

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Ray's :  
Transport, Inc., Notice of : Case No.  
Apparent Violation and : 21-143-TR-CVF  
Intent to Assess Forfeiture. :

- - -

PROCEEDINGS

Before Daniel E. Fullin, Attorney Examiner, held  
at the offices of the Public Utilities  
Commission of Ohio, 180 East Broad Street,  
Hearing Room 11-D, Columbus, Ohio, on Tuesday,  
August 17, 2021, at 10:00, A.M.

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- - -

1 APPEARANCES:

2 Mr. Werner L. Margard  
3 Assistant Attorney General  
4 30 East Broad Street, 26th Floor  
5 Columbus, Ohio 43215

6 On behalf of the Staff of the  
7 Public Utilities Commission  
8 of Ohio.

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Tuesday Morning,  
August 17, 2021.  
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ATTORNEY EXAMINER FULLIN: The Commission has assigned for hearing at this time and place Case No. 21-143-TR-CVF in the Matter of Ray's Transport, Inc. Notice of Apparent Violation and Intent to Assess Forfeiture.

My name is Daniel E. Fullin, I am the Attorney Examiner assigned to hear this case today, and we will begin by having appearances first on behalf of the Staff.

MR. MARGARD. Thank you, Your Honor. On behalf of the Staff of the Ohio Public Utilities Commission, Dave Yost, Ohio Attorney General; John Jones, Section Chief of the Public Utilities Section, by Assistant Attorney General Werner L. Margard, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215.

ATTORNEY EXAMINER FULLIN: Thank you. And I will note that while I will ask for appearance for Complainant, but note there doesn't seem to be anyone here appearing on behalf of the Complainant.

So, at this point I will allow the

1 Staff to make any motions and put on its case,  
2 or both.

3 MR. MARGARD: Your Honor, I would  
4 respectfully move for a default judgment against  
5 the Respondent having failed to appear. I am  
6 prepared to go forward with my case.

7 ATTORNEY EXAMINER FULLIN: Yes, I  
8 will take the motion for default judgment under  
9 advisement. I wouldn't rule on it from  
10 the Bench anyway. Maybe the Commission will  
11 choose to rule that way rather than some other  
12 way in the case. But, so I will take that under  
13 advisement, wait for the Commission decision,  
14 but also allow you to put your case in chief on  
15 for today.

16 MR. MARGARD: Thank you, Your Honor.  
17 For my first witness I would call Motor Carrier  
18 Inspector Johnson to the stand, please.

19 ATTORNEY EXAMINER FULLIN: My  
20 intention would be to just allow him to stay  
21 where he is and testify from there. If the  
22 court reporter can hear just as well that would  
23 be fine. And the next witness can either take  
24 the stand or just come up to the table, either  
25 way.

1 MR. MARGARD: Thank you, Your Honor.

2 I appreciate it.

3 (WITNESS SWORN)

4 - - -

5 INSPECTOR WILLIAM JOHNSON

6 called as a witness, being first duly sworn,

7 testified as follows:

8 DIRECT EXAMINATION

9 By Mr. Margard:

10 Q. Would you please state your name for  
11 the record?

12 A. William Johnson.

13 Q. And by whom are you employed and in  
14 what capacity, please?

15 A. By the State of Ohio, and I am a  
16 Motor Carrier Enforcement Inspector.

17 Q. Can you briefly describe your  
18 duties?

19 A. I inspect trucks, log books,  
20 mechanically, also check for tires, brakes.

21 Q. And how long have you been doing  
22 that?

23 A. Five years.

24 Q. Okay. Did you have occasion to be  
25 performing those duties on the 5th of November

1 in 2020?

2 A. Yes.

3 Q. And as result of your work on that  
4 date did you have occasion to inspect a truck  
5 being operated by Ray's Transport, Inc?

6 A. Yes, I did.

7 Q. And as a result of that inspection  
8 did you issue a Driver/Vehicle Examination  
9 Report?

10 A. Yes, I did.

11 Q. I have placed before you a document  
12 that I have marked for purposes of  
13 identification as Staff Exhibit 1. Can you  
14 identify that document?

15 A. Yes. It's a copy of the inspection.

16 Q. And was that prepared by you at the  
17 time of your inspection?

18 A. Yes.

19 Q. And have you had an opportunity to  
20 review this prior to taking the stand today?

21 A. Yes.

22 Q. And does it accurately reflect your  
23 findings on that date?

24 A. Yes, it does.

25 Q. I want to briefly go through



1 the violations. The first violation says  
2 "Onboard recording device does not display  
3 required information."

4 Did the vehicle have the onboard  
5 recording device?

6 A. Yes, it did.

7 Q. What information did it not display,  
8 if you recall?

9 A. It didn't display the mileage  
10 driven.

11 Q. Okay. The next violation indicates  
12 that the "Driver failed to maintain ELD  
13 instruction sheet."

14 First of all, for the record, ELD  
15 means --

16 A. Electronic logging device.

17 Q. And what is an ELD instruction  
18 sheet?

19 A. It is a piece of paper that has  
20 the company, or it could be electronic also,  
21 that when you are stopped it will say this is  
22 how you transfer it to that MCSA website. Very  
23 basic information. Just push this button, do  
24 this and off it goes.

25 Q. And the driver did not have such a

1 sheet?

2 A. Correct.

3 Q. Thank you. The next violation  
4 indicates the "Driver failed to manually add the  
5 trailer number." This would be on the logging  
6 device?

7 A. Correct.

8 Q. And there was no trailer number  
9 noted on the logging device?

10 A. Correct.

11 Q. Was there a trailer on this vehicle?

12 A. Yes.

13 Q. What type of trailer was it? Do you  
14 recall?

15 A. It was a Walbash.

16 Q. Was it a regular cargo, was it a  
17 refrigerator?

18 A. It's a refrigerated trailer.

19 Q. Thank you very much. I am going to  
20 ask you in the packet that I have handed you to  
21 go to what's been marked as Staff Exhibit 4.  
22 It's a photograph.

23 A. Okay.

24 Q. Do you recognize this photograph?

25 A. Yes.

1           Q.    Is this a photograph that you took  
2           at the time of the inspection?

3           A.    Yes.  There is me in the reflection.

4           Q.    And it's a reflection of the device,  
5           and you would have expected to see in this  
6           display the things that you noted in your report  
7           were missing?

8           A.    Correct.

9           Q.    So this photograph documents that  
10          missing information; correct?

11          A.    Correct.

12          Q.    Thank you.  The next violation on  
13          the inspection report is failure to manually add  
14          the shipping document number.  Is that also  
15          something that would be displayed on the ELD?

16          A.    Yes, it would be.

17          Q.    And it was not?

18          A.    Correct.

19          Q.    Did the driver have a shipping  
20          document?

21          A.    Yes.

22          Q.    Let me ask you to turn to what is  
23          marked as Staff Exhibit No. 5.  It's another  
24          photograph.  And can you identify that document  
25          for me?

1 A. That's his shipping documents.

2 Q. And did you take this photograph?

3 A. Yes.

4 Q. At the time of the inspection?

5 A. Yes.

6 Q. What does this photograph show?

7 A. It will show the shipping document  
8 information like the shipper, what he is  
9 hauling, the shipping document number itself,  
10 where he is coming from and going to. And what  
11 the commodity is.

12 Q. And what commodity was he hauling?

13 A. Just refrigerated food.

14 Q. Okay. Thank you. And this is  
15 the document that has the number that you  
16 expected to see on the ELD?

17 A. Correct.

18 Q. Thank you. The next violation that  
19 you noted was "Driving beyond the 11 hour  
20 driving limit in a 14 hour period."

21 How did you determine this  
22 violation?

23 A. By looking at his logs.

24 Q. And did his logs show that he had  
25 more than 11 hours in 14?

1           A.    Yes.

2           Q.    And likewise the final violation is  
3    "Driving beyond the eight hour limit since  
4    the end of the last off duty or sleeper period  
5    of at least 30 minutes."

6                   Did you discover this in the same  
7    manner?

8           A.    Yes.   Looking at the logs.

9           Q.    Okay.   In refreshing your  
10   recollection prior to the hearing today in  
11   reviewing this report was there any other  
12   information of note as to why he had these  
13   violations?   Did he give you any reason or  
14   explanation?

15          A.    He said Covid exemption.

16          Q.    Did he explain what he meant by  
17   that?

18          A.    No.

19          Q.    Are you aware of Covid exemptions?

20          A.    Yes.

21          Q.    And what is your understanding of  
22   Covid exemptions?

23          A.    They are not for general stocking of  
24   shelves.   They are for supplying a significant  
25   amount of the product.

1 Q. Are you familiar with this company?

2 A. No, not really. They are just a  
3 trucking company.

4 Q. But in your opinion and based on  
5 your experience was this just a routine grocery  
6 shipment?

7 A. Correct.

8 Q. Is there anything else with respect  
9 to your inspection that we haven't covered that  
10 you think the Commission needs to know in order  
11 to be able to make a decision in this case?

12 A. No.

13 MR. MARGARD: Thank you. Your  
14 Honor, I have no further questions for  
15 the witness.

16 ATTORNEY EXAMINER FULLIN: Towards  
17 the end of your questioning or answering of  
18 questions you talked about a Covid exemption  
19 having to do with stocking of shelves. That is  
20 what I heard.

21 Could you explain more? I am not  
22 familiar with Covid exemptions. Could you just  
23 help me understand more about what you are  
24 talking about?

25 THE WITNESS: The Covid exemptions

1 allowed for -- I always got it confused. I  
2 always had to make a phone call to my supervisor  
3 about it because there were a lot of  
4 stipulations.

5 But it was not just general  
6 restocking like filling up the shelves at  
7 Speedway. It was more for transporting food  
8 that was needed somewhere, and they got  
9 exemptions so they didn't have to run log books,  
10 you just drive.

11 ATTORNEY EXAMINER FULLIN: Okay.  
12 Maybe you have already covered this, but just  
13 because I didn't note it, I concentrated on  
14 everything that I heard, could you explain why  
15 in this case it doesn't seem to be a situation  
16 where the Covid exemption would apply?

17 THE WITNESS: Because it was just  
18 general groceries to a store.

19 ATTORNEY EXAMINER FULLIN: Okay.  
20 Thank you. I don't think I have any further  
21 questions. Thank you for your testimony.

22 MR. MARGARD: Thank you. Your  
23 Honor, Staff would call Mr. Rod Moser to the  
24 stand, please.

25 (WITNESS SWORN)

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ROD MOSER

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

DIRECT EXAMINATION

By Mr. Margard:

Q. Mr. Moser, will you please state  
your name for the record?

A. My name is Rod Moser.

Q. And by whom are you employed and in  
what capacity?

A. I am the Chief of the Registration  
and Compliance Divisions within the  
Transportation Department of the Public  
Utilities Commission of Ohio.

Q. And have you been present throughout  
the hearing?

A. Yes.

Q. Are you familiar with  
the Commission's files in this matter?

A. I am, yes.

Q. And did you have an opportunity to  
review it prior to taking the stand today?

A. I did.

Q. Thank you. Let me ask you first if



1 you have before you what's been marked as Staff  
2 Exhibit No. 1 previously identified as the  
3 inspection report in this case?

4 A. Yes, sir, I do.

5 Q. Is this document contained as part  
6 of the Commission's record in this case?

7 A. Yes, it is.

8 Q. Let me ask you then to turn to,  
9 please, Staff Exhibit No. 2. Will you identify  
10 that document for me, please?

11 A. Sure. This is what we commonly  
12 refer to as an a NAV, or Notice of Apparent  
13 Violation. It's a listing of the violations  
14 reported on the inspection.

15 The reason it's in this format as an  
16 NAV is because there were no fines assessed as  
17 part of this civil forfeiture process.

18 Q. Let me then ask you to turn to Staff  
19 Exhibit No. 3, and identify that document,  
20 please?

21 A. This is again what we commonly refer  
22 to as an NPD, or Notice of Preliminary  
23 Determination. This is a document that  
24 basically says that the carrier, the Respondent,  
25 in this case the carrier, had a conference with

1 one of the compliance officers, they were unable  
2 to resolve any differences.

3 And this document tells the carrier  
4 that their options going forward are either to  
5 pay the fine or not pay the fine in this case,  
6 but that they could request an administrative  
7 hearing.

8 Q. These notices indicated in Staff  
9 Exhibit No. 2 and Staff Exhibit No. 3, these are  
10 required notices; is that correct?

11 A. Yes, sir.

12 Q. Under the Commission's rules and in  
13 your opinion were these notices properly issued  
14 and timely served?

15 A. Yes, sir, they were.

16 Q. Thank you. And you indicated that  
17 there were no forfeitures assessed in this.  
18 Can you briefly explain why that is the case?

19 A. Sure. The violations that are  
20 reportable by way of inspections are divided  
21 into groups. There is five groups. Group zero,  
22 1, 2, 3 and 4.

23 Group zero violations never have a  
24 fine. Groups 1, 2 and 3 have a fine if  
25 the violation is an out of service violation.

1 Group 4 always has a fine.

2 Groups zero through 3 are generally  
3 related to nominal out of service violations and  
4 equipment issues. And they are -- group zero  
5 violations are generally considered not to be  
6 impactful or related to crashes. Group 1 is the  
7 most likely to cause a crash than Group 2 and  
8 Group 3.

9 In this case there are five Group  
10 Zeros, again those never have a fine. And then  
11 the Group 1 is driving 11 hours in a 14 hour  
12 period, it was not an out of service violation,  
13 so there was no fine assessed.

14 MR. MARGARD: Thank you, very much.  
15 Your Honor, I have provided the witness, the  
16 Bench and the court reporter with an additional  
17 document from the Federal Motor Carrier Safety  
18 Administration marked Emergency Declaration  
19 Under 49 CFR Section 390.23. And I would  
20 respectfully request that administrative notice  
21 be taken of this document.

22 ATTORNEY EXAMINER FULLIN: I think I  
23 will also mark it as an exhibit.

24 MR. MARGARD: Very good. In that  
25 case, Your Honor, we will mark it as Staff

1 Exhibit No. 6.

2 ATTORNEY EXAMINER FULLIN: Okay.

3 I am marketing the copy I have, and I will take  
4 administrative notice of it as well.

5 (EXHIBIT MARKED FOR THE PURPOSE OF  
6 IDENTIFICATION)

7 MR. MARGARD: Thank you.

8 Q. Mr. Moser, do you have before you  
9 what's been marked now as Staff Exhibit No. 6?

10 A. I do, yes.

11 Q. And are you familiar with this  
12 document?

13 A. I know of it. I can't say I am  
14 intimately familiar with it.

15 Q. I understand. Let me direct your  
16 attention to the third paragraph and just ask  
17 you if you would read the first couple of lines  
18 in that paragraph?

19 A. Sure. "This Emergency Declaration  
20 provides regulatory relief for commercial motor  
21 vehicle operations that are providing direct  
22 assistance in support of emergency relief  
23 efforts related to Covid-19 outbreaks, including  
24 transportation to meet immediate needs for: (1)  
25 medical supplies and equipment related to the

1 testing, diagnosis and treatment of Covid-19;  
2 (2) supplies and equipment necessary for  
3 community safety, sanitation, and prevention of  
4 community transmission of Covid-19 such as  
5 masks, gloves, hand sanitizer, soap and  
6 disinfectants; (3) food for emergency restocking  
7 of stores."

8 Q. And I can probably stop you there.  
9 No need to read the entire paragraph.

10 Is it your understanding that the  
11 issue in this matter relates to food?

12 A. Yes. Specifically not just that you  
13 are transporting food, but it's for emergency  
14 restocking.

15 Q. And in fact let me direct your  
16 attention on that same paragraph, about the  
17 fourth line up beginning with the word direct  
18 assistance. Do you see that sentence? It's in  
19 the third paragraph, four lines up from the  
20 bottom?

21 A. Okay. Yes.

22 Q. It says direct assistance. Do you  
23 see that?

24 A. Yes, I do.

25 Q. And would you read that sentence,

1 please?

2 A. "Direct assistance does not include  
3 routine commercial deliveries, or transportation  
4 of mixed loads that include essential supplies,  
5 equipment and persons, along with supplies,  
6 equipment and persons that are not being  
7 transported in support of emergency relief  
8 efforts related to the Covid-19 outbreaks."

9 Q. And what is your understanding of  
10 that sentence?

11 A. Again, it would only apply to  
12 emergency relief efforts.

13 Q. And not regular grocery shipments?

14 A. Right. Not run of the mill  
15 deliveries.

16 MR. MARGARD: I have no further  
17 questions for the witnesses. Thank you, Your  
18 Honor.

19 ATTORNEY EXAMINER FULLIN: Thank  
20 you. I don't think I have any other questions.  
21 Thank you.

22 MR. MARGARD: Your Honor, that  
23 concludes Staff's case. I would respectfully  
24 move for the admission of Staff Exhibits 1  
25 through 6. And I would at this time renew my

1 motion for a default judge against the  
2 Respondent.

3 ATTORNEY EXAMINER FULLIN: I will  
4 admit all 6 Staff Exhibits into the record at  
5 this time. And, again, advise that I am taking,  
6 acknowledging your motion for default judgment  
7 and taking it under advisement subject to the  
8 Commission ruling on it.

9 I guess I also want to ask, I  
10 haven't done that many of these types of cases,  
11 and the ones that I have done always have some  
12 kind of assessment. Here I see that's not the  
13 case, so am I to understand that the Staff is  
14 looking to have the Commission find the  
15 violations that are set out here, but not  
16 necessarily proposing any kind of assessment in  
17 this case?

18 MR. MARGARD: That is correct, Your  
19 Honor. And there are consequences for finding  
20 violations even without forfeiture, and we can  
21 certainly have a Staff witness speak to that if  
22 you desire, but that is in fact what we are  
23 looking for in this case is a finding of  
24 violations.

25 ATTORNEY EXAMINER FULLIN: Okay.

1 Yes, I just wanted to understand because, again,  
2 having limited experience and not having that  
3 situation come up before, I didn't want to be  
4 making an assumption that that was the case  
5 without some understanding from the Staff that  
6 that is what's involved here.

7 MR. MARGARD: That is correct, Your  
8 Honor.

9 ATTORNEY EXAMINER FULLIN: So, I  
10 don't think we need any further testimony on  
11 that. I do feel like if I come into need of  
12 further understanding of that situation I could  
13 consult with Staff without necessarily rendering  
14 any kind of prejudice into the case or anything.  
15 So I will reply on the ability to do that as  
16 well.

17 And with that I think we can  
18 probably bring this hearing to a close. And I  
19 appreciate everyone's time and effort, and the  
20 case will be submitted on the record based on  
21 today's hearing record.

22 MR. MARGARD: Thank you, Your Honor.

23 ATTORNEY EXAMINER FULLIN: Thank  
24 you.

25 (At 10:35 A.M. the hearing was



1 concluded)

2 - - -

3 CERTIFICATE

4 I do hereby certify that the foregoing  
5 is a true and correct transcript of the  
6 proceedings taken by me in this matter on August  
17, 2021, and carefully compared with my  
original stenographic notes.

7  
8 

---

Michael O. Spencer,  
9 Registered Professional  
Reporter.

10 - - -

**This foregoing document was electronically filed with the Public Utilities**

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Summary: Transcript August 17th 2021

In the Matter of Ray's Transport, Inc., Notice of Apparent Violation and Intent to Assess Forfeiture. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Spencer, Michael O. Mr.