

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

:  
:  
:  
:  
:

v.

C.A. No. T09-0023

ROY WOOD

STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED  
09 APR 27 AM 7:19

DECISION

PER CURIAM: Before this Panel on April 8, 2009—Judge Almeida (Chair, presiding) and Judge Parker and Magistrate DiSandro sitting—is Roy Wood’s (Appellant) appeal from a decision of Chief Magistrate Guglietta, sustaining the charged violation of G.L. 1956 § 31-13-4, “Obedience to devices.” The Appellant was 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.” The statute defines a “carrier” as “any company or person who furthers their commercial or private enterprise by use of the vehicle.”

On December 20, 2008, Appellant, the operator of a three-axle tractor-trailer, traveled southbound over the Pawtucket River Bridge. The Appellant was subsequently stopped by Trooper Darnel Weaver (Trooper Weaver) of the Rhode Island State Police and was charged with violating § 31-13-4.<sup>1</sup> The Appellant contested the charge, and the matter proceeded to trial.

At trial, Trooper Weaver testified that on the date in question, at approximately 10:30 a.m., he was on a “fixed post” on Route 95 South, just north of the George Street overpass in Pawtucket.<sup>2</sup> (Tr. at 3.) At this time, Trooper Weaver observed a three-axle tractor-trailer bearing California apportioned registration travel over the Pawtucket River Bridge. *Id.* Trooper Weaver indicated that a sign had been posted by the Department of Transportation in the vicinity of Exit 30.<sup>3</sup> *Id.* On cross-examination by counsel for Appellant, Trooper Weaver testified that he encountered Appellant “just south of” Exit 27 on Route 95. (Tr. at 4.)

At this point in the trial, counsel for Appellant moved to dismiss the charged violation. As grounds for his dismissal motion, counsel argued that the prosecution failed to prove to a standard of clear and convincing evidence that Appellant “in fact drove by any traffic control device” posted at the direction of the Department of Transportation. (Tr. at 5.) Counsel reasoned that “to violate a traffic control device you have to actually drive by it,” and that there was “no evidence in the record that [Appellant] did that.” *Id.*

Following the trial, the trial magistrate sustained the charged violation of § 31-13-4. The Appellant, aggrieved by this decision, filed a timely appeal to this Panel. Our decision is rendered below.

---

<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> Trooper Weaver indicated that the George Street overpass is in the vicinity of Exit 27. (Tr. at 4.)

<sup>3</sup> Trooper Weaver testified that the sign read: “ALL TRUCKS MUST EXIT OVER 18 TONS AND TWO AXLES PER UNIT.” (Tr. at 11.)

### 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, Appellant argues that the trial magistrate’s decision is affected by error of law and clearly erroneous in light of the reliable, probative, and substantial record evidence. Specifically, Appellant contends that the prosecution failed to prove the charged violation of § 31-13-4 to a standard of clear and convincing evidence, as required by Rule 17 of the Rules of Procedure for the Traffic Tribunal.<sup>4</sup> As there is no evidence in the record that Appellant failed to “obey the instructions of any official traffic control device applicable to him . . . placed in accordance with the provisions of” § 31-25-30 by the Department of Transportation, the charged violation cannot be sustained.

Although our Rules do not expressly define “clear and convincing evidence,” this Panel is guided by the definition that appears in the 1968 case of Parker v. Parker, 103 R.I. 435, 238 A.2d 57 (1968). In Parker, our Supreme Court stated:

“The phrase ‘clear and convincing evidence’ is more than a mere exercise in semantics. It is a degree of proof different from a satisfaction by a ‘preponderance of the evidence’ which is the recognized burden in civil actions and from proof ‘beyond a reasonable doubt’ which is the required burden in criminal suits. If we could erect a graduated scale which measured the comparative degrees of proof, the ‘preponderance’ burden would be at the lowest extreme of our scale; ‘beyond a reasonable doubt’ would be situated at the highest point; and somewhere in between the two extremes would be ‘clear and convincing evidence.’” Parker, 103 R.I. at 442, 238 A.2d at 60-61.

The Parker Court went on to state:

“To verbalize the distinction between the differing degrees more precisely, proof by a ‘preponderance of the evidence’ means that a

---

<sup>4</sup> Rule 17 reads, in relevant part: “The burden of proof shall be on the prosecution to a standard of clear and convincing evidence.”

jury must believe that the facts asserted by the proponent are more probably true than false; proof 'beyond a reasonable doubt' means the facts asserted by the prosecution are almost certainly true; and proof by 'clear and convincing evidence' means that the jury must believe that the truth of the facts asserted by the proponent is highly probable." Id.

Thus, this Panel's task on appeal is to review the evidentiary record to determine whether the trial magistrate could have found it "highly probable" that Appellant operated his tractor-trailer over the Pawtucket River Bridge in contravention of the signage posted at Exit 30. Having reviewed the record in its entirety, the members of this Panel are satisfied that the prosecution failed to meet the burden of proof set forth in Rule 17.

While it is undisputed that Appellant operated a tractor-trailer with more than two axles over the Pawtucket River Bridge, there is no evidence in the record that Appellant drove by a sign or signs designed to limit access to the structurally-deficient span. As counsel for Appellant pointed out, Trooper Weaver failed to set forth in his trial testimony that Appellant, in crossing the bridge, failed to heed the sign posted at Exit 30 on Route 95. (Tr. at 5.) Further, the record reveals that Appellant may have gained access to Route 95 by means of an on-ramp at Exit 29 or Exit 28, altogether bypassing the Department of Transportation signage at Exit 30. Accordingly, as there is no legally competent evidence in the record to support the trial magistrate's determination that Appellant failed to "obey the instructions of any official traffic control device applicable to him," the charged violation of § 31-13-4 cannot be sustained as supported by clear and convincing evidence.

### **Conclusion**

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial magistrate's decision is clearly erroneous in light of the reliable, probative, and substantial record evidence and affected by other error of law. Substantial rights

of Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violation dismissed.

ENTERED: