21 A. I am a Motor Carrier Enforcement
22 Inspector.

23 Q. How long have you been a Motor Carrier
24 Enforcement Inspector?

25 A. Going on five years.

1 Q. What are your duties in that position?

2 A. I enforce all the safety rules and
3 regulations for commercial traffic intra and
4 interstate, passenger vehicles, Hazmat, hazardous
5 material transportation, anything that Federal Motor
6 Carrier Safety Administration rules and regs.

7 Q. Thank you. What sort of training have
8 you received on -- in connection with your duties?

9 A. Originally I went through a program that
10 the Feds came down. I completed A and B North
11 American Standard Training. I've done Hazmat, bulk,
12 nonbulk, passenger vehicle training, and then
13 certified by the Federal Motor Carrier Safety
14 Administration, and then yearly we receive updates
15 and additional training.

16 Q. Thank you. Were you on duty on August 22
17 of 2014?

18 A. I was.

19 Q. And do you recall inspecting a vehicle
20 driven by Jamal Abdi on that date?

21 A. I do.

22 Q. And do you recall the reason why you --
23 you performed this inspection?

24 A. I do. I was sitting at the crossover by
25 the 175 exit watching westbound traffic and saw a

1 vehicle approaching with one headlight, so I waited
2 on it to go by, pulled out behind it, and stopped it
3 at the westbound scales for an inspection.

4 Q. Was this -- this was on an interstate?

5 A. It was on interstate.

6 Q. Which interstate?

7 A. Interstate 70 Westbound.

8 Q. Thank you.

9 A. The 172 mile marker.

10 Q. Okay. Thank you. Did you prepare a
11 report that reflects the -- the results of your
12 inspection of this vehicle driven by Jamal Abdi?

13 A. I did.

14 MR. LINDGREN: If I may approach the
15 witness?

16 EXAMINER SHEETS: You may.

17 MR. LINDGREN: Let the record reflect I
18 am handing the witness what I have marked as Staff
19 Exhibit 1.

20 EXAMINER SHEETS: So marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

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

23 A. I do. This is the inspection that I
24 performed.

25 Q. And did you prepare this report yourself?

1 A. I did.

2 Q. And what did you do after you prepared
3 this report? What did you do with it?

4 A. I uploaded it to the PUCO and SAFE
5 website.

6 Q. Thank you. Does this report appear to
7 have been altered in any way since you transmitted it
8 to the PUCO?

9 A. No, it does not.

10 Q. Thank you. Does the report accurately --
11 accurately reflect the results of your inspection?

12 A. Yes, it does.

13 Q. Thank you. And does the report list any
14 violations that you found in the course of your
15 inspection of this vehicle?

16 A. It does.

17 Q. And can you explain what they are?

18 A. It lists the original reason for the
19 stop, the left high beam, and then upon inspection of
20 the vehicle I found that the ABS light on the trailer
21 was inop. It also had a right ID light on the rear
22 of the trailer that was inop. And then upon
23 inspection of his logbook he was in violation of the
24 14-hour rule which requires him to stop driving.

25 Q. With respect to the last violation, how

1 did you determine that -- that he was driving beyond
2 the 14-hour duty period?

3 A. I looked at his logbook that he gave me.
4 It's a record that they keep of their -- every time
5 they change their duty status.

6 Q. Are the drivers required to keep this
7 logbook?

8 A. They are.

9 Q. Thank you. Did you take any photographs
10 of this logbook during your inspection?

11 A. I did.

12 Q. Thank you.

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

15 EXAMINER SHEETS: You may.

16 MR. LINDGREN: Let the record reflect I
17 am handing the witness what I have marked as Staff's
18 Exhibits 2A through 2H.

19 EXAMINER SHEETS: So marked.

20 (EXHIBITS MARKED FOR IDENTIFICATION.)

21 Q. Mr. Frye, can you explain -- do you
22 recognize these?

23 A. I do. These are -- these are the logbook
24 pictures I took of the ve -- or the driver.

25 Q. Do they accurately reflect what -- what

1 you saw that day?

2 A. They do.

3 Q. And do these pictures appear to have been
4 altered in any way since you took them?

5 A. No.

6 Q. Thank you. Could you walk us through
7 these pictures and explain -- explain what they show
8 and how you determined there was a violation.

9 A. I can. There's -- there's four basic
10 lines on a daily log, the off duty line, the sleeper
11 berth, the driving line, and on duty line. Whatever
12 status they are in at the time they have to mark on
13 here. Even if they are -- they are not working, if
14 they are off, if they are on vacation, they mark the
15 off duty line. They have to have a log for the day
16 that I stop them and the previous seven days. So
17 every time they stop, they change their duty status,
18 they will draw down to a different line.

19 So the day that I stopped him everything
20 looks fine on the previous six days, but on the 21st
21 he starts out at 6:30. He goes from off duty, he
22 goes down to on duty not driving. That's his pretrip
23 inspection. That's after he picked his load up in
24 Hershey.

25 Q. Could you tell me which page you're on

1 there?

2 A. I'm sorry. That is 2G.

3 Q. Okay. Thank you.

4 A. On page 2G.

5 Q. Okay. Please go ahead.

6 A. You'll look at 6:30 p.m. he was in
7 Hershey, Pennsylvania. He was off duty. He was in
8 the sleeper berth, and he goes up to off duty, so he
9 had his mandatory 10-hour restart which gives him a
10 new 14-hour timeframe where he can drive 11 hours in
11 a 14-hour period. So he goes down to his pretrip on
12 duty not driving, that's where his 14 hours starts.
13 That's 6:30 p.m. He can drive 11 hours in the next
14 14, so he drove 4 hours, and he was off duty 1 hour.
15 Then he goes back to driving at midnight on the
16 22nd --

17 Q. Excuse me. Are you now on --

18 A. The following page on 2H.

19 Q. Thank you.

20 A. And then at 5 a.m., he stops in Wheeling,
21 West Virginia, and takes a three-hour break. That
22 3-hour break goes against his 14 hours. Anything
23 less than 8 hours continuous in the sleeper counts
24 against your 14 hours. So when he went back down to
25 the drive line at 8 o'clock, he was 30 minutes shy of

1 his 14th hour which meant he had to -- he could no
2 longer drive past his 30 minutes or past his 14th
3 hour. So when he started driving, he should have
4 been aware that he only had 30 minutes left of drive
5 time. And then he drove 60 miles approximately to
6 where I stopped him and put him out of service for
7 over his 14th hour.

8 Q. And what time was it that you pulled him
9 over?

10 A. It was 8:56 a.m.

11 Q. Is that shown on your inspection report?

12 A. It is on --

13 Q. So how long past the 14-hour mark is
14 that?

15 A. It would be 26 minutes.

16 Q. Thank you. And did you -- did you give
17 the driver a copy of your inspection report?

18 A. I did.

19 Q. Thank you. And did you explain to him
20 what the violations were?

21 A. I did. I explained all the violations,
22 and I also explained on the second page of the
23 inspection report, about a quarter of the way down,
24 it says "I hereby declare Jamal Abdi out of service.
25 The driver may not drive any commercial motor vehicle

1 nor may any carrier permit or require this driver to
2 drive any commercial motor vehicle unit until an
3 eight-hour break is taken," and then I explained that
4 to him.

5 MS. RABE: Thank you.

6 Thank you. I have no further questions.

7 EXAMINER SHEETS: Do you have any
8 questions?

9 MR. GRAVES: Yes, yes, sir.

10 EXAMINER SHEETS: I am going to ask you
11 to speak up, counsel.

12 MR. GRAVES: Yes, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Graves:

16 Q. Mr. Frye, you testified you have five
17 years' experience; is that correct?

18 A. Approximately, yes.

19 Q. And during those five years how many
20 inspections or examinations would you say you've
21 conducted of motor carriers?

22 A. I do approximately 1,000 to 1,100 a year.
23 I could tell you for a fact that I've done 5,402
24 inspections before this one.

25 Q. Thank you very much. So is it fair to

1 say of those 5,402 inspections that you don't
2 remember the details of each and every one of those
3 inspections?

4 A. Correct.

5 Q. Okay. I point you to Staff Exhibit 1.
6 The information here is typed into this document; is
7 that correct?

8 A. Right.

9 Q. And do you type it into software that you
10 use from your --

11 A. An Aspen report.

12 Q. An Aspen report, okay. And when do you
13 enter this information?

14 A. At the -- at the time of stop while I am
15 doing the inspection.

16 Q. So you enter all of the information we
17 see on this examination report contemporaneous to
18 your examination of the vehicle.

19 A. Right, while the driver and the vehicle
20 is sitting there next to me.

21 Q. Okay. So is there any possibility that
22 you would have stopped Mr. Abdi at any time prior to
23 8:56?

24 A. Within a minute, 30 seconds maybe,
25 perhaps.

1 Q. So --

2 A. My time starts -- my inspection time
3 starts at the time of inspection, not necessarily the
4 time of stop.

5 Q. Could you repeat that for me?

6 A. My inspection time starts at the time of
7 inspection, not necessarily the time I -- when I pull
8 out behind him.

9 Q. Okay. Now, if you were to estimate for
10 me when you pulled out behind Mr. Abdi as you just
11 mentioned, what time would that have been relative to
12 this 8:56?

13 A. It is approximately 3 miles.

14 Q. Approximately 3 miles. And were there
15 any stops during those 3 miles, that you drove those
16 3 miles continuously then?

17 A. No.

18 Q. Okay. So your testimony is this time may
19 not be precisely accurate but --

20 A. I didn't say that.

21 Q. Okay.

22 A. I said this inspection started when I got
23 out of my vehicle --

24 Q. Okay.

25 A. -- and approached the driver, not

1 necessarily when I pulled out on the interstate
2 system to follow him and turned my lights on.

3 MR. GRAVES: I understand. Okay. No
4 further questions.

5 EXAMINER SHEETS: Anything on redirect?

6 - - -

7 REDIRECT EXAMINATION

8 By Mr. Lindgren:

9 Q. Can you estimate the time when you began
10 to follow this -- this vehicle?

11 A. 3 miles, 3 minutes, 60 to 65 miles an
12 hour. They usually slow down when I get behind them
13 so approximately 3 minutes.

14 Q. Okay. So it would have been
15 approximately what, 8:52, 8:53 a.m.?

16 A. Correct.

17 MS. RABE: Thank you. I have no further
18 questions.

19 EXAMINER SHEETS: Any on recross?

20 MR. GRAVES: No, your Honor.

21 EXAMINER SHEETS: You are excused.

22 Any further witnesses?

23 MS. MESSENGER: Your Honor, at this time
24 I would like to call Thomas Persinger to the stand.

25 (Witness sworn.)

1 EXAMINER SHEETS: Be seated.

2 MS. MESSENGER: Thank you.

3 - - -

4 THOMAS PERSINGER

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

7 DIRECT EXAMINATION

8 By Ms. Messenger:

9 Q. Can you state your name and spell it for
10 the record, please.

11 A. My name is Thomas Persinger. Last name
12 is spelled P-E-R-S-I-N-G-E-R.

13 Q. What is your business address?

14 A. 180 East Broad Street, Columbus, Ohio,
15 4th Floor.

16 Q. And who is your employer?

17 A. Public Utilities Commission of Ohio
18 Transportation Division.

19 Q. And what is your position with the PUCO?

20 A. My position with the PUCO is as a
21 compliance officer.

22 Q. And how long have you been a compliance
23 officer?

24 A. Closing in on four years.

25 Q. And what are your duties in the position?

1 A. My duties include assessing fines for
2 inspections that are completed by officers out in the
3 field.

4 Q. Are you familiar with the facts of this
5 case?

6 A. Yes, ma'am.

7 MS. MESSENGER: Your Honor, may I
8 approach the witness?

9 EXAMINER SHEETS: You may.

10 MS. MESSENGER: Let the record show I am
11 handing the witness what is marked Staff Exhibit 3.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 Q. Do you recognize this document?

14 A. Yes, ma'am.

15 Q. And what is it?

16 A. It is a Notice of Preliminary
17 Determination letter.

18 Q. What is the purpose of the notice?

19 A. The purpose of the notice we send these
20 out after we have made attempts to settle any fines
21 and violations that are found on an inspection.

22 Q. What is the amount of the forfeiture
23 shown on this notice?

24 A. \$100.

25 Q. And can you explain how this amount is

1 calculated?

2 A. The amount is calculated from a fine
3 schedule where depending upon the type of violation
4 that is found on the inspection, a certain dollar
5 amount may or may not be assessed for that particular
6 violation.

7 Q. And is this amount consistent with the
8 guidelines issued by the Commercial Vehicles Safety
9 Alliance?

10 A. Yes, ma'am.

11 Q. And do you recommend that the Commission
12 order the Respondent to pay this amount as a
13 forfeiture?

14 A. Yes, ma'am.

15 MS. MESSENGER: No further questions.

16 EXAMINER SHEETS: Do you have cross?

17 MR. GRAVES: Thank you, your Honor.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Graves:

21 Q. When you prepare this Notice of
22 Preliminary Determination, you base your decision on
23 nothing but the examination report and any other
24 documents that would have been provided to you by the
25 PUCO trooper; is that correct?

1 A. It's based exclusively upon the code cite
2 from the inspection report, and it again rates
3 through the computer.

4 Q. Okay. And just to be clear you weren't
5 present when the examination of Mr. Abdi's vehicle
6 was conducted; is that right?

7 A. Correct.

8 MR. GRAVES: No further questions.

9 EXAMINER SHEETS: Done?

10 MS. MESSENGER: Yes.

11 EXAMINER SHEETS: You are excused.

12 MR. LINDGREN: Your Honor, the Staff
13 rests its case and would like to move the admission
14 of Staff Exhibits 1, 2, and 3.

15 EXAMINER SHEETS: Very good. I'll admit
16 those exhibits into evidence at this time.

17 (EXHIBITS ADMITTED INTO EVIDENCE.)

18 EXAMINER SHEETS: Now, Respondent, do you
19 have a case to put on?

20 MR. GRAVES: Your Honor, my client is not
21 present.

22 EXAMINER SHEETS: Speak up, please.

23 MR. GRAVES: My client has not arrived.
24 My client is not present, so we rest our case.

25 EXAMINER SHEETS: So you have no

1 witnesses to call.

2 MR. GRAVES: No witnesses, your Honor.

3 EXAMINER SHEETS: Very good. Let's go
4 off the record at this point.

5 (Discussion off the record.)

6 EXAMINER SHEETS: Go back on the record
7 and just say that I'll consider the case submitted on
8 the record at this point and thank you all for
9 coming.

10 (Thereupon, at 10:21 a.m., the hearing
11 was 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 Thursday, March 5,
2015, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-6013)

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This foregoing document was electronically filed with the Public Utilities

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3/18/2015 5:14:01 PM

in

Case No(s). 14-2180-TR-CVF

Summary: Transcript in the matter of FMT Trucking, LLC hearing held on 03/05/15 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.