

STATE OF OHIO
DEPARTMENT OF EDUCATION

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In the Matter of Tommy Shad :
Notice of Apparent Violation : Case No.
and Intent to Assess : 15-1521-TR-CVF
Forfeiture. :

- - -

PROCEEDINGS

Before Nicholas Walstra, Attorney Examiner, held
at the offices of the Public Utilities
Commission of Ohio, 180 East Broad Street,
Hearing Room 11-D, Columbus, Ohio, on Tuesday,
January 26, 2016, at 10:00 A.M.

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Armstrong & Okey, Inc.
222 East Town Street, 2nd Floor
Columbus, Ohio 43215
(614) 224-9481 - (800) 223-9481
Fax - (614) 224-5724

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APPEARANCES:

Mr. Steven L. Beeler
Assistant Attorney General
180 East Broad Street, 6th Floor
Columbus, Ohio 43215

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

Mr. Tommy Shad
4171 Marks Road
Medina, Ohio 44256

Appearing Pro se.

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1 Tuesday Morning,
 2 January 26, 2016.

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4 ATTORNEY EXAMINER: The Public
 5 Utilities Commission of Ohio has called for
 6 hearing at this time and place Case No.
 7 15-1521-TR-CVF being in the matter of Tommy Shad
 8 Notice of Apparent Violation and Intent to
 9 Assess Forfeiture.

10 My name is Nick Walstra, I am the
 11 Attorney Examiner assigned by the Commission to
 12 hear this case. I will begin by taking
 13 appearances of the parties. On behalf of Staff.

14 MR. BEELER: Thank you, your Honor.
 15 On behalf of the Staff of the Public Utilities
 16 Commission of Ohio, Steven Beeler, Ohio Attorney
 17 General, Mike DeWine's office, 180 East Broad
 18 Street, Columbus, Ohio.

19 ATTORNEY EXAMINER: Thank you. Mr.
 20 Shad, if you could just give your name and
 21 address.

22 MR. SHAD: Tommy Shad, 4171 Marks
 23 Road, Medina, Ohio 44256.

24 ATTORNEY EXAMINER: Thank you.
 25 Before we get started are there any procedural

1 matters to discuss?

2 MR. BEELER: No, your Honor.

3 ATTORNEY EXAMINER: Mr. Shad, since
4 you are not an attorney you can't practice law,
5 so there are limits on some things that you can
6 do here. Staff is supposed to present their
7 case against you and provide enough evidence for
8 the Commission to make their decision. And the
9 burden is on them to do that.

10 They can put witnesses on the stand
11 to question them. I will give you an
12 opportunity to ask those witnesses questions if
13 you like.

14 Then when they are concluded I will
15 give you a chance to, I will swear you in, and
16 you can kind of give your side of the story.
17 And then Staff can question you on anything.
18 Any questions?

19 MR. SHAD: No, sir.

20 ATTORNEY EXAMINER: All right. Mr.
21 Beeler, go ahead.

22 MR. BEELER: Thank you, your Honor.
23 Staff would call Inspector Bell to the stand.

24 (WITNESS SWORN)

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RICHARD DAVID BELL

called as a witness, being first duly sworn,
testified as follows:

DIRECT EXAMINATION

By Mr. Beeler:

Q. Good morning.

A. Good morning.

Q. Please state your name for the
record.

A. My name is Richard David Bell.

Q. Where are you employed?

A. Ohio State Patrol, Motor Carrier
Enforcement.

Q. And is that your full title for your
position within the Patrol?

A. Yes. Federal Motor Carrier
Enforcement, yes.

Q. How long have you been with
the Patrol?

A. Going on 22 years.

Q. Have you been, in that 22 years,
have you always been a Federal Motor Carrier
inspector?

A. No. I started out as a license
examiner. I did that for 15 years. And while a

1 license examiner I became a bioptic specialist.
2 Somebody that deals with people that's visually
3 impaired. And also I traveled, I worked in
4 eight counties. And also I am assigned for the
5 hearing impaired. I sign for people that came
6 in for a driving test, whether it's written or
7 driving.

8 Q. And how long have you been with the
9 Motor Carrier Enforcement Division?

10 A. Going on seven years, sir.

11 Q. Okay. What are your duties in your
12 capacity as a Motor Carrier inspector?

13 A. Basically we check the compliance of
14 vehicles 26,001 pounds, or we can check
15 compliance of safety regulations for vehicles
16 10,001 pounds, the trailer.

17 We look for violations, obvious,
18 that's the lights, lights on the vehicle not
19 working. Then we have after we stop the vehicle
20 go up under and check for safety compliance as
21 far as the mechanics, make sure the U-bolts are
22 tight, steering mechanism is working, the brakes
23 work, whether manual, or excuse me, hydraulic or
24 air brakes.

25 And basically overall the truck

1 almost like glorified mechanic to make sure
2 everything is in compliance so the vehicles
3 comply with the safety rules and regulations.
4 So actually they are safe and the people that is
5 coming through the State of Ohio is safe also.

6 Q. What sort of training do you have in
7 the area of motor carrier enforcement?

8 A. We train for up to six weeks down in
9 Columbus at the Academy going through North
10 American training where they teach us all about
11 the trucks and mechanics and how the truck
12 operates.

13 And also we train for hazmat
14 vehicles and tractor-trailer with doubles and
15 triples. And then school buses and tankers,
16 stuff like that.

17 Q. Do you do continuing yearly training
18 as well?

19 A. Yes. We have what you call
20 in-service. Twice a year we go back down to
21 Columbus and do like refresher doing in-service,
22 any new laws that the PUCO or any regulations
23 that we need to learn about, we do that.

24 Then once a month they send videos
25 and anything that is new within the commercial

1 travel, commercial vehicles, we have to train,
 2 they send us some videos or read, sign that you
 3 read, sign that we completed that training.

4 Q. How many inspections on average do
 5 you perform in a year?

6 A. I would say between 1,200 to 1,400
 7 inspections per year.

8 Q. And those motor carrier inspections,
 9 they are conducted to protect the safety of the
 10 Ohio traveling public and the traveling public
 11 through Ohio; correct?

12 A. Yes, sir.

13 MR. BEELER: May I approach
 14 the witness, your Honor?

15 ATTORNEY EXAMINER: You may.

16 MR. BEELER: I have here what's
 17 marked as Staff Exhibit 1, the Driver/Vehicle
 18 Examination Report with an inspection date of
 19 July 8th, 2015.

20 (EXHIBIT MARKED FOR THE PURPOSE OF
 21 IDENTIFICATION)

22 Q. Take a moment to look that over.
 23 Do you recognize this document?

24 A. Yes.

25 Q. Is this document a patrol record?

1 A. Yes. The only difference is the top
2 header is just a little different. Where ours
3 has the Highway State Patrol this one has the
4 Public Utilities Commission of Ohio. But all
5 the information is exactly the same.

6 Q. Are these reports kept in your
7 ordinary course of business?

8 A. Yes.

9 Q. It's the practice of the Patrol to
10 make these reports; correct?

11 A. Yes.

12 Q. Do you report on matters observed
13 pursuant to a duty imposed by law which there
14 was a duty to report?

15 A. Yes.

16 Q. And again you said that this
17 document is in the same condition, similar
18 condition, as it was when you prepared it?

19 A. Correct.

20 Q. And the reason for you producing
21 this report was an inspection of a motor carrier
22 vehicle operated by Bridge Terminal Transport
23 Services, Inc?

24 A. Correct.

25 Q. Do you remember the inspection?

1 A. Yes, I do.

2 Q. Okay. Who is the driver listed on
3 the report?

4 A. Tommy L. Shad.

5 Q. Is Mr. Shad here today?

6 A. Yes.

7 Q. Does the driver get a copy of the
8 report at the stop?

9 A. Yes.

10 Q. Are there any violations noted on
11 this report?

12 A. Yes, there are.

13 Q. What are they?

14 A. First one under Section 338.23
15 (a) (2) is operating a CMV with a CDL restriction
16 as driving an international move with an
17 intrastate restriction on the license or the
18 CDL.

19 Q. Okay. And the other one?

20 A. And the other one is under 392.82
21 (a) (1), using a hand held mobile telephone while
22 operating a CMV, driving while using a hand held
23 communication device.

24 Q. Okay. Starting with the 49 CFR
25 338.12 (a) (2), which is operating CMV with an

1 improper CDL. So to start, you did observe Mr.
2 Shad operating a commercial vehicle; correct?

3 A. Correct.

4 Q. Have you inspected this type of
5 violation before?

6 A. Yes.

7 Q. Please explain how Mr. Shad violated
8 this section.

9 A. Well, it was a violation because his
10 CDL had intrastate only, meaning he can operate
11 a motor vehicle with products that's produced in
12 the State of Ohio, and deliver in the State of
13 Ohio.

14 He is in violation of this law
15 because he was driving not intrastate but by
16 continuation of a international move, meaning
17 the product came from outside the United States,
18 came into the United States, and then he picked
19 it up and continued the international move to
20 Akron, Ohio actually from China.

21 Q. And his CDL did have an intrastate
22 restriction on it?

23 A. Yes.

24 Q. And you were able to look up on your
25 computer in your car if Mr. Shad's CDL was

1 limited to only intrastate moves?

2 A. Right.

3 Q. And we will come back to that, but
4 first how did you know that this was an
5 interstate load?

6 A. International load. What I did was
7 I looked at the manifest, and by looking at the
8 manifest I had to cut the seal on the intermodal
9 to verify that it was an international move.

10 That product was not produced in the
11 State of Ohio, and shipped within the State of
12 Ohio. It was actually produced in China,
13 shipped over here, and then continuation of the
14 international move.

15 Q. Was there a label on the packaging
16 in the trailer that showed that it was an
17 international move?

18 A. Yes.

19 MR. BEELER: May I approach, your
20 Honor?

21 ATTORNEY EXAMINER: You may.

22 MR. BEELER: Thank you. I have
23 marked as Staff Exhibit 2 a photograph.

24 (EXHIBIT HEREBY MARKED FOR
25 IDENTIFICATION PURPOSES)

1 ATTORNEY EXAMINER: Thank you.

2 Q. Do you recognize this picture?

3 A. Yes.

4 Q. Did you take this picture?

5 A. Sure. Yes.

6 Q. Does this picture accurately
7 represent the scene at the day of the
8 inspection?

9 A. Yes.

10 Q. What does this picture show?

11 A. It shows the origin of the product
12 and then where it's going, the destination,
13 where it's shipped to.

14 Q. And the origin is Guangdong
15 Province, China?

16 A. Correct.

17 Q. And then the destination or the to
18 is Imperial Electric in Akron, Ohio?

19 A. Correct.

20 Q. So it is your testimony that this
21 picture supports your statement in your report
22 that the driver had a limitation on his CDL for
23 intrastate moves only; correct?

24 A. Correct.

25 MR. BEELER: Okay. May I approach,

1 your Honor?

2 ATTORNEY EXAMINER: You may.

3 MR. BEELEER: Previously marked as
4 Staff Exhibit 3, another photograph.

5 (EXHIBIT HEREBY MARKED FOR
6 IDENTIFICATION PURPOSES)

7 Q. Do you recognize this photograph?

8 A. Yes.

9 Q. Did you take this photograph?

10 A. Correct.

11 Q. Does this photograph accurately
12 represent the scene the day of the inspection?

13 A. Yes.

14 Q. What does this photograph show?

15 A. This shows the restriction on
16 the actual license from the LEADS, where we type
17 in the LEADS. It pulls up all the information
18 on the particular driver. And this time it
19 shows he had a restriction of intrastate only.

20 We normally find out when we first
21 pull someone over, we take their license back to
22 the patrol car, you run the information through
23 LEADS to find out, make sure their license is
24 valid and to see if there are any type of
25 restrictions on it.

1 Once this comes up it lets you know
2 how far to do your investigation to find out if
3 he is hauling product, is it intrastate or is it
4 interstate or international.

5 Q. So this is a photograph of the
6 actual screen in your vehicle?

7 A. Yes. Computer in my patrol car,
8 yes.

9 Q. And the restriction there about
10 mid-way down the page it says restriction for
11 intrastate only?

12 A. Correct.

13 Q. So it's your testimony that this
14 picture supports your statement that the driver
15 had a limitation on his CDL; correct?

16 A. Yes.

17 Q. You are familiar with the FMCSA
18 guidelines; correct?

19 A. Correct.

20 Q. And according to those guidelines
21 you distinguish between an intra and an
22 interstate commerce by looking at the essential
23 character of the movement; is that correct?

24 A. That's correct.

25 Q. And that is manifested by the

1 shipper's fixed and persistent intent at the
2 time of the shipping which is ascertained from
3 all the facts and circumstances surrounding the
4 transportation; correct?

5 A. Correct.

6 Q. Okay. And in Staff Exhibit 2, if
7 you look at it, that's the label, make sure the
8 label says China to Akron in one move; correct?

9 A. Correct.

10 Q. According to your report, Staff
11 Exhibit 1, you state on the report that the
12 cargo seal was removed; is that correct?

13 A. That's correct.

14 Q. Where do you state that on the
15 report?

16 A. If you look where it says Vehicle
17 Information, Vehicle Identification, excuse me,
18 it has "Cargo seal removed and then seal
19 replaced."

20 Q. So you both removed it and then you
21 replaced it at the end of the inspection?

22 A. Yes.

23 Q. Okay. Does the cargo seal, does
24 that typically indicate an interstate or an
25 international load?

1 A. Not necessarily. A lot of people
2 seal the products for security reasons. But in
3 this particular case you had to -- once we
4 finally had the restriction we asked where the
5 product come from. We had to make sure the
6 product actually did come from China or
7 overseas, or make sure that he wasn't in
8 violation of his restriction of intrastate only.

9 So at that point that's why I had to
10 cut the seal of the intermodal so I could go in
11 there and check the manifest or the product to
12 make sure that is what we had a violation of.

13 Q. So based on your observations and
14 from some of the photos that you took it's your
15 opinion that this was an interstate or
16 international move; correct?

17 A. Correct.

18 Q. Okay. Then as a result of those
19 observations you cited Mr. Shad for
20 the violation; correct?

21 A. That's correct.

22 Q. Okay. Now turning to the second
23 violation, that is 49 CFR 392.82 (a)(1). You
24 observed Mr. Shad using a hand held
25 communication device; correct?

1 A. That's correct.

2 Q. How did you observe that?

3 A. I sit where I can see truckers come
4 down the road. I use binoculars at this
5 particular time because a lot of times I look to
6 see if they are in violation of seat belt
7 violation, because unfortunately a lot of
8 commercial drivers don't drive with their belt
9 on.

10 So as I am sitting with my
11 binoculars watching the vehicles approach I
12 observed him on his cell phone, using a hand
13 held communication devise

14 Q. Was he talking on his cell phone or
15 just using it?

16 A. Using it. He had it in his hand.

17 Q. Okay. For a violation of a hand
18 held communication device, does it necessarily
19 have to be a cell phone?

20 A. No. It can be any communication
21 device that you have in your hand trying to
22 utilize it, texting or trying to dial a number,
23 or even putting coordinates in your GPS.

24 Q. Okay. Did you have a conversation
25 about this violation with the driver at the

1 stop?

2 A. Yes.

3 Q. What did you discuss?

4 A. I asked the driver, I ask all what
5 is the company's policy on using the hand held
6 as a communication device. And a lot respond I
7 am trying to talk to the company, I am trying to
8 talk to my wife, trying to text someone.

9 The reason I am doing that is
10 because there is different violations you can
11 utilize. If it's the company calling the driver
12 there is a different violation for that. So I
13 am establishing what violation am I going to
14 utilize for that particular driver.

15 Q. What was your exact conversation
16 with Mr. Shad that day?

17 A. I asked him was he aware that, I
18 mean, what was your company's policy you using a
19 hand held communication device.

20 Q. What did he respond?

21 A. He said, yes, he was trying to text
22 his boss, trying to talk to his boss.

23 Q. Okay. Again you said you had
24 binoculars; correct?

25 A. Correct.

1 Q. And binoculars would make it easier
2 to observe the violation; correct?

3 A. See a lot that way, yes.

4 Q. Okay. Can you read just the
5 inspection notes from your report, that's about
6 three-quarters of the way down, Staff Exhibit 1?

7 A. Okay. It says "OBVI: Driving while
8 using a hand held communication device, driving
9 a international load with a intrastate
10 restriction on the driver's CDL."

11 Q. And I notice you have OBVI listed
12 there. What does that mean, why did you put it
13 there?

14 A. Obvious violation. That is
15 the reason code why I stopped, it was an obvious
16 violation I observed.

17 Q. And you might have said it, but I
18 might have missed it, the obvious violation here
19 was your observation of the --

20 A. Hand held communication device.

21 Q. And the notes that we just
22 referenced, those were completed at the same
23 time or contemporaneously with the vehicle stop;
24 correct?

25 A. Yes. With the inspection, at the

1 time of the inspection.

2 Q. So commonly as part of your job you
3 look specifically for drivers using hand held
4 devices; correct?

5 A. Right. Had seat belt on, other
6 obvious violations. Light, various lights out,
7 stuff like that.

8 Q. Sure. The stop was at 1:16 in the
9 afternoon; correct?

10 A. Correct.

11 Q. So nothing weather related would
12 have impeded your vision?

13 A. No.

14 Q. So as a result of these observations
15 you cited the driver for the violation; correct?

16 A. Correct.

17 Q. Again, it is your testimony here
18 today that you observed Mr. Shad using a hand
19 held communication device while operating a
20 commercial motor vehicle; correct?

21 A. Yes.

22 Q. Anything else important to note that
23 we have not discussed here today that you feel
24 the Commission would like to know for the
25 record?

1 A. Yes. I guess I would add that using
2 a hand held, use of the hand held communication
3 device because that includes you calling, trying
4 to put the GPS coordinates or you are texting.
5 A lot of times if you are texting you won't have
6 a -- if we come up you won't have a chance to
7 complete your text, or of you are calling, most
8 people I pull beside them, I give them a chance
9 to put the phone down. I motion to them if they
10 are on the phone and normally they put the phone
11 down.

12 It's still a violation, yes, but I
13 still stop them and charge them with a
14 violation, sure I do. And that is why, like I
15 said, that is why I utilize this, using hand
16 held communication device. That is not just
17 limited to cell phones, it's any electronic
18 device you use while operating a motor vehicle.

19 Q. Anything else?

20 A. No.

21 MR. BEELER: No further questions,
22 your Honor.

23 ATTORNEY EXAMINER: Thank you.

24 MR. BEELER: At this time though I
25 would move for admission of Staff Exhibits 1, 2

1 and 3 subject to cross-examination by Mr. Shad.

2 ATTORNEY EXAMINER: Okay. I have a
3 couple questions, sir.

4 EXAMINATION

5 By the Attorney Examiner:

6 Q. First, on the CDL restriction, is
7 that a restriction of what he can drive, or is
8 that about the load specifically?

9 A. Yes. That is the load, and that is
10 to limit the driver. So, in other words, he
11 only can operate something that is
12 manufactured -- manufactured in the State of
13 Ohio, in that particular state, and then
14 delivered within that state. That is the
15 intrastate restriction.

16 If it comes from another state
17 across the line it becomes interstate move.
18 If you have a restriction, although you may pick
19 up in the State of Ohio and deliver it within
20 the State of Ohio, that is still a continuation
21 of an intrastate move.

22 So you can operate that, you can
23 haul that move, that load. And it comes from
24 out of this country that is the continuation of
25 the international move. So you can't haul that

1 particular load.

2 Q. Even if he did all his driving
3 within Ohio it's still a violation?

4 A. It would be a violation if
5 the product didn't originate in Ohio. Now, add
6 this, say, for instance, steel, if they brought
7 steel here from China and it sat in a steel yard
8 until GM ordered it and they moved it to a steel
9 yard, that is still a continuation of
10 the international move. They haven't touched
11 the steel.

12 But if they bring the steel, say
13 take it to where they stamp doors out of it, now
14 the actual product was actually made in Ohio.
15 Now he can deliver it, he or she, whoever the
16 driver is.

17 ATTORNEY EXAMINER: Okay. Thank
18 you. Mr. Shad, any questions for Mr. Bell?

19 MR. SHAD: Yes, I do.

20 CROSS-EXAMINATION

21 By Mr. Shad:

22 Q. The pull over, you took my
23 paperwork, went back to your vehicle?

24 A. Yes.

25 Q. Come back, your statement was, "Mr.

1 Shad, you are in violation of intrastate and
2 interstate." Is that correct?

3 A. You are in violation of
4 international or intrastate because you have an
5 intrastate restriction.

6 Q. True. Is that correct?

7 A. Yes.

8 Q. And your next comment was, or
9 accusation, or accusing, you said "And you were
10 on your phone too." Is that correct?

11 A. You were on your cell phone, yes.

12 Q. Is that correct?

13 A. That's the first thing I said to
14 you.

15 Q. That is completely different than
16 what you just --

17 MR.BEELER: Objection, your Honor.
18 Ask questions, but he can't testified.

19 ATTORNEY EXAMINER: Mr. Shad, you
20 will have a chance to testify, but if you have
21 questions --

22 MR. SHAD: All right. No, no
23 further.

24 ATTORNEY EXAMINER: Nothing further?

25 MR. SHAD: No, sir.

1 ATTORNEY EXAMINER: Any cross or
2 redirect?

3 MR. BEELER: Can I have 30 seconds
4 to just check with him?

5 ATTORNEY EXAMINER: Sure.

6 (RECESS TAKEN)

7 MR. BEELER: No redirect.

8 ATTORNEY EXAMINER: Okay. Thank
9 you. You may step down.

10 MR. BEELER: At this time, your
11 Honor, I would reserve Inspector Bell for
12 rebuttal if necessary.

13 ATTORNEY EXAMINER: Okay.

14 MR. BEELER: And then I would renew
15 my motion for the admission of Staff Exhibits 1,
16 2 and 3.

17 ATTORNEY EXAMINER: Okay. And all
18 three of those will be admitted.

19 (EXHIBITS ADMITTED INTO EVIDENCE)

20 MR. BEELER: At this time, your
21 Honor, the Staff would call its second witness,
22 Thomas Persinger.

23 (WITNESS SWORN)

24 - - -

25 THOMAS PERSINGER

1 called as a witness, being first duly sworn,
 2 testified as follows:

3 DIRECT EXAMINATION

4 By Mr. Beeler:

5 Q. Good morning.

6 A. Good morning.

7 Q. Please state your name for the
 8 record.

9 A. My name is Thomas Persinger.

10 Q. Where are you employed?

11 A. I am employed with the Public
 12 Utilities Commission of Ohio in the
 13 Transportation Department, Compliance Division.

14 Q. What is your position?

15 A. My position is Compliance Officer.

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

18 A. About four and a half years.

19 Q. What are your duties?

20 A. My duties include determining fines
 21 on roadside inspections that are submitted, as
 22 well as trying to resolve those at the
 23 conference stage.

24 Q. Okay.

25 A. Any disputes arising from there.

1 Q. What are your expert qualifications
2 on the subject matter of violations, your
3 certification, your continuing education?

4 A. I have taken the North American
5 Standard Part A and Part B classes as well as
6 general hazmat, other bulk package and bulk
7 package or cargo tank classes.

8 And I do approximately 50
9 inspections a year to keep my certifications and
10 all of that.

11 Q. Any training on how calculations are
12 performed for the forfeitures?

13 A. Within the Department, yes.

14 Q. Explain just generally how you
15 determine amounts for forfeitures.

16 A. For non-hazardous material
17 violations, violations are determined from an
18 assessment chart, depending upon what group
19 the violation is, what specifically
20 the violation is, a set fine amount is
21 determined.

22 Q. Does the Commission apply this
23 process uniformly to everyone?

24 A. Yes, sir.

25 MR. BEELER: May I approach

1 the witness, your Honor?

2 ATTORNEY EXAMINER: You may.

3 MR. BEELER: I have what has
4 previously been marked as Staff Exhibit 4, a
5 Notice of Preliminary Determination sent to Mr.
6 Tommy Shad with the date of August 28th, 2015.

7 (EXHIBIT MARKED FOR IDENTIFICATION)

8 Q. Take a second to look at that. Do
9 you recognize this document?

10 A. Yes, sir.

11 Q. What is it?

12 A. This is a Notice of Preliminary
13 Determination letter.

14 Q. Was it prepared by you or under your
15 direction?

16 A. Yes, sir.

17 Q. Is this document a Commission
18 record?

19 A. Yes, sir.

20 Q. Is it kept in the ordinary course of
21 business?

22 A. Yes, sir.

23 Q. Is it the practice of the Commission
24 to make this determination?

25 A. Yes, sir.

1 Q. Is this document in the same or
2 similar condition as when you prepared it or it
3 was prepared under your direction?

4 A. Yes, sir.

5 Q. Explain how the civil forfeiture was
6 derived in this case.

7 A. The civil forfeiture was derived
8 from as Group 4 violations on the chart, on the
9 civil forfeiture chart. And for these
10 particular Group 4 violations \$250 forfeitures
11 were assigned to both fines.

12 Q. And the total for both violations
13 was \$500; is that correct?

14 A. Correct.

15 Q. Is this penalty consistent with the
16 recommended fine schedule in recommended civil
17 penalty procedure adopted by the Commercial
18 Motor Vehicle Alliance?

19 A. Yes, sir.

20 Q. And again forfeiture amount is \$500?

21 A. Yes, sir.

22 Q. And is that the correct forfeiture
23 amount for this case?

24 A. Yes, sir, it is.

25 Q. Would you recommend this amount to

1 the Commission?

2 A. Yes, I do.

3 Q. One other thing just to clear up for
4 the record, I notice on the Notice of
5 Preliminary Determination, it says the vehicle
6 operated by XPO Drayage Incorporated, whereas
7 the carrier on the Driver/Vehicle Examination
8 Report, which is Staff Exhibit 1, is Bridge
9 Terminal Transport Services, Inc. Do you know
10 why that is the case?

11 A. It's likely affiliated with the DOT
12 number on the inspection.

13 Q. So it's a possibility that the DOT
14 number, the name assigned to the DOT number,
15 could have changed since the time of the stop?

16 A. Yes, sir.

17 Q. So from your understanding as an
18 expert in the field it's possible that a
19 different name could be on the Driver/Vehicle
20 Examination Report than can be on the Notice of
21 Preliminary Determination?

22 A. Correct. Company names can an do
23 change. DOT number does not.

24 Q. But from what you understand in this
25 case these are both driver violations, so the

1 carrier name wouldn't necessarily be relevant
2 here; correct?

3 A. Yes, sir.

4 Q. Anything else you think would be
5 important to note that the Commission would like
6 to know and be in the record?

7 A. Not that I can think at this time.

8 MR. BEELER: Thank you. Your Honor,
9 no further questions.

10 ATTORNEY EXAMINER: Thank you. Mr.
11 Shad, do you have any questions?

12 MR. SHAD: Yes, I do.

13 ATTORNEY EXAMINER: Go ahead.

14 CROSS-EXAMINATION

15 By Mr. Shad:

16 Q. As far as the intrastate and
17 interstate, the driver's license Bureau, the
18 folks that sent the letter out, they are not so
19 educated on this interstate and intrastate; is
20 that true? Or do they get -- do they have a
21 full training for that?

22 MR. BEELER: I am going to object at
23 this time, Your Honor. Mr. Persinger is
24 testifying as to the calculation of the
25 forfeiture in this case. That question would

1 have been better directed at Inspector Bell.

2 ATTORNEY EXAMINER: Your question is
3 as to the fines?

4 MR. SHAD: As to the rules of
5 the interstate and intrastate. Are the people
6 that are recording this, and when you declare
7 yourself, are they well trained, completely
8 trained, as far as directing what the driver is
9 asking?

10 MR. BEELER: May I respond, your
11 Honor?

12 ATTORNEY EXAMINER: Yes.

13 MR. BEELER: Again, these would have
14 been great questions for Inspector Bell when he
15 was on the stand, but Mr. Persinger is not here
16 to testify as to the facts of the violation and
17 what occurred on that day and the interpretation
18 of the violation itself. He is mainly here to
19 discuss how the forfeiture was derived.

20 MR. SHAD: But I object to his
21 objection because he is in charge of issuing
22 these rules. Am I wrong?

23 ATTORNEY EXAMINER: I think the
24 violations you were charged with came from what
25 Mr. Beeler is saying is from the Inspector, and

1 they just issue the fines based on
2 the inspections that come in.

3 MR. SHAD: I understand.

4 ATTORNEY EXAMINER: So, based on --

5 MR. SHAD: Can I call Mr. Bell up to
6 the --

7 ATTORNEY EXAMINER: At this point
8 you cannot. That would have been good on the
9 first round.

10 MR. SHAD: I understand.

11 ATTORNEY EXAMINER: Any other
12 questions for Mr. Persinger?

13 MR. SHAD: No, there is no need in
14 asking him anything. Thank you.

15 ATTORNEY EXAMINER: Thank you.

16 MR. BEELER: No redirect, your
17 Honor.

18 ATTORNEY EXAMINER: Thank you. You
19 may step down.

20 MR. BEELER: At this time I will
21 move for the admission of what's been previously
22 marked as Staff Exhibit 4 into the record.

23 ATTORNEY EXAMINER: And that will be
24 admitted.

25 (EXHIBIT HEREBY ADMITTED INTO

1 EVIDENCE.

2 MR. BEELER: That is all I have.

3 MR. SHAD: Sir, who can I ask these
4 questions to? I mean, Mr. Bell obviously I
5 can't now. But my thoughts are when I declared
6 myself nobody knew --

7 ATTORNEY EXAMINER: Right now, now
8 is your time to present your case. So I can
9 call you to the stand, swear you in, and then
10 you can basically give your opinion of the facts
11 of how you understand them.

12 MR. SHAD: Thank you.

13 ATTORNEY EXAMINER: So if you want
14 to come up here.

15 (WITNESS SWORN)

16 - - -

17 TOMMY SHAD

18 called as a witness, being first duly sworn,
19 testified as follows:

20 ATTORNEY EXAMINER: So as I was
21 saying you can basically give your testimony of
22 how you see things and how you understand
23 things. And then Mr. Beeler will have a chance
24 to ask you questions after that.

25 MR. SHAD: Okay. My thoughts are

1 when I got the letter from the Ohio Public
2 Commission as to interstate and intrastate.
3 And I didn't know what they were talking about.

4 Drove a truck for 20 years or
5 better, and I called them on the phone and said
6 I got this letter, I don't know what this means,
7 interstate and intrastate. My license I thought
8 were intact.

9 What can I do? I had hazmat, I had
10 double, triples, everything but tanker. And all
11 I do is drive in Ohio. I don't go out of state.
12 So what is this -- what's the difference?

13 And they said, well, if you just
14 drive in Ohio all you need is intrastate, with
15 no explanation on product be produced in Ohio or
16 delivered in Ohio. No explanation of those
17 boundaries at all.

18 And Mr. Bell looked at me, actually
19 looked and said to me "You look confused." And
20 I said "I sure am confused."

21 And at the mercy of the Court, not
22 even the people at the motor vehicle Bureau, the
23 next day after we had our meeting, they didn't
24 have any idea what I was talking about. And
25 the lady that helped me, I explained to her, she

1 said "My God, my husband is a truck driver.

2 I am going to tell him about this."

3 I told other truck drivers that I
4 know, hey, declare yourself intrastate, or if
5 you do declare yourself intrastate you are in
6 trouble if you are driving containers, you
7 better get it straightened out.

8 And as I say, I didn't do that out
9 of arrogance or ignorance is what happened.
10 I had no idea of intrastate or interstate
11 product only in Ohio, delivered only in Ohio.
12 It was nothing but confusion.

13 And I thought with me talking to an
14 official over the phone that they cleared it up
15 for me. I only drive in Ohio, that is all I
16 needed.

17 I have a medical card, I had no
18 intentions on snobbing the system. And this, I
19 am wondering when did this law come, when did
20 this become -- when did this change? I am
21 not -- I never got a -- never had to declare
22 myself, I guess I might say, before this. Did
23 this just come about?

24 ATTORNEY EXAMINER: We can't answer
25 your questions, unfortunately.

1 MR. SHAD: Okay. I got you. Not
2 understanding. And, like I say, I am at the
3 mercy of the court on it.

4 I have my phone records. I don't
5 know who I present this to.

6 ATTORNEY EXAMINER: Do you want to
7 present this as an exhibit?

8 MR. SHAD: Sure. Who do I present
9 it to?

10 ATTORNEY EXAMINER: Actually it goes
11 into my record. Mr. Beeler gets a copy. Do you
12 need to keep that copy? Do you have it?

13 MR. SHAD: Are you who I talked to
14 on the phone, by the way? Okay.

15 ATTORNEY EXAMINER: Thank you. I
16 will mark this as Respondent's Exhibit 1.

17 (EXHIBIT MARKED FOR THE PURPOSE OF
18 IDENTIFICATION)

19 MR. SHAD: I wasn't texting on my
20 phone driving down the road. It's an incredible
21 thought. Crazy thought. But, as I said, the
22 record speaks for itself. I wasn't talking to
23 my company on the phone, or anybody.

24 Nor did I have a conversation with
25 Mr. Bell about talking to my company on the

1 phone, or texting on my phone to my company.
2 That conversation between him and I was never --
3 I don't remember one word about talking -- you
4 and I talking about talking to my company on the
5 phone, or texting my company on the phone.

6 ATTORNEY EXAMINER: Anything else?

7 MR. SHAD: I have nothing else to
8 say. I apologize to the State about the
9 intrastate and interstate. I would say that.
10 And I learned a big lesson there.

11 ATTORNEY EXAMINER: Mr. Beeler, do
12 you have any questions?

13 MR. BEELER: Yes, just a few, your
14 Honor.

15 CROSS-EXAMINATION

16 By Mr. Beeler:

17 Q. So, you don't have a copy of your
18 phone records up there?

19 ATTORNEY EXAMINER: He can look at
20 mine.

21 Q. Who is Chadsky Inc?

22 A. That is the owner of the phone
23 and the truck I was driving.

24 Q. So is that your work phone?

25 A. It was.

1 Q. Do you have a personal phone too?

2 A. No.

3 Q. And you don't have a personal --

4 A. I have -- I used that as my personal
5 phone.

6 Q. As your personal cell phone?

7 A. Yes, yes.

8 Q. From what you see on this report
9 that just shows phone calls; correct?

10 A. I don't know to be honest. I just
11 asked for records.

12 Q. Okay. But if you look, I guess I
13 don't know how many columns over, but it says
14 minutes; right?

15 A. Yes.

16 Q. And then below all those minutes are
17 just, you know, amounts of time; right?

18 A. Right. Wouldn't texting show up in
19 that category as far as minutes go?

20 Q. You tell me.

21 A. I don't --

22 Q. I don't believe that this shows
23 texts or not.

24 A. I just show usage in my thoughts.

25 Q. And usage, and you do admit that

1 there is a column there that says minutes with
2 minutes listed there?

3 A. Yes.

4 Q. And those correspond with the
5 numbers of incoming and outgoing calls in the
6 other columns?

7 A. Yes, sir. It doesn't say -- it
8 doesn't categorize, it just says usage. And if
9 you are on the phone in any form or fashion it's
10 going to be recorded in my view.

11 Q. Okay. And turning just to the
12 other -- the intra and interstate, did
13 the Inspector tell you anything that you could
14 do to fix the restriction on your CDL?

15 A. No, sir. I went -- I directly went
16 to the, as far as I remember, I went directly
17 the next day to the motor vehicle Bureau, Bureau
18 of vehicles in Parma, and went back to
19 interstate.

20 Q. So the day after the inspection you
21 went to the --

22 A. Yes, sir.

23 Q. The Parma Bureau of Motor Vehicles?

24 A. Yes, sir.

25 Q. You went and you got the restriction

1 changed from intrastate to interstate?

2 A. Correct. Because in my view that
3 wasn't -- intrastate or interstate wasn't doing
4 me any good as far as making my job easier or
5 making my job quick. I was interstate prior to
6 proclaiming I was intrastate, and I just -- I
7 don't drive out of the state, and I am thinking,
8 well, that was what it accomplished. I don't
9 drive out of state.

10 I already had a physical card and I
11 presented it to Mr. Bell. And I never
12 thought -- and I pick up the equipment in the
13 rail yard. Product, I don't know what's in
14 there. I am not allowed to pop the seal unless
15 authority has me do it. Got to wait until I get
16 to the customer.

17 MR. BEELER: No further questions,
18 your Honor. Thank you.

19 ATTORNEY EXAMINER: Thank you. Do
20 you have any response to the questions you were
21 just asked?

22 MR. SHAD: Who would I ask?

23 ATTORNEY EXAMINER: Just anything
24 you want to say after being asked those
25 questions.

1 MR. SHAD: Intrastate, interstate?
2 Really asking for the mercy of the Court. I
3 truly wasn't trying to be getting over on the
4 State because it didn't cost me -- it cost, it's
5 going to cost me, but it didn't help me in my
6 job whatsoever in my views. I wasn't trying to
7 be sly there or whatever you want to put in it.
8 I wasn't trying to get over on the State.

9 ATTORNEY EXAMINER: All right.
10 Thank you. You may step down. Mr. Shad, would
11 you like this phone record made an official part
12 of this court record?

13 MR. SHAD: Well, if you don't need
14 them. I mean --

15 MR. BEELER: No objection.

16 ATTORNEY EXAMINER: Okay. It will
17 be admitted.

18 (EXHIBIT HEREBY ADMITTED INTO
19 EVIDENCE)

20 ATTORNEY EXAMINER: Anything
21 further?

22 MR. BEELER: One moment. Nothing
23 further, your Honor. Thank you.

24 ATTORNEY EXAMINER: Thank you. The
25 Commission will take everything under

1 advisement. I will get a copy of
2 the transcript, which the transcript will be
3 available on the website within a few weeks
4 usually.

5 The Commission will look over
6 everything and issue a ruling as soon as they
7 can. We are adjourned. Thank you.

8 MR. SHAD: Thank you for listening
9 to me.

10 MR. BEELER: Thank you.

11 (At 10:50 A.M. the hearing was
12 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
January 26, 2016, and carefully compared with my
original stenographic notes.

Michael O. Spencer,
Registered Professional
Reporter.

- - -

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Case No(s). 15-1521-TR-CVF

Summary: Transcript in the matter of the Tommy Shad hearing held on 01/26/16 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Spencer, Michael O. Mr.