STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: August 18, 2025)

J.H. LYNCH & SONS, INC.,	:	
	:	
Plaintiff/Appellant,	:	
	:	
v.	:	**C.A. No. PC-2024-03482**
	:	
MATTHEW D. WELDON, in his capacity as Director of the Rhode Island Department of Labor and Training,	:	
	:	
***Defendant/Appellee*.**	:	

DECISION

STERN, J. Before the Court is an appeal filed by Plaintiff/Appellant, J.H. Lynch & Sons, Inc. (Lynch), of a Decision on Appeal rendered by the Rhode Island Department of Labor and Training (the DLT). Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

I

Facts and Travel

On or about April 2, 2024, the DLT issued a Notice of Violation/Request for the Imposition of Penalty(ies) to Lynch in connection with Violation #7470. (Joint Stip. of Facts ¶ 1.) Violation #7470 alleged that on or about March 13, 2024, Lynch violated G.L. 1956 § 28-26-5 when Daniel J. Keeffe (Keeffe), an employee of Liddell Brothers, Inc. (Liddell), failed to maintain a valid Rhode Island hoisting license while operating a compact excavator at a job located in Newport, Rhode Island. *Id.* At all relevant times, Keeffe was a Liddell employee, and Liddell was one of Lynch's subcontractors. *Id.* ¶¶ 10-11. The DLT issued a Notice of Violation/Request for the Imposition of Penalty(ies) to Keeffe (Violation #7468) and Liddell

(Violation #7469) for that same event. *Id.* ¶ 2. The DLT ultimately imposed a $2,000 fine on Lynch and imposed fines on Keeffe and Liddell. *Id.* ¶¶ 3-4.

On April 5, 2024, Lynch appealed Violation #7470 to the DLT's Board of Examiners of Hoisting Engineers (the Board). *Id.* ¶ 5. The Board held a hearing on Lynch's appeal on May 15, 2024, enumerating several findings of fact and making two recommendations pertinent to Lynch: that Violation #7470 did occur and that the minimum penalty of $2,000 should be upheld. *Id.* ¶ 7; R. at 39. On June 4, 2024, the DLT issued a Decision on Appeal finding that "a violation of . . . § 28-26-5 'License required for operation of hoisting machinery' did occur and" upholding "the recommended fine of $2,000.00[.]" R. at 40. The DLT's Decision on Appeal relied "[u]pon review of the testimony and evidence recorded, the findings of fact by the Board, [and] the recommendation of the Board[.]" *Id.* On June 18, 2024, Lynch filed a Complaint against Defendant/Appellee, Matthew D. Weldon, in his capacity as Director of the Rhode Island Department of Labor and Training, asserting a claim for relief pursuant to § 42-35-15. (Compl. 1-2.) In pertinent part, Lynch's Complaint avers that the DLT's Decision on Appeal to uphold the Board's recommendation in connection with Violation #7470 was

> "in violation of statutory provisions; . . . beyond the statutory authority afforded to the [DLT], including the Board; . . . made upon unlawful provisions; . . . affected by other errors of law; . . . clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; and . . . arbitrary, capricious, or characterized by abuse or clearly unwarranted exercise of discretion." *Id.* ¶ 15.

Lynch's Complaint seeks reversal of the DLT's Decision on Appeal and an annulment of Violation #7470. *Id.* at 3. On May 1, 2025, Lynch filed a brief in support of its appeal to the Court. (Lynch's Br.) On June 6, 2025, the DLT filed its Brief in Support of its Opposition to Plaintiff/Appellant's Administrative Appeal. (the DLT's Br.)

II

Standard of Review

Our Supreme Court has made clear that "'[w]hen this Court reviews an administrative appeal brought under the Administrative Procedures Act, G.L. 1956 chapter 35 of title 42, our review is limited to questions of law.'" *Banki v. Fine*, 224 A.3d 88, 93 (R.I. 2020) (quoting *Blais v. Rhode Island Airport Corporation*, 212 A.3d 604, 611 (R.I. 2019)). "'This Court does not substitute its judgment for that of the agency concerning the credibility of witnesses or the weight of the evidence concerning questions of fact.'" *Id.* (quoting *Blais*, 212 A.3d at 611). "'Although we afford great deference to the factual findings of the administrative agency, questions of law—including statutory interpretation—are reviewed *de novo*.'" *Id.* (quoting *Blais*, 212 A.3d at 611). Further, our Supreme Court has provided that when reviewing an administrative appeal pursuant to § 42-35-15(g), the Court may:

> "'affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> "(1) In violation of constitutional or statutory provisions;
>
> "(2) In excess of the statutory authority of the agency;
>
> "(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.'" *Id.* (quoting *Blais*, 212 A.3d at 611).

III

Analysis

Lynch argues it was not in direct charge of Keeffe, and that as a general contractor that subcontracted with Liddell—"the equipment owner and . . . Keef[f]e's employer"—Lynch

"cannot legally be an agent of the user of the subject equipment." (Lynch's Br. 1.) Lynch argues that § 28-26-5—that chapter of the Rhode Island General Laws' title on Labor and Labor Relations governing Hoisting Engineers—"yields one logical conclusion: the Legislature intended only that the individual operator and his or her immediate ('Direct') supervisor – be it an individual or a business – would be subject to a penalty in the event of a hoisting license violation." *Id.* at 5. Lynch argues that "it is undisputed that . . . Keef[f]e, a Liddell employee, operated the subject equipment on the date of the alleged violation[,]" and "[t]herefore, Lynch was not a 'user' of the subject equipment as the term is ordinarily deployed and plainly understood." *Id.* Moreover, Lynch argues that it "cannot legally be construed as the 'agent of a user' of the subject equipment because it was an upstream contracting party with the firm that employed . . . Keef[f]e." *Id.* Lynch contends that it was not authorized to act for or in place of Keeffe, and that it was not his representative. *Id.* Lynch asserts that "it would turn the definition of principal and agent on its head to construe the subcontracting party (Liddell) as the principal and the general contractor (Lynch) as the agent." *Id.* (citing *Cayer v. Cox Rhode Island Telecom, LLC*, 85 A.3d 1140, 1143 (R.I. 2014)). Ultimately, Lynch argues that because the plain language of § 28-26-5 "means what it says, it was arbitrary, capricious, and otherwise an abuse of law for the Board to impose a penalty on Lynch." (Lynch's Br. 5.)

The DLT argues that Lynch has ignored the "'controlling' Statute with regard to" § 28-26-12, the enforcement provision of that chapter of the Rhode Island General Laws' title on Labor and Labor Relations governing Hoisting Engineers. (the DLT's Br. 2.) Specifically, the DLT argues that such enforcement provision permits the director of labor and training to impose penalties against not only the violator, but also the operator, contractor, and project developers. *See id.* at 8. In turn, the DLT argues that Lynch "was clearly and indisputably the Contractor

with regard to the matter at bar[.]" *Id.* (citing Ex. 1 to Joint Stip. of Facts). The DLT argues that one of the Board's findings of fact was that Keeffe operated a compact excavator without a valid Rhode Island Hoisting Engineer's License. *Id.* at 9. The DLT thus argues that the Court cannot substitute its judgment "for that of the Agency concerning questions of fact." *Id.* at 10.

A

Violation #7470

Here, the Board made four findings of fact in its recommendation to the DLT:

> "1) Location of Violation: Electrical Cabinet-Admiral Kalbfus Road, Newport, RI 02840[.]
>
> "VIOLATION: On Wednesday, March 13, 2024, I, Mr. Richard Paquet, Chief Hoisting Engineer Investigator, witnessed Daniel J. Keeffe, an employee of Liddell Brothers, Inc. located at 600 Industrial Drive, Halifax, MA, 02338, operating a compact excavator without a valid RI Hoisting Engineer's License at the listed job location, in violation of RIGL 28-26-5 'License required for operation of hoisting machinery.'
>
> "2) I later confirmed through the DLT database that Daniel J. Keeffe did not possess a valid RI Hoisting Engineer's License to operate this machinery.
>
> "3) J.H. Lynch & Sons, Inc. sub-contracted with Liddell Brothers, Inc. to perform said work.
>
> "4) Pursuant to RIGL 28-26-12 'Investigation and prosecution of violations' and RIGL 28-26-11 'Penalty for violations,' and subsequent to a previous violation, . . . one (1) fine of $2,000.00 was imposed to J.H. Lynch & Sons, Inc." (R. at 39) (emphases omitted).

At the Board's May 15, 2024 hearing on Violation #7470—which is a violation alleging that Lynch committed a § 28-26-5 infraction for the event involving Keeffe on March 13, 2024—the Board engaged in the following colloquy:

> "THE CHAIRMAN: Okay. And as to the violation 7470, did it indeed occur?
>
> "BOARD MEMBER MCGEE: Mr. Chair, Mr. McGee. I make a motion that this violation did occur.
>
> "THE CHAIRMAN: Okay. Do I have a second?
>
> "BOARD MEMBER WHITE: Mr. Chair, Mr. White. Based on testimony given, I make a -- I second Mr. McGee's Motion.
>
> "THE CHAIRMAN: Okay. A motion has been made and seconded, this violation did occur." (R. at 21.)

In turn, the DLT's Decision on Appeal found that with reference to Lynch's complained-of violation, a violation of § 28-26-5 did occur. *Id.* at 40. The parties have additionally stipulated to the fact that such Decision on Appeal held that Violation #7470 did occur, and that the Decision on Appeal found that Lynch had violated § 28-26-5. (Joint Stip. of Facts ¶ 8.) Such a stipulation is bolstered by the fact that the DLT's Decision on Appeal was "IN RE: Appeal of J.H. Lynch & Sons, Inc. (viol. #7470) to the Board of Examiners of Hoisting Engineers[.]" (R. at 40) (emphasis omitted). Ultimately, the DLT's Decision on Appeal found that Lynch had violated § 28-26-5. *See id.*; Joint Stip. of Facts ¶ 8.

The Court defers to the Board and the DLT's findings, as the Court is to refrain from substituting "its [own] judgment for that of the agency concerning . . . the weight of the evidence concerning questions of fact." *Banki*, 224 A.3d at 93 (internal quotation omitted). This is further mandated by chapter 35 of title 42 of the Rhode Island General Laws—governing Administrative Procedures—which provides that, upon judicial review of a contested case such as the one here, "[t]he court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." Section 42-35-15(g). Given that the DLT found that Lynch's

complained-of violation did occur, it is inherent that the Board and the DLT made the finding that Lynch

> "operate[d] or [was] in direct charge of hoisting or excavation equipment that uses steam, internal combustion engines, electric, or compressed air of five (5) horsepower or more and/or can lift more than five hundred pounds (500 lbs.) without obtaining a license to do so as provided in this chapter." Section 28-26-5.

The Court will not substitute its own judgment for that of the DLT or the Board as to whether Lynch operated or was in direct charge of qualifying equipment without obtaining a license to do so. For the Court to say that Lynch did not violate § 28-26-5, it would have to contradict both the Board and the DLT's finding that Lynch's complained-of violation did occur; and the Court would have to say that Lynch did *not* operate nor was it in direct charge of qualifying machinery without the appropriate license. The DLT's decision to uphold Violation #7470 was not in violation of constitutional or statutory provisions, in excess of the statutory authority of the agency, made upon unlawful procedure, affected by other error of law, clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

B

Imposition of a Penalty/Fine Against Lynch

Lynch not only appeals the DLT's finding that Violation #7470 did occur, but also appeals the penalty imposed upon it. Lynch's Complaint asks for the Court to "[r]everse the decision of the [DLT] upholding the Board's recommendation[,]" and the Board's recommendation was that Violation #7470 did occur, and that a minimum penalty of $2,000 be upheld. (Compl. 3; R. at 39.) The propriety of a penalty or fine resulting from a chapter 26

violation is discussed by §§ 28-26-5, 28-26-11, and 28-26-12. At the outset, § 28-26-5 provides for when a licensing violation occurs when a person

> "operate[s] or [is] in direct charge of hoisting or excavation equipment that uses steam, internal combustion engines, electric, or compressed air of five (5) horsepower or more and/or can lift more than five hundred pounds (500 lbs.) without obtaining a license to do so as provided in this chapter." Section 28-26-5(a)(1).

Next, § 28-26-11 provides for what shall occur if a § 28-26-5 violation occurs:

> "Whoever, being an engineer or user or agent of steam, internal combustion engines, electric, or compressed air hoisting machinery described in this chapter, violates any provision of this chapter shall be fined not less than one thousand five hundred dollars ($1,500) nor more than two thousand dollars ($2,000) per offense." Section 28-26-11.

Finally, § 28-26-12 provides for who shall be on the proverbial hook for a § 28-26-11 fine when a person has violated § 28-26-5:

> "[W]henever a complaint is made by the chief of the section to the director of labor and training that the provisions of this chapter are being violated, the director of labor and training shall issue an order to cease and desist from the violation and impose the penalties provided in § 28-26-11 against the violator, against the operator, against the contractor, and against the project developers." Section 28-26-12.

Returning to the findings of the Board, it found that a § 28-26-5 violation occurred. (R. at 39.) The Board next found that a § 28-26-11 fine of $2,000 had been imposed. *Id.* Finally, the Board found that the § 28-26-11 fine of $2,000 had been effectively transposed onto Lynch via § 28-26-12. *Id.* The DLT upheld the imposition of said fine. (R. at 40.)

Lynch identifies itself as the "contractor" in this scenario; § 28-26-12 allows the director of labor and training to impose § 28-26-11 fines against "the violator, . . . the operator, . . . *the contractor*, and . . . the project developers." (Lynch's Br. 3; § 28-26-12) (emphasis added). Although Lynch contends that it could not have been the perpetrator of the § 28-26-5 violation, it

is clear that, contrary to Lynch's assertion that the Legislature "intended only that the individual operator and his or her immediate . . . supervisor . . . would be subject to a penalty in the event of a hoisting license violation[,]" (Lynch's Br. 5), § 28-26-12 reflects the Legislature's intention to expose not only the violator or operator to a penalty or fine, but also the contractor. *See* § 28-26-12. This is evident upon a review of who the Legislature identified as the potential recipients of a § 28-26-11 fine "shall" be: "the violator, . . . the operator, . . . the contractor, and . . . the project developers." *Id.* The Legislature's enumeration of individuals or entities *other than* the violator as to whom may be live to receive a § 28-26-11 penalty reflects the Legislature's intent to not only hold the violator responsible, but also other individuals or entities who are not encapsulated within the term "violator." *See id.* Thus, even if Lynch did not violate § 28-26-5, § 28-26-12 creates the prospect that a contractor such as Lynch will be responsible for a fine imposed by a chapter violation, regardless of whether that contractor perpetrated the violation. The DLT's decision to uphold the imposition of a $2,000 fine on Lynch was therefore not in violation of constitutional or statutory provisions, in excess of the statutory authority of the agency, made upon unlawful procedure, affected by other error of law, clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

IV

Conclusion

Based on the foregoing, Plaintiff/Appellant, J.H. Lynch & Sons, Inc.'s, appeal of a Decision on Appeal rendered by the Rhode Island Department of Labor and Training is **DENIED**. Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**J.H. Lynch & Sons, Inc. v. Matthew D. Weldon**
CASE NO:	**PC-2024-03482**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**August 18, 2025**
JUSTICE/MAGISTRATE:	**Stern, J.**
ATTORNEYS:	
For Plaintiff:	**Lawrence P. McCarthy, III, Esq.** **Jonathan Cardosi, Esq.**
For Defendant:	**Robert J. Cosentino, Esq.**