

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Eddie Greer, Notice of : Case No. 15-479-TR-CVF
Apparent Violation and Intent to Assess : (3293007372D)
Forfeiture. :

POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

Mike DeWine
Ohio Attorney General

William L. Wright
Section Chief

Natalia V. Messenger
Assistant Attorney General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, OH 43215-3793
614.466.4395 (telephone)
614.644.8764 (fax)
william.wright@puc.state.oh.us
natalia.messenger@puc.state.oh.us

November 20, 2015

TABLE OF CONTENTS

	Page(s)
INTRODUCTION	1
STATEMENT OF FACTS	2
A. Procedural History.....	2
B. Factual Background.....	3
ARGUMENT.....	4
A. Respondent admitted to Inspector Walker that he began driving at 4:30 a.m. on January 7, 2015, confirming that he falsified his record of duty status.	5
B. Respondent's record of duty status indicating that his trip took him only eleven hours is likely false because the PC Miler calculated that the trip from Matthews, Missouri to Blawnox, Pennsylvania should take a minimum of twelve hours and thirty-six minutes.	6
C. The Commission has authority to assess civil forfeitures.	9
CONCLUSION	10
PROOF OF SERVICE.....	11

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Eddie R. Greer, Notice : Case No. 15-479-TR-CVF
of Apparent Violation and Intent to : (3293007372D)
Assess Forfeiture. :

POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

INTRODUCTION

While driving from Matthews, Missouri to Blawnox, Pennsylvania on January 6, 2015, Eddie Greer (“Respondent”) violated the Federal Motor Carrier Safety Administration (FMCSA) regulations. When Inspector Walker of the Ohio State Highway Patrol pulled Respondent over, he discovered that Respondent falsified his logbook. The inspector cited Respondent under 49 C.F.R. 395.8(e) for the “false report of drivers record of duty status.”¹ As a result of that inspection, the Staff of the Public Utilities Commission of Ohio (“Staff”) assessed a civil forfeiture of \$100 for violation of 49 C.F.R. 395.8(e).

¹ Driver/Vehicle Examination Report (Staff Ex. 1).

At the evidentiary hearing in this case, Staff offered the testimony of a highly qualified and credible safety inspector to support the violation at issue. Two issues are at the heart of this case: the first is whether Respondent began driving at 4:30 a.m. or 7:30 a.m. on January 6th; the second is the accuracy of the PC Miler calculation.

First, Respondent began driving at 4:30 am. Respondent himself admitted to Inspector Walker that he left at 4:30 am. Second, the PC Miler calculation is a more accurate representation of the trip than Respondent's falsified logbook. Given the speed limit on the road and the winter weather conditions at the time, it is unreasonable to believe that Respondent could have made the trip as logged.

Therefore, based on the evidence of record, the Commission must find Respondent violated 49 C.F.R. 395.8(e) and must hold Respondent liable for the civil forfeiture of one hundred dollars (\$100).

STATEMENT OF FACTS

A. Procedural History

Staff sent a Notice of Apparent Violation and Intent to Assess Forfeiture to Respondent on January 9, 2015, as required by Ohio Adm. Code 4901:2-7-07. The Notice cited a violation of 49 C.F.R. 395.8(e) for "false report of drivers record of duty status." Respondent filed a request for an administrative hearing. The hearing was conducted on September 24, 2015.

B. Factual Background

On January 7, 2015, Inspector Walker pulled Respondent over for a problem with his brake lights.² Inspector Walker did a Level II Walk-Around inspection, which includes the inspection of the driver's license, logbook, and the outside of the vehicle.³ Upon reviewing Respondent's log for January 6, 2015, Inspector Walker saw that Respondent claimed that he completed his 731-mile trip in exactly eleven hours,⁴ the maximum amount of driving time allowed in one day under the FMCSA rules.⁵ The inspector then used PC Miler to determine the amount of time a trip from Matthews, Missouri to Blawnox, Pennsylvania should take.⁶ The PC Miler calculated that the 711.9-mile trip should take a driver a minimum of twelve hours and thirty-six minutes to complete.⁷

In order to further investigate the claims that Respondent made on his log, Inspector Walker asked him for his fuel receipts.⁸ When Inspector Walker called the fuel stop at which Respondent fueled up the morning of January 6th, the attendant informed

² Tr. at 13.

³ Tr. at 11.

⁴ Picture of Driver's Logbook (Staff Ex. 2).

⁵ 49 C.F.R. 395.3(a)(3); Tr. at 19.

⁶ Tr. at 18.

⁷ Staff Ex. 1.

⁸ Tr. at 35.

the inspector that Respondent pumped fuel at 4:30 that morning.⁹ Inspector Walker informed Respondent that the attendant gave him that time and asked if he left right after he pumped fuel, or went back to his sleeper berth and left later.¹⁰ Respondent admitted to leaving right after he pumped fuel at 4:30 that morning.¹¹

On January 5, 2015, there was a severe ice storm in the Matthews, Missouri area.¹² The conditions were so icy that Respondent feared walking across the parking lot of the fuel stop to use the bathroom, so he drove his commercial vehicle over instead.¹³ After his bathroom break, Respondent pumped fuel and began his trip to Blawnox, Pennsylvania.¹⁴

ARGUMENT

Under 49 C.F.R. 395.8(e), a driver is prohibited from making a false report in connection with duty activities. Respondent falsified his logbook in violation of 49 C.F.R. 395.8(e) when he stated on his logbook that he began driving at 7:30 a.m., but actually began driving at 4:30 a.m. It is evident that Respondent falsified his logbook

⁹ Tr. at 35-36.

¹⁰ Tr. at 23-25.

¹¹ *Id.*

¹² Tr. at 40.

¹³ Tr. at 40-41.

¹⁴ Staff Ex. 1.

because he admitted to the inspector that he left at 4:30 a.m., and the PC Miler calculated Respondent's trip to take much longer than he reported.

A. Respondent admitted to Inspector Walker that he began driving at 4:30 a.m. on January 7, 2015, confirming that he falsified his record of duty status.

To investigate the accuracy of Respondent's log for January 6, 2015, Inspector Walker asked Respondent for his fuel receipts.¹⁵ Inspector Walker called the fuel stop in Matthews, Missouri where Respondent pumped gas before he began his eleven-hour driving period.¹⁶ The fuel stop attendant informed Inspector Walker that Respondent pumped gas at 4:30 a.m.¹⁷ After communicating this to Respondent, Inspector Walker asked Respondent when he left.¹⁸ Respondent then admitted to Inspector Walker that he left right after he pumped fuel.¹⁹ Respondent knew that the inspector called the gas station and that the attendant told him that Respondent pumped gas at 4:30 a.m.²⁰ Being informed of that, Respondent admitted to leaving around 4:30 a.m., right after he pumped fuel.²¹

¹⁵ Tr. at 35.

¹⁶ Tr. at 17.

¹⁷ *Id.*

¹⁸ Tr. at 17, 25.

¹⁹ *Id.*

²⁰ Tr. at 25.

²¹ *Id.*

At the hearing, Respondent testified that he lied to Inspector Walker when he admitted that he began driving at 4:30 am.²² That testimony in itself puts his credibility at issue in this case. Respondent's testimony demonstrates that he has a disregard for the truth and makes it difficult for the Commission to view any part of his testimony as credible and truthful.

The best evidence of Respondent's falsification of his logbook is his own admission, and that is exactly what happened in this case. Respondent admitted that he began driving three hours earlier than indicated on his log. He, therefore, falsified his logbook in violation of 49 C.F.R. 395.8(e).

B. Respondent's record of duty status indicating that his trip took him only eleven hours is likely false because the PC Miler calculated that the trip from Matthews, Missouri to Blawnox, Pennsylvania should take a minimum of twelve hours and thirty-six minutes.

Respondent's logbook states that he drove 731 miles in only eleven hours.²³ As is customary, Inspector Walker used the PC Miler to calculate how long it would take a commercial motor vehicle to travel from Matthews, Missouri to Blawnox,

²² Tr. at 42.

²³ Staff Ex. 2.

Pennsylvania.²⁴ The PC Miler predicted that it would take a minimum of twelve hours and thirty-six minutes to travel 711.9 miles.²⁵

PC Miler is a system used to assist commercial motor vehicle drivers with directions.²⁶ “It’s very detailed when it comes to commercial vehicles.”²⁷ PC Miler is more accurate for commercial vehicles than Google Maps or MapQuest because it will provide a route that a commercial vehicle can actually travel.²⁸ PC Miler will take into account roads that a commercial vehicle cannot travel so that drivers can avoid getting into difficult situations with their vehicle.²⁹ After designating a route, PC Miler will only take into account the speed limits along the way to calculate the time it will take to drive a certain distance.³⁰ PC Miler does not take into account traffic jams, rush hours, or construction areas.³¹ It also, then, does not factor in weather conditions. Because an eleven- or twelve-hour trip is bound to experience some of those elements, it is nearly

²⁴ Tr. at 17-18.

²⁵ Staff Ex. 1; Tr. at 19.

²⁶ Tr. at 17.

²⁷ *Id.*

²⁸ Tr. at 18.

²⁹ *Id.*

³⁰ Tr. at 19.

³¹ *Id.*

impossible for a driver to take less time than the PC Miler designates.³² In fact, Inspector Walker has not seen that happen in his career as an inspector.³³

Here, Respondent's logbook indicated that he traveled 731 miles in eleven hours.³⁴ The PC Miler calculation indicated that it would take twelve hours and thirty-six minutes to travel 711.9 miles, from Matthews, Missouri to Blawnox, Pennsylvania.³⁵ At the hearing, Respondent attempted to discredit the PC Miler by pointing out that it only allowed a driver to drive 56.5 miles per hour on average on a highway with a speed limit of 70 miles per hour.³⁶ Respondent's actual time and distance traveled allowed him to drive 66.45 miles per hour.³⁷ This calculation, however, does not take into account that it is very unlikely for a driver to drive a commercial vehicle for eleven or twelve hours without ever slowing down for road conditions.³⁸ Based on four years of experience as a Motor Carrier Enforcement Inspector, Inspector Walker testified, "It's impossible to go 66 miles per hour from Matthews, Missouri to Blawnox, Pennsylvania straight through."³⁹

³² Tr. at 18-19.

³³ Tr. at 18.

³⁴ Staff Ex. 2.

³⁵ Staff Ex. 1; Tr. at 19.

³⁶ Tr. at 29.

³⁷ *Id.*

³⁸ *See* Tr. at 19.

³⁹ Tr. at 30.

Furthermore, Respondent testified that there was an ice storm on January 5th, the day before he began the trip at issue here.⁴⁰ In fact, the ice was so severe that Respondent feared walking across the parking lot of the fuel stop the morning of January 6th and chose to drive his commercial vehicle there instead for a bathroom break.⁴¹ Given the severe weather, it is even more unlikely that Respondent took off from the fuel stop that morning at 66.45 miles per hour without slowing down or stopping for eleven hours.

The PC Miler calculation corroborates Respondent's admission that he left at 4:30 in the morning on January 6th. It shows that it is more likely and more reasonable to believe that Respondent left at 4:30 a.m. rather than at 7:30 a.m.

C. The Commission has authority to assess civil forfeitures.

Under R.C. 4923.99, the Commission has statutory power to assess monetary forfeitures against drivers for non-compliance with the FMCSA regulations. The Commission has adopted rules to governing the assessment of civil forfeitures.⁴²

The parties stipulated that the forfeiture amount of one hundred dollars (\$100) is proper in this case.⁴³ As such, if Respondent is found to have violated 49 C.F.R. 395.8(e), he should be assessed the full one hundred dollars (\$100) as stipulated.

⁴⁰ Tr. at 40.

⁴¹ Tr. at 41.

⁴² See Ohio Adm. Code 4901:2-7-01 through 22.

⁴³ Tr. at 6.

CONCLUSION

Respondent's admission that he left earlier than indicated on his logbook proves that he violated the FMCSA regulations. That violation is further supported by the PC Miler calculation that shows that Respondent's claim regarding the time it took him to complete his trip is likely false. Based on the record produced at the hearing and for the reasons stated above, Staff respectfully requests that the Commission find that Respondent violated 49 C.F.R. 395.8(e) and require him to pay the forfeiture amount of one hundred dollars.

Respectfully submitted,

Mike DeWine
Ohio Attorney General

William L. Wright
Section Chief

/s/Natalia V. Messenger

Natalia V. Messenger
Assistant Attorney General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, OH 43215-3793
614.466.4397 (telephone)
614.644.8764 (fax)
william.wright@puc.state.oh.us
natalia.messenger@puc.state.oh.us

PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Post-Hearing Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by regular U.S. mail, postage prepaid, or hand-delivered, upon the following Parties of Record, this 20th day of November, 2015.

/s/Natalia V. Messenger

Natalia V. Messenger

Assistant Attorney General

Parties of Record:

Michael J. Yemc Jr.
Yemc Law Offices
P.O. Box 468
Delaware, Ohio 43015

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

11/20/2015 2:09:32 PM

in

Case No(s). 15-0479-TR-CVF

Summary: Brief Post Hearing Brief filed on behalf of the Public Utilities Commission of Ohio.
electronically filed by Mrs. Tonnetta Y Scott on behalf of PUCO