

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. :

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

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APPEARANCES:

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

On behalf of the Staff of the
Public Utilities Commission
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)

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CERTIFICATE

4

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

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Michael O. Spencer,
Registered Professional
Reporter.

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/25/2021 1:12:22 PM

in

Case No(s). 21-0143-TR-CVF

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.