

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of :
Troy A. Poirier, Notice : Case No.
of Apparent Violation and : 20-1599-TR-CVF
Intent to Assess Forfeiture. :

- - -

PROCEEDINGS

Before Jacky St. John, 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,
November 9, 2021, at 10:00 A.M.

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1 APPEARANCES:

2 Mr. Troy A. Poirier
3 1910 State Route 550
4 Cutler, Ohio 45724

5 Appearing Pro se.

6 Ms. Jodi Bair
7 Assistant Attorney General
8 30 East Broad Street, 26th Floor
9 Columbus, Ohio 43215

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

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Tuesday Morning,
November 9, 2021.
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ATTORNEY EXAMINER ST. JOHN: The
Public Utilities Commission of Ohio has set for
hearing at this time and place Case No.
20-1599-TR-CVF which is captioned In the Matter
of Troy Poirier, Notice of Apparent Violation
and Intent to Access Forfeiture.

Good morning everyone. My name is
Jacky St. John, I am the Attorney Examiner
assigned by the Commission to hear this case.
And at this time we will take appearances of the
parties. First of behalf of Staff.

MS. BAIR: Thank you, your Honor.
On behalf of the Staff of the Public Utilities
Commission of Ohio, Jodi Bair, Assistant
Attorney General, 30 East Broad Street,
Columbus, Ohio 43215.

ATTORNEY EXAMINER ST. JOHN: Thank
you. And, Mr. Poirier, would you please provide
your name and address.

MR. POIRIER: First name Troy, last
name Poirier. Address is 1910 State Route 550,
Cutler, Ohio 45724.

1 ATTORNEY EXAMINER ST. JOHN: Thank
2 you. And with that, Ms. Bair, you are welcome
3 to proceed with your case.

4 MS. BAIR: Thank you, your Honor.
5 I would like to call William Forbes to the
6 stand, please.

7 (WITNESS SWORN)

8 MS. BAIR: Your Honor, could I
9 please have marked as Staff Exhibit 1 the
10 examination report?

11 ATTORNEY EXAMINER: That will be so
12 marked.

13 (EXHIBIT HEREBY MARKED FOR
14 IDENTIFICATION PURPOSES)

15 MS. BAIR: Thank you.

16 - - -

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

20 DIRECT EXAMINATION

21 By Ms. Bair:

22 Q. Can you please tell me your name?

23 A. William Forbes.

24 Q. And what is your job at the
25 Commission?

1 A. I am Chief of the Transportation
2 Department, Enforcement Division.

3 Q. And what are your qualifications for
4 that job?

5 A. I have been trained and certified by
6 the Federal Motor Carrier Safety Administration
7 in driver inspections, vehicle inspections,
8 hazardous material inspections, cargo tank
9 inspections, radioactive material inspections,
10 cylinder inspections.

11 Additionally I am an instructor for
12 the National Training Center for hazardous
13 materials inspections, and cargo tank
14 inspections. And I travel throughout
15 the country training other officers.

16 I have been with the Commission for
17 16 years, eight of that in the civil forfeiture
18 section, and eight of it I was a field
19 supervisor, assistant chief or chief in the
20 transportation department.

21 Q. Thank you. And could I please
22 direct your attention to Staff Exhibit 1? Could
23 you please tell me what that is?

24 A. This is a copy of an inspection
25 report that I conducted on July 29th of 2020.

1 Q. And why did you create this report?

2 A. I observed a violation while
3 stationary at a railroad crossing and stopped
4 the commercial vehicle and conducted a Level 2
5 inspection.

6 Q. And what was the violation that
7 occurred?

8 A. The vehicle failed to stop, a
9 placarded cargo tank vehicle failed to stop for
10 a railroad grade crossing.

11 Q. And how is that a violation?

12 A. It's a violation of the Federal
13 Motor Carrier Safety regulations that all cargo
14 tank motor vehicles transporting hazardous
15 materials must stop between 15 and 50 feet from
16 the grade crossing, look both directions,
17 ascertain no trains are coming, and then
18 continue across the crossing without shifting
19 gears.

20 Q. So what you observed on that day was
21 that the truck did not stop?

22 A. Yes, ma'am.

23 MS. BAIR: Okay. Your Honor, I
24 would like to, I don't know if I will introduce
25 this into evidence, but I would like to --

1 Q. Does your vehicle have a way too
2 video tape this?

3 A. Yes. There is a video recorder in
4 my vehicle.

5 MS. BAIR: And I would like to
6 introduce this into evidence.

7 ATTORNEY EXAMINER ST. JOHN: Okay.
8 Would you like to, or introduce it as exhibit,
9 or mark it as Exhibit 2?

10 MS. BAIR: Yes. This would be Staff
11 Exhibit 2.

12 ATTORNEY EXAMINER: That will be so
13 marked.

14 (EXHIBIT HEREBY MARKED FOR
15 IDENTIFICATION PURPOSES)

16 (At this time the video was played)

17 Q. So does that video reflect what you
18 saw on that day?

19 A. Yes, ma'am.

20 Q. And what was the violation that was
21 indicated on that video?

22 A. The cargo tank motor vehicle hauling
23 gasoline and diesel fuel, hauling diesel fuel
24 and had gasoline in a residue compartment,
25 failed to stop for a grade crossing. And I

1 pulled out immediately, never lost sight of the
2 vehicle, and stopped the vehicle in the little
3 town of Moxahala.

4 Q. And is the driver here today?

5 A. Yes, ma'am.

6 Q. And do you recall, did you say you
7 didn't stop, or what occurred at the stop?

8 A. Yes. I pulled him over and I was
9 calling in the stop, and Mr. Poirier got out of
10 his vehicle and began to walk to the rear. And
11 I met him near the rear of the cargo tank.

12 He said to me "I know I was supposed
13 to stop at that crossing," and he began to
14 explain to me that his truck pulled to the left
15 as he applied his brakes. And there was an
16 oncoming commercial motor vehicle, and that he
17 did not stop.

18 At that time I completed my
19 inspection, discovered a violation of the
20 electronic logging device was not mounted, it
21 was laying on the dash.

22 Listed that violation. Explained
23 both violations to the driver. He proceeded on
24 and I went back to the railroad grade crossing.

25 MS. BAIR: Thank you. Your Honor, I

1 have nothing further.

2 ATTORNEY EXAMINER: Okay. I have a
3 few questions.

4 EXAMINATION

5 By the Attorney Examiner:

6 Q. So looking at the Staff Exhibit 1.
7 Could you, I am not familiar with how this
8 document is laid out, would you mind pointing
9 out to me where you have identified the
10 violations?

11 A. May I stand, your Honor?

12 Q. Yes.

13 A. Right here in this box is
14 violations.

15 ATTORNEY EXAMINER: Okay. Thank
16 you. So, Ms. Bair, just to clarify, so Staff
17 Exhibit 1, is this a 3-page document or 2-page
18 document?

19 MS. BAIR: Your Honor, I have it as
20 a 2-page document, what you have in your hand
21 there.

22 ATTORNEY EXAMINER: Here is what I
23 have.

24 MS. BAIR: Okay. We will stick with
25 that. Is that okay?

1 ATTORNEY EXAMINER: Sure. I just
2 want to make sure that's what the court reporter
3 has as well so we are all looking at the same
4 thing.

5 Mr. Poirier, do you have --

6 MR. POIRIER: I actually have the
7 original citation report, which is a little bit
8 different than that.

9 ATTORNEY EXAMINER: Does Staff
10 Exhibit 1 that we are looking at, is that a
11 front and back document? The first page it
12 looks like there is a kind of a long rectangle
13 in the middle of it; is that correct?

14 MR. POIRIER: Yes. It's similar,
15 but some of the terminology is different.

16 ATTORNEY EXAMINER: Okay. Okay.
17 For the time being we will go ahead and look at
18 Staff Exhibit 1. And if you would like to
19 introduce the document that you brought at your
20 point in time. We can certainly discuss that at
21 that point.

22 I just wanted to make sure we were
23 all looking at the same document for the time
24 being.

25 Q. So it looks like the two violations

1 that were listed, failure to stop at a railroad
2 crossing and ELD not mounted properly; is that
3 correct?

4 A. Yes, ma'am.

5 Q. And you had also mentioned when you
6 stopped Mr. Poirier he had mentioned that he did
7 not stop because of a braking issue that was
8 causing him to veer off in a different
9 direction; is that correct?

10 A. He said when he applied his brakes
11 the truck pulled to the left and there was an
12 oncoming commercial motor vehicle, in this case
13 a dump truck, and he let off the brakes and did
14 not stop.

15 Q. Okay. And in your experience would
16 that be a reason that this would not be
17 considered a violation for failure to stop at a
18 railroad crossing?

19 A. Not in my experience, no. The
20 regulation requires the driver to stop.

21 ATTORNEY EXAMINER: Okay. Thank
22 you. Those are all the questions that I have.
23 Mr. Poirier, do you have any questions for this
24 witness?

25 MR. POIRIER: I am not too sure how

1 far to jump ahead.

2 ATTORNEY EXAMINER: Well, you
3 haven't been sworn in, so this is not the time
4 for you to give your side of the story. But if
5 there is anything that the witness said that you
6 have any clarifying question about or didn't
7 understand this would be your time to ask that.

8 MR. POIRIER: Okay.

9 CROSS-EXAMINATION

10 By Mr. Poirier:

11 Q. Well, you did a formal Level 2
12 inspection which is just a walk-around
13 inspection?

14 A. Walk-around inspection, yes, sir.

15 Q. If you would have performed a Level
16 1 that would have included a full and complete
17 brake inspection as well.

18 A. Yes.

19 Q. Would that not have determined that
20 there was an actual brake issue on the vehicle?

21 A. It could have. We were sitting
22 along the side of the road not in a safe
23 location to conduct a Level 1 inspection. But,
24 yes.

25 MR. POIRIER: Because, like I said,

1 I know it was a level lot, there was a monument
2 there or something for the township or whatever
3 it was. But, I mean, you explained it, I wasn't
4 arguing that fact. I guess I don't have any
5 other questions other than the fact that, you
6 know, if it was a Level 1 he would have
7 determined that there was a brake issue.

8 ATTORNEY EXAMINER: Okay. Thank
9 you. I appreciate that question. Ms. Bair, do
10 you have any redirect at this time?

11 MS. BAIR: No, but I would like to
12 move Staff Exhibit 1 and 2 into evidence,
13 please.

14 ATTORNEY EXAMINER: Okay. We will
15 go ahead and admit both of those exhibits.

16 MS. BAIR: Thank you, your Honor.

17 (EXHIBITS HEREBY ADMITTED INTO
18 EVIDENCE)

19 ATTORNEY EXAMINER: Anything further
20 for this witness?

21 MS. BAIR: No.

22 ATTORNEY EXAMINER: You are
23 excused. Thank you.

24 THE WITNESS: Thank you, Your Honor.

25 MS. BAIR: Staff now calls Rod Moser

1 as the next witness.

2 (WITNESS SWORN)

3 - - -

4 ROD MOSER

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

7 DIRECT EXAMINATION

8 By Ms. Bair:

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

11 A. My name is Rod Moser.

12 Q. And what is your position with
13 the Commission?

14 A. I am the Chief of the Compliance and
15 Registration sections within the Transportation
16 Department for the Public Utilities Commission
17 of Ohio.

18 Q. And what is your role in assessing
19 forfeitures with the Commission?

20 A. I am basically -- well, I am the
21 Chief. I oversee the civil forfeiture process
22 for the compliance section.

23 Q. What training do you have for that
24 position?

25 A. Well, my training related to this

1 goes back to my time with the Ohio State Highway
2 Patrol. I was involved heavily in commercial
3 enforcement in my 30 years with the Patrol, the
4 last portion of which was the commercial
5 enforcement coordinator Sergeant for
6 the District 6.

7 I then came to the PUCO about four
8 and a half years ago, was trained with North
9 American Standards Parts A and B, cargo tank,
10 bulk and general hazmat.

11 Q. And that was ongoing training?

12 A. It is. There is a refresher
13 training, in-service training each year. I
14 don't think they had one last year because of
15 COVID, but generally an annual and refresher.

16 MS. BAIR: Your Honor, I would like
17 to introduce Staff Exhibit 3.

18 ATTORNEY EXAMINER: Okay. That
19 will be so marked.

20 (EXHIBIT HEREBY MARKED FOR
21 IDENTIFICATION PURPOSES)

22 Q. Mr. Moser, do you recognize Staff
23 Exhibit 3?

24 A. I do, yes.

25 Q. Could you please tell me what that

1 is?

2 A. This is what in our office we refer
3 to as an NPD, Notice of Preliminary
4 Determination. This is a document that is sent
5 to a respondent after an unsuccessful attempt at
6 mediation through a telephone conference.

7 Q. Could you please tell me how you
8 would assess the \$500 forfeiture? Is there a
9 frame work for that?

10 A. There are. Violations are divided
11 into groups. And this is a Group 4. Group 4
12 violations always entail a civil forfeiture
13 assessment. And this particular violation is
14 always \$500.

15 MS. BAIR: Your Honor, I would move
16 Staff Exhibit 3 into evidence. And I have no
17 further questions.

18 ATTORNEY EXAMINER: Okay. Thank
19 you. I have one quick question for you. Mr.
20 Forbes was up here and described two violations
21 that he witnessed that day. I see here on the
22 Notice of Preliminary Determination only one of
23 those violations listed.

24 Could you explain why only one of
25 those violation are listed?

1 THE WITNESS: Sure. Violations are
2 assigned to different respondents. The other
3 violation was assigned as a carrier violation.
4 So it's dealt with as a carrier case versus a
5 driver case that we have here.

6 ATTORNEY EXAMINER: Okay. Thank
7 you. I don't have anymore questions.

8 Mr. Poirier, do you have any
9 questions for this witness?

10 CROSS-EXAMINATION

11 By Mr. Poirier:

12 Q. My concern was a loss of license.
13 Where does a loss of license show up on here?

14 A. Well, on the inspection that you
15 were given there is information there that says
16 a conviction of this particular offense could
17 lead to a disqualification of your license.

18 It's also discussed in the letters
19 that we send out. And it was also discussed at
20 your prehearing conference that you had with Mr.
21 Banks.

22 And that is a federal directive that
23 could be found in 383.51 and laid out in those
24 terms.

25 MR. POIRIER: Okay. I have nothing

1 else.

2 ATTORNEY EXAMINER: Ms. Bair.

3 MS. BAIR: I would like to move
4 Staff Exhibit 3 into evidence, your Honor.

5 ATTORNEY EXAMINER: Okay. That will
6 be admitted. Thank you.

7 (EXHIBIT ADMITTED INTO EVIDENCE

8 MS. BAIR: Thank you.

9 ATTORNEY EXAMINER: Is there
10 anything further from Staff?

11 MS. BAIR: Nothing further from
12 Staff. Thank you.

13 ATTORNEY EXAMINER: Okay. All
14 right. Mr. Poirier, now this is going to be
15 your opportunity to present your case. So you
16 have your opportunity to tell your side of
17 the story, present any exhibits that you may
18 have and would like to introduce as part of your
19 case. And then after you present your testimony
20 Staff will have the opportunity to ask you some
21 questions as well.

22 So at this time I would like to
23 invite you to come up to the witness stand.

24 (WITNESS SWORN)

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TROY A. POIRIER

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

DIRECT TESTIMONY

MR. POIRIER: I am not arguing what
happened. The road in question has a little bit
of downgrade. While coming down the hill I
applied the brakes on two separate occasions to
stop. Both times it jerked left on me.

The final time the dump truck was
coming across the tracks, you know, too close to
the vehicle so I had to come off the brakes, so
I did go across the tracks without stopping.
I am not contesting that at all.

There was a Level 2 inspection done,
you know. Again not disputing any of that
stuff. If a Level 1 was done it would have
found out that there was only three brakes
working on the tractor.

I made my final delivery for the
day. While I was at the facility to make my
final delivery I had another driver help me out,
climb inside the truck to apply the brakes and
that's when I noticed there was only three
brakes that was working on the tractor.

1 I called the shop, let them know,
2 whatever. Had a tow truck come out, tow the
3 tractor to the shop. The truck was in the shop,
4 you know, the whole day after while it got
5 repaired.

6 Mechanical devices break with no
7 warning, you know. We can't foresee that sort
8 of stuff even though we inspect the vehicles
9 the best we can, things happen throughout
10 the day that is out of everybody's control.

11 As far as the inspection form, my
12 only question was simply the terminology on it
13 from the original to what is on the paperwork.

14 EXAMINATION

15 By the Attorney Examiner:

16 Q. Okay. So you have in front of you
17 the document that you were handed at
18 the inspection itself?

19 A. Yes, ma'am.

20 Q. Is that correct? And you noticed
21 that there are some differences in what --

22 A. The Officer does state that I tried
23 slowing down for the tracks, you know. Granted,
24 it's just terminology. That one form makes it
25 sound like I just went through the crossing at

1 speed, which is not the case. And I did try to
2 slow down.

3 Q. Understood. So do you have that
4 document with you?

5 A. Yes.

6 Q. And so you are discussing some
7 terminology that's included on that?

8 A. Yes. From the original compared to
9 this report.

10 Q. I think it would be helpful for
11 nothing else for us to all have a copy of that
12 so we can be looking at the same document.

13 A. This is the only copy that I have.
14 I didn't think of bringing multiple copies.

15 Q. That is no problem. If you don't
16 mind I will go ahead and take just a brief
17 break, I will go ahead and take that document
18 and make some copies?

19 A. The only other thing that I have is
20 my pay slip from the day showing the inspection
21 was done and that then I had to wait for a tow
22 truck. And then the next day was an off day so
23 the truck was in the shop being repaired.

24 ATTORNEY EXAMINER: I will go ahead
25 and make copies of that as well. So at this

1 time let's go off the record.

2 (RECESS TAKEN)

3 ATTORNEY EXAMINER: So while off
4 the record I took both documents that Mr.
5 Poirier provided to me. The first is
6 the Driver/Vehicle Examination Report which he
7 had noted before we went off the record that has
8 some additional language in addition to what
9 staff presented in their Exhibit 1.

10 And also provided another document
11 that is a grid-type of document.

12 Q. So at this point, Mr. Poirier, would
13 you like to go through this Driver/Vehicle
14 Examination Report and identify the language
15 that you are noting that you wanted to bring to
16 the Commission's attention?

17 A. As far as the vehicle examine
18 report, under Violations Discovered it basically
19 said "Driver slowed but failed to stop."
20 Basically states what happened, where the form
21 that they gave out is pretty much just failed to
22 stop.

23 It doesn't show any indication that
24 I tried to slow or anything like that. That
25 just makes it sound -- just part of the ordeal.

1 ATTORNEY EXAMINER: Understood.

2 Let's go ahead and mark this as Driver Exhibit
3 1. So we are just marking it at this time, Mr.
4 Poirier. It's not officially moved into the
5 record yet. But just for clarity purposes we
6 will potentially continue discussing this
7 exhibit, we will be able to refer to this as
8 your Exhibit 1.

9 (EXHIBIT MARKED FOR IDENTIFICATION)

10 ATTORNEY EXAMINER: And the second
11 document, let's mark that as Driver Exhibit 2.

12 (EXHIBIT HEREBY MARKED FOR
13 IDENTIFICATION PURPOSES)

14 ATTORNEY EXAMINER: This is for
15 the same reason.

16 Q. And could you walk us through this
17 document a little bit more?

18 A. Basically this document here was
19 kind of like my daily pay sheet. We don't punch
20 a clock, we have this real off the wall way we
21 get paid, mileage, flat rate pay, bumping bay.
22 A little bit of everything.

23 So this is kind of like -- in
24 essence it's a weekly journal, but everything we
25 do on a daily basis has to be put on this form.

1 So when I was inspected I put down
2 my inspection time, what the company pays for
3 inspection, any kind of wait time. When I made
4 my final delivery. And tell them the vehicle
5 had an issue. That is when I make a phone call,
6 had to wait for the tow truck to come, and I
7 also got paid while the truck is in the shop.
8 The next day the vehicle was in the shop the
9 whole day.

10 So it kind of shows that the vehicle
11 was in the shop being worked on. Then I
12 continued my week.

13 Q. Okay.

14 A. So the vehicle had a mechanical
15 issue that was undiagnosed at that time, even
16 though we do a daily inspection on the truck.
17 This is something that crept up at that time.

18 Q. Understood. I want to make sure
19 that I understand everything that I am looking
20 at on this document here. In the first column
21 over to the left there is numbers 1 through 16.
22 It appears that those are just for marking the
23 logs for clarity purposes.

24 A. Yes.

25 Q. So, first looking at row No. 5 it

1 looks like you had marked 7-29 as the day; is
2 that correct?

3 A. That's correct. That's the day in
4 question. Start location was Marietta which is
5 where I park the truck at.

6 Q. And also just to clarify, who is the
7 author of this document? Did you --

8 A. We fill these out on a weekly basis.

9 Q. So when you say we, do you mean you
10 fill them out, or somebody else?

11 A. All the drivers, every driver the
12 company has fills out one of these forms. It's
13 not just specific to myself, it's, you know, the
14 15 drivers the company has all fill out our own
15 forms.

16 Q. So you are saying that this was
17 initially a blank document that was provided by
18 your carrier and that all of the handwritten
19 notes in here are from you; is that correct?

20 A. This is my weekly pay sheet. This
21 is what the company pays me according to.

22 Q. I just want to clarify. So the
23 handwriting on this document, that is yours or
24 somebody else?

25 A. It's mine.

1 Q. Okay. Great. Thank you. So let's
2 talk about Line No. 7. It looks like it says
3 DOT inspection roadside.

4 A. Correct. That is the time when the
5 officer pulled me over and basically did
6 the citation, did the Level 2 inspection on the
7 vehicle.

8 Q. Then next to that on the same row it
9 says 1000/1030. Is that 10:00 o'clock to 10:30?
10 Is that what those numbers are referencing?

11 A. Roughly between 10:00 and 10:30.

12 Q. Okay. And let's move down to the
13 next row, row 8. It looks like it says waiting
14 on tow truck after delivery to Athens, Ohio;
15 Is that right?

16 A. Correct.

17 Q. And there is no time listed on that
18 log; is that right?

19 A. Correct. At that point when the tow
20 truck showed up, that is basically -- it took
21 them about 90 minutes to show up. At that point
22 is when I was off duty until the truck came out
23 of the shop.

24 Q. That is the last log that you had
25 made for 7/29; is that right?

1 A. Correct.

2 Q. Then moving to row No. 9. It's
3 listed as 7:30. It looks like that says
4 downtime truck in shop 7-30-20; is that right?

5 A. Yes, ma'am.

6 Q. And --

7 A. Then 7:30 was back to normal work.
8 Okay.

9 Q. So, it's clear that there was a tow
10 truck, the truck was in the shop. What
11 specifically was worked on on the truck, if you
12 know?

13 A. To the best of my knowledge there
14 was an air valve that is controlled by the ABS
15 system that went bad. That was only allowing
16 air to flow to part of the break system, not the
17 whole brake system.

18 Q. So that air valve was affecting the
19 brake system?

20 A. Yes.

21 Q. You also testified earlier that only
22 three of your brakes were working on that day;
23 is that correct?

24 A. Yes.

25 Q. How many brakes total on your truck?

1 A. On the tractor there is six brakes,
2 plus the brakes on the trailer.

3 Q. So you have to forgive me, I am not
4 terribly familiar. So there is six brakes on
5 the vehicle portion of the truck?

6 A. Yes.

7 Q. And then there are additional brakes
8 on the trailer, which is the load portion of
9 the truck; is that right?

10 A. Correct.

11 Q. So of those how many brakes were
12 working on the day that you were pulled over?

13 A. The trailer was functioning. There
14 were three brakes that were bad on the tractor.
15 Upon applying the brakes, more pressure I
16 applied the more it started pulling to the left,
17 which is pulling me into the oncoming traffic.
18 So to get back to my lane I had to take my foot
19 off the brakes to get back -- the vehicle under
20 control to get back in my lane.

21 The second time I applied the brakes
22 is when it jerked again. This time it was just
23 a matter of feet until the dump truck was
24 directly in front of me.

25 Q. Okay. And when was the first time

1 that you had noticed the braking?

2 A. Maybe about 100 feet prior to the
3 railroad crossing. Coming down the hill. I
4 mean, everything happened rather quickly.

5 Q. Based on your log sheet for the day
6 can you look at that and tell me what time you
7 started driving that morning?

8 A. My normal day usually starts
9 anywhere between 12:00 and 1:00 o'clock in the
10 morning.

11 Q. Okay. So, middle of the night
12 basically?

13 A. Yes.

14 Q. Okay.

15 A. It's usually anywhere between 10:00
16 to 12:00, on occasion 14-hour shift. And then
17 we are done for 10 hours, then we start
18 the shift again.

19 Q. Does the log sheet show the time
20 that you were in that day?

21 A. This sheet? No. The actual -- our
22 actual ELD, the log book itself would.

23 Q. Okay. And you are saying that
24 before approaching this particular railroad
25 crossing you had not noticed any braking issues

1 that day?

2 A. No. None whatsoever.

3 ATTORNEY EXAMINER: All right.

4 Would you like to move these exhibits into the
5 record so the Commission can consider these
6 documents when its making its decision?

7 MR. POIRIER: Yes, if it might help,
8 I guess. Like I said --

9 ATTORNEY EXAMINER: I certainly
10 can't give you any sort of advice or legal
11 representation or anything like that. But what
12 I can say is, you know, we discussed these
13 documents, that will show up on the transcript,
14 but in a sense, you know, if you would like
15 these to be exhibits themselves to be
16 considered --

17 MR. POIRIER: Yes, let's do that.

18 ATTORNEY EXAMINER: The only way
19 would be if you would move to have those entered
20 into the record.

21 MR. POIRIER: We can move that, put
22 it in.

23 ATTORNEY EXAMINER: Okay. I will
24 go ahead and wait to rule on whether these
25 exhibits will be admitted. Is there anything

1 else that you would like to say on the record
2 here today?

3 MR. POIRIER: Just the whole fine
4 situation. You know, when it comes to the
5 penalties. The side of the deal with my
6 situation is going to be difficult because of
7 having to support my family. I have a special
8 need grandson that I am taking care of.
9 Recently my daughter got separated and moved
10 into the house, that's three more grandkids in
11 my house.

12 Financially it's tough. The loss of
13 my license is going to be devastating,
14 especially with all the Covid stuff going on.
15 My biggest fear is losing my license. That
16 is -- what I have is not the greatest paying
17 job, but it's a lot better than a lot of --
18 way better than a lot of other jobs.

19 And just the loss of license is,
20 you know, going to be devastating to the family.

21 ATTORNEY EXAMINER: Thank you for
22 that. This is the point in the hearing where I
23 will go ahead and turn it over to Ms. Bair and
24 ask if she has any questions that she would like
25 to ask you at this time, or questions about

1 either of the documents that you have presented.

2 MS. BAIR: Thank you, your Honor.

3 Yes.

4 CROSS-EXAMINATION

5 By Ms. Bair:

6 Q. Could I please direct your attention
7 to your exhibit Page 2?

8 ATTORNEY EXAMINER: Which exhibit is
9 that? Exhibit 1?

10 MS. BAIR: Yes.

11 Q. If I could direct your attention,
12 you do recognize on that that there is some
13 terminology that says that there is a possible
14 CDL commercial driver's license
15 disqualification. That is --

16 A. Yes, ma'am.

17 Q. Okay. Thank you. How long have you
18 driven the truck that you were in?

19 A. I was in that truck for five months.

20 Q. And the first time you recognized
21 the brake issues was actually at that railroad
22 place?

23 A. That day, yes. The motor carrier
24 has, you know, the company has a shop
25 up in Mt. Pleasant, Pennsylvania which is out by

1 New Stanton. They have got a shop, they have
2 the vehicles in the shop every 5,000 miles. The
3 first five thousand is basically brake
4 adjustment and chassis lube.

5 On the 10,000 mile mark, which is
6 the second 5, it's basically a full service.
7 Oil change, brake adjustment. They, you know,
8 check everything.

9 Then basically repeat the process.
10 Another 5,000 it goes back in for a brake
11 adjustment, chassis lube. Another 5,000 goes
12 back in for an oil change.

13 So the vehicle is getting full
14 service at the shop every two to three weeks.

15 Q. So after you were pulled over you
16 continued on to your delivery point; correct?

17 A. Yes. While we were pulled over I
18 did call the shop and say, hey, I explained to
19 them what happened. And then the shop manager
20 was like, well, he goes the day in question was
21 one of those extremely hot days, high 90s.

22 He says maybe it's the heat, I don't
23 know. The parking brakes on the tractor and
24 trailer both worked. The vehicle and
25 the trailer both have automatic slack

1 adjustments. Even with that being said, I would
2 get underneath the truck and still check the
3 adjustment. Everything appeared fine.

4 But with the brake valve going bad,
5 without having somebody hold the brake down so
6 you can physically check to see if the slack
7 adjustments are pushing the brakes open like
8 they should, there is no way to see that
9 everything is fully functioning.

10 Q. So just to be clear, you did
11 continue on to do your delivery point after
12 being pulled over by Officer Forbes?

13 A. Yes.

14 Q. Okay. Thank you. Do you have a
15 copy of the repair that you had done?

16 A. Getting anything out of a motor
17 carrier is kind of complicated. Even when it
18 comes to permits. We are getting our permits
19 two or three days late. After the expiration
20 date. We get the stuff late. So getting any
21 kind of documentation from a motor carrier is
22 complicated.

23 Q. So, this truck was repaired?

24 A. Right.

25 Q. Do you get a copy of the receipt?

1 How do you know what's been repaired? Do you
2 see that?

3 A. Basically we bring the vehicle to
4 the shop and everything is handled through
5 the purchase orders. If it was my truck I would
6 be paying the bills. You know, I have got tons
7 of receipts on my own personal truck that I
8 owned in the past from 2001 until 2019 when I
9 sold it off.

10 But when it comes to a company truck
11 that I am just a hired hand I just basically
12 utilize the truck to deliver the product that
13 the company tells me to do. Unless I am
14 personally buying washer fluid or radiator fluid
15 to put in the truck I don't have any receipts to
16 cover repairs because that's all done through
17 the company.

18 MS. BAIR: Thank you. I have
19 nothing further.

20 ATTORNEY EXAMINER: All right. Mr.
21 Poirier has moved for the admission of his
22 Exhibits 1 and 2. Does Staff have any
23 objections?

24 MS. BAIR: I have no objection.
25 Thank you.

ATTORNEY EXAMINER: Okay. Those 2
exhibits will be admitted.

(EXHIBITS HEREBY ADMITTED INTO
EVIDENCE)

ATTORNEY EXAMINER: And I am going
to thank you all for your participation today,
for traveling in for this hearing.

At this point in time the case is
submitted to the record. Thanks again, and we
are adjourned.

(At 10:50 A.M. the hearing was
concluded)

- - -

CERTIFICATE

I do hereby certify that the foregoing
is a true and correct transcript of the
proceedings taken by me in this matter on
November 9, 2021, and carefully compared with my
original stenographic notes.

Michael O. Spencer,
Registered Professional
Reporter.

- - -

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Case No(s). 20-1599-TR-CVF

Summary: Transcript November 9th 2021 In the Matter of Troy A. Poirier, 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.