

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Mahad Isse :
Notice of Apparent Violation : Case No.
and Intent to Assess : 22-528-TR-CVF
Forfeiture. :

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PROCEEDINGS

Before Matt Sandor, Attorney Examiner, at the
offices of the Public Utilities Commission of
Ohio, 180 East Broad Street, Hearing Room 11-D,
Columbus, Ohio, on Thursday, July 18, 2023, at
10:00 A.M

- - -

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1 APPEARANCES:

2 Mr. Steven Beeler
3 and
4 Ms. Janet Gregory
5 Assistant Attorneys General
6 30 East Broad Street, 26th Floor
7 Columbus, Ohio 43215

8 On behalf of the Staff of the
9 Public Utilities Commission
10 of Ohio.

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Thursday Morning,
July 18, 2023.

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ATTORNEY EXAMINER SANDOR: Good morning everyone. The Public Utilities Commission of Ohio has called for hearing Case No. 22-528-TR-CVF captioned In the Matter of Mahad Isse Notice of Apparent Violation and Intent to Assess Forfeiture.

I am Matt Sandor, Attorney Examiner assigned by the Commission to hear this case. Let's start with appearances of the parties beginning with Staff.

MS. GREGORY: Thank you, your Honor. Appearing on behalf of the Staff of the Public Utilities Commission of Ohio, Dave Yost, Ohio Attorney General; John Jones, Section Chief Public Utilities Section; by Assistant Attorney General Janet Gregory and Steven Beeler, 30 East Broad Street, 26th Floor, Columbus, Ohio.

ATTORNEY EXAMINER SANDOR: Thank you. Also I will note for the record that neither counsel for the Respondent nor the Respondent are currently here at the hearing. Because of that I will give them an additional

1 15 minutes to show up. So we will be back
2 around 10:15 or so. Let's go off the record.

3 (RECESS TAKEN)

4 ATTORNEY EXAMINER SANDOR: I will
5 note that it is approximately 10:15 and
6 the Respondent nor counsel for the Respondent
7 are not currently here.

8 Counsel for Staff, have you heard
9 anything from the Respondent or counsel for the
10 Respondent?

11 MS. GREGORY: We have not.

12 ATTORNEY EXAMINER SANDOR: Okay.
13 I have not been contacted either. I know there
14 has been no notice on the docket of any
15 undeliverable mail. So I believe he would have
16 received any of the entries that were sent out.
17 At least counsel for Respondent.

18 I will also note to my recollection
19 that during the prehearing conference I called
20 counsel for Respondent and left a voice mail.

21 And Staff's former counsel, Sarah
22 Feldkamp, had e-mailed me back that she never
23 heard from him either. So there has been no
24 contact from Respondent or counsel for
25 Respondent.

1 With that I will go ahead and turn
2 the case over to Staff.

3 MS. GREGORY: I would like to move
4 for default judgment under 4901-2-7-14.

5 ATTORNEY EXAMINER SANDOR: Thank
6 you. I will take that under advisement.

7 MS. GREGORY: Thank you, your Honor.
8 We would like to call Lieutenant Kristina
9 Bennett to the stand, please.

10 (WITNESS SWORN)

11 - - -

12 OFFICER KRISTINA BENNETT
13 Called as a witness, being first duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION

16 By Ms. Gregory:

17 Q. Please state your name for
18 the record.

19 A. Lieutenant Kristina Bennett.

20 Q. And where are you employed?

21 A. I am employed by the Ohio State
22 Highway Patrol. I am assigned to the Findlay
23 District as Commander there.

24 Q. And what is your position within
25 the Highway Patrol?

1 A. I am Lieutenant.

2 Q. And what are your duties and
3 responsibilities with that position?

4 A. I have several different job duties
5 within that position. I oversee about 35
6 employees in the application of the Federal
7 Motor Carrier standards during traffic stops.
8 I also am certified to perform those type of
9 inspections.

10 Q. How long have you been with the
11 Patrol?

12 A. I have been with the Patrol since
13 July 25th, 1995.

14 Q. And prior to that?

15 A. No.

16 Q. Are motor carrier inspections
17 conducted to protect the safety of the Ohio
18 traveling public?

19 A. Yes, they are.

20 Q. And how many inspections on average
21 do you perform a year?

22 A. It varies. I haven't been out as
23 much as I like. I have roughly 750 inspections
24 in the five years I have been conducting it.
25 So about 120 average a year.

1 Q. And when you perform an inspection
2 do you complete an examination report?

3 A. I do.

4 Q. I would like to direct your
5 attention to March 21, 2022. Were you on duty
6 that day?

7 A. I was.

8 Q. And do you recall what your job
9 assignment, duties and responsibilities were on
10 that date?

11 A. Yes. I was Sergeant in the Highway
12 Patrol at that time, and my job duties were
13 enforcing the State of Ohio laws and the Federal
14 Motor Carrier regulations.

15 Q. On that date did you have the
16 opportunity to inspect a vehicle that was being
17 operated by BG Logistics?

18 A. I did. My actual shift ended at
19 3:00 P.M. but I was called out to do a
20 post-crash investigation as a result of a crash
21 that occurred on that vehicle.

22 MS. GREGORY: May I approach
23 the witness, your Honor?

24 ATTORNEY EXAMINER SANDOR: You may.

25 MS. GREGORY: I am handing the

1 witness what has been marked for reference Staff
2 Exhibit No. 1. And for the record there has
3 been a redaction of person identification from
4 each.

5 ATTORNEY EXAMINER SANDOR: So
6 Staff Exhibit 1, the Driver/Vehicle Examination
7 Report, shall be marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION)

9 Q. Do you recognize this document?

10 A. I do.

11 Q. And is this document a Highway
12 Patrol record?

13 A. It is actually not a Highway Patrol
14 record, it would be a Public Utilities
15 Commission of Ohio record. It's completely
16 different set of things than what the normal
17 Highway Patrol uses.

18 Q. Is the information within the
19 record done in the ordinary course of business?

20 A. For my job description, yes, it is.

21 Q. And is it the practice of
22 the Highway Patrol to make such records?

23 A. Yes.

24 Q. Would you make a report on matters
25 pursuant to the law as which there was a duty to

1 report?

2 A. Yes, I did.

3 Q. And is the document in substantially
4 the same condition as when you prepared it?

5 A. Yes, it is.

6 Q. Was the reason for producing this
7 report the inspection of the motor carrier
8 vehicle owned by BG Logistics?

9 A. Yes, it was.

10 Q. And do you remember the inspection?

11 A. I do.

12 Q. And who is the driver listed on the
13 report?

14 A. The driver listed on the report was
15 Mahad Isse.

16 Q. Did you give the driver a copy of
17 the report at the stop?

18 A. I did.

19 Q. And are there any violations noted
20 on the report?

21 A. There are several violations noted
22 on the report.

23 Q. Could you list those violations,
24 please?

25 A. Yes. As a result of the traffic

1 crash itself the drive shaft tube was cracked or
2 twisted. The brake, the No. 3 left brake
3 chamber had broken off as result of the crash.
4 And the leaf spring assembly on the right side
5 was broken in two places as a result of the
6 crash.

7 Not as a result of the crash,
8 however, was a charge of a false record of hours
9 of service. And an observed illness or altered
10 state of the driver.

11 Q. Let's talk about the violation of
12 392.3, the illness violation, operating a CMV
13 while impaired by illness or other causes.

14 A. Sure.

15 Q. I would like to direct you to
16 the inspection notes for that day. Would you be
17 able to describe what was observed or what was
18 physically wrong with the driver?

19 A. At the time of the crash, leading up
20 to the crash there was several reports of a
21 bobtail semi traveling at an extremely low
22 speed, which was the proximate cause of the
23 crash.

24 When I spoke with the driver he gave
25 several reasons why he was going slow, which no

1 one else observed. He advised that there were
2 vehicles in front of him. He advised that they
3 were going at a slow rate of speed brake
4 checking him. None of the other drivers in the
5 area reported seeing any of that.

6 And then he changed his story again.
7 He seemed very confused, very lethargic. He
8 said that he had uncontrolled diabetes that he
9 was taking medication for at the scene.

10 The paramedics checked him out and
11 his blood sugar was in the 200 range which was
12 extreme, but he was very confused and did not
13 really know where he was at the time of the
14 crash.

15 Q. It is noted in the inspection notes
16 that a violation was removed. Would you be able
17 to describe why that was removed?

18 A. Normally when that is removed it's
19 because he had no history of it in his medical
20 certificate, so with it being not a prior
21 history of the diabetes it was removed for that
22 reason.

23 However, at the scene he displayed
24 signs of illness and confusion.

25 Q. Is there anything else important to

1 note or discuss about his physical state?

2 A. He was having trouble writing. And
3 it wasn't due to a language barrier. He was
4 physically having trouble holding a pen,
5 shaking, having trouble forming thoughts. Just
6 there was definitely some sort of mental,
7 something inhibiting his cognitive function at
8 the time of the crash.

9 Q. Thank you. I would like to talk
10 about the second violation of 395.8(e)(1). The
11 ELD violation of false report of drivers record
12 of duty status, false log on March 21, 2022.

13 A. Yes.

14 MS. GREGORY: May I approach
15 the witness, your Honor?

16 ATTORNEY EXAMINER SANDOR: You may.

17 MS. GREGORY: I am handing the
18 witness a document marked for reference as Staff
19 Exhibit No. 2. And I would like to note that I
20 have redacted the personal identification
21 information.

22 ATTORNEY EXAMINER SANDOR: Thank
23 you. So Staff Exhibit 2 will be the electronic
24 record of duty status document. It is so
25 marked.

(EXHIBIT HEREBY MARKED FOR
IDENTIFICATION PURPOSES)

Q. For purposes of the record what is
an ELD?

A. An ELD is an electronic logging
device and it keeps track automatically. It's
synced with the truck's engine and GPS. It will
keep track of location and hours of service.

Q. What is the purpose of an ELD?

A. It's to make sure that the driver is
in compliance with the regulations governing
hours of service for the trucking industry.

Q. I would like to direct you to the
Exhibit 2. Would you describe what is in this
file of the ELD?

A. Yes. This particular file of ELD
was electronically transferred to me at the
crash scene by the driver. And you can see on
there that he sent me the log on the 23rd, I am
sorry, the 21st of March at 5:34: P.M. which was
at the time I responded to the crash.

If you turn to the second page of
that -- well, the first page shows that it's his
truck and his company, that it's the correct
file.

On the second page it shows his last log, his last entry was at 2:30 that day. And it showed him off duty in Columbus. The crash occurred in Bellefontaine, and the crash time was closer, I don't think that is on here, but the crash time was significantly later than that. And Bellefontaine, Ohio, not Columbus, Ohio.

Q. So is it correct then that it was not recording that he was driving at the time of the crash?

A. It was not recording his driving time at the time of the crash. And it did not show him in the correct location.

Q. Is there anything else important to note about the ELD that has not been discussed?

A. Normally when the driver is operating when either in commerce or in -- well, he would be in commerce even if he was just on the way to the next -- to pick up the next load, he still needs to log his hours.

At the time of the crash he stated that we was on his way to Ashley Furniture to pick up a load, and that still needed to be reported.

1 MS. GREGORY: Thank you. I have no
2 further questions, your Honor. I would like to
3 move Exhibits 1 and 2 into the record.

4 ATTORNEY EXAMINER SANDOR: I have no
5 questions either. Thank you very much.

6 And Staff Exhibits 1 and 2 are
7 admitted.

8 (EXHIBITS HEREBY ADMITTED INTO
9 EVIDENCE)

10 MS. GREGORY: Your Honor, I would
11 like to call to the stand Staff witness Rod
12 Moser.

13 (WITNESS SWORN)

14 - - -

15 ROD MOSER
16 called as a witness, being first duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION

19 By Ms. Gregory:

20 Q. Please state your name for the
21 record.

22 A. My name is Rod Allen Moser.

23 Q. And where are you employed?

24 A. I am employed as the Chief of the
25 Compliance and Registration sections for

1 the Transportation Department of the Public
2 Utilities Commission of Ohio.

3 Q. And what is your position?

4 A. I am the Chief of those two
5 sections.

6 Q. And how long have you been in that
7 position?

8 A. Roughly six and a half years.

9 Q. And what are your duties?

10 A. I would describe it as I am the
11 shepherd of the civil forfeiture process for
12 the Transportation Department.

13 Q. What is your expertise in the
14 violations or the subject matter of
15 the violations?

16 A. I was a State Trooper for just under
17 30 years, with heavy emphasize on commercial
18 vehicle enforcement. Then I came to the PUCO
19 and I was trained in North American Standards
20 Parts A and B, cargo tank, general hazmat, bulk,
21 non-bulk, and motor coach inspections.

22 Q. Could you please describe how you
23 determined the amount of the forfeiture?

24 A. Sure. So for roadside inspections
25 violations are divided into -- well, 6 basic

1 groups. First of all it's divided into hazmat
2 and non-hazmat. This particular inspection was
3 non-hazmat, so everything was automated. Our
4 process for non-hazmat violations is completely
5 automated.

6 Violations for non-hazmat are
7 divided into 5 groups. Group zero violations
8 have little or no chance of causing a crash,
9 and so they never sustain a fine, or civil
10 forfeiture.

11 Groups 1, 2 and 3 are mechanical
12 violations, with Group 1 being the most likely
13 to cause a crash or play a part in a crash.
14 And Group 3 the least likely of those. They
15 engender a violation when the violation -- or
16 engender a civil forfeiture when the violation
17 is marked as out of service.

18 Group 4 violations are things like
19 driver behaviors, authority and insurance. And
20 those always have a civil forfeiture amount.

21 Q. Does the Commission apply
22 the process uniformly to everyone?

23 A. Yes. As I said it is an automated
24 process, so everybody, every inspection is
25 treated in the same manner.

1 Q. What is a Notice of Preliminary
2 Determination?

3 A. A Notice of Preliminary
4 Determination, we just call it an NPD, is a
5 notice sent to a Respondent or Respondent's
6 representative following a telephone conference
7 in an attempt to resolve the issues, following
8 an unsuccessful attempt to resolve those issues.
9 And basically it tells the Respondent, they can
10 either pay the civil forfeiture or they can
11 request an formal administrative hearing.

12 Q. And was a Notice of Preliminary
13 Determination sent to the Respondent in this
14 case?

15 A. Yes, it was.

16 MS. GREGORY: May I approach
17 the witness, your Honor?

18 ATTORNEY EXAMINER SANDOR: You may.

19 MS. GREGORY: I am handing the
20 witness what has been marked for reference Staff
21 Exhibit No. 3.

22 ATTORNEY EXAMINER SANDOR: Staff
23 Exhibit No. 3 will be the Notice of Preliminary
24 Determination, and it's so marked.

25 (EXHIBIT HEREBY MARKED FOR

1 IDENTIFICATION PURPOSES)

2 Q. Do you recognize this document?

3 A. I do.

4 Q. And could you explain what it is?

5 A. Sure. This is the NPD sent to Mr.
6 Mohamed who was the representative for Mr. Isse.
7 And it describes two violations that remain on
8 the inspection related to the driver.

9 There was a third violation that was
10 removed per the Highway Patrol. So these two
11 violations were what remained after our
12 conference.

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

15 A. Yes, it is.

16 Q. And kept in the ordinary course of
17 business?

18 A. It is.

19 Q. Could you explain how the civil
20 forfeiture was derived in this case?

21 A. Sure. As I previously described
22 non-hazmat violations are divided into 5 groups,
23 zero through 4. These particular violations,
24 the illness violation is a Group 4, so that
25 always has a Civil forfeiture amount, in this

1 case \$100.

2 And the false report of driver's
3 record of duty status is Group 1, but it was not
4 marked out of service on the inspection, so,
5 therefore, it did not get a civil forfeiture.

6 Q. Is this fine consistent with the
7 recommended fine schedule and recommended civil
8 forfeiture adopted by the Commercial Vehicle
9 Safety Alliance?

10 A. Yes, it is.

11 Q. And is \$100 the civil forfeiture
12 amount in this case?

13 A. It is.

14 Q. Would you recommend this amount to
15 the Commission?

16 A. I do, yes.

17 Q. Is there anything important you
18 would like to note that we have not discussed
19 earlier that you would like the Commission to
20 have on the record?

21 A. No, ma'am.

22 MS. GREGORY: Thank you. I have no
23 further questions, your Honor. I would like to
24 move Staff Exhibit 3 into the record

25 ATTORNEY EXAMINER SANDOR: Thank

1 you, Mr. Moser. You are excused. And Staff
2 Exhibit 3 is admitted into the record.

3 (EXHIBIT HEREBY ADMITTED INTO
4 EVIDENCE)

5 ATTORNEY EXAMINER SANDOR: Anything
6 further from Staff today?

7 MS. GREGORY: No, your Honor.

8 ATTORNEY EXAMINER SANDOR: All
9 right. Thank you. Well, with that I believe
10 there is nothing further, this case will be
11 submitted to the record. We are done for today.
12 We are adjourned. Thank you.

13 (At 10:35 A.M. the hearing was
14 concluded)

15 - - -

CERTIFICATE

I do hereby certify that the foregoing
is a true and correct transcript of the
proceedings taken by me in this matter on July
18, 2023, and carefully compared with my
original stenographic notes.

Michael O. Spencer,
Registered Professional
Reporter.

- - -

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

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Summary: Transcript In the Matter of Mahad Isse 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..