

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF PAWTUCKET

v.

JOHN PESCE

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C.A. No. T08-0138

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STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED

CITY OF PAWTUCKET

v.

PGT TRUCKING, INC.

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C.A. No. T08-0139

**DECISION**

**PER CURIAM:** Before this Panel on March 5, 2009—Magistrate Noonan (Chair, presiding), and Judge Almeida and Magistrate DiSandro sitting—are the appeals of John Pesce (Mr. Pesce) and PGT Trucking, Inc. (collectively Appellants), from a decision of Judge Ciullo, sustaining Mr. Pesce’s violation of G.L. 1956 § 31-13-4, “Obedience to devices,” and PGT Trucking’s violation of G.L. 1956 § 31-25-30, “Axle restriction on the Pawtucket River Bridge and the Sakonnet River Bridge.” As these cases arise out of the same act or transaction, this Panel, in furtherance of judicial economy and to promote clarity, consolidated these appeals for review and decision. The Appellants were represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

**Facts and Travel**

On June 12, 2008, the General Assembly made it “unlawful to transport or operate over or upon the Pawtucket River Bridge or the Sakonnet River Bridge, any

single vehicle equipped with more than two (2) axles or any combination vehicle equipped with more than two (2) axles per unit except those listed” elsewhere in G.L. 1956 § 31-25-30. Pursuant to § 31-25-30, the director of the Department of Transportation was “directed to post signs to limit access” to these structurally-deficient bridges. Section 31-25-30 further provides that “[a]ny carrier operating a vehicle or combination of vehicles in violation of this section shall be fined three thousand dollars (\$3,000) for the first offense, not to exceed five thousand dollars (\$5,000) for each and every subsequent offense.”

On August 7, 2008, Mr. Pesce, the operator of a tractor-trailer owned by PGT Trucking, Inc., drove over the Pawtucket River Bridge without heeding the signs posted in the vicinity of the bridge by the director of the Department of Transportation. Mr. Pesce was subsequently stopped by a trooper of the Rhode Island State Police (Trooper) and was charged with violating § 31-13-4.<sup>1</sup> As the owner of Mr. Pesce’s tractor-trailer, PGT Trucking was separately charged with violating § 31-25-30. The Appellants contested these charges, and the matters proceeded to trial.<sup>2</sup>

At trial, the Trooper testified that on the date in question, at approximately 10:12 a.m., he was on a “commercial enforcement unit detail” on the Pawtucket River Bridge. (Tr. at 1.) At this time, the Trooper observed “a 2006 International, five axle tractor-trailer . . . operate over the Pawtucket River Bridge.” *Id.* The Trooper initiated a traffic stop of the tractor-trailer and issued the operator, later identified at trial as Mr. Pesce, a

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<sup>1</sup> Section 31-13-4 reads, in pertinent part: “The driver of any vehicle shall obey the instructions of any official traffic control device applicable to him or her placed in accordance with the provisions of chapters 12 - 27 of this title, unless otherwise directed by a traffic or police officer . . . .”

<sup>2</sup> Pursuant to Rule 9 of the Rules of Procedure for the Traffic Tribunal, the summons issued to Mr. Pesce and the summons issued to PGT Trucking were tried together, as “they are alleged to have participated in the same act or transaction . . . constituting an offense . . . .”

summons “for not following the D.O.T. signs.” Id. The Trooper also issued a separate summons to PGT Trucking, the owner of the tractor-trailer operated by Mr. Pesce. Id.

On cross-examination by counsel for Appellants, the Trooper testified that the vehicle operated by Mr. Pesce was composed of two distinct units: the motorized truck tractor and the non-motorized trailer. (Tr. at 2.) The Trooper testified that the tractor had three axles and that the trailer attached to it had two axles. Id.

Counsel for Appellants then argued that there was no evidence that PGT Trucking, the owner of the tractor-trailer, “operated” the vehicle over the Pawtucket River Bridge. (Tr. at 3.) As counsel explained, PGT Trucking “was not driving the vehicle; they weren’t any more responsible for this vehicle going over this bridge than . . . if the driver were speeding.” (Tr. at 4.)

Following the trial, the trial judge sustained the charged violations of §§ 31-13-4 and 31-25-30. Aggrieved by this decision, Appellants have filed timely appeals to this Panel. Forthwith is this Panel’s decision.

#### **Standard of Review**

Pursuant to G.L. 1956 § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the judge's findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the judge or magistrate;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

In reviewing a hearing judge or magistrate's decision pursuant to § 31-41.1-8, this Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact." Link v. State, 633 A.2d 1345, 1348 (R.I. 1993) (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). "The review of the Appeals Panel is confined to a reading of the record to determine whether the judge's [or magistrate's] decision is supported by legally competent evidence or is affected by an error of law." Link, 633 A.2d at 1348 (citing Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)). "In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision." Link, 633 A.2d at 1348. Otherwise, it must affirm the hearing judge's [or magistrate's] conclusions on appeal. See Janes, 586 A.2d at 537.

#### Analysis

On appeal, Appellants argue that the trial judge's decision is affected by error of law. The Appellants' first argument on appeal is that PGT Trucking was not a proper party defendant for the charged violation of § 31-25-30, as there is no evidence that PGT

“operat[ed] a vehicle or combination of vehicles in violation of” the statute. With respect to Mr. Pesce’s charged violation of § 31-13-4, Appellants assert that the “official traffic control device” posted in the vicinity of the Pawtucket River Bridge pursuant to § 31-25-30 was inapplicable to Mr. Pesce, as the trailer portion of his vehicle was outside the ambit of the statute and the non-cargo-carrying tractor portion was expressly exempt as a “truck tractor.” Accordingly, Appellants maintain that as Mr. Pesce did not disobey a traffic control device applicable to him, the charged violation of § 31-13-4 cannot be sustained.

The Appellants’ first argument on appeal—that the charged violation of § 31-25-30 cannot be sustained because there is no proof of “operation” by PGT Trucking—does not merit extensive consideration. Section 31-25-30 defines a “carrier” as “any company or person who furthers their commercial or private enterprise by use of the vehicle” that crosses either the Pawtucket River Bridge or the Sakonnet River Bridge. As PGT Trucking was furthering its commercial enterprise by use of the tractor-trailer that Mr. Pesce operated over the Pawtucket River Bridge, this argument must fail.

Turning to Mr. Pesce’s charged violation of § 31-13-4, it appears that the central issue before this Panel is whether the term “vehicle,” as that term is employed in § 31-25-30, refers to the combination of a motorized “truck tractor” with a non-motorized “trailer,” or whether the tractor and trailer components constitute separate and distinct “vehicles” for the purpose of determining the number of axles.

Section 31-1-3, the section of the motor vehicle code defining the various “types of vehicles,” defines the term “vehicle” as “every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices

used exclusively upon stationary rails or tracks.” This definition is overly generalized and does not provide this Panel with guidance. However, turning to the more specific definitions of “truck tractor” and “trailer,” it appears that there is some support for Appellant’s position. Section 31-1-4 defines a “truck tractor” as “a non-cargo-carrying power unit that operates in combination with a semi-trailer or trailer . . . .” Section 31-1-5 defines a “trailer” as “every vehicle without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle, constructed so that none of its weight rests upon the towing vehicle.” (Emphasis added.) Reading these definitions in conjunction, it appears that the non-motorized “trailer” and the motorized “tractor” upon which its weight rests are separate and distinct “vehicles” under the motor vehicle code.

However, there is yet another, more specific definition in the motor vehicle code that more precisely captures the nature of the vehicle that Mr. Pesce operated over the Pawtucket River Bridge on the date in question. Section 31-1-5 defines a “tractor-trailer combination” as “every combination of a tractor and a trailer, properly attached to the tractor to form an articulated vehicle.” Based on this definition, it is clear that when a non-motorized “trailer” is affixed to a motorized “truck tractor,” the individual “vehicles” merge to form a single, articulated “vehicle.” Not only does this conception of a tractor-trailer as a single “vehicle” describe Mr. Pesce’s vehicle with a greater degree of precision, but it also comports with the legislative intent behind § 31-25-30. Furthermore, §§ 31-1-3 – 31-1-5 must be read together, as it is a well-established principle of statutory construction that “statutes relating to the same subject matter should be considered together so that they will harmonize with each other and be consistent”

with their general objective scope. Such v. State, 950 A.2d 1150, 1156 (R.I. 2008) (quoting State ex rel. Webb v. Cianci, 591 A.2d 1193, 1203 (R.I.1991)). “Such statutes are considered to be in pari materia, which stands for the simple proposition that ‘statutes on the same subject . . . are, when enacted by the same jurisdiction, to be read in relation to each other.’” Id. (quoting Horn v. Southern Union Co., 927 A.2d 292, 294-295 (R.I. 2007)).

The General Assembly’s intent in passing § 31-25-30 was to ensure that vehicle traffic over the structurally-deficient Pawtucket River and Sakonnet River Bridges would continue in a safe and efficient manner without a corresponding risk that that traffic would further undermine structural integrity. To accomplish these ends, the General Assembly certainly intended that vehicles such as Mr. Pesce’s—a combination of a motorized “truck tractor” and non-motorized “trailer”—would not travel over these already-compromised spans, owing to their size and weight. To construe the term “vehicle” in § 31-25-30 to refer to the individual component parts of a “tractor-trailer combination” would not only frustrate the legislative intent of fostering public safety—an intent that is plain and clear on the face of the statute—but it would also result in absurdities. See Hanley v. State, 837 A.2d 707 (R.I. 2003) (court will not construe a statute to reach an absurd result). The General Assembly simply did not envision a situation in which the tractor and trailer components of a tractor-trailer combination would cross one of the named bridges separately, particularly in light of the fact that trailers are, by definition, immobile. Further, the existence of an exemption for “truck tractors” indicates that the General Assembly did envision a situation in which a truck tractor, unencumbered by a trailer, would be able to cross the Pawtucket River Bridge or

Sakonnet River Bridge safely. Accordingly, the members of this Panel are satisfied that the combination of a “truck tractor” and a “trailer” constitutes a “vehicle” for the purpose of determining the number of axles under § 31-25-30.

Having already concluded that Mr. Pesce’s tractor-trailer constitutes a “vehicle” within § 31-25-30 and that the signs posted on Route 95 northbound in the vicinity of the Pawtucket River Bridge were applicable to him, this Panel must still consider whether there is competent record evidence to support the trial judge’s decision on the charged violation of § 31-13-4. The trial judge heard testimony from the Trooper that Mr. Pesce operated his tractor-trailer over the Pawtucket River Bridge in contravention of the signs posted in the vicinity of the bridge. (Tr. at 1.) As the Trooper explained, Mr. Pesce was charged with failing to obey a traffic control device because he did “not follow[] the D.O.T. signs.” *Id.* As the signs described by the Trooper were posted by the director of the Department of Transportation in accordance with chapter 25 of the general laws, and there is no evidence in the record that Mr. Pesce was told to ignore the signs at the direction of a law enforcement officer, this Panel is satisfied that there is reliable, probative, and substantial record evidence to support the charged violation of § 31-13-4.



### **Conclusion**

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial judge's decision is not in violation of statutory provisions, affected by error of law, or clearly erroneous in view of the reliable, probative, and substantial record evidence. Substantial rights of Appellants have not been prejudiced. Accordingly, Appellants' appeals are denied, and the charged violations sustained.

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