

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**PROVIDENCE, SC.**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**STATE OF RHODE ISLAND**

:

**V.**

:

**Appeal No. T11-0027**

:

**EDWIN LOIGNON**

:

:

**DECISION**

**PER CURIAM:** Before this Panel on June 22, 2011 – Magistrate Goulart (Chair, presiding), Judge Parker, Magistrate Noonan, sitting – is Edwin Loignon’s (Appellant) appeal from a decision of Judge Almeida, sustaining the charged violations of G.L. 1956 § 31-14-3 “Conditions Requiring Reduced Speed,” brought by the State of Rhode Island (Appellee). Both parties were represented by counsel before this Panel. Jurisdiction is pursuant to §31-41.1-8.

**I**

**Facts and Travel**

On February 10, 2011 Trooper David Trainor (Trooper Trainor) of the Rhode Island State Police observed a disabled yellow school bus located in the right lane of travel prior to exit twenty three on Memorial Boulevard. (Tr. at 4.) Trooper Trainor positioned his police cruiser behind the bus, forcing oncoming traffic to merge into the middle lane. (Tr. at 5.) Trooper Trainor then attempted to exit his cruiser in order to assist in the transfer of students from the disabled bus. (Tr. at 5.) There was no breakdown lane at the scene making conditions hazardous for such a transfer. Trooper Trainor looked over his shoulder, to ensure the lane behind him was clear of traffic, and opened the

cruiser door. (Tr. at 5.) At this time, a Red Ford Taurus operated by the Appellant struck Trooper Trainor's cruiser. (Tr. at 5.) Trooper Trainor immediately approached Appellant's vehicle, and asked if the appellant was injured. (Tr. at 6.) Appellant responded that he was uninjured, and explained that another vehicle had forced him from one of the traffic lanes, causing the Appellant to hit the Trooper's cruiser door. (Tr. at 6.)

At this point, Trooper Mark Alboun (Trooper Alboun), of the Rhode Island State Police was dispatched to investigate the accident. (Tr. at 2.) Upon arriving at the scene, Trooper Alboun immediately noticed damage to Trooper Trainor's cruiser door, and damage to the passenger side of Appellant's vehicle. (Tr. at 3.) Trooper Alboun then inquired if there were any injuries, and photographed the vehicles' positions on the roadway. (Tr. at 3.) Trooper Alboun concluded his investigation, and issued Appellant a summons for violating §31-14-3 "Conditions Requiring Reduced Speed." (Tr. at 5.) Appellant contested the charge, and the matter proceeded to trial.

The trial began with Trooper Alboun's testimony regarding the events of February 10, 2011. Trooper Alboun testified that upon arriving at the accident scene, he observed damage to the passenger side of Appellant's vehicle. (Tr. at 2.) During his testimony, Trooper Alboun presented photographs of the accident scene, and explained the positioning of the vehicles in the photographs. (Tr. at 3.) He noted that the lane in which Trooper Trainor's police cruiser was parked was "extra wide" with "plenty of room to spare." (Tr. at 5.) Furthermore Trooper Alboun testified that while he was conducting the accident investigation, he observed other vehicles easily merging into the middle lane. (Tr. at 5.)

Following Trooper Alboun's testimony, Trooper Trainor testified that he had parked his cruiser directly behind the school bus in the right lane. (Tr. at 5.) Trooper Trainor continued by noting that his cruiser's door did not extend into the center lane of traffic. He also stated that his cruiser's emergency lights were on throughout the traffic stop. (Tr. at 6.)

On cross-examination, Defense counsel attempted to show inconsistencies between Officer Alboun's police report and his aforementioned testimony. (Tr. at 10.) Trooper Alboun testified that Appellant's vehicle was traveling at twenty-five to thirty miles per hour, rather than the fifty-five miles per hour listed on the summons. (Tr. at 7.) Trooper Alboun also admitted that traffic was extremely heavy at the time of the accident. (Tr. at 7.)

Following the cross-examination of Trooper Alboun, Appellant testified. Appellant contended that prior to the accident, he was unable to move his vehicle to the middle lane because he was surrounded by other cars. (Tr. at 12.) Appellant stated that prior to the accident the traffic on Route 95 was "bumper to bumper." (Tr. at 18.) He also testified that while he was traveling on Route 95, he had planned to continue on Route 95 North until he reached Route 146, and was not coming from the nearby ramp which would have placed him in the lane behind Trooper Trainor's cruiser. (Tr. at 18, 20.)

At the conclusion of the testimony, the trial judge sustained the charge against the Appellant. The trial judge found the summons for "Conditions Requiring Reduced Speed" under § 31-14-3 to be valid. (Tr. at 23.) The trial judge failed to find Appellant's testimony credible, stating in pertinent part "I just don't find your client's explanation

credible, looking at the photos and just using a little common sense as to how these things could happen.” (Tr. at 23.) The trial judge noted it would be impossible for the defendant to have hit Trooper Trainor’s police cruiser if Appellant’s claims of driving in the open lane were true. (Tr. at 21.) As such, finding the State met its burden in proving all elements of the offense under § 31-14-3, the trial judge imposed penalties. (Tr. at 22.) Appellant appealed this Decision. The Decision of the Appeals Panel is rendered below.

## II

### Standard of Review

Pursuant to § 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 on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, may remand the case for further proceedings, or may reverse or modify the decision if the substantial rights of the appellant have been prejudiced 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 following 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, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

In reviewing a hearing judge’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 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 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 conclusions on appeal. See Janes, 586 A.2d at 537.

### III

#### Analysis

On appeal, Appellant contends that the trial judge's decision is not based on clear and convincing evidence, and therefore prejudices Appellant's substantial rights. Additionally, Appellant argues that his right to have the charges against him established by clear and convincing evidence was denied by the trial judge's ruling. Appellant claims the trial judge sustained the "Conditions Requiring Reduced Speed" violation based on common sense, and not on the legal facts of the case. Appellant also claims the trial judge erred in finding Appellant's explanation of the accident to be incredible. Appellant cites the trial judge's statements regarding a common sense explanation for the accident to support this proposition. Appellant asserts that the trial judge is required to base her findings of fact on clear and convincing evidence and her failure to do so has prejudiced Appellant's substantial rights.

The State however, argues that the trial court judge's credibility determinations were valid and based on clear and convincing evidence. The state claims the trial judge

relied on the testimony of Troopers Alboun, and Trainor, and photographic evidence in reaching her determination. The state asserts that Rhode Island case law makes clear that the trial judge's evaluation of the evidence is given deference on appellate review.

The Rhode Island Supreme Court has stated that this Panel "lacks the authority to assess witness credibility or to substitute its own judgment for that of the hearing magistrate concerning the weight of the evidence on questions of facts." Link v. State, 633 A.2d 1345, 1348 (R.I. 1993) (citing Liberty Mut. Ins. Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). Furthermore, the Appeals Panel is "limited to a determination of whether the hearing justice's decision is supported by legally competent evidence." Marran v. State, 672 A.2d 875, 876 (R.I. 1996). As the members of this Panel did not have an opportunity to view the live trial testimony of Troopers Alboun and Trainor, we must give great deference to the trial judge's impressions, because she observed the Troopers' testimony firsthand. Envtl. Scientific Corp. v. Durfee, 621 A.2d 200,208 (R.I. 1993). As such, this Panel must confine its review of the record. This Panel must only determine whether the trial judge's decision is supported by legally competent evidence, and is unaffected by error of law. See id.

The trial judge was present for Appellant's April 20, 2011 testimony, and decided that Appellant's explanation of the accident was not credible when compared with the testimony of Troopers Alboun and Trainor. (Tr. at 23.) It is entirely within the trial judge's discretion to weigh such evidence and testimony. See Link, 633 A.2d at 1348. In this case, there is ample evidence in the record to support all of the trial judge's findings. See id. The trial judge heard testimony presented by the State of Rhode Island's witnesses Trooper Trainor and Trooper Alboun regarding their experiences at the

accident scene. Additionally, the trial judge was presented with photographic evidence of the scene of the accident. Based on the evidence and testimony presented the trial judge made a determination that the testimony was reliable.

Furthermore, nothing in § 31-14-3, or the Rhode Island common law requires a fact finder to formally use the words “clear and convincing evidence” when rendering a decision. See §31-14-3. In her decision, the trial judge stated that her use of “common sense” revealed that Appellant’s testimony was not convincing. (Tr. at 23.) Upon review of the record, it is clear that the trial judge was only bringing her own experience and knowledge to bear upon the evidence presented at trial. See (Tr. at 23.) A trial judge sitting as a finder of fact is expected to use his or her judgment in evaluating issues of credibility and fact. See Link, 633 A.2d 1348. In this case, the trial judge heard testimony from two State Troopers and reviewed photographic evidence. As such, the record clearly supports the trial judge’s finding that Appellant was guilty of violating § 31-14-3 by the clear and convincing evidence presented at trial. See id. Therefore, the members of this Panel are satisfied that the trial judge’s decision to sustain the charged violations is supported by legally competent evidence, and is unaffected by error of law or abuse of discretion.

### Conclusion

Having reviewed the entire record before it, this Panel is satisfied that the trial judge's decision sustaining the charged violation of § 31-14-3 was not affected by error of law, clearly erroneous based on reliable, probative and substantial record evidence, characterized by abuse of discretion, or in violation of constitutional provisions. Finding that substantial rights of Appellant have not been prejudiced, we hereby deny his appeal and sustain the violation charged against him.