

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Level One :
Trans, Inc. Notice of : Case No.
Apparent Violation and Intent : 20-1700-TR-CVF
to Access Forfeiture. :
- - -

PROCEEDINGS

Before David Hicks, Attorney Examiner, held via
WebEx, on Tuesday, January 11, 2022, at 10:10
A.M.

- - -

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- - -

APPEARANCES:

Mr. Roman Bilunyk
78 Carol Lane
Richboro, Pennsylvania 18954

Appearing Pro se.

Mr. Thomas Shepherd
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,
January 11, 2022.
- - -

ATTORNEY EXAMINER: Good morning,
everyone. The Public Utilities Commission of
Ohio has called for hearing Case No.
20-1700-TR-CVF which is captioned In the Matter
of Level One Trans, Inc.

My name is David Hicks, I am the
Attorney Examiner assigned by the Commission to
hear this case. As I said, I have a little bit
of introductory remarks here, then we will
proceed.

Let's go ahead and start now with
appearances of counsel, beginning with Staff.

MR. SHEPHERD: Thank you, your
Honor. On behalf of the Staff of the Public
Utilities Commission of Ohio, Dave Yost,
Attorney General of Ohio, John Jones, Section
Chief Public Utilities Section, by Assistant
Attorneys General Thomas Shepherd and Werner
Margard, 30 East Broad Street, 26th Floor,
Columbus, Ohio.

ATTORNEY EXAMINER: Thank you.
And, Mr. Bilunyk, if you could -- presumably you

1 are appearing on behalf of the Company. If you
2 could state and spell your name for the record,
3 give us your position with the Company, and
4 address for the Company, please.

5 MR. BILUNYK: Good morning, your
6 Honor. My name is Roman Bilunyk. I am the
7 owner of the Company, and I am the driver who
8 was accused.

9 ATTORNEY EXAMINER: Could you
10 provide the address for the Company?

11 MR. BILUNYK: It is 78 Carol Lane,
12 Richboro, Pennsylvania 18954.

13 ATTORNEY EXAMINER: Okay. Again,
14 you know, a few preliminary remarks. First of
15 all I would just right off the bat, which I
16 think will help our court reporter is if you are
17 not speaking or needing to be able to quickly
18 interject I would suggest muting your microphone
19 just because that will eliminate any background
20 noise when others are speaking and our court
21 reporter is trying to transcribe everything
22 that's being said.

23 On that same note, we will just have
24 to be careful with, because of the virtual
25 nature of this, try not to speak over each

1 other, talk while others are talking. I know
2 it's probably inevitable it's going to happen a
3 little bit, but just keep in mind that our court
4 reporter is trying to get everything down. So
5 if you can take a pause before you speak, speak
6 clearly and loudly to the extent that you can, I
7 think that will help everyone.

8 First, again, just note for the
9 record this hearing is being held via WebEx
10 pursuant to the November 9, 2021 entry issued in
11 this case. Pursuant to that entry due to the
12 issues surrounding the Covid 19 pandemic this is
13 being held virtually via WebEx which enables
14 parties to participate by video conference while
15 also forwarding the public access to the hearing
16 by telephone or video over the internet.

17 As an additional and other
18 preliminary matter I will note that this is a
19 violation against the company, Level One
20 Transportation, and pursuant to Commission rules
21 that it typically requires that a corporation
22 must be represented by an attorney at law.
23 There is, as the entry notes, an exception
24 allowing a regular salaried employee of the
25 corporation to appear before the Commission

1 involving matters of question of fact. So in
2 that respect, Mr. Bilunyk, I just want to point
3 out that that would be the case. Obviously if
4 you can confirm you are a salaried employee of
5 the company, representing the company,
6 authorized to represent the company here.

7 MR. BILUNYK: Yes. I am, yes.

8 ATTORNEY EXAMINER: Okay. So we
9 will kind of, I don't know if you have any
10 questions on this front, Mr. Shepherd, we will
11 kind of play this one by ear as it goes. Mr.
12 Bilunyk will be allowed to present the evidence,
13 factual matters, ask factual questions, but
14 things that are more the traditional domain of
15 an attorney, objecting, legal arguments, things
16 like that, that will strictly be the domain of
17 attorneys.

18 So before we call the first witness,
19 again just if you experience any sort of
20 technical difficulties, can't hear, you are
21 cutting in and out, please just speak up and let
22 us know. We will try to fix those. Wave your
23 arms at the screen if all else fails. And we
24 will try to go from there. You can contact our
25 event host, Micha Schmidt is on, 614-466-6843.

1 There is also a chat function in
2 WebEx. Just be aware that those are public,
3 it's not going to be something private. If you
4 put something in the chat and that is also not
5 part of the official record of the case.

6 For any one listening as an
7 attendee, you can observe the hearing, but your
8 microphones are going to be muted. You are not
9 allowed to speak. To the extent that any
10 witnesses are on as attendees, when they are
11 called as the witness Micha will promote you to
12 an attendee and you will then have your video
13 and auto enabled and be able to testify.

14 In all other respects we will try to
15 conduct this the same way as we would if we were
16 in person. Again, due to the remote nature,
17 let's try to limit background noise and talking
18 over each other and things like that. So if you
19 are not testifying, if you are not asking
20 questions, I would say keep yourself muted until
21 you need to, to unmute to speak, and that will
22 help everyone else.

23 I would also, I know we talked a
24 little bit about, I would say that all of us
25 that are on camera right now, let's stay on

1 camera to the extent that we can. If people
2 start to have band width issues we can turn off
3 the camera when it's not necessary. But, again,
4 that's something we can play by ear as we go.

5 During a witnesses' testimony they
6 should only have access to either filings in the
7 case docket or other documents that have been
8 identified as potential exhibits and exchanged
9 between the parties. Any witnesses should not
10 access or seek other information while
11 testifying in which they communicate through any
12 means with anyone privately during their
13 testimony.

14 Any exhibits that are ultimately
15 admitted into the record will need to be
16 e-mailed to the court reporter. We would ask
17 hopefully that you would do that by tomorrow.
18 The e-mail address for that is
19 kspencer@aando.com. And I will follow with that
20 in an e-mail to you all where we share e-mails
21 so you have it and we can get those in.

22 That is all I have in terms of
23 preliminary matters. I don't know if either of
24 you have any questions or, Mr. Bilunyk, if you
25 have -- if you would like me to sort of outline

1 how things are going to proceed here. But,
2 essentially the Staff is going to present their
3 case, call their witnesses, present their
4 evidence.

5 As I mentioned, any sort of factual
6 questions you have of those witnesses we can
7 entertain, and then once Staff has rested with
8 their case you will have the opportunity to
9 testify and present your evidence on your side.

10 MR. BILUNYK: Understood.

11 ATTORNEY EXAMINER: Okay. Mr.
12 Shepherd, I will take silence as you are good to
13 go on your end. And with that I will turn it
14 over to you to go ahead and proceed.

15 MR. SHEPHERD: Thank you, your
16 Honor. First Staff calls Trooper Shawn Martin
17 to the stand.

18 (WITNESS SWORN)

19 - - -

20 TROOPER SHAWN MARTIN
21 called as a witness, being first duly sworn,
22 testified as follows:

23 ATTORNEY EXAMINER: Please go
24 ahead, Mr. Shepherd

25 DIRECT EXAMINATION

1 By Mr. Shepherd:

2 Q. Good morning, Mr. Martin. How are
3 you?

4 A. Good. How are you?

5 Q. Good. Could you please state your
6 full name for the record?

7 A. Trooper Shawn Martin.

8 Q. Go ahead and spell your name.

9 A. S-H-A-W-N M-A-R-T-I-N.

10 Q. Thank you. By whom are you
11 employed?

12 A. The Ohio State Highway Patrol.

13 Q. And what's your position within
14 the Highway Patrol?

15 A. State Trooper.

16 Q. Okay. How long have you been with
17 the Highway Patrol?

18 A. Since December of 2004.

19 Q. And what are your duties in your
20 capacity as a Trooper?

21 A. To patrol and enforce the laws of
22 Mahoning, Portage and Trumbull County.

23 Q. All right.

24 A. And inspect commercial motor
25 vehicles.

1 Q. And what specific training do you
2 have in the realm of inspecting commercial motor
3 vehicles?

4 A. Several weeks of Part A, Part B and
5 all the hazmats.

6 Q. Any continuing education throughout
7 your time with the Patrol?

8 A. Just school bus. That is about it.

9 Q. Okay. Are motor carrier inspections
10 conducted to protect the safety of the Ohio
11 traveling public?

12 A. Yes.

13 Q. And just kind of ball park, how many
14 inspections on average do you think you have
15 performed in a year of commercial motor
16 vehicles?

17 A. I would say over 750 to 850.

18 Q. And you were on duty on August 11th,
19 2020?

20 A. Yes, sir.

21 MR. SHEPHERD: Okay. Your Honor, I
22 would like to have marked as Staff Exhibit 1 the
23 document I circulated earlier that says
24 Driver/Vehicle Examination Report.

25 ATTORNEY EXAMINER: Okay. That will

1 be so marked. And, Mr. Bilunyk, if you want --
 2 did you receive those by e-mail as well? Just
 3 follow along with his description. Hopefully
 4 you can see what they are.

5 So we will mark what Mr. Shepherd
 6 e-mailed yesterday as Staff Exhibit 1,
 7 Driver/Vehicle Examination Report, will be
 8 marked as Staff Exhibit 1.

9 (EXHIBIT HEREBY MARKED FOR
 10 IDENTIFICATION PURPOSES)

11 Q. Mr. Martin, do you have that up?

12 A. Yes, I do.

13 Q. Okay. Do you recognize this
 14 document?

15 A. The one I printed out, or the one
 16 that you have? It's the same, I just printed it
 17 off the computer.

18 Q. Yes. If we could use the one that I
 19 sent over. They are very similar. One is just
 20 a Commission document.

21 A. Okay. I have got to figure out how
 22 to access this. I think it's the same one.
 23 It's obviously the same one.

24 Q. It has all the same information on
 25 it, but I would prefer to use that if you can

1 just so we are all looking at the same thing.

2 A. Okay. If you could give me one
3 second I am going to print that off.

4 Q. Okay. And while you are printing
5 things if you want to go ahead and print off the
6 other one I sent to you, which is the electronic
7 logging device readout.

8 A. Yes. I do have that one. It's
9 printing now.

10 Q. Okay.

11 A. I have it now.

12 Q. Okay. And do you recognize this
13 document?

14 A. Yes.

15 Q. And is this document a record of the
16 Highway Patrol?

17 A. Yes

18 Q. It's kept in the ordinary course of
19 business?

20 A. Yes, it is.

21 Q. Okay. And it is generally
22 the practice of the Patrol to make this kind of
23 report?

24 A. Yes.

25 Q. Okay. Is the information in this

1 document an accurate reflection of the report
2 you filled out on August 11th, 2020 following
3 the inspection of the vehicle driven by Mr.
4 Roman Bilunyk and operated by Level One Trans?

5 A. Yes, it is.

6 Q. Okay. And did you prepare this
7 report because of the inspection of the vehicle
8 driven by Mr. Bilunyk?

9 A. Yes, I did.

10 Q. Okay. And why did you stop Mr.
11 Bilunyk for an inspection on that day?

12 A. For speed. I checked his speed with
13 laser at 62 miles an hour in a 50 mile an hour
14 zone.

15 Q. Okay. And did Mr. Bilunyk receive a
16 copy of the report at the stop?

17 A. Yes. We give a copy to every stop.

18 Q. Great. Moving along, if I could
19 draw your attention to the second violation
20 listed on that report. Can you tell me what
21 that is?

22 A. That is a 14-hour rule violation.
23 Or actually 11-hour. Driving beyond the 11-hour
24 driving limit in a 14-hour period.

25 Q. Okay. And it's kind of

1 self-explanatory, but if you could just in a
2 little more detail briefly describe that rule.

3 A. The driver is allowed 11 hours of
4 drive time in a 14-hour period. Like you said,
5 pretty much self-explanatory.

6 Q. Okay. Thank you. And do you always
7 check a driver's log during an inspection to see
8 how much they have been driving?

9 A. Yes.

10 Q. Okay. And you did that obviously
11 during this inspection?

12 A. Yes, I did.

13 Q. Okay. I am going to move to our
14 second exhibit.

15 MR. SHEPHERD: Your Honor, I would
16 like to have marked Staff Exhibit 2 a document
17 that has Electronic Record of Duty Status listed
18 at the top.

19 ATTORNEY EXAMINER: Let me get that
20 up. Okay. The Electronic Record of Duty Status
21 which you circulated and labeled Staff Exhibit 2
22 will be so marked.

23 (EXHIBIT HEREBY MARKED FOR
24 IDENTIFICATION PURPOSES)

25 MR. SHEPHERD: Thank you.

1 Q. Mr. Martin, do you have in front of
2 you what's been marked Staff Exhibit 2?

3 A. Is this the ELD report? Yes.

4 Q. Can you briefly explain what this
5 document is, what's the data that's in it?

6 A. It keeps track, it's the ELD report
7 that gets uploaded, keeps track of the driver's
8 record of duty status.

9 Q. Okay.

10 A. That day and the previous 7.

11 Q. And is the information listed in
12 Staff Exhibit 2 the same type of information you
13 would have examined during your inspection?

14 A. Yes.

15 Q. And I am going to, this is kind of a
16 longer document, but about Page 11, 12. If you
17 would turn to page 16 of it, most of the way
18 through. That is where August 10th, 2020
19 starts.

20 A. Okay.

21 Q. And can you please explain how you
22 came to the conclusion that based on this data
23 that the driver was in violation of the rule
24 prohibiting drivers from driving more than 11
25 hours in a 14-hour period?

1 A. Yes, I can. August 10th at 10:17
2 P.M. the driver went into an off duty status.
3 You go to August 11th and the driver comes back
4 on duty driving, and that was at 7:50 A.M.

5 8:17 A.M. would have been the time
6 that he would have been allowed to drive without
7 having a violation. So he left at like I said
8 7:50 A.M. instead of 8:17 A.M.

9 Q. All right. So, and based, on your
10 professional opinion, based on the information
11 that was provided to you during this inspection
12 do you believe that a violation of 49 CFR 359.3
13 (A) (3) (1) occurred?

14 A. Yes, I do. The driver made no
15 mention of any malfunctions or anything like
16 that at the time.

17 Q. We will get to that in a second.
18 But, turning back to Staff Exhibit 1, briefly,
19 can you tell me what the third violation listed
20 there is?

21 A. Driving beyond a 14-hour duty
22 period, driving beyond 14-hour period on August
23 11th. The violation occurred at 7:50 A.M.

24 Q. And again, I am sorry to do this
25 again, but can you briefly describe what this

1 rule is, what's it's prohibiting?

2 A. This allowed the driver 14 hours
3 total of on duty time. And it's pretty much
4 self-explanatory also.

5 Q. Okay. Just so it's very clear, can
6 you tell me, on duty is different than driving
7 time how?

8 A. Yes. On duty is basically being in
9 an on duty status where they are sitting. A lot
10 of times, sometimes they are getting loaded,
11 things like that. During an inspection that's
12 an on duty time. Basically not driving, but
13 still at work.

14 Q. Thank you. We are going to turn
15 back to Staff Exhibit 2, the ELD readout. And
16 if you could kind of go to the same spot and
17 explain how you came to the conclusion that the
18 violation of the 14-hour rule occurred?

19 A. Again, going back to August 10th,
20 the driver going off duty at 10:17 P.M. and then
21 on the 11th coming back into a driving status on
22 August 11th at 7:50 A.M. He didn't get his full
23 10-hour break.

24 Q. Thank you.

25 A. That's the violation.

1 Q. Thank you. So in your professional
2 opinion based on the data you reviewed there was
3 a violation of 49 CFR 359.3 (A) (2)?

4 A. Yes.

5 Q. Thank you. And we are going to
6 change gears here. I just have a few more
7 questioins for you. Can you briefly describe
8 how an electronic logging device works?

9 A. That is for me, sir?

10 Q. Yes.

11 A. Okay. It's synced up to the truck
12 and it records their location. There is
13 intermittent driving. So it pings the truck
14 every so often. Let you know the location and
15 things like that.

16 It's supposed to indicate their
17 change of duty status, sleeper berth, off duty,
18 on duty and drive time. And it records all that
19 information.

20 Q. And so it's an automated process you
21 are saying?

22 A. Yes, it is.

23 Q. And Mr. Bilunyk was utilizing one of
24 these electronic logging devices at the time of
25 the inspection?

1 A. Yes, sir.

2 Q. Okay. Is there something that a
3 driver of a commercial motor vehicle should do
4 in the event that their logging device is not
5 functioning? Is there some sort of backup plan?

6 A. Yes, there is. They need to go to a
7 paper log, and indicating the malfunction they
8 are having and use the paper log.

9 Q. And is a driver of a commercial
10 motor vehicle responsible for ensuring that
11 their equipment, including an electronic logging
12 device, is functioning properly? Is that their
13 responsibility?

14 A. Yes.

15 Q. Based on your recollection of this
16 inspection and your review of the inspection
17 report that you filled out, did Mr. Bilunyk
18 provide any other record of his activities
19 besides the information contained in Staff
20 Exhibit 2?

21 A. No.

22 Q. There was no paper log or anything?

23 A. No.

24 Q. Okay. I just have one final
25 question, I believe, and I will be set.

1 A driver of a commercial motor
2 vehicle is required upon inspection to provide
3 an accurate record of duty at that time;
4 correct?

5 A. Yes.

6 Q. That's all for me. Is there
7 anything else important that you would like to
8 note for the record before I am done with you?

9 A. No, sir.

10 MR. SHEPHERD: All right. Thank
11 you. No further questions, your Honor. I would
12 reserve for rebuttal if necessary, but we are
13 open to cross-examination.

14 ATTORNEY EXAMINER: Okay. Mr.
15 Bilunyk, as we had talked about, you are free to
16 ask some questions as far as the facts of what
17 he has testified to just now. So, please, you
18 can go ahead with any questions you may have for
19 Mr. Martin.

20 CROSS-EXAMINATION

21 By Mr. Bilunyk:

22 Q. Good morning, Mr. Martin.

23 A. Good morning.

24 Q. I have a question. You said there
25 was no malfunction. I did show you my record

1 off duty in my ipad. And I did clearly ask you
2 can I ask the log book provider about the
3 malfunction. Because I showed you on my site --
4 let me explain how the ELD works. Because it
5 does work automatically. But --

6 ATTORNEY EXAMINER: Mr. Bilunyk,
7 one second. So, when it's your turn to present
8 your evidence I am going to let you testify for
9 everything you have. Right now if you have
10 questions for Mr. Martin, you ask him questions
11 in response to what he testified to.

12 As far as your explanation of what
13 happened, you are going to have your opportunity
14 to provide that information. So right now if
15 you have questions for Mr. Martin go with
16 those.

17 MR. BILUNYK: No. I don't have any
18 questions.

19 ATTORNEY EXAMINER: Okay. Mr.
20 Shepherd.

21 MR. SHEPHERD: Your Honor, I move
22 for admission of Staff Exhibits 1 and 2 into the
23 record.

24 ATTORNEY EXAMINER: Okay. Mr.
25 Bilunyk, any questions on those exhibits? Again

1 Staff has moved to admit them into the record.

2 MR. BILUNYK: I don't agree with
3 them, the duty status, duty records, but I don't
4 have any questions.

5 ATTORNEY EXAMINER: Okay. Staff
6 Exhibit, what has been marked as Staff Exhibit 1
7 and Staff Exhibit 2, will both be admitted into
8 the record.

9 (EXHIBITS HEREBY ADMITTED INTO
10 EVIDENCE)

11 ATTORNEY EXAMINER: Thank you for
12 time, Mr. Martin.

13 THE WITNESS: Thank you.

14 MR. SHEPHERD: Your Honor, Staff
15 will next call Rod Moser to the stand.

16 (WITNESS SWORN)

17 - - -

18 ROD MOSER
19 called as a witness, being first duly sworn,
20 testified as follows:

21 ATTORNEY EXAMINER: Mr. Shepherd,
22 pleasing go ahead.

23 MR. SHEPHERD: Thank you.

24 DIRECT EXAMINATION

25 By Mr. Shepherd:

1 Q. Good Morning, Mr. Moser.

2 A. Good morning.

3 Q. Could you please state your full
4 name and business address for the record?

5 A. My name is Rod Allen Moser. Last
6 name is M-O-S-E-R. Business address is 180 East
7 Broad Street, Columbus, Ohio 43215.

8 Q. Thank you. By whom are you
9 employed?

10 A. I am the Chief of Compliance and
11 Registration for the Transportation Department
12 of the Public Utilities Commission of Ohio.

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

15 A. Coming up on five years.

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

18 A. Related to this case, my duties are
19 to basically shepherd the civil forfeiture
20 process for the Transportation Department.

21 Q. Did you have an opportunity to
22 review the Commission's file in this case prior
23 to today's hearing?

24 A. Yes, sir, I did.

25 Q. Can you please explain briefly how a

1 forfeiture amount in a transportation case such
2 as this is determined?

3 A. Sure. This particular inspection
4 was a non-hazmat, non-hazardous materials
5 inspection. And as such it is fully automated
6 in its assessment. Violations noted on the
7 inspection are divided into one of five
8 categories.

9 We call groups, Group zero, Group 1,
10 2, 3 and 4. Group zero violations are those
11 which are least likely to cause a crash, and
12 never have a civil forfeiture amount assigned to
13 them.

14 Group 4 violations are largely
15 driver behavior violations and things like
16 registration and authority and insurance issues.
17 They always have a violation.

18 Groups 1, 2 and 3 deal with
19 mechanical issues of the truck. And Group 1
20 would be the most likely of those three to cause
21 a crash.

22 And whenever those violations are
23 noted as they are marked as out of service on
24 the inspection, then there is a civil forfeiture
25 assessment for that violation.

1 Q. Thank you. Have you had an
2 opportunity to review the two hours violations
3 that we have been discussing today?

4 A. I did not personally review whether
5 or not the merits of the violation, that's not
6 my role, my role is to properly assess the
7 inspection and violations as they come in.

8 Q. Okay.

9 A. These are properly assessed, yes.

10 Q. Okay. Thank you.

11 MR. SHEPHERD: Your Honor, I would
12 like to have marked as Staff Exhibit 3 the
13 document I circulated earlier dated August 12,
14 2020.

15 ATTORNEY EXAMINER: Okay. Staff
16 Exhibit 3 well be so marked.

17 (EXHIBIT HEREBY MARKED FOR
18 IDENTIFICATION PURPOSES)

19 MR. SHEPHERD: And we are going to
20 do Staff Exhibit 4 at the same time if that
21 works. I would like to have marked as Staff
22 Exhibit 4 a document dated October 9th, 2020.

23 ATTORNEY EXAMINER: It will also be
24 so marked as Staff Exhibit 4.

25 (EXHIBIT HEREBY MARKED FOR

1 IDENTIFICATION PURPOSES)

2 MR. SHEPHERD: Thank you.

3 Q. Mr. Moser, do you recognize
4 the documents I have marked as Staff Exhibits 3
5 and 4?

6 A. Yes, sir, I do.

7 Q. Can you briefly explain what each
8 document is?

9 A. The one marked Staff Exhibit 3 is
10 what we commonly refer to as a NIF, Notice of
11 Apparent Violation and Intent to Assess
12 Forfeiture. This would be the first letter
13 mailed to the Respondent following the civil
14 forfeiture assessment.

15 This particular document lists 3
16 violations. The first violation is for a
17 speeding offense in which the inspector noted on
18 the inspection that he had given the Respondent
19 a warning.

20 And then violation No. 2 in order is
21 11-hour rule violation. And No. 3 in order
22 there is 14-hour rule violation.

23 Q. That's Staff Exhibit 4. You don't
24 need to go into detail about the violations at
25 this time.

1 A. Staff Exhibit 4 is what we refer to
2 as an NPD, Notice of Preliminary Determination.
3 This document is mailed to a Respondent
4 following an unsuccessful attempt during a
5 telephone conversation to resolve the issues of
6 the case.

7 Q. Okay. And both of these notices are
8 required by Commission rules sent to Respondent?

9 A. Yes, sir, that's correct.

10 Q. And based on your review of the
11 Commission's file which contains these
12 documents, the Respondent received all
13 the notices required by Commission rules?

14 A. It appears so, yes.

15 Q. In your professional opinion are the
16 forfeitures proposed in this case accurately and
17 reasonably determined?

18 A. Yes, sir, they are.

19 Q. Is there anything else important to
20 note before you step down?

21 A. No, sir.

22 MR. SHEPHERD: All right. Thank
23 you. No further questions.

24 ATTORNEY EXAMINER: Thank you.
25 Again, Mr. Bilunyk, if you have any questions

1 for Mr. Moser. Again as far as your narrative
2 or what you want to present, you will have
3 the opportunity here shortly. But now would be
4 the time if you have any questions for Mr. Moser
5 as to what he just testified to.

6 MR. BILUNYK: No, sir.

7 ATTORNEY EXAMINER: Okay.

8 MR. SHEPHERD: At this time Staff
9 moves for the admission of Staff Exhibits 3 and
10 4 into the record.

11 ATTORNEY EXAMINER: Okay. Any
12 questions on that, Mr. Bilunyk?

13 MR. BILUNYK: No, sir.

14 ATTORNEY EXAMINER: What has been
15 marked as Staff Exhibit 3 and Staff Exhibit 4
16 will be admitted.

17 (EXHIBITS HEREBY ADMITTED INTO
18 EVIDENCE)

19 MR. SHEPHERD: I am all set.

20 ATTORNEY EXAMINER: Anything
21 further, Mr. Shepherd?

22 MR. SHEPHERD: No. I am all set.

23 Thank you

24 ATTORNEY EXAMINER: Okay. Mr.
25 Bilunyk, Mr. Shepherd has completed presenting

1 his witnesses. Now will be your opportunity.
 2 I assume you would like to testify. So I would
 3 swear you in. And if you would go ahead and
 4 raise your right hand, I will officially swear
 5 you in.

6 (WITNESS SWORN)

7 ATTORNEY EXAMINER: Again, before
 8 we get going here, just speak up as you can,
 9 speak clearly. If we have any issues, Mike, if
 10 you have any issues, just speak up as far as
 11 hearing him as he testifies.

12 And I know you had circulated some
 13 documents as well that you may want to
 14 introduce. So now is your opportunity to talk
 15 through those and present them as well, Mr.
 16 Bilunyk.

17 And with that I will turn it over to
 18 you. And just note again you may be subject to
 19 cross-examination from Mr. Shepherd after you
 20 provided your testimony. So, please go ahead.

21 - - -

22 ROMAN BILUNYK
 23 being first duly sworn, testified as follows:

24 DIRECT TESTIMONY

25 MR. BILUNYK: Let me start with

1 explaining the log book because there is
2 misunderstanding how they work. But it does
3 record all the movements.

4 But the driver, we have device that
5 is connected to ETU, engine control unit, and
6 GPS device. And details when we go on duty, off
7 duty. But it does report only driving status.
8 Only when you drive it records by itself. The
9 rest you do on our own.

10 After it's all been done we certify
11 and the record goes to cloud. What happened at
12 that day on August 10th, I came to my pickup
13 location. If you can see picture, you can see
14 the picture on my ipad.

15 ATTORNEY EXAMINER: Okay. Just a
16 second so we can try and see that everyone --
17 are you referring I am guessing to an e-mail you
18 sent to me and Mr. Shepherd with what appear to
19 be images of the log?

20 MR. BILUNYK: Yes, sir, yes, sir.

21 ATTORNEY EXAMINER: Mr. Shepherd,
22 are we on the same page as far as -- okay.

23 Okay. I am going to go ahead and we
24 will mark that as Respondent's Exhibit 1.

25 (EXHIBIT MARKED THE THE PURPOSE OF

1 IDENTIFICATION)

2 ATTORNEY EXAMINER: Go ahead, Mr.
3 Bilunyk.

4 MR. BILUNYK: And if you can see
5 that I went off duty at 9:42. I am trying to
6 say there was clear small malfunction. That is
7 my side. And I did present this to the officer.

8 I tried to explain to him. I asked
9 him ten times can we call the provider so they
10 can verify that probably something wrong.

11 Because if I went off duty at 9:42 that means I
12 can start working at 7:42. I started working
13 like 8:00 o'clock, I don't remember what, so it
14 was 20 minutes after 10 hours.

15 And I did explain that. I didn't
16 mean to falsify something or do something. It
17 just malfunctioned. I did contact -- okay.
18 Let's go with this.

19 So, on my side it said, and I did
20 show him ipad. He said I don't care. I have my
21 cloud. No matter what I said he said you just
22 sit in the truck and wait.

23 Then he comes back, pulls me out of
24 service, and tells me that is all I can do. Go
25 to Court. No matter what I did. And at that --

1 go with that.

2 And then the second picture, and if
3 you go to the second picture. Can you do that,
4 please, for me? It's image No. 2. That picture
5 from cloud, from our safety management cloud.
6 That has access to. That is not from the driver
7 ipad. It said on top, ELD software, driver.

8 You can clearly see that is the same
9 timing like -- that is kind of like violation.
10 I don't know why they didn't change it. I mean,
11 I do agree that he has all rights to said that I
12 was wrong.

13 And now can we please go to the
14 third picture? I will explain why.

15 That is going to be the August 11th.
16 Can you see that, please? If you look on
17 the top right corner there are hours. Every
18 time we start our day we have 14 hours to work,
19 11 hours to drive, and 8 hours before the break.
20 It clearly says that. On top, you see?

21 Time until break. Eight hours.
22 That's how we start our morning. He doesn't
23 check the cloud. He go by the device in our
24 hands. I don't know what's going on on the
25 cloud.

1 So my ipad and my device give me
2 clear to work. I had time to work. Again, I
3 just want to make sure I did not know what's
4 going on on the cloud. And I did not intend to
5 falsify something. I had time.

6 Even I wasn't in a hurry. And that
7 is proof that I went off duty at 7:42 and
8 started working at 8:00. So if I was in a hurry
9 I would do my 10 hours and go on, work; right?
10 I did 10 hours 20 minutes, something like that.

11 I did explain to the officer five
12 times, I was begging him, asking him, is this
13 too much travel or not?

14 And so that is proof that I had
15 clear to go. And I did contact the ELD
16 provider; that it should be e-mail forwarded to
17 you that where they say with the malfunction and
18 all this stuff was fixed, but you cannot see it.
19 Did you see that e-mail too?

20 ATTORNEY EXAMINER: Yes. That was
21 the second e-mail?

22 THE WITNESS: Yes. That is
23 the second e-mail. That was -- I tried to work
24 with Public Commission for Ohio, explain that.
25 It was just mistake when we had the phone call.

1 They said just pay \$250 and forget about it.

2 I am like, I am not going to pay for nothing.

3 I contested.

4 ATTORNEY EXAMINER: Hold on just a
5 second. Did you have that second e-mail, Mr.
6 Shepherd?

7 MR. SHEPHERD: Yes, I do.

8 ATTORNEY EXAMINER: Okay.

9 MR. SHEPHERD: And I am going to
10 object to that. The person who sent that e-mail
11 isn't here to testify as to the nature of what
12 was said in the e-mail.

13 ATTORNEY EXAMINER: So let's mark
14 it first so we know what everyone is referring
15 to. That e-mail will be marked as Respondent
16 Exhibit 2.

17 (EXHIBIT HEREBY MARKED FOR
18 IDENTIFICATION PURPOSES)

19 ATTORNEY EXAMINER: I will defer
20 ruling on that. I will let Mr. Bilunyk
21 continue. Go ahead, Mr. Bilunyk.

22 MR. BILUNYK: And honestly that is
23 nothing I can do or say, because I didn't do
24 nothing wrong. I followed the rules. I know
25 the rules.

1 I have hazmat endorsements, I have
2 been driving truck for 15 years. I know all
3 the rules, I always follow the rules. And if
4 things go out of control I can't help it.

5 It's just simple malfunction. One
6 more thing I forgot to mention. Just one more
7 thing. As the first e-mail, picture No. 4, just
8 to prove that the ELD wasn't working properly.
9 If you look at the picture No. 4, the dates, and
10 Wednesday, August 5th. Can you see that? It
11 says worked 18 hours. That thing was going on
12 and off 18 hours. And I didn't get in trouble.
13 They should have seen that at the time of
14 inspection.

15 That just ELD malfunction. They
16 should have seen that. That's a big thing.
17 It's not 20 minutes. Nobody said nothing. I
18 did explain it them too. They like, nope, you
19 are wrong. I am like, okay.

20 What else can I do? And the ELD
21 device is approved by DOT. I just purchased --
22 the only reason I purchase it, because it was --
23 bought it and all that story. I don't even
24 know.

25 I tried to go by the name. So they

1 have customer service here, in U.S., which is in
2 Michigan for this one. I mean, I do my best to
3 keep it safe, in compliance.

4 But things -- when things go out of
5 control, I didn't get a chance to explain it.
6 I was told I see what I see. I don't want to
7 look at your logbook. I don't want to look at
8 your record. I have my own record. What else
9 can I do?

10 I think that is all I can say.
11 Thank you so much.

12 ATTORNEY EXAMINER: Mr. Shepherd,
13 any cross-examination?

14 MR. SHEPHERD: Yes. Just a couple
15 questions for you, Mr. Bilunyk.

16 CROSS-EXAMINATION

17 By Mr. Shepherd:

18 Q. So the pictures that we are looking
19 at that show a different record of hours than
20 the documents you were looking at earlier, did
21 you show that to the inspector during the
22 inspection?

23 A. It's on my ipad. I took my ipad and
24 tried to show him. He said, no, I have my own.

25 Q. And just going quickly to that

1 Wednesday entry you were talking about, you said
 2 it says you worked 18 hours; correct? So that
 3 is how you know it was malfunctioning. Did you
 4 notice it was malfunctioning before the
 5 inspection on August 11th? Because -- yes.
 6 Did you notice that it said you were working 18
 7 hours?

8 A. No. That's the thing. It was okay
 9 at the date of inspection. But then the bell
 10 thing, the bell pop up meaning violation. I am
 11 like, what is going on with this thing? That's
 12 how I noticed it. But I did notice it after the
 13 inspection. So it was okay.

14 And just for the record, on the
 15 cloud it's okay. It's seven hours -- I mean
 16 it's clear on the cloud. Malfunctioning between
 17 cloud and the device.

18 Q. But on your device that you were
 19 using that we are looking at it notified you
 20 that you had been working 18 hours, which must
 21 have been a violation.

22 So, I guess did you think maybe your
 23 electronic logging device wasn't working
 24 properly at that time?

25 A. Maybe without me knowing. Because

1 let me just say one more thing. We don't look
2 on the cloud. We don't have access to it. We
3 have simply -- I have ipad. You got to have GPS
4 connection and you got to have internet. That
5 ipad and Bluetooth connected to the cloud. I
6 had no issue. I didn't know nothing about that.

7 Q. Okay. But, and you didn't at any
8 time have a paper log around in August?

9 A. If you suspect something is wrong we
10 go with the paper log. I have paper log with
11 me. Blanks. But everything was fine.

12 Q. Okay.

13 A. I didn't have any problem.

14 Q. And I just want to make sure. So,
15 you didn't think to use a paper log when it said
16 that you were working 18 hours when you knew
17 that was an error?

18 A. The thing, I called the DOT that day
19 and tell them that shows me I am in violation.
20 They said don't worry about that, on the cloud
21 you are clean, clear, you are okay. And I did
22 check the cloud. Cloud was okay.

23 I didn't have reason to use the
24 paper log. Because it's after inspection, after
25 everything. It popped up and disappeared. If

1 you go, I can provide you that record for that
2 day too. It's clear, it's all good. I don't
3 know why it's doing that.

4 Now I don't have any problem. But
5 at that time, I don't know.

6 MR. SHEPHERD: Thank you. Your
7 Honor, I have no further questions.

8 ATTORNEY EXAMINER: Okay. Mr.
9 Bilunyk, I just have a couple questions for you
10 just to clarify here.

11 So, what we marked as Respondent's
12 Exhibit 1 are the pictures that you sent, and I
13 just want to make sure this is clear for
14 everyone for the record, these are pictures that
15 you took?

16 A. I took from my ipad.

17 Q. From your ipad. Do you know when
18 you took these pictures?

19 A. It says right on the top 9:10 P.M.
20 Thursday, August 13th.

21 Q. Okay. And that would have been of
22 what year?

23 A. 2021. Yes. A couple days after.

24 Q. So that would have been, we are
25 right at 2022, so obviously 2020, I believe.

1 A. Yes.

2 ATTORNEY EXAMINER: I just wanted to
3 verify that so we are clear where these came
4 from. If you have nothing further, am going to
5 help you a little and ask if you want to move
6 your two exhibits that have been marked into
7 evidence?

8 MR. BILUNYK: Yes.

9 ATTORNEY EXAMINER: Okay. Mr.
10 Shepherd, any objections on Respondent Exhibit
11 1?

12 MR. SHEPHERD: No objections on
13 Exhibit 1.

14 ATTORNEY EXAMINER: Okay. So
15 Respondent's Exhibit 1 will be admitted into the
16 record.

17 (EXHIBIT HEREBY ADMITTED INTO
18 EVIDENCE)

19 ATTORNEY EXAMINER: And
20 Respondent's Exhibit 2, you had indicated you
21 would object.

22 MR. SHEPHERD: Yes. Just to the
23 extent that it's an e-mail from someone who is
24 not here to testify today. And I would object
25 to that as inadmissible hearsay.

1 ATTORNEY EXAMINER: Your objection
2 is so noted. I am going to admit it into the
3 record and the Commission will be able to give
4 it the weight it deserves when considering it.

5 Respondent's Exhibit 2 will be so
6 admitted.

7 (EXHIBIT HEREBY ADMITTED INTO
8 EVIDENCE)

9 ATTORNEY EXAMINER: Does that
10 conclude things for you, Mr. Bilunyk?

11 MR. BILUNYK: Yes. That is all I
12 can do. That is okay. Fine.

13 ATTORNEY EXAMINER: Okay. Mr.
14 Shepherd, any rebuttal on your end?

15 MR. SHEPHERD: No. I am all set.
16 Thank you.

17 ATTORNEY EXAMINER: Okay. With both
18 sides having rested here, I believe that will
19 wrap things up for the hearing. I appreciate
20 everyone suffering through the fun of WebEx
21 here. I think we got through it rather
22 painlessly.

23 With that, you know, Mr. Bilunyk,
24 just so you know, we will get a transcript of
25 this hearing in a few weeks. And the Commission

1 will then consider it, and ultimately issue an
2 opinion. Typically it will be a couple months
3 out from hearing. It just kind of depends on
4 how things progress here. But, be on the
5 lookout for that.

6 With that, the matter will be
7 submitted to the record. I want to thank you
8 all again for tuning in today. And we are
9 adjourned.

10 (The hearing was concluded at 10:56
11 A.M.)

12 - - -

CERTIFICATE

I do hereby certify that the foregoing
is a true and correct transcript of the
proceedings taken by me in this matter on
January 11, 2022, and carefully compared with my
original stenographic notes.

Michael O. Spencer,
Registered Professional
Reporter.

- - -

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Case No(s). 20-1700-TR-CVF

Summary: Transcript January 11th 2022 In the Matter of Level One Trans, Inc.
Notice of Apparent Violation and Intent to Access Forfeiture. electronically filed by
Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Spencer, Michael O. Mr.