

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Andrzej :
Jan Lazarus, Notice of :
Apparent Violation and : Case No. 15-1429-TR-CVF
Intent to Assess :
Forfeiture. :

- - -

PROCEEDINGS

before Ms. Sarah Parrot, 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, February 11, 2016.

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On behalf of the Staff of the PUCO.

Mr. Andrzej Jan Lazarus
P.O. Box 50296
Los Angeles, California 90050

On his own behalf.

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1 Thursday Morning Session,
2 February 11, 2016.

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4 EXAMINER PARROT: The Public Utilities
5 Commission of Ohio has called for hearing at this
6 time and place Case No. 15-1429-TR-CVF, being in the
7 Matter of Andrzej Jan Lazarus, Notice of Apparent
8 Violation and Intent to Assess Forfeiture.

9 My name is Sarah Parrot. I am the
10 Attorney Examiner assigned by the Commission to hear
11 this case. Let's get started with appearances of the
12 parties and we will start with the staff.

13 MR. JONES: Yes, good morning, your
14 Honor. On behalf of the staff of the Public
15 Utilities Commission of Ohio, Ohio Attorney General
16 Mike DeWine, Assistant Attorney General John Jones,
17 180 East Broad Street, Columbus, Ohio 43215.

18 EXAMINER PARROT: Thank you.

19 Mr. Lazarus, at this time if you could
20 just state and spell also your full name and also
21 provide your address for the record.

22 MR. LAZARUS: Yes. My name is Andrzej
23 Lazarus. The address is Los Angeles, California
24 90050, P.O. Box 50296.

25 EXAMINER PARROT: Okay. And the spelling

1 of your first name is?

2 MR. LAZARUS: A-N-D-R-Z-E-J.

3 EXAMINER PARROT: Thank you. And your
4 last name is Lazarus, typical spelling on that.
5 Thank you.

6 All right. Do we have any preliminary
7 matters to address before we call our first witness?

8 MR. JONES: Let's see here, I don't
9 believe so, no.

10 EXAMINER PARROT: All right. Then,
11 Mr. Jones, you may call your witness.

12 MR. JONES: Thank you, your Honor. The
13 staff would call Lieutenant Weakley to the stand.

14 EXAMINER PARROT: Okay.

15 - - -

16 LIEUTENANT KELLY WEAKLEY
17 being first duly sworn, as prescribed by law, was
18 examined and testified as follows:

19 DIRECT EXAMINATION

20 By Mr. Jones:

21 Q. Would you please state your name for the
22 record.

23 A. Kelly D. Weakley.

24 Q. And where are you employed?

25 A. I'm a Lieutenant with the Ohio State

1 Highway Patrol.

2 Q. Okay. And what are your job duties and
3 responsibilities?

4 A. I am the commander of the Columbus
5 District Commercial Enforcement Unit that includes
6 the motor carrier inspectors and school bus
7 inspectors for central Ohio.

8 Q. And how long have you been so employed?

9 A. Over 18 years.

10 Q. And what training have you had for
11 qualifying for your position?

12 A. As a Trooper, we went through six months
13 of the academy and then graduated and became sworn
14 State Troopers and then I spent several years on the
15 road before I came into the Commercial Enforcement
16 Section which I have been a part of for nine years.

17 And we had to go through North American
18 Standard inspection courses. There's part A and B.
19 Part A is the -- is the driver part that talks about
20 hours of service and there's a part B section that
21 talks about the vehicle. And then I also went
22 through the hazardous material inspection course,
23 also a cargo tank inspection course, and other bulk
24 packaging inspection course, those classes were each
25 a week long, and then a passenger carrying vehicle

1 course which is inspecting motor coaches.

2 Q. And do you have annual update training?

3 A. Annual, yes, we do annual in-service
4 training, yes.

5 Q. Okay. All right. And so do you have any
6 certifications then?

7 A. Yes. I am certified for level I is what
8 we call them which is the full inspections. I'm
9 certified to conduct a full inspection on any motor
10 carrier. I'm also hazardous materials certified
11 which means I can inspect a vehicle that has non-bulk
12 hazardous materials placarded, and I am also
13 certified to inspect cargo tanks and then certified
14 to inspect buses.

15 Q. And what is your jurisdiction?

16 A. The state of Ohio, any street or roadway
17 in the state of Ohio.

18 Q. Okay. And what equipment is issued to
19 you to perform your duties?

20 A. We have our patrol car with all the
21 necessary equipment that we need, uniform, our
22 inspection equipment such as a -- you know, we have
23 wheel chocks, creeper, tape measure, flashlight, just
24 regular chalk to mark the brakes, and there's several
25 different pieces of equipment that we use to inspect

1 trucks along with, of course, our materials, you
2 know, manuals we have in our vehicles.

3 Q. Okay. And do you generate any
4 documentation as a result of conducting an
5 inspection?

6 A. Yes, sir, we do.

7 Q. And what would that be?

8 A. Just generate the inspection report
9 through our laptop and we type in using the Aspen
10 program and we print off the report.

11 Q. Okay.

12 MR. JONES: Your Honor, may I approach
13 the witness, please?

14 EXAMINER PARROT: You may.

15 Q. Lieutenant Weakley, I hand you what I
16 want to mark as Staff Exhibit 1. Could you please
17 identify that document for the record, please.

18 A. This is a Driver/Vehicle Examination
19 Report for Andrzej Lazarus. It's a level I
20 inspection report.

21 Q. Okay.

22 EXAMINER PARROT: All right. It's been
23 marked as Staff Exhibit 1.

24 MR. JONES: Thank you, your Honor.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 Q. And does this resemble the report that
2 was generated concerning an inspection that occurred
3 on May 20, 2015, and involving Mr. Lazarus?

4 A. Yes, sir.

5 Q. Okay. And if you would then look at
6 Staff Exhibit 1 and look at the top here has some
7 information regarding a report number, inspection
8 date, inspection level. Could you please tell us
9 about that information, please.

10 A. The report number is -- is the four
11 numbers. 1552 is my identification number and then
12 the inspection number generated, inspection date
13 there, the time started 13:05, time ended 14:45,
14 inspection level's indicated it's a full inspection,
15 and there was no hazmat inspection.

16 Q. And so the inspection took how much time
17 then according to your time started and ended time?

18 A. Hour and 45 minutes --

19 Q. Okay.

20 A. -- roughly.

21 Q. And could you describe what is entailed
22 in a full inspection.

23 A. A full inspection entails inspecting the
24 driver's credentials, making sure it has proper --
25 within the proper hours of service, checking the

1 medical card, checking his license, also checking
2 credentials through FMCSA via a computer we use. We
3 log onto the FMCSA portal and check the driver's
4 credentials there. We also check the vehicle
5 credentials using the DOT number, and then we -- we
6 inspect the entire vehicle for a level I inspection.

7 We check -- basically we start with the
8 driver. We look at -- go up there with them. We
9 check to make sure we have him pump down his brakes.
10 We check a low air warning light. We check horn. We
11 check windshield wipers. We check, make sure he has
12 a fire extinguisher that's in working order, make
13 sure he has safety triangles.

14 And then I would move to the outside of
15 the vehicle and have him turn on all of his lights,
16 and then we -- I check all the lights, make sure the
17 low beam, high beams are working. I didn't mention
18 that. Make sure he activates his horn, turn signals,
19 ID lights, clearance lights, and then I tell him to
20 watch me in his mirrors, and I will move towards the
21 back, you know, I look at the vehicle.

22 I will be looking at the tires as well
23 when I'm walking back. I kick the tires, make sure
24 they have proper inflation. Then I would ask him to
25 use his turn signals. I will check the turn signals

1 on the tractor. I'll check brake lights, make sure
2 all the lights are working. I'll make sure the
3 connections are how they are supposed to be between
4 the tractor and trailer, the gladhands, and I will
5 continue on back to the rear of the vehicle. I will
6 look underneath while I am doing that to see if I see
7 anything unusual about the frame or support of the
8 trailer.

9 And then I'll get to the rear, and I will
10 have him -- I will signal him for left turn signal,
11 right turn signal, and then this for apply the
12 brakes, make sure all those lights are working. I
13 will check the ID and clearance lights on the top of
14 the trailer, you know, as I am also checking the
15 tires at that time too.

16 And then I will move around to the right
17 side of the vehicle, and it's the same protocol. I
18 will check the tires, kick the tires, make sure the
19 wheels -- there is no cracks in the wheel hubs, make
20 sure that the lug nuts are secure by physically
21 touching those, make sure that the trailer is hooked
22 in correctly. There is holes that the trailer has to
23 lock into, locking mechanisms. I will make sure
24 those are locked in correctly.

25 And then I just continue up slowly up to

1 the front and, once again, I will look underneath and
 2 if there is anything I can see at that time, I will
 3 check the tires on the right side. And then I'll
 4 come around and I failed to mention that I do chock
 5 the tires on the vehicle and then to -- at that point
 6 once the vehicles are -- his tires were chocked, I'll
 7 get my creeper out of my vehicle; and, you know, I
 8 will tell him what I am going to do. I'm going --
 9 don't have him touch anything. I will have him open
 10 up his hood with the engine running. I will have
 11 him -- I will check the steering lag, have him rock
 12 the steering back and forth and make sure there is
 13 nothing wrong with the pitman arm and steering
 14 mechanism. And this is while the engine is running.

15 And then I'll ask him how much air he has
 16 in the brake compartment. I want the air to be at
 17 least over 100, preferably 120 pounds. And then at
 18 that time I will tell him to shut off the tractor.
 19 And then I will have him shut the tractor off, and
 20 then I will tell him to release the brakes. The
 21 wheels are chocked, so if it moves, it is not going
 22 to move very far. And then I will go underneath and
 23 measure all the brakes by, you know, what we do is we
 24 chock the brakes where the pushrods are, and so I'll
 25 mark all the brakes. I don't have to go underneath

1 the tractor. I will mark the tractor brakes, and
2 then I will go underneath and mark all the brakes
3 under the tractor and the trailer.

4 While I am doing that, I am looking for
5 any kind of unusual brake wear, pads, shoes, you
6 know, linings, making sure everything is okay there.
7 And then when I come out, I will tell him -- I will
8 make sure he has proper air again, and if he -- you
9 know, if the driver doesn't, we'll build up the air
10 again. So with the brake's released, with the proper
11 air, I indicate to the driver that I want him to --
12 him or her to apply the brake as if coming to an
13 emergency stop and hold while I go through and
14 measure all the brakes. So at that time the
15 driver -- ask if he is ready, the driver applies the
16 brake, and then I take measurements.

17 And if you want me to talk about this
18 inspection at this time.

19 Q. Yeah, just hold you there for a second.

20 A. Okay.

21 Q. Okay. So let's go to this day of May 20,
22 2015. Now, what was the cause for the stop and the
23 inspection of Mr. Lazarus?

24 A. The cause for the stop was the running
25 the DOT number through the federal system, and it

1 came back as a high DOT number. It's what we call an
2 Inspection Selection System, ISS, is what we use to
3 code it. That's what's coded on the inspection
4 report and that's why I stopped the vehicle, based on
5 the high DOT number. It tells me that I can inspect
6 the vehicle.

7 Q. And where were you at when you observed
8 this?

9 A. I was on Interstate 71 in Delaware
10 County, state of Ohio.

11 Q. Okay. Were you stationary at that point?

12 A. Yes.

13 Q. Okay. And --

14 A. I believe I was stationary as the truck
15 went by; and then, you know, I wouldn't be able to
16 see the DOT number as it went by. I would have to
17 come out to drive up to the vehicle alongside and
18 punch in the DOT number.

19 Q. Okay.

20 A. And then at that time I would back off
21 and initiate the traffic stop.

22 Q. Okay. So then you ran that number. You
23 saw this is a high risk for safety issues for this
24 particular number for the truck?

25 A. Yes, sir.

1 Q. And you made that stop at that time.

2 A. Yes, sir. I stopped him into the rest
3 area there on 71 in Delaware County southbound.

4 Q. Okay.

5 A. Southbound rest area.

6 Q. At this time you were on duty and in
7 uniform?

8 A. Correct, in a marked cruiser.

9 Q. In a marked cruiser.

10 A. Yes, sir.

11 Q. And then tell us then as to this specific
12 stop and inspection what occurred.

13 A. Okay. Well, I stopped Mr. Lazarus, and
14 then as I indicated, I told him we were going to be
15 doing a full inspection which is a level I. And as I
16 indicated what the procedure was, at that time you
17 know, he was cooperative. And so if I may go back to
18 the point where when I checked the -- there was no
19 vi -- I am not finding any violations with
20 Mr. Lazarus or the tractor but when -- when I went
21 through the brake procedure on -- you know, when I
22 was going back to measure the brakes, he had applied
23 the brakes. There -- the slack adjustor on each of
24 the four trailer brakes did not move. And it's
25 not -- you know, it's not unusual, it's not, but I

1 always come out and double-check and make sure the
2 brakes are released and, you know, he had been
3 applying the brakes and we had the proper air as we
4 had before and he did.

5 And there was no -- no movement on four
6 of the trailer brakes on both axles 4 and 5. Asked
7 for a second opinion. John -- Motor Carrier Officer
8 John Fate was there and asked him if he could come
9 over there and look at them with him just to get
10 another opinion but.

11 Q. Can you explain in more detail the
12 testing process for you to make that determination?

13 A. Well, as far as how I came about the
14 violation?

15 Q. Yes, yes.

16 A. Well, he built up the proper amount of
17 air into the system into the tractor and then all --
18 I had already chocked all the brakes and I was ready
19 to take a measurement and then I told him hit the
20 brakes. I checked the tractor brakes, and you could
21 see that the tractor I got measurements from each of
22 the three axles on the tractor as indicated on
23 Exhibit 1. And then when I was getting underneath to
24 measure the trailer brakes, they had not moved from
25 my mark because usually we are measuring where I mark

1 the chock. When the slack adjustor moves, you know,
2 we will take a measurement to see how far that
3 pushrod travels. And there was no travel on that
4 pushrod so there was nothing to measure.

5 We marked it as inoperative, and I wanted
6 another inspector to take a look at it just in case
7 there was something I was not seeing because, you
8 know, as I said, it's not unusual but it's not
9 entirely common, I guess, that, you know, a lot of
10 times I'll see -- I have been doing this for nine
11 years. I'll see, you know, one brake maybe
12 inoperative or not work on a trailer but not all
13 four, so I thought that was kind of unusual.

14 So we went through an air loss test as
15 indicated on the exhibit. What we do is we have them
16 build up the air again since he has been applying,
17 the air has been lost, so I have him build up his air
18 again and then apply the brakes. And he was -- what
19 we are looking for is seeing if we go up and look at
20 the gauge and make sure the gauge doesn't drop off
21 drastically. And there was -- he was maintaining air
22 in the tractor.

23 So we couldn't understand what -- we
24 didn't know what was going on. We are not mechanics.
25 Obviously there was something not, you know, working

1 with the trailer that did not allow the brakes to
2 function properly.

3 Q. So all the problems were confined to the
4 trailer axles --

5 A. Correct.

6 Q. -- and brakes?

7 A. In fact, I issued what we call a CVSA
8 decal. Correction, I did not. I am mistaken. I did
9 not issue a CVSA decal due to the combination
10 vehicle, but at that time after I typed up the
11 report, Mr. Lazarus, you know, we told him your
12 brakes aren't working on the trailer. You know, he
13 was nice, but then he kind of was trying to convince
14 me not to write that violation. I said I'm not going
15 to ignore the violation. It's a serious violation.
16 Brakes on the trailer aren't working, so we are going
17 to write them and placed him out of service.

18 I did place an out-of-service decal on
19 his trailer which is indicated on the report. I told
20 him he would not be able to move the trailer until
21 those violations were fixed on the brakes.

22 Q. Okay. And I see that you are referring
23 to the violations portion or part of the report
24 marked as Staff Exhibit 1. And how many violations
25 have you noted there from that inspection?

1 A. There's six violations but -- so each of
2 the brake -- got No. 1 the axle for right side
3 inoperative. The second violation, 393.53(b) is
4 something that automatically comes up, asks you when
5 you write a violation on a brake such as 393.47, it
6 asks you in the program if the CMV was manufactured
7 after 10/19/94 has an automatic airbrake adjustment
8 system. This trailer did. It's 2014. I observed it
9 has that what we call an automatic slack adjustor,
10 compensates for wear. So that violation -- you know,
11 I marked yes and that violation automatically
12 populates.

13 And then moving on to violation 3,
14 393.47(e), axle 4 left side brakes inoperative, and
15 then moving to axle 5 both left and right side brake
16 was inoperative. And then to put him out of service,
17 the last violation is the 396.3(a)(1). In order to
18 put him out of service, it has to be equal or better
19 than 20 percent of the brakes, either not within the
20 adjustment limit or just not working or maybe another
21 problem as indicated in the out-of-service book.

22 And, of course, the 4 were not -- there
23 is 10 brakes on the tractor total, and so all you
24 need is 2; and, of course, we had 4 so that's why
25 that violation is there, put the trailer, you know,

1 out of service.

2 Q. Okay. And, now, you have information
3 above this as to identifying who the driver is and
4 his information. How did you confirm that
5 information?

6 A. Through his driver's license and picture
7 and, you know, I knew I had Mr. Lazarus right there
8 with me. Everything matched up.

9 Q. Okay. And so the person you identify in
10 your report as Andrzej Lazarus and driving the
11 vehicle that day, that person you made contact with
12 and did the inspection on his vehicle, is that person
13 here in the courtroom today?

14 A. Yes, sir. Right there, sir.

15 Q. Could you please describe what he is
16 wearing.

17 A. Gray jacket, blue jeans, white tennis
18 shoes.

19 MR. JONES: Your Honor, could the record
20 reflect the witness has identified the Respondent
21 Mr. Andrzej Lazarus?

22 EXAMINER PARROT: Yes.

23 MR. JONES: Thank you.

24 EXAMINER PARROT: So noted.

25 Q. (By Mr. Jones) And let's see here, and

1 also you have the information regarding what
2 Mr. Lazarus was hauling. Was he hauling anything
3 that day?

4 A. He was empty.

5 Q. Empty, okay. And the origin of the trip?

6 A. He was from Delaware heading to
7 Reynoldsburg. I don't recall. It comes into my mind
8 maybe he dropped a load at the Kroger Distribution
9 Center, but I can't say for 100 percent. That seemed
10 to stick in my mind he was headed to Reynoldsburg to
11 pick up another load.

12 Q. Okay. And you identify the tractor and
13 the trailer information for your report, is that
14 there?

15 A. Yes. It's on the vehicle identification.

16 Q. Okay.

17 A. License plate.

18 Q. Which one is No. 1? Which one is No. 2?

19 A. No. 1 is the 2010 Kenworth with a
20 California license plate listed WP52560, and then you
21 had the 2014 Utility manufactured trailer had an
22 Indiana license plate SP790KTS.

23 Q. Okay. And so then you conclude your
24 inspection. What did you do after that?

25 A. Well, after the conclusion of the

1 inspection, I told Mr. Lazarus, you know, the vehicle
2 is out of service. It has to be repaired before it
3 is moved. I went down through the violations. You
4 know, I also placed the out-of-service sticker onto
5 the trailer.

6 Q. The purpose of putting the sticker on the
7 trailer and giving him that notice, what does that
8 mean?

9 A. It makes -- it makes the driver and other
10 law enforcement people, you know, aware that that
11 vehicle is not supposed to be driven when it has that
12 red sticker affixed onto the side, left side of the
13 vehicle.

14 Q. Okay. And then how did you generate this
15 report, this Staff Exhibit 1?

16 A. It's through our computer, and we have a
17 printer in our cruiser and just printed it off.

18 Q. Okay. And after you printed it off, what
19 did you do with the report?

20 A. Give a copy, he has to sign the bottom
21 just acknowledging receipt. So I gave him his copy
22 and then I asked him if he had any questions and then
23 I stuck around. It was towards the end of the day,
24 so I would have uploaded the report up to the PUCO.
25 I upload my inspections at the end of every day when

1 I go out and work the road.

2 Q. That would have been transmitted to the
3 Commission?

4 A. That day, yes, sir.

5 Q. And so then you served a copy of this on
6 Mr. Lazarus --

7 A. Yes.

8 Q. -- after he had signed it, you had signed
9 it.

10 A. Yes, sir.

11 Q. And is Staff Exhibit 1 an accurate
12 representation of the information that you compiled
13 that day for your report?

14 A. Yes, sir.

15 Q. Okay. And is this a record that's kept
16 in the ordinary course of business for your agency?

17 A. Yes, sir.

18 Q. And you said you had called for another
19 officer to come to do another inspection on the
20 vehicle?

21 A. Yeah, just to kind of double-check my
22 work, make sure there wasn't something I was missing.
23 That's why I called him, Motor Carrier Officer Fate,
24 over to take a second look and also kind of help with
25 the inspection report. If you have another set of

1 eyes and, you know, they see what you are seeing, it
2 just adds credence to the report as well. Don't do
3 it every time but on something like that where I
4 indicated earlier where you have four brakes and they
5 are not working, you know, maybe he could see
6 something that I didn't see that may be causing that,
7 you know, so that was one of the reasons to call him
8 over too so.

9 Q. Okay. So it's -- it's your opinion then
10 that the violations you noted here in your report are
11 violations that you are recommending the Commission
12 find that there is violations of the Federal Motor
13 Carrier Safety Regulations; is that correct?

14 A. Yes, sir; yes, sir.

15 MR. JONES: And, your Honor, that's all
16 the questions I have of this witness.

17 EXAMINER PARROT: Okay. Thank you,
18 Mr. Jones.

19 Mr. Lazarus, at this point I am going to
20 offer you the opportunity to ask questions of this
21 witness, but I am just going to caution you in
22 advance this is not your time yet to tell your side
23 of the story. It's purely to ask any questions that
24 you have of the witness. So I will turn that over to
25 you. And if you have no questions, you can say that

1 as well. It's up to you.

2 MR. LAZARUS: Then I will be speaking on
3 my own behalf.

4 EXAMINER PARROT: You will have that
5 chance, yes, so it's purely at this point if you have
6 any questions to follow up.

7 MR. LAZARUS: No. I don't have any
8 questions.

9 EXAMINER PARROT: Okay.

10 MR. JONES: Thank you, your Honor.

11 EXAMINER PARROT: Thank you very much.

12 MR. JONES: Your Honor, the staff has a
13 second witness.

14 EXAMINER PARROT: Okay.

15 MR. JONES: Officer John Fate.

16 (Witness sworn.)

17 EXAMINER PARROT: Have a seat.

18 - - -

19 INSPECTOR JOHN FATE

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

22 DIRECT EXAMINATION

23 By Mr. Jones:

24 Q. Could you please state your name for the
25 record, please.

1 A. John Fate.

2 Q. And where are you employed?

3 A. Ohio State Highway Patrol.

4 Q. Okay. And what is your position there?

5 A. I'm a Motor Carrier Enforcement

6 Inspector.

7 Q. And what is your job duties and

8 responsibilities?

9 A. I do commercial vehicle inspections of
10 motor carriers, drivers, buses.

11 Q. And what is your training for that job?

12 A. Six months at the Academy of the Ohio
13 State Highway Patrol to get certified and licensed to
14 do commercial vehicle inspections, and then I had six
15 months of on-the-job training.

16 Q. Okay. And how long have you been in your
17 position?

18 A. I have been doing commercial vehicle
19 inspections for 12 years and 2 years with this job
20 title.

21 Q. Okay. And what equipment is issued to
22 you to perform your duties?

23 A. I have small mechanical tools,
24 screwdriver, pliers, wrench, flashlight, creeper to
25 get underneath the vehicles, computer, and a vehicle,

1 Tahoe.

2 Q. Okay. And what is your jurisdiction?

3 A. The state of Ohio.

4 Q. Okay. And you have before you there
5 what's been marked as Staff Exhibit 1. Were you
6 involved in this inspection?

7 A. Yes.

8 Q. Okay. And can you tell us how?

9 A. I was the co-inspector. I came in
10 towards the last third of the inspection and assisted
11 in the inspection.

12 Q. Okay. And who called you to be a part of
13 this?

14 A. Lieutenant Weakley.

15 Q. Okay. And so you responded to this
16 location; this report indicates an inspection
17 occurred?

18 A. Yes. I was already in the area. I was
19 already in the parking lot, and I had just finished
20 an inspection, so I just walked over to assist
21 Lieutenant Weakley's inspection.

22 Q. And were you on duty that day?

23 A. Yes.

24 Q. And were you in uniform?

25 A. Yes.

1 Q. Okay. And so then once you had arrived
2 at this location, what did you do?

3 A. The Lieutenant said something to the
4 effect the brakes aren't working, and I just -- and I
5 conducted my own brake inspection.

6 Q. Tell us about that. Tell us how you did
7 that.

8 A. Well, I asked the driver if his parking
9 brake was released and I said step on the brake and I
10 watched all the the brakes move on the truck except
11 for the trailer brakes. So I went up to the driver's
12 area of the truck and I said release your parking
13 brake and I motioned to him to release the parking
14 brake in case he didn't understand.

15 I watched him release the parking brake.
16 And then I went back to the rear of the vehicle, to
17 the rear of the trailer, and I said step on the
18 brake, and he stepped on the brake because you could
19 hear the brakes actuate on the truck, but you
20 couldn't hear him do anything on the trailer so.

21 MR. JONES: Could you kill that?

22 MR. LAZARUS: Give me a second. It will
23 be louder. I'm sorry, apologize for this.

24 A. So when the trailer brakes didn't work, I
25 went up to the truck again and I said how much air do

1 you have and is it over 100 and the answer was yes
2 and I said -- and I looked up in the truck to see if
3 I could see the gauges and it looked like it was over
4 100 pounds and did you release the brake and he said
5 yes and then so I said step on the brake and he
6 stepped on the brake and I could see the front brakes
7 move and I could see the -- on the truck and I could
8 see the axle 2 and 3 brakes move and I could hear
9 them move; but, again, the trailer brakes didn't
10 move.

11 So I walked back to the trailer, released
12 the brakes, and I asked the driver to release the
13 brakes and step on the brakes again. He stepped on
14 the brakes; still the trailer brakes didn't move. So
15 I just let the Lieutenant know, yeah, the brakes are
16 inoperative.

17 Q. What were you expecting to see as to
18 movement?

19 A. Normally you will hear and see the brakes
20 move. It's like all brakes, you know, there's cause
21 and effect. You squeeze your brake pedal, you will
22 see brakes move. On your bicycle you step on the
23 brake pedal, the brakes should do something, and in
24 this case the brakes didn't do anything. They
25 just -- which it's unusual but it happens. I have

1 seen it on brand new vehicles. I have seen it on old
2 vehicles.

3 Q. Okay. And what axles did you observe
4 this?

5 A. Axle 4 and 5, which would be the trailer
6 brakes, they weren't working.

7 Q. And that was for how many sides? Both
8 sides?

9 A. Both sides, all four brakes on the
10 trailer were inoperative.

11 Q. Okay. And also then about -- there
12 was -- how about the slacker piece, like the backup
13 here?

14 A. Well, the slack adjustor, nothing moved
15 on the brakes. There was nothing moving. There's --
16 the pushrod should have come out of the brake
17 chamber. The pushrod should have come out when the
18 air pressure was applied, and you can hear. This is
19 high pressure. It's more -- it's 90 to 100 pounds
20 normally plus, and you can hear the air filling up
21 the air bladders. You can hear -- you can hear the
22 air pressure hitting the airlines because they are
23 rubber. You can hear it, and you can see it when the
24 brakes are applied, but nothing moved the slack
25 adjustor, didn't move the brake shoes, didn't move --

1 it was like the trailer was disconnected and that was
2 what was so puzzling.

3 Q. Okay. And Lieutenant Weakley placed this
4 vehicle, the trailer, out of service. Do you agree
5 with that?

6 A. Yes.

7 Q. And why is that?

8 A. With 20 percent or more of the brakes
9 inoperative, that's part of the out-of-service
10 criteria from the out-of-service criteria manual, so
11 we had to place the trailer out of service.

12 Q. All right. So you ran through this
13 testing process one time, multiple times to confirm
14 your opinion here?

15 A. Multiple times, at least three times
16 because I was -- I wanted to make sure we weren't
17 missing anything.

18 Q. Okay. So everything you did and observed
19 you would agree with the violations that were
20 reported from Staff Exhibit 1 in this report?

21 A. Yes.

22 MR. JONES: Okay. Your Honor, I have no
23 other questions.

24 EXAMINER PARROT: Mr. Lazarus, do you
25 have any questions for this witness?

1 MR. LAZARUS: Well, actually I do because
2 the most important thing I came here, I understand
3 the brakes, the evaluation of the brakes, but the
4 most important thing Lieutenant didn't mention the
5 truth, as well the Officer didn't mention the truth
6 what happened.

7 EXAMINER PARROT: Well, again, you will
8 have a chance to testify, so if you have a specific
9 question.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Lazarus:

13 Q. I am just wondering why -- why didn't
14 they mention it. You are missing the most important
15 thing, the conflict between the two officers. I
16 mean, that would be very nice, I mean, if you guys
17 say the truth.

18 MR. JONES: You have to ask questions,
19 Mr. Lazarus. You can't make a statement.

20 MR. LAZARUS: Question this, you know,
21 the -- the first officer who was doing --

22 MR. JONES: A question to him, a question
23 to him.

24 MR. LAZARUS: Okay. It starts from the
25 first officer anyway because --

1 MR. JONES: I am going to have to object,
2 your Honor.

3 Q. (By Mr. Lazarus) All right. So let's say
4 at that time he was asked for the -- by the other
5 officer to help -- to help him with the inspection,
6 right? You was -- you was inspecting the brakes and
7 I was in the cab and at that time the first time you
8 went to the trailer you said the brakes are moving
9 and it's working. Then your colleague said, well, it
10 was not working a moment ago so it's working now.
11 And that's what is the missing piece. I don't
12 understand why you didn't mention that.

13 EXAMINER PARROT: I am going to caution
14 you again that sounded quite a bit like testimony, so
15 you need to form that in a question.

16 MR. LAZARUS: Okay. So so far that's --
17 that's like I said.

18 EXAMINER PARROT: You will have -- again,
19 we will give you the opportunity to testify.

20 Q. The testimony in the beginning the brakes
21 was working or not, the first --

22 A. I never saw the trailer brakes work.

23 Q. Excuse me?

24 A. I never saw the trailer brakes work, and
25 we spent a lot of time trying to get them to work. I

1 couldn't get your trailer brakes to work.

2 Q. Well, there was two times you was
3 checking. The first time you checked that you said
4 the trailer brakes are working. And I hear you in
5 the cab. And then I mention to the Lieutenant, look,
6 you know, your colleague even saying the brakes are
7 working so what is the story now? And then --

8 MR. JONES: Object, your Honor. He has
9 to have a question there. He is rambling on.

10 EXAMINER PARROT: Again, we need specific
11 questions at this point.

12 MR. LAZARUS: I am going to do the
13 testimony after that so.

14 EXAMINER PARROT: Okay. You will get
15 that chance to do that when the staff is finished
16 with its case.

17 MR. LAZARUS: Okay.

18 EXAMINER PARROT: Okay. All right.

19 MR. JONES: No further questions, your
20 Honor.

21 EXAMINER PARROT: Okay. Thank you very
22 much.

23 MR. JONES: Your Honor, our staff has one
24 more witness. We would like to call Tom Persinger to
25 the stand.

1 (Witness sworn.)

2 EXAMINER PARROT: Have a seat.

3 - - -

4 TOM PERSINGER

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

7 DIRECT EXAMINATION

8 By Mr. Jones:

9 Q. Could you please state your name for the
10 record, please.

11 A. My name is Tom Persinger.

12 Q. And where are you employed?

13 A. I am employed with the Public Utilities
14 Commission of Ohio.

15 Q. And what is your job title?

16 A. My job title is Compliance Officer within
17 the Transportation Department.

18 Q. And what are your duties and
19 responsibilities?

20 A. My duties and responsibilities include
21 determining fines and forfeitures for violations
22 conducted at roadside by inspectors.

23 Q. And how -- when -- you heard Lieutenant
24 Weakley say that he had transmitted electronically
25 his report into the Commission. How does the

1 Commission pick it up from that?

2 A. The inspection is uploaded into a
3 database that we have access to that lists the
4 various fines that were -- excuse me, the various
5 violations that were found at roadside.

6 Q. Okay. And what do you do with that
7 information?

8 A. With that information we determine fines,
9 if applicable, and then once those are determined,
10 they are sent out to the offending parties.

11 Q. Okay.

12 MR. JONES: Your Honor, may I approach
13 the witness?

14 EXAMINER PARROT: You may.

15 MR. JONES: Thank you.

16 Q. Mr. Persinger, I will hand you what's
17 marked as Staff Exhibit 2. Could you please identify
18 that document for the record, please.

19 A. That is a Notice of Preliminary
20 Determination Letter.

21 EXAMINER PARROT: And it's been marked as
22 Staff Exhibit 2.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. Okay. And can you explain what this --
25 what this contains?

1 A. This contains a list of violations that
2 was found at roadside that after these proceedings an
3 agreement could not be reached with the Respondent on
4 how to settle and resolve the case.

5 Q. Yes. And so who was -- who was this sent
6 to?

7 A. So it was sent to a -- a Mr. Lazarus in
8 Los Angeles, California.

9 Q. And on what date was it sent?

10 A. It looks like July 19, 2015.

11 Q. Okay. And also I refer you to Staff
12 Exhibit 1. Did you have a chance to review this
13 information in relation to this case?

14 A. Yes, I did.

15 Q. Okay. And how did the Staff Exhibit 2
16 relate to Staff Exhibit 1?

17 A. Staff Exhibit 2 takes the listed
18 violations on -- that come from Exhibit 1 which is
19 the examination report.

20 Q. And then how do you go through the
21 process of determining the forfeiture amount
22 calculation?

23 A. Is determined by what is present on the
24 forfeiture chart, the violation chart, depending upon
25 what group the violation shows up in.

1 Q. Okay. And that then provides consistency
2 then for forfeitures for certain classifications of
3 offenses?

4 A. Yes, sir.

5 Q. Okay. And then the process you went
6 through to make the calculation in this case, was
7 that consistent with the Commercial Vehicle Safety
8 Alliance protocol?

9 A. Yes, sir.

10 Q. Okay. And the amount of the forfeiture
11 that the staff is recommending in this case for these
12 violations would be?

13 A. That would be \$100.

14 Q. One other thing for Staff Exhibit 2,
15 the -- is this a reference to the -- to a number
16 that's provided in the report for the Staff Exhibit
17 1?

18 A. Yes. Case number -- the case number
19 listed on the Notice of Preliminary Determination
20 letter refers to the report number on the examination
21 report.

22 Q. Okay. And likewise the attention that
23 the Notice of Preliminary Determination was sent to
24 the address, is it consistent then with the
25 information contained in Staff Exhibit 1?

1 A. Yes, sir.

2 Q. Okay. And is Staff Exhibit 2 a record
3 that's kept in the ordinary course of business?

4 A. Yes, sir.

5 Q. And is Staff Exhibit 2, the information
6 contained therein, an accurate reflection of the
7 information that was sent out to Mr. Andrzej Lazarus
8 on July 19, 2015, from the Public Utilities
9 Commission?

10 A. Yes, sir.

11 MR. JONES: Staff has no further
12 questions, your Honor.

13 EXAMINER PARROT: Okay. Thank you.

14 Any questions, Mr. Lazarus, for this
15 witness?

16 MR. LAZARUS: Yes.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Lazarus:

20 Q. I have a question for you. Could you
21 please tell me if one brake doesn't work, why the
22 other four -- other three on the axle 4 and 5 are
23 working and why they are combined as a failure of all
24 four and how many points is for that as well and what
25 is the penalty? The penalty I think you already

1 mentioned is \$100, right? And what is the points
2 on -- from the Department of Transportation on this
3 violation?

4 A. Points?

5 Q. Yeah, points.

6 A. Are you referring -- what are you
7 referring to in terms of points?

8 Q. Points, I know that Department of
9 Transportation is deducting points from the -- from
10 the --

11 MR. JONES: Only if you know.

12 A. Yeah, the CSA points are handled by the
13 Federal Government. I work for the State of Ohio or
14 Public Utilities Commission the State of Ohio.
15 That's a question for the Federal Motor Carriers.

16 Q. There is no one present that represents
17 the Department of Transportation today? Because I
18 think that was the main problem I have, you know, to
19 appeal that because, you know, there's too many
20 penalties on the violation which was not even
21 testified --

22 EXAMINER PARROT: I will cut you off
23 there. Again, you are getting into testimony, so you
24 will have the chance to get into this but.

25 Q. So you don't work for the Department of

1 Transportation to give me the answer about the
2 points, right?

3 A. I don't know how it affects your safety
4 scores or anything of that sort. I do know how --
5 how the fine is calculated here.

6 Q. So what is the fine?

7 A. \$100.

8 MR. LAZARUS: Okay. Thank you.

9 EXAMINER PARROT: Anything else?

10 MR. JONES: No further questions, your
11 Honor.

12 EXAMINER PARROT: Thank you very much,
13 Mr. Persinger.

14 MR. JONES: Your Honor, at this time the
15 staff would move for admission of Staff Exhibits 1
16 and 2.

17 EXAMINER PARROT: Okay. Mr. Lazarus, do
18 you have any objection to the admission of Staff
19 Exhibits 1 or 2?

20 MR. LAZARUS: I do not agree with that
21 violation because --

22 EXAMINER PARROT: And, again, you will
23 have a chance to state all that. I am asking purely
24 at this point do you have any objection to the
25 documents themselves?

1 MR. LAZARUS: No.

2 EXAMINER PARROT: Okay. So Staff
3 Exhibits 1 and 2 are admitted into the record.

4 (EXHIBITS ADMITTED INTO EVIDENCE.)

5 EXAMINER PARROT: Anything else from
6 staff?

7 MR. JONES: Nothing else, your Honor.

8 EXAMINER PARROT: Okay. I've already
9 dismissed you. You are free to go.

10 THE WITNESS: I wanted to make sure.

11 EXAMINER PARROT: All right. Okay,
12 Mr. Lazarus. At this point now the staff has
13 finished with its presentation of its case, so if you
14 have any documents that you need to bring with you,
15 please bring them up to the witness stand.

16 MR. LAZARUS: I don't have copy enough
17 to.

18 EXAMINER PARROT: We will see what you do
19 with them, and then we will figure that out if we
20 need to.

21 Before you sit down, please raise your
22 right hand.

23 (Witness sworn.)

24 EXAMINER PARROT: Go ahead and have a
25 seat. And, Mr. Lazarus, you are proceeding today

1 without counsel to represent you; is that correct?

2 THE WITNESS: Yes.

3 EXAMINER PARROT: All right. So given
4 that, at this point you in a free form narrative sort
5 of format just go ahead and state your case to the
6 Commission. And then once you finish let me know
7 that, and then at that point Mr. Jones will have an
8 opportunity to ask any questions he may have based on
9 your testimony. So go ahead.

10 - - -

11 ANDRZEJ JAN LAZARUS

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

14 DIRECT EXAMINATION

15 THE WITNESS: Okay. In the beginning I
16 would like to say that day I was pulled over by the
17 police officer of the State of Ohio, and I was
18 conducted inspection level I which -- which the
19 effect of that there was violation issued on the
20 trailer.

21 And here I will try to explain this
22 situation. The trailer doesn't belong to me. It's
23 the second company which I renting or leasing or have
24 some other agreements with them with the trailers.
25 The trailer was brand new. Trailer, it was 2014 with

1 warranty and everything. Trailer was picked up few
2 miles empty. Trailer was picked up few miles from
3 the location where I was pulled over. So basically
4 we deliver goods, and we exchange trailers many times
5 dropping goods.

6 So the trailer is inspected by company.
7 We call XPress Cargo. All inspection is done before
8 the trailers are released in Indiana. So this
9 document here I don't have copy to give to everyone.
10 They stating they did inspection on the trailer plus
11 the trailer --

12 EXAMINER PARROT: Let's go off the record
13 for a moment.

14 (Discussion off the record.)

15 EXAMINER PARROT: Let's go back on the
16 record. We will mark this as Respondent Exhibit 1.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 EXAMINER PARROT: And the court reporter
19 needs a copy as well. Did she get one?

20 Okay. Go ahead and describe the document
21 for us, please.

22 THE WITNESS: Okay. This is from XPress
23 Cargo where I have contract with them for renting the
24 trailers. They are the ones who are responsible for
25 maintenance on the trailer. And, again, the trailer

1 was brand new and still under warranty, was picked up
2 in Ohio a few miles from the location I was pulled
3 over.

4 And what I was trying to say I disagree
5 with the violation of four brakes on axle 4 and 5
6 didn't work. First of all, on the new trailers the
7 trailer's brake chamber is connected to each -- each
8 tie on the trailer. So basically the tractor is
9 pumping the air, but if the air reach the trailer,
10 the end of the trailer between each tire, if the
11 trailer was sitting on the parking lot for, say, day
12 or two and some of the tires are losing air, this way
13 or the other way, because the tires, the tires will
14 be very heavy, not sealing very well on the rim, so
15 they are losing air.

16 So, first, if we pick up the trailers, we
17 are losing a lot of air from the tractor and they
18 distribute to each tire so if the air is not 100 or
19 110, 120 PSI, then -- then it is kind of difficult if
20 you press the brakes so that the brakes will open up
21 immediately. Sometimes that takes time. And if you
22 are losing air, it's still going back there. It's
23 still going for few minutes, sometimes to even 15
24 minutes before the air pump the tires. But
25 everything is distributed from the tractor.

1 So then -- then if I don't have enough
2 pressure, the slack adjustor sometimes is very slow
3 opening, okay? So I understand maybe if there would
4 be one brake bad but completely disagree there was
5 four brakes on axle 4 and 5 bad.

6 Then the second thing what I was trying
7 to say would be the police officer who was doing the
8 level I inspection, I was proceeding as he was asking
9 me to do those requirements to make the inspection
10 available for him and do the inspection. First of
11 all, he is not a mechanic. He is not professional
12 mechanic. He finished some classes, courses which I
13 understand they are very helpful, of course, but I
14 still don't believe, you know, that skills as a
15 professional mechanic can say, okay, those brakes
16 didn't work. Those brakes out of service. I
17 disagree with this.

18 Now, the most important thing of this
19 after I was kind of asking the officer -- after he
20 presented me the violation, I was asking the officer,
21 I said, you know, something is wrong here. There's
22 too many violations. Why I started questioning him
23 if one brake doesn't work doesn't mean all four don't
24 work. Okay. Especially, you know, I know there was
25 new trailer, and I knew the trailer was just picked

1 up and a few miles from the time I got pulled over,
 2 so I know trailer needs sometimes a lot of air
 3 pressure and time to get -- to get working proper.
 4 Those new trailers, they have automatic slack
 5 adjustors. I don't have control over that. If one
 6 slack adjustor doesn't open completely doesn't mean
 7 all four are defective. We just have to pump the air
 8 completely too much to 120 and do this again and
 9 again. And sometimes, like I saying, you know, it is
 10 distributed to the tires constantly losing the air.

11 Now, but the most important thing is
 12 after the first officer -- after I disagree with him,
 13 you know, with the violation, he asked a second
 14 officer to assist him which I was in the cabin and
 15 that's what -- that's one of the reasons I decide to
 16 appeal that because I remember perfectly because that
 17 was my disagreement with the first officer.

18 The second officer was doing the
 19 inspection, and he said not to me but he was saying
 20 to his colleague, he said, well, it's working now.
 21 It's working now. And then the first officer went
 22 back to the second officer which was, you know, in
 23 the back of the trailer that was talking for a moment
 24 and then he said -- he came back to me and stated
 25 violation would stay, okay? I had to sign. I

1 decided to give you violation for it wasn't work.

2 That was already a red flag.

3 You know, I am the owner of the company
4 actually, but I training new drivers, and I have lot
5 of experience, military experience. I have
6 experience, you know, in heavy hauling. I have
7 experience, you know, with Air Force and other things
8 hauling. We working, you know, with most of the time
9 actually hauling to vegetables and fruits and produce
10 from California to Washington, D.C., to the center.

11 So most of our trailers are new
12 equipment. They are very -- very, very well --
13 maintenance is done on those trailers and equipment
14 very well. We are spending a lot of money on
15 equipment. Most -- most of that problem we have we
16 have with the highways, whereas, the potholes and
17 broken highways which cause -- you have to understand
18 if you are hauling 80,000 pounds, if the trailer or
19 the tractor or one of the tires hit the pothole,
20 this -- there's huge impact on the equipment. So
21 metals getting bended and getting stuck. It doesn't
22 work, you know, correctly.

23 We are losing constantly lightbulbs
24 because of the impact and other electronics on the
25 computer. So, first of all, we can even say is the

1 highways would cause a lot of fatigue and problems
2 and damage. Now, we are paying a lot of taxes. We
3 are talking thousands and thousands and thousands of
4 dollars of the taxes to each state. But it looks
5 like, you know, the highway -- the highway not
6 repaired so then -- then as soon as we got pulled
7 over for the lightbulbs, we carry lightbulbs with us,
8 all kinds, even lightbulbs cost over \$150. I am
9 doing this as an example, of course.

10 So instead of officer saying, okay, well,
11 the light -- the light is not working, you know, and
12 ask us do you have any lightbulbs? Can you exchange
13 the lightbulb right here on the spot? The drivers
14 are trained to do so. But they don't ask us no
15 questions. They are not asking about the potholes.
16 They are not asking for anything. They are just
17 giving ticket. They are not only giving one ticket
18 they are giving three tickets, one ticket violation
19 of this -- of the whatever it was, the violation.
20 Second ticket, the DOT ticket, then you have the
21 points, then you have fines. How many times are we
22 going to be punished for the one let's say violation
23 one time? I mean, this is going a little bit too
24 far. So then there is no -- there is no -- on the --
25 on the other side, the side of the -- they don't

1 understand what we are going through, you know.

2 So then I went a little bit off course,
3 but I want to say the truth because that's the
4 dilemma all over. You know, I have lot of drivers
5 complaining saying the potholes almost cause me to
6 lose control, shift to the right so bad very
7 difficult to control the truck, and nobody is saying
8 nothing about this. Nobody gives violation to the
9 Department of Transportation or whatever is in charge
10 of those people who are supposed to fix the highways.
11 They are not fixed for years, for years.

12 So I don't know what's happening to the
13 man. The man, they have their own way to go to the
14 side or, in fact, used to repair the highways for the
15 safety of those citizens, not only me but for the
16 safety of other companies.

17 But it comes to the violations, they are
18 giving like candy to everybody, you know, and what
19 happened -- you know, the government should -- and
20 the Department of Transportation should work for the
21 people as well as officers. We are paying your
22 bills. We are paying, taxpayers paying for your
23 service. So sometimes, you know, if lightbulb -- you
24 shouldn't just give the ticket. Say, look, you know,
25 maybe the driver doesn't even know the lightbulb

1 doesn't work. If the highways would be repaired and
2 done well and everything, I understand. But not
3 every time the company is -- or the driver is guilty.

4 And some of the violations we have on the
5 brakes, which I don't agree with that especially, you
6 know, like I -- like I said before, the second police
7 officer, you know, he checked the brakes and he said
8 the brakes are working.

9 So overall we have -- I have another
10 document standing here have the same situation. I
11 brought this because, you know, it happened same
12 thing almost similar to this -- to this violation.
13 There was no violation but the driver call for the
14 brake problem. We -- issue leak and didn't work
15 properly, so we called for this. We asked the driver
16 to pull over again. He did what we asked him. Then
17 we sent mobular -- mobular technician and mechanic to
18 fix the problem. Then the notice saying everything
19 works proper. Everything was working properly.

20 EXAMINER PARROT: And if you are going to
21 refer to that document, again, you need to give -- I
22 think that's one I made copies for you so make sure
23 Mr. Jones has one to see.

24 THE WITNESS: You one too?

25 EXAMINER PARROT: One for me and one for

1 the court reporter here.

2 We will mark this one as Respondent
3 Exhibit 2.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 MR. JONES: What is it?

6 THE WITNESS: Basically same thing, air
7 leak.

8 EXAMINER PARROT: That's a copy for you,
9 Mr. Jones.

10 MR. JONES: Thank you.

11 THE WITNESS: That's similar situation.

12 EXAMINER PARROT: So this is an invoice.
13 Let's just make it clear for the record, invoice
14 dated February 1, 2016. So this is for a different
15 situation.

16 THE WITNESS: Again, it was trailer. We
17 didn't get pulled over.

18 EXAMINER PARROT: I just want to be clear
19 this wasn't the -- from the inspection that we are
20 here today about.

21 THE WITNESS: No, that's not from this
22 inspection.

23 EXAMINER PARROT: From May of 2015. I
24 just want that to be clear. Thank you.

25 THE WITNESS: Basically called the

1 mechanic and the mechanic -- professional mechanic
2 came with equipment, and he checked all the trailer
3 and everything. It was not working but it is working
4 and but the way he locate, you know, the service so
5 he explained the driver what is the situation but he
6 said you are free to go and we didn't find nothing
7 wrong, you know. Everything works. But anyway.

8 EXAMINER PARROT: Okay.

9 THE WITNESS: Then we have because the
10 police officer took the precaution which -- which he
11 put the trailer out of service, we didn't have a
12 choice. We called the service to come to the trailer
13 and, again, there is another document.

14 EXAMINER PARROT: Okay. So let's go
15 ahead and hand the copies around for that one.

16 THE WITNESS: This is to the same
17 violation where it was.

18 EXAMINER PARROT: We will mark this one
19 Respondent Exhibit 3.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 THE WITNESS: So around that time I spoke
22 with the mechanic. He checked the trailer. He said,
23 well, we can say there is one issue. He said the
24 brakes are working basically. There was -- that was
25 concern about one chamber with -- because I didn't

1 have the time to -- I didn't have the time to
2 continue for the mechanic to investigate this more, I
3 decided to make the decision to change the whole --
4 the whole chamber. I said just change the whole
5 chamber. This is when -- this way it's piece of
6 mind.

7 So he changed one chamber on my request,
8 okay, I paid for that, and he removed the red sticker
9 from the trailer and said you are free to go, and the
10 other brakes, everything was fine. Just even for
11 that sake, I said just replace that chamber, and we
12 are going to have piece of mind.

13 EXAMINER PARROT: Okay. So, again, and
14 Respondent Exhibit 3, just to be clear, is a repair
15 invoice and this is the one that's from the
16 inspection that we are here today about from May,
17 2015.

18 THE WITNESS: Yes. I didn't have a
19 choice because I have the red ticket, so I had to
20 call professional mechanic. Actually he was
21 professional mechanic for the brakes.

22 EXAMINER PARROT: Okay. Thank you.

23 THE WITNESS: With many years of
24 experience. I asked him to leave me the chamber, but
25 I think he got another call. He put that chamber on

1 his truck and took off with the chamber, so I lost
2 the evidence because otherwise I would have give it
3 to the utility company and ask them to investigate
4 that why it was a situation like this but.

5 So in conclusion I would like to just say
6 only I disagree on this violation because the brakes
7 was working. The professional mechanic who was
8 repairing the trailer, he said, no, the other brake
9 is working. There was only -- on my request was
10 changed on the one chamber for the sake of the good
11 in removing the sticker, and I was back on the road.

12 The second most important thing it is the
13 question about conflict between two officers. One is
14 saying don't work, and one is saying it is working.
15 What happened after that, I'm sorry, I can't say that
16 because I understand, you know, I was not present in
17 the back of the trailer.

18 EXAMINER PARROT: Okay. Anything else
19 then before we?

20 THE WITNESS: No. Just thank you for
21 everything.

22 EXAMINER PARROT: So we will give
23 Mr. Jones now an opportunity to ask any questions
24 that he has.

25 - - -

CROSS-EXAMINATION

By Mr. Jones:

Q. Let's see, Mr. Lazarus, so you are the carrier, and you are the driver during this time, right?

A. Well, you know, I am from Europe. I have experience with trucking and some other heavy equipment. I want to train the drivers, and I want to see what they can do to be safe drivers, so I'm the one teaching them, and sometimes I take week and two weeks and drive with them so that would be --

Q. But on the day of the inspection, you were wearing two hats. You are the carrier and you are the driver; is that correct?

A. Yeah, I was driving.

Q. And you are the carrier as well.

A. Yes.

Q. Yes. And you are not contesting the fact that you were inspected on May -- May 20, 2015, by Lieutenant Weakley and Officer Fate; they came out and they did the inspection?

A. No.

Q. Several tests on your brakes, right?

A. Yes, yes.

Q. They were there for quite a -- about an

1 hour or better just to run these tests over and over?

2 A. No. They run first the test on my
3 documents, on my tractor.

4 Q. Full inspection.

5 A. Takes much, much longer like the trailer.
6 Trailer only two axles, that's it. But mostly it was
7 doing on the tractor which had many components,
8 electric, lights, and air.

9 Q. But they tested your brakes.

10 A. Yes, they did.

11 Q. And your trailer was placed out of
12 service; you are not contesting that, right?

13 A. That's what he made the decision to put
14 out of service, yes.

15 Q. Okay. And you were informed by the
16 officers that your axles 4 and 5 both sides were not
17 working, correct?

18 A. Well, one time was not working, the other
19 times was working, so that's the conflict we are
20 having. One is saying it don't work. The other one
21 said working and that's unusual, that's really
22 unusual whatever is the valuation, you know.
23 Sometimes maybe. But, like I said, I was trying to
24 get the chamber and send to utility to investigate
25 what went wrong but.

1 MR. JONES: Your Honor, I have no other
2 questions.

3 EXAMINER PARROT: Okay. All right.
4 Mr. Lazarus, anything to add based on Mr. Jones's
5 questions to you?

6 THE WITNESS: No.

7 EXAMINER PARROT: Okay. Then you are
8 excused. Thank you.

9 MR. JONES: Your Honor, the staff would
10 like to call a rebuttal witness, Lieutenant Weakley.

11 EXAMINER PARROT: Okay. When we get to
12 that.

13 Mr. Lazarus, I do think you already
14 stated you do want the exhibits that we've marked to
15 be presented to the Commission for consideration?

16 THE WITNESS: Yes, please, please.

17 MR. JONES: Your Honor, staff would
18 object to those exhibits. Let's start in response to
19 Exhibit No. 1 here. As you can see, this thing is
20 dated November 12, 2015. The inspection occurred May
21 20, 2015. So this is not even on the same day. This
22 guy Perry, don't have a last name, he is not here
23 today. I can't cross-examine him. There is no
24 foundation for this Respondent's Exhibit 1. It's
25 hearsay. The content of this information has no

1 relevance to the condition of the brakes at the time
2 of the inspection. So for all those reasons I would
3 object to the admission of Respondent's Exhibit 1.

4 Same thing for Respondent's Exhibit 2.
5 Again, there's no relation to the condition of the
6 brakes. I don't even know if this is the same
7 trailer. Yeah, your Honor, on Respondent's Exhibit 2
8 it's not even dealing with the same trailer. It's a
9 different trailer so there was no relation whatsoever
10 to what we are talking about for this proceeding.
11 So, again, this is hearsay. It has no relevance.
12 There is no foundation. I would object to
13 Respondent's Exhibit 2 as well.

14 Respondent's Exhibit 3, again, there is
15 no foundation. It's hearsay. I don't have
16 anybody -- I don't even see a name here. It's
17 initials. I mean, I don't know who prepared this, if
18 this is authentic, you know. I question it's
19 authenticity. Like I said, it's hearsay. There's no
20 foundation for it. I don't have the opportunity to
21 cross-examine whoever prepared this. So I would
22 object -- I would object for those reasons, your
23 Honor, to the Respondent's Exhibit 3 as well.

24 EXAMINER PARROT: Is there anything you
25 would like to say in response, Mr. Lazarus?

1 MR. LAZARUS: Yes. I kind of object you
2 as well. Then this is the document from the -- No.
3 3.

4 MR. JONES: 3.

5 MR. LAZARUS: This is the document from
6 the mechanic who was called to the service to release
7 the trailer from -- from out of service. He is the
8 one who received the repair so and this is authentic.
9 I don't -- I don't understand why you are calling
10 this not authentic. That's not my concern how he
11 writes the receipts that was on the field.

12 Now, this second -- oh, the first, the
13 first document is actually from the XPress Cargo
14 where I renting or leasing the trailers. And they
15 are responsible for the maintenance. Basically I
16 asked the manager to give me some hint on -- on their
17 repairs on trailers so just document how they
18 proceedings, you know, maintenance on trailers so I
19 would like to stay.

20 The second one, this is only example. It
21 is only example. We call, you know -- I mean, we
22 have call from the driver who was stating the trailer
23 have problem with brakes and leak. Then we call the
24 mechanic, and the mechanic say nothing wrong,
25 everything was working, so basically it is just

1 example.

2 EXAMINER PARROT: Okay. Thank you.

3 MR. JONES: Your Honor, if I could go
4 back to respond to Respondent's Exhibit 3.

5 EXAMINER PARROT: You may.

6 MR. JONES: One thing there is no VIN
7 number as to what -- what was repaired. There is no
8 identification of what was repaired. I don't know if
9 it was his trailer. There is nothing that relates to
10 the trailer as to this.

11 EXAMINER PARROT: There is a license
12 number on it, Mr. Jones. It does appear to match the
13 inspection report.

14 Anyway your objections are noted on the
15 record. I am going to admit Respondent's Exhibits 1
16 through 3 and allow the Commission to determine what
17 weight, if any, to give them in its decision.

18 (EXHIBITS ADMITTED INTO EVIDENCE.)

19 MR. JONES: Thank you.

20 EXAMINER PARROT: All right. You
21 mentioned a rebuttal witness.

22 MR. JONES: Oh, yes, Lieutenant Weakley,
23 your Honor.

24 EXAMINER PARROT: Okay. And I just
25 remind you you are still under oath. Have a seat.

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LIEUTENANT KELLY WEAKLEY

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

DIRECT EXAMINATION

By Mr. Jones:

Q. Lieutenant Weakley, you heard
Mr. Lazarus's testimony and his claim about the
potholes for Ohio roads may have contributed to --
contributed to the condition of the brakes causing
their condition as you found them. What do you have
to say in relation to that claim?

A. With my almost 20 years of experience
on -- as a State Trooper, I did not see any evidence
of any damage that would be related to a pothole.
What we would see is a flat tire or an axle, you
know, broke like a tie rod. Semi trailers is a very
heavy piece of equipment, and I did not see any brake
chambers loose or hanging or anything that made me
think that it was involved in a crash or it struck,
you know, a pothole. There was no evidence there
that, you know, led me to believe that at all.

Q. So you didn't observe any structural
damage as a result of an impact with a pothole?

A. No, sir.

Q. Okay. And you heard Mr. Lazarus claim

1 also that there was some discussion and disagreement
2 between you and Officer -- the other officer as to
3 whether or not the brakes were -- these brakes were
4 working or not. Did such a discussion take place?

5 A. No. The brakes never worked when we --
6 as we indicated in our testimony, we tried. We had
7 him apply the brakes. The brakes never worked.
8 Motor Carrier Inspector Fate and I never had that
9 discussion. The only discussion we had was the
10 brakes didn't work. He tried to get them to work. I
11 tried to get them to work. The brakes did not work.

12 Q. Okay. And you are referring to axles 4
13 and 5 both left and right side?

14 A. Yeah. The tractor brakes worked but --
15 as indicated on the report because I took
16 measurements of those, but the vehicle 2, the
17 trailer, the brakes never worked.

18 Q. Okay.

19 A. The air was -- as I indicated, the air
20 was maintained in the tractor, but for whatever
21 reason the brakes on the trailer never worked.

22 MR. JONES: Okay. All right. That's all
23 I have, your Honor.

24 MR. LAZARUS: I have a question.

25 EXAMINER PARROT: Okay. Go ahead.

CROSS-EXAMINATION

By Mr. Lazarus:

Q. Could you please tell me how you can describe the brakes was not damaged from the potholes? You observed the brakes outside the housing of the brakes, or you inspect the brakes inside, all the mechanical things?

A. Well, I can observe the brake shoes. Those are visible to the naked eye. The pads, the brake chamber, the wheel, none of the trailer -- you know, the tires on the trailer were flat. You know, that's when we check when we go underneath. We check and do full inspection. None of those --

Q. You didn't answer my question. I said how you --

MR. JONES: Objection, your Honor.

EXAMINER PARROT: I am not sure he was finished so go ahead.

A. Yeah. I can't get inside the inner workings of the brake chamber but there was nothing indicated. As I said, I can see -- we can see the brake shoes and the pads and the linings of the chamber. There was nothing visibly wrong that I could see with any of those components.

Q. Okay. So basically you didn't see the

1 chamber inside if there was caused by potholes some
2 damage inside. You saw only the housing outside.

3 A. No, I did not see -- you can't -- you
4 cannot see inside the chamber.

5 MR. LAZARUS: Thank you. That's all I
6 want to ask you. Thank you for your answer.

7 EXAMINER PARROT: Were you finished? Go
8 ahead.

9 THE WITNESS: A mechanic has to
10 disassemble the chamber. You know, if I may, I do
11 have some, you know, experience related to the
12 chambers. The chambers are a high pressure piece of
13 equipment, and we are taught to when the driver
14 applies the brakes that we are outside of the truck
15 before we enter to measure the brakes in case there
16 is a catastrophic failure because that's usually when
17 that has occurred, one of our inspectors that has
18 occurred with them, when a driver would apply the
19 brake.

20 And if a chamber is not working properly
21 on our end, what we would see on our end is, you
22 know, holes which we do see holes or the brake
23 chamber is not attached, rust holes and so forth.
24 But we obviously cannot see the inner workings
25 unless, as I said, there is some kind of a rust hole

1 or something like that where we could see inside the
2 chamber but, you know, we -- with Mr. Lazarus, you
3 know, I could not see inside the chamber. Everything
4 looked -- appeared to be normal on -- from the
5 outside.

6 MR. LAZARUS: Yeah, but all the --

7 MR. JONES: Objection. He is
8 argumentative I think.

9 EXAMINER PARROT: Well, I didn't get the
10 full question yet.

11 Q. (By Mr. Lazarus) Basically the question I
12 asked you you didn't see nothing what happened inside
13 the chamber --

14 A. No, I could not.

15 Q. -- caused by the potholes or broken --
16 broken highways or.

17 A. I could not see inside the brake chamber.

18 MR. LAZARUS: Thank you. That's what I
19 wanted.

20 EXAMINER PARROT: Any redirect?

21 MR. JONES: No, your Honor.

22 EXAMINER PARROT: Okay. Thank you.

23 THE WITNESS: Thank you.

24 EXAMINER PARROT: All right. Anything
25 else from the staff then?

1 MR. JONES: Nothing else, your Honor.

2 EXAMINER PARROT: Okay. Very good. All
3 right.

4 Mr. Lazarus, anything else from your side
5 of things here?

6 MR. LAZARUS: I want it hotter outside
7 and where is the bathroom?

8 EXAMINER PARROT: Okay.

9 MR. LAZARUS: I'm sorry.

10 EXAMINER PARROT: Let's go off the
11 record.

12 MR. LAZARUS: I'm done.

13 EXAMINER PARROT: Let's go off the record
14 just for a minute.

15 (Discussion off the record.)

16 EXAMINER PARROT: Let's go back on the
17 record.

18 The parties have agreed there is no need
19 in this matter to file any sort of written statement
20 or briefs. So with that, I think we are finished and
21 we will adjourn. Thank you, everyone, for your time
22 today.

23 (Thereupon, the hearing was concluded at
24 11:28 a.m.)

25 - - -

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, February 11,
2016, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-6153)

- - -

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Summary: Transcript in the matter of the Andrzej Jan Lazarus hearing held on 02/11/16 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.