

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Pedro Mirabal : Case No.
Notice of Apparent Violation : 16-2310-TR-CVF
and Intent to Assess Forfeiture :

- - -

PROCEEDINGS

Before Scott Farkas, Attorney Examiner, held at
the Public Utilities Commission of Ohio, 180
East Broad Street, Hearing Room 11-D, Columbus,
Ohio, on Tuesday, March 7, 2017, at 10:00 A.M.

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1 APPEARANCES:

2 Mr. Pedro Mirabal
3 c/o Mrs. Milena Spassova
4 1411 Kismet Parkway
5 Cape Coral, Florida 33993

6 Appearing Pro se.

7 Mr. Steven Beeler
8 Assistant Attorney General
9 30 East Broad Street, 16th Floor
10 Columbus, Ohio 43215

11 On behalf of the Staff of the
12 Public Utilities Commission
13 of Ohio.

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Tuesday Morning,
March 7, 2017.

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ATTORNEY EXAMINER: The Commission
has called for hearing at this time and place
The Matter of Pedro Mirabal Notice of Apparent
Violation and Intent to Assess Forfeiture.
Case No. 16-2310-TR-CVF.

My name is Scott Farkas, I am the
Attorney Examiner assigned to hear this case.
First I will take appearances. For the Staff.

MR. BEELEER: Thank you, your Honor.
On behalf of the Staff of the Public Utilities
Commission of Ohio, Ohio Attorney General Mike
DeWine. I am Steve Beeler, Assistant Attorney
General, 30 East Board Street, 16th Floor,
Columbus, Ohio 43215.

ATTORNEY EXAMINER: Thank you. And
if you would state your name for the record.

MR. MIRABAL: Pedro Mirabal.

ATTORNEY EXAMINER: Okay. And you
are here without counsel; is that correct?

MR. MIRABAL: Yes, sir.

ATTORNEY EXAMINER: Okay. And why
don't I swear you in since you are going to be I

1 assume testifying today. So raise your right
2 hand.

3 (WITNESS SWORN)

4 ATTORNEY EXAMINER: Okay. Do you
5 understand the process, how the hearing is going
6 to go forward?

7 MR. MIRABAL: Yes.

8 ATTORNEY EXAMINER: Do you have any
9 questions about that?

10 MR. MIRABAL: No.

11 ATTORNEY EXAMINER: Okay. Then,
12 Staff, you can call your first witness.

13 MR. BEELEER: Thank you, your Honor.
14 At this time Staff would call Philip Haskins to
15 the stand.

16 (WITNESS SWORN)

17 - - -

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

21 DIRECT EXAMINATION

22 By Mr. Beeler:

23 Q. Good morning, Mr. Haskins.

24 A. Good morning.

25 Q. Start off here, please state your

1 full name for the record.

2 A. Philip Haskins.

3 Q. Where are you employed?

4 A. Employed by the Public Utilities
5 Commission of Ohio, Transportation Department,
6 Columbus, Ohio.

7 Q. And what is your position within
8 the Transportation Department of the Commission?

9 A. My job title is Hazardous Materials
10 Investigative Specialist. My duties include
11 investigating motor carriers and hazardous
12 material shippers in compliance with the motor
13 carrier safety regulations and the hazardous
14 materials regulations.

15 Q. Thank you. How long have you been
16 with the Commission?

17 A. Twenty-nine years.

18 Q. And you just explained your
19 position. What exactly are your duties in that
20 capacity?

21 A. My duties are to ensure that the
22 motor carriers comply with federal safety
23 regulations, and hazardous materials
24 regulations. And in addition we also do
25 inspections of facilities that ship hazardous

1 materials and ensure compliance of the hazardous
2 materials regulations.

3 And the biggest component of our
4 duties are doing roadside inspections of motor
5 carriers transporting hazardous materials.

6 Q. What sort of training do you have in
7 this area?

8 A. Extensive training from the Federal
9 Motor Carrier Safety Administration, United
10 States Department of Transportation, annual
11 training to ensure certification to conduct
12 these types of inspections, and complete these
13 duties in the course of my responsibilities to
14 ensure compliance with these regulations.

15 Q. And did you have additional training
16 when you first became a motor carrier inspector?

17 A. Yes. And then ongoing training
18 annually to conduct these inspections. The
19 federal government requires verification, annual
20 certification which must be met, which I do
21 meet.

22 Q. How many inspections on average do
23 you think you perform in a year? Just roughly?

24 A. Several hundred. Two hundred.

25 Q. Is it safe to say that the motor

1 carrier inspections are conducted to protect
2 the safety of Ohio's traveling public?

3 A. Yes. Yes.

4 MR. BEELEER: Okay. May I approach
5 the witness, your Honor?

6 ATTORNEY EXAMINER: Yes.

7 MR. BEELEER: I have what's in front
8 of me that has been marked as Staff Exhibit 1.

9 (EXHIBIT MARKED FOR THE PURPOSE OF
10 IDENTIFICATION)

11 Q. This is the Driver/Vehicle
12 Examination Report, an inspection date of
13 September 8th, 2016. And this is the inspection
14 report that happened on the day of the citation.

15 Go ahead and take a second to look
16 over that. Do you recognize this document?

17 A. I do.

18 Q. Is this document a Commission
19 record?

20 A. It is.

21 Q. It's kept in the ordinary course of
22 the Commission's business?

23 A. Yes.

24 Q. It's the practice of the Commission
25 to make this report; is that correct?

1 A. That is correct.

2 Q. Did you report on matters observed
3 pursuant to a duty imposed by law as to which
4 there was a duty by you to report?

5 A. Yes. And to execute an inspection
6 report.

7 Q. Is this document in the same
8 condition substantially as when you prepared it
9 originally?

10 A. Yes.

11 Q. And was the reason for you producing
12 this report an inspection of a motor carrier
13 vehicle operated by Silvicom, Inc?

14 A. Yes. This inspection was conducted
15 as an observation of a violation while I was
16 performing my normal roadside duties. I
17 happened to observe the vehicle fail to comply
18 with the hazardous materials regulations.

19 Q. Okay. So you remember
20 the inspection?

21 A. I do.

22 Q. Is the driver listed on the report?

23 A. The driver's name is Pedro Mirabal.

24 Q. Is Mr. Mirabal here today?

25 A. He is present, yes.

1 Q. Does the driver get a copy of the
2 report at the stop?

3 A. He does. He gets an executed copy
4 at the completion of the inspection.

5 Q. Are there violations noted on the
6 report, and what are they?

7 A. Yes. In the middle of the document
8 you will see the violations in bold print. In
9 this report I documented two violations while
10 completing this inspection report.

11 Q. And there are two violations listed
12 there. The violation that we are dealing with
13 here today is the violation for Code 392.10A3,
14 failure to stop at railroad crossing; is that
15 correct?

16 A. That is correct.

17 Q. Okay. So, just turning to the day
18 of the inspection, you observed Mr. Mirabal fail
19 to stop at a railroad crossing; is that correct?

20 A. I did.

21 Q. Okay. Now, this is just your
22 narrative. How did you observe that?

23 A. The facts of the case are I was on a
24 two-lane rural route in Union County, and I was
25 moving while I was driving my state issued

1 vehicle. I happened to approach the crossing.
2 Traveled through the crossing, and in so doing I
3 observed in my rear view mirror the vehicle that
4 was transporting placardable hazardous materials
5 immediately behind me.

6 As I moved through the crossing I
7 had an unobstructed view of the vehicle that was
8 driven by Mr. Mirabal and observed him drive
9 through the crossing without stopping.

10 Q. How did you know it was hazardous
11 materials from your rear view mirror?

12 A. I made previous observations during
13 that moment observing that the vehicle was
14 placarded and displaying warning placards. The
15 vehicle was a large commercial vehicle
16 transporting, semi-trailer, with warning
17 placards displayed on all four sides.

18 The contour of the road is such that
19 it's not perfectly straight. There are curves
20 to the road. And in so doing I observed that
21 the vehicle behind me was displaying hazardous
22 material warning placards because he was
23 transporting hazardous materials.

24 Q. How long was Mr. Mirabal following
25 you or the vehicle following you? Do you

1 remember?

2 A. I don't have an independent memory.
3 I just remember my observation, immediately
4 behind me, my vehicle.

5 Q. And the actual -- how did you
6 observe the actual not stopping? Was it a roll
7 through or --

8 A. Yes. My notes say that, the unique
9 characteristics of this is, normally you are
10 behind traffic, but in this instance I was
11 actually in front of the offending vehicle, and
12 I say in my notes "The driver was observed
13 transporting placardable hazardous material and
14 failed to stop at a grade crossing as required.
15 Driver approached CSX main line crossing and
16 only briefly slowed to approach crossing and
17 subsequently proceeded through grade crossing
18 without stopping as required."

19 Q. Can you go on reading your notes,
20 please, for the record?

21 A. Yes. "CMV was immediately behind
22 this inspector's vehicle and violation was
23 observed from that observation. The
24 relationship of distance was consistent through
25 the crossing with traffic on two-lane state

1 route moderately heavy. The driver stated he
2 was aware of the hazardous requirements specific
3 to grade crossings and further stated he felt he
4 slowed adequately to view clear traffic to
5 proceed through the crossing."

6 Q. You were going to say something
7 about the previous sentence first. Go ahead and
8 say that.

9 A. This is relevant because there is a
10 unique observation that I was in front of the
11 vehicle. The key element often is whether
12 the vehicle slowed or stopped. The rule says he
13 must stop.

14 I did not observe any braking action
15 as I was in front of the vehicle. Therefore, I
16 could not see any stop lamps illuminated. So my
17 physical location in front of the vehicle
18 allowed me to view the vehicle unobstructed and
19 saw the vehicle proceeded through the crossing
20 without stopping.

21 ATTORNEY EXAMINER: Could I just ask
22 a question for clarification? At what point in
23 time prior to you traveling over the grade
24 crossing did you observe the motion of the
25 vehicle driven by Mr. Mirabal?

1 THE WITNESS: Probably five
2 seconds.

3 ATTORNEY EXAMINER: So your
4 testimony is that at that point you drove over
5 the crossing and Mr. Mirabal drove his vehicle
6 over the crossing and the distance between your
7 two vehicles did not change at any time?

8 THE WITNESS: That's correct.

9 ATTORNEY EXAMINER: That is your
10 testimony.

11 THE WITNESS: That is my testimony.

12 ATTORNEY EXAMINER: Go ahead.

13 Q. And then just turning to the last
14 sentence, I just want to talk to you a little
15 bit about your discussion with Mr. Mirabal on
16 that -- at the time of the inspection.

17 So, Mr. Mirabal basically told you
18 on that day that he felt that he slowed
19 adequately?

20 A. Yes. At the beginning of
21 the inspection I notified Mr. Mirabal the reason
22 for his being stopped and inspected. And his
23 statement to me was that, how I documented it,
24 he stated he was aware of the hazardous
25 requirements, specifically to the grade

1 crossing. And further stated he felt he slowed
2 adequately to view traffic to clear
3 the crossing safely.

4 Q. So the driver did mention some
5 traffic approaching him from behind?

6 A. That I cannot testify. I can only
7 testify what my notes say.

8 Q. Do you believe the driver admitted
9 not stopping at the scene?

10 A. He made a reference to slowing,
11 that he made an excuse, if you will, for
12 the reason for not stopping.

13 Q. Okay. And traffic from behind a
14 commercial motor vehicle, that would not excuse
15 Mr. Mirabal from stopping at the crossing; is
16 that correct?

17 A. No, sir.

18 Q. It's not a mitigating factor here?

19 A. It is not.

20 Q. Just back to your notes, you
21 completed these notes contemptuousness or at the
22 same time the day of the report; correct?

23 A. At the day of the report, yes, sir.

24 Q. And just commonly as part of your
25 job you regularly are looking for driver's

1 behavior at railroad crossings; is that correct?

2 A. That's correct.

3 Q. And just Ohio drivers in general,
4 cars, trucks, they are all obligated to keep a
5 safe distance while following another vehicle;
6 is that correct?

7 A. That's correct.

8 Q. Okay. The stop was at 7:30 in the
9 morning; is that correct?

10 A. Yes. 7:31 actually.

11 Q. Okay. Was it light outside?

12 A. Yes.

13 Q. Okay. Nothing weather related that
14 would have impeded your vision; is that correct?

15 A. No.

16 Q. And your vision is okay?

17 A. Yes.

18 Q. You have regular checkups?

19 A. Yes.

20 Q. So, as a result, kind of to sum this
21 up, as a result of your observations on the day
22 of the citation you cited Mr. Mirabal with the
23 violation of failure to stop at a railroad
24 crossing; correct?

25 A. I did.

1 Q. And that is your testimony today
2 here that you observed Mr. Mirabal fail to stop
3 at a railroad crossing; is that correct?

4 A. It is, yes.

5 Q. Anything else that you can think of
6 which would be important for the Commission to
7 know?

8 A. Well, as I stated the route
9 utilized, U.S. 42, is a two-lane rural route
10 with moderately heavy traffic. There are two
11 schools within approximately four miles of my
12 location or location of the crossing, which is
13 also of note that school buses must also stop at
14 grade crossings, which they do every day, I
15 observe them every day.

16 Unfortunately Mr. Mirabal did not
17 stop at the crossing and that is why he was
18 inspected for that violation.

19 MR. BEELER: No further questions
20 right now, Your Honor. I would reserve Mr.
21 Haskins for rebuttal if it's necessary.

22 And then again at this time I move
23 for the admission of Staff Exhibit 1 into the
24 record subject to cross-examination from Mr.
25 Mirabal.

1 ATTORNEY EXAMINER: Okay. Mr.
2 Mirabal, do you have any questions for the
3 witness?

4 MR. MIRABAL: I do.

5 ATTORNEY EXAMINER: Okay.

6 CROSS-EXAMINATION

7 By Mr. Mirabal:

8 Q. I saw the officer in front of me.

9 ATTORNEY EXAMINER: I need you to
10 ask him questions.

11 MR. BEELEER: Objection.

12 ATTORNEY EXAMINER: You will have a
13 chance to testify.

14 Q. Yes. Well, you told them that you
15 didn't see -- you don't remember about
16 the traffic behind, and I don't know if you
17 remember that when you pulled me over and I
18 explained to you about the traffic behind me.
19 Okay? The way this person was driving behind
20 me. Okay.

21 And then you told me, which was the
22 red car, you saw the car. You saw the car.

23 ATTORNEY EXAMINER: You have to ask
24 him a question. Like I said, you will have the
25 opportunity to tell your side of the story, but

1 if you have any questions for the witness you
2 need to form them, frame them in the form of a
3 question.

4 Q. Do you remember that?

5 A. I don't remember.

6 Q. When I told you about the traffic
7 behind me, I have been driving for 17 years, and
8 I never have any problem with my driver's
9 license. And I really don't want it to ruin my
10 record.

11 MR. BEELER: Objection, your Honor.
12 Testifying, you will have an opportunity to
13 testify.

14 ATTORNEY EXAMINER: Yes. Sustained.
15 You will have an opportunity. This is an
16 opportunity for you to ask questions of the
17 witness.

18 Q. You don't remember when you told me
19 about the red car?

20 MR. BEELER: Objection. Asked
21 and answered.

22 ATTORNEY EXAMINER: I will allow it.

23 Q. Do you remember?

24 A. I don't recall my exact dialogue.
25 I don't remember any discussion of a red car.

1 MR. MIRABAL: Okay.

2 ATTORNEY EXAMINER: Do you have any
3 further questions?

4 MR. MIRABAL: No, that is
5 the question because I asked him when he pulled
6 me over.

7 ATTORNEY EXAMINER: Okay. I have a
8 few questions for you.

9 EXAMINATION

10 By the Hearing Officer:

11 Q. At the time that you -- your
12 testimony is that you were in front of Mr.
13 Mirabal and observed him travel over the tracks
14 without stopping. How did you come to inspect
15 his vehicle? Can you explain that?

16 A. Yes. Once I observed the commercial
17 vehicle pass through the crossing I waited until
18 I had a safe shoulder on the highway to inspect
19 the vehicle. So probably maybe almost a mile to
20 where I activated my traffic lights and pulled
21 the vehicle over on a safe shoulder section of
22 the road.

23 Q. So Mr. Mirabal passed you?

24 A. He did not. Our relationship never
25 changed. I was in front of Mr. Mirabal, and at

1 the time I observed a wide stop from the side of
2 the road I was activating my lights and pulled
3 Mr. Mirabal over to that part of the highway.

4 Q. So he was still in back of you?

5 A. Yes, he was.

6 Q. Okay. And he reacted to your
7 lights, he pulled over?

8 A. Correct.

9 Q. Alongside the road. US 42 is a
10 two-lane road?

11 A. It is.

12 Q. What is the speed limit of that
13 road?

14 A. 55, at that location.

15 Q. And at the crossing itself are there
16 gates and lights?

17 A. There is.

18 Q. Is there an exempt sign posted?

19 A. There is not.

20 Q. And on the day of your observation
21 of the violation what were the traffic
22 conditions?

23 A. At 7:30 in the morning I would say
24 moderate to heavy based on the schools in the
25 area and the fact that it is somewhat rural, so

1 it is a truck route. So I would say there were
2 vehicles utilizing the highway moderately.

3 Q. On the inspection report it
4 indicates in the vehicle identification section
5 that there was a cargo seal removed and a cargo
6 sealed replaced. Can you explain that?

7 A. Yes. Part of our duties conducting
8 these roadside inspections involves the
9 inspection of the cargo in addition to the
10 vehicle and the driver. This inspection
11 requires us to remove a seal. In this case it
12 was offered by the shipper in Florida, and I am
13 required to document removal and replacement of
14 the seal if I feel that inspection of the cargo
15 is necessary.

16 In this case that is exactly what I
17 did. I removed the existing seal, replaced it
18 with a State issued seal, signed the shipping
19 document provided by the driver, and made an
20 inspection and entry into the trailer to
21 investigate the commodity, the cargo.

22 Q. And are cargo seals normally used
23 with what is hazardous materials? I mean, with
24 cargo that is placarded?

25 A. Often, yes, your Honor, that is the

1 normal industrial practice to secure the cargo
2 with a metal seal.

3 Q. And what was the cargo in this case?

4 A. It was a corrosive chemical. I
5 believe it was -- I would have to check.

6 Q. If you know?

7 A. I know it was 43,008 pound shipment
8 of a corrosive material.

9 Q. And that corrosive material means
10 it's a hazardous material sufficient to require
11 placards?

12 A. Yes, sir.

13 ATTORNEY EXAMINER: That is all I
14 have. You may step down.

15 Do you have another witness?

16 MR. BEELER: I do, your Honor. At
17 this time the Staff would call Thomas Persinger
18 to the stand.

19 (WITNESS SWORN)

20 - - -

21 THOMAS PERSINGER
22 called as a witness, being first duly sworn,
23 testified as follows:

24 DIRECT EXAMINATION

25 By Mr. Beeler:

1 Q. Good morning.

2 A. Good morning.

3 Q. Please state your name for the
4 Examiner.

5 A. My name is Thomas Persinger.

6 Q. Where are you employed, Mr.
7 Persinger?

8 A. I am employed in the Transportation
9 Department of the Public Utilities Commission of
10 Ohio.

11 Q. What is your position?

12 A. I am a Compliance Officer.

13 Q. How long have you been in that
14 position?

15 A. Just short of six years.

16 Q. What are your duties in that
17 position?

18 A. Some of my duties include
19 determining fine amounts for violations that
20 result from a roadside inspection as well as
21 compliance reviews.

22 Then I also on occasion will do
23 roadside inspections where I go out to the field
24 and inspect vehicles for safety purposes.

25 Q. What sort of training do you have in

1 this area, qualifications?

2 A. Certain training I have gone
3 through, North America Standard classes, the
4 Part A, Part B classes that deal with driver
5 regulations, vehicle regulations as well as
6 several hazmat courses including federal hazmat,
7 bulk package, cargo tank.

8 Q. Okay. Just generally as part of
9 your duties just explain how forfeitures are
10 generally derived.

11 A. Forfeitures originate from roadside
12 inspections where an inspector or hazmat
13 specialist or State Trooper in uniform will
14 perform an inspection on a commercial motor
15 vehicle. Those inspections are uploaded into
16 the central database FMCS portal into Safetynet
17 and then from that our system will determine the
18 fine based upon the violation that is written.

19 Q. And the Commission applies this
20 process uniformly to all carriers, shippers,
21 drivers?

22 A. Correct.

23 MR. BEELEER: May I approach
24 the witness, your Honor?

25 ATTORNEY EXAMINER: Yes.

1 MR. BEELER: I have here what has
2 been marked as Staff Exhibit 2. This is a
3 Notice of Preliminary Determination that was
4 sent to Mr. Mirabal. It was addressed to Ms.
5 Milena Spassova. And this is dated November 20,
6 2016.

7 (EXHIBIT MARKED FOR THE PURPOSE OF
8 IDENTIFICATION)

9 Q. Do you recognize this document?

10 A. Yes, sir.

11 Q. What is it?

12 A. It's a Notice of Preliminary
13 Determination letter.

14 Q. Okay. And this is the document that
15 was sent to the Respondent, Mr. Mirabal?

16 A. Correct.

17 Q. I noticed that it is addressed to
18 Ms. Spassova. Do you know why that is?

19 A. A lot of times the driver may
20 indicate or designate someone to have, or excuse
21 me, request a conference on their behalf. It
22 could be an attorney, it could be a carrier
23 official, employment official.

24 Q. At least to the best of your
25 understanding Ms. Spassova was a carrier

1 official?

2 A. Correct.

3 Q. But Mr. Mirabal is down in the text,
4 the body of this document as the driver in this
5 case?

6 A. Yes, sir

7 Q. Okay. As far as you know this
8 document was sent to the Respondent?

9 A. Yes, sir.

10 Q. Did you review this document in
11 preparation for hearing today?

12 A. Yes, sir, I did.

13 Q. And is this document a Commission
14 record?

15 A. Yes, it is.

16 Q. It's kept in the ordinary business
17 of the Commission?

18 A. Correct.

19 Q. Okay. Explain in this specific case
20 how the civil forfeiture was derived.

21 A. The forfeiture was derived based
22 upon the listing of the violations as a Group 4
23 violation. Depending upon what sort of Group 4
24 violation it is, it will receive a forfeiture
25 amount anywhere from \$100 to \$500.

1 In this case any sort of failure to
2 stop at a railroad crossing where hazmat is on
3 board automatically generates a fine amount of
4 \$500.

5 Q. Okay. So \$500 is the forfeiture
6 amount in this case?

7 A. Correct.

8 Q. And that is a correct forfeiture
9 amount in your opinion?

10 A. Yes, sir.

11 Q. So the penalty here, is that
12 consistent with the recommended fine schedule
13 and recommended civil penalty procedure adopted
14 by the Commercial Motor Vehicle Alliance?

15 A. Yes, it is.

16 Q. Would you recommend this amount to
17 the Commission?

18 A. Yes, I do.

19 Q. Anything else important that we have
20 not talked about that you think the Commission
21 should know?

22 A. Not that I can think of.

23 MR. BEELEER: Thank you. No further
24 questions, your Honor.

25 At this time I would move for the

1 admission of Staff Exhibit 2 subject to
2 cross-examination by Mr. Mirabal.

3 ATTORNEY EXAMINER: All right. Do
4 you have any questions?

5 MR. MIRABAL: No.

6 ATTORNEY EXAMINER: Okay. I just
7 have a question just for clarification.

8 EXAMINATION

9 By the Attorney Examiner:

10 Q. This is identified as Group 4.
11 Could you explain the grouping numbers
12 associated with fines that the Commission uses?

13 A. The grouping a lot of times will
14 vary depending upon what has been determined as
15 the severity of a violation. And a lot of times
16 the grouping, depending upon are you a Group 1,
17 Group 4, sometimes there could be multipliers if
18 you have more violations in a particular group.

19 And sometimes if you only have one
20 violation in a particular group you may not
21 necessarily get a fine for it.

22 Q. Okay. And there aren't any
23 multipliers in this case; is that correct?

24 A. Correct.

25 Q. And the system that you are using is

1 adopted from the Commercial Motor Vehicle
2 Alliance; is that correct?

3 A. Correct.

4 ATTORNEY EXAMINER: Okay. All
5 right. That is all I have. Thank you.

6 Did you have another witness?

7 MR. BEELEER: No other witnesses,
8 your Honor.

9 ATTORNEY EXAMINER: Okay. The Staff
10 has moved for admission of Staff Exhibit 1 and
11 2. Do you have any objections to the admission
12 of those exhibits?

13 MR. MIRABAL: I am sorry.

14 ATTORNEY EXAMINER: Do you have any
15 objection to the admission of Staff Exhibits 1
16 or 2?

17 MR. MIRABAL: No.

18 ATTORNEY EXAMINER: Okay. Then they
19 will be admitted.

20 (EXHIBITS HEREBY ADMITTED INTO
21 EVIDENCE.

22 ATTORNEY EXAMINER: Now, Mr.
23 Mirabal, you will have a chance to tell your
24 side of this. Why don't you come up here, and
25 you can bring your papers with you up here.

1 MR. MIRABAL: Can I do it from here?

2 ATTORNEY EXAMINER: That is okay.

3 MR. MIRABAL: I can see straight to
4 your face.

5 ATTORNEY EXAMINER: Okay.

6 (WITNESS SWORN)

7 - - -

8 PEDRO MIRABAL

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

11 MR. MIRABAL: Something I don't
12 understand over here. I have been driving for
13 almost 18 years. If you check my records I got
14 a great record. I never have any major problem
15 with my driver's license because this is my
16 living.

17 The officer was driving in front of
18 me for a while. I was watching the officer in
19 front of me. I would not do something like that
20 to risk my load, to risk somebody, because I
21 know I am going to get in trouble. Okay.

22 I had a big traffic behind me. The
23 car behind me, he was pushing me bad. This
24 driver, I cannot -- with this load I will not --
25 I don't like to go like 55 miles an hour and

1 only two-lane road, only two-lane road because
2 this thing is. Okay.

3 So I was going under 55 miles. And
4 this driver I think he was -- he was dimming
5 the lights, he tried to move forward the line.

6 Okay. And then he was pushing me.
7 He was pushing me. I was put in danger with
8 this driver.

9 I didn't see the sign. When I saw
10 the sign for the railroad it was late. Okay.
11 I do try to stop the most I can, but if I tried
12 to stop complete I would stop in the middle of
13 the railroad, or I have to jerk my brake to
14 complete and risk the load, which I knew would
15 be dangerous.

16 That is something, that is what I
17 tried to explain to the officer when he pulled
18 me over. And then he told me which one, the red
19 car? So he saw the car, he saw the car.

20 I think in this case he should have
21 pulled over the car and see why he was driving
22 behind me that way and pushing the truck that
23 way. Okay.

24 I went down the hill because
25 something like that, and in Arizona and in the

1 wintertime, because car like that was pushing
2 me. I slowed down, this car tried to go over
3 me. When he tried to go over me he was sliding
4 under my trailer. I went to the shoulder and
5 the car go. And then when I tried to get in my
6 lane I went jackknife down the hill.

7 This is the reason why I always
8 check my traffic behind me. When I saw the car
9 and the way he was driving, something to me that
10 I have to keep looking at this car the way he
11 was driving behind me, because it was dangerous.

12 I didn't see the sign. When I saw
13 the sign it was a little bit late. I could stop
14 complete, but if I tried to stop complete the
15 load will move and we can have a spill and spill
16 hazmat. We could have something dangerous.

17 So I did the most safe I could, my
18 process, I tried my best. I didn't stop
19 complete because I didn't want no like that.

20 This is the only living I have.
21 My driver's license. And I sustain my dad, he
22 is sick, and I can't pay my house.

23 I will not put my driver's license
24 like that in the middle for two seconds, sir. I
25 would not. I will not.

1 When I told the officer about the
2 car, he told me which one, the red car? He saw
3 the car.

4 ATTORNEY EXAMINER: Is that all you
5 have to say?

6 MR. MIRABAL: Yes, sir.

7 ATTORNEY EXAMINER: Okay. Do you
8 have questions?

9 MR. BEELER: One second, your Honor.

10 ATTORNEY EXAMINER: Sure.

11 MR. BEELER: Just one just to
12 reiterate.

13 I take that back. I have no
14 questions, your Honor.

15 ATTORNEY EXAMINER: Thank you very
16 much.

17 MR. MIRABAL: I will not try to do
18 something like that, believe me. This is my
19 living. This is the only way I can make a
20 living.

21 I will not try to do something like
22 that. And if you check my record you will see I
23 got a good record. For 17 years, keep
24 the record the way I keep it is not easy.

25 EXAMINATION

1 By the Attorney Examiner:

2 Q. Your testimony is that you traveled
3 over the crossing without stopping; correct?

4 A. No, I did stop, but when I --

5 Q. You are testifying now that you
6 stopped?

7 A. No, I slowed down the most I can.

8 Q. So, you went over the crossing
9 without stopping though; is that correct?

10 A. I did, sir.

11 Q. And your testimony --

12 A. I was going like probably like 3 --
13 at the moment I was on the railroad might be 4,
14 5 miles an hour because I don't want to stop in
15 the middle of the railroad.

16 And that was the only choice to be
17 safe, make sure nobody come.

18 ATTORNEY EXAMINER: Do you have any
19 questions?

20 MR. BEELER: No, your Honor.

21 ATTORNEY EXAMINER: Okay. Do you
22 have any documents or anything you want to offer
23 as exhibits?

24 MR. MIRABAL: No, sir, I don't.

25 ATTORNEY EXAMINER: Okay. I have no

1 further questions. We will submit this on the
2 record and the Commission will render a
3 decision. Thank you.

4 MR. MIRABAL: Is this going to
5 suspend my driver's license?

6 ATTORNEY EXAMINER: The process,
7 what will happen now, is that the transcript
8 this gentleman here has been preparing, and
9 the exhibits will become the record in this
10 case. The transcript of the testimony of you,
11 the officer, this witness here, and the
12 questions we have all asked, that becomes --
13 that and the exhibits become the record of
14 the case.

15 The Commission within three months,
16 two or three months, will render a decision on
17 this case. If they find against you your case
18 will be referred to the Bureau of Motor Vehicles
19 and the Bureau of Motor Vehicles is the forum
20 which they decide what happens to your license.

21 The Commission doesn't do anything
22 with your commercial motor vehicle license. The
23 Bureau of Motor Vehicles deals with those in
24 Ohio.

25 So the Commission doesn't have

1 anything to do with that. They will just render
2 a decision on whether or not there is a
3 violation of the law as alleged by staff. Does
4 that explain that?

5 MR. MIRABAL: Yes, sir.

6 ATTORNEY EXAMINER: Okay. All
7 right. Thank you.

8 (At 10:40 A.M. the hearing was
9 concluded)

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CERTIFICATE

I do hereby certify that the foregoing
is a true and correct transcript of the
proceedings taken by me in this matter on March
7, 2017, and carefully compared with my original
stenographic notes.

Michael O. Spencer,
Registered Professional
Reporter.

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Case No(s). 16-2310-TR-CVF

Summary: Transcript In the Matter of Pedro Mirabal Notice of Apparent Violation and Intent to Assess Forfeiture, hearing held on March 7, 2017. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Spencer, Michael O. Mr.