

STATE OF RHODE ISLAND

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

KEYLA NEGRON

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VS.

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W.C.C. 2021-05347

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FIRST STUDENT, INC.

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FINAL DECREE OF THE APPELLATE DIVISION

This matter came on to be heard by the Appellate Division upon the claim of appeal of the petitioner/employee and upon consideration thereof, the employee's claim of appeal is denied and dismissed, and it is

ORDERED, ADJUDGED, AND DECREED:

That the findings of fact and the orders contained in a decree of this Court entered on July 8, 2024 be, and they hereby are, affirmed.

Entered as the final decree of this Court this 17th day of June, 2026.

PER ORDER:

/s/ Nicholas DiFilippo
Administrator

ENTER:

/s/ Olsson, J.

/s/ Feeney, J.

/s/ Conte, J.

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DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on the employee's appeal from the trial judge's decision and decree denying her original petition for workers' compensation benefits. In her petition, the employee alleged that she sustained a work-related lumbar strain on May 3, 2021, as a result of repeatedly reaching with her right leg for the pedal of the school bus she was driving. She requested weekly benefits for partial incapacity from May 4, 2021 and continuing. At the pretrial conference on November 9, 2021, the trial judge entered a pretrial order denying the petition and the employee filed a timely claim for trial. After a thorough review of the record, and following consideration of the parties' respective arguments, we deny and dismiss the employee's appeal and affirm the trial judge's decision and decree.

Keyla Negron (the "employee") worked as a bus driver for First Student, Inc. (the "employer"). She first testified in English without an interpreter. Over eleven (11) years, she transported children to school for six (6) hours daily—three (3) hours in the morning and three (3) hours in the afternoon. She drove a minibus until sometime in February 2021, at which point the employer temporarily switched her to an older standard-sized bus for about five (5) or six (6)

weeks. The employee testified that the seat on this standard-sized bus did not move forward enough, so she had to move forward and stretch her right leg to reach the pedal. In February and March of 2021, she noticed numbness, tingling, and a pinching sensation in her right leg and back pain.

On May 3, 2021, the employee sought medical care at Garden City Treatment Center for complaints of back pain. She testified that she did not indicate that the injury was work-related because she was not aware of the connection between the injury and her job. She received a note stating that she would be out of work due to sciatica. She provided the note to the employer without any indication that the injury could result in a workers' compensation claim. The employee then treated with her primary care physician, who referred her to physical therapy and to Dr. Dominic Kleinhenz, an orthopedic specialist. Since June of 2021, the employee treated with Dr. Kleinhenz. She testified that it was only during a conversation with Dr. Kleinhenz about the results of her lumbar MRI that she became aware that the injury was work-related. She stated that, prior to the injury, the only time she sought treatment for back pain was in 2016, when she saw a chiropractor after she was injured in a car accident.

During the employee's testimony, two (2) photographs of the employee seated in the driver's seat of a standard size school bus were identified and introduced into evidence. The photographs show the employee sitting in the driver's seat with her right leg extended but unable to reach the gas pedal.

During cross-examination, the employee was questioned regarding several additional incidents resulting in complaints of back pain. She then acknowledged that in 2014, she was involved in a domestic assault where she fell and reported back pain. In 2017, she applied for Temporary Disability Insurance (TDI) benefits for lower back pain and stress. In 2018, she

reported back pain after bending over to pick up a napkin. The employee asserted that she did not receive further treatment beyond an initial evaluation for the 2014 or 2018 incidents and that the 2017 TDI claim was only for stress.

After providing opportunities for re-direct and re-cross examination, the trial judge asked some questions of the employee regarding the positioning of the driver's seat on the bus and when she became aware that her condition may be work-related. The employee clarified that the bus seat could be lowered, but she asserted that it would not be enough to enable her to reach the pedal even though it would be closer. She also explained that she first saw a physician's assistant in Dr. Kleinhenz's office who referred her for the MRI which took place on June 23, 2021. The employee stated that when she saw Dr. Kleinhenz in July of 2021, he asked her about her job, and she told him that she could not reach the pedal. The doctor then told her that stretching her leg out like that would cause pinching of the nerve in her back. Upon further questioning, the employee stated that she saw Dr. Kleinhenz in August of 2021, rather than July, and told him about her job.

The employee was recalled for additional testimony on June 29, 2022 and testified with the assistance of a Spanish language interpreter. She asserted that if the driver's seat was lowered, she would not be able to see over the steering wheel. The employee also clarified that the conversation with Dr. Kleinhenz regarding her job duties and the cause of her back pain occurred on July 6, 2021, and she told the employer the injury was work-related a few weeks later. She testified that she did not have any back pain when she was first assigned to the larger bus and the pain started during the time she drove the larger bus.

After this testimony, the trial judge had some additional questions for the employee. The court referred to Employee's Exhibit 4, a photograph of the employee sitting in the seat of one of

the employer's standard-sized buses with her leg extended, unable to reach the pedal. The trial judge asked how much lower the bus seat could move, to which the employee responded that she did not know. The trial judge then questioned, "Would you agree with me that if the seat was lowered two inches, you'd still be able to see over the steering wheel?" Tr. 52:17-19. The employee answered, "I could, but the difference is the protrusion of the front of the bus." Tr. 52:20-21. She asserted that she would not be able to see over the front end of the bus.

The medical evidence included the deposition and records of Dr. Kleinhenz. The employee first saw a physician's assistant in Dr. Kleinhenz' office on June 21, 2021, and the physician's assistant diagnosed her with right lumbar radiculopathy and degeneration of the L5-S1 disc. Dr. Kleinhenz saw the employee on July 6, 2021. He testified that at that time, the employee had stopped physical therapy due to worsening pain and had an MRI. He diagnosed her with a right L5-S1 disc herniation. A note from Dr. Kleinhenz' office dated August 3, 2021, documented that the employee was an injured bus driver and that the right L5-S1 disc herniation was related to her April 29, 2021 work injury.

Dr. Kleinhenz performed a right L5-S1 laminotomy with discectomy on September 9, 2021. Four months post-surgery, an updated MRI showed scar tissue around the S1 nerve, and Dr. Kleinhenz referred the employee to Dr. Shiqiang Tian. Dr. Tian performed a lysis of adhesions, a spinal cord stimulator trial, and a permanent placement of a spinal cord stimulator lead. The employee experienced a reherniation and saw Dr. Kleinhenz again in October of 2023. After physical therapy proved unsuccessful, Dr. Kleinhenz performed a revision right L5-S1 discectomy on January 24, 2024. Based on the description of the injury by the employee and his office notes, Dr. Kleinhenz concluded that the injury occurred because the employee was reaching for the pedal on the bus and the pedal was too far away for her leg to reach considering

her short stature. Despite not reviewing any history regarding low back pain or injuries to the employee prior to the alleged 2021 injury, Dr. Kleinhenz testified that any such injuries would not change his opinion as the employee apparently recovered and resumed full employment.

Dr. Kleinhenz admitted that he did not know how far away the pedal was or anything about the bus or the driver's seat or the employee's actual work duties. The employee's attorney asked the doctor to assume that the employee worked as a bus driver for over twenty (20) years, she worked 35 to 38 hours a week, she developed right leg and back pain, and she drove a bus that she could not reach the gas pedal. Dr. Kleinhenz maintained that the employee's work activities caused the injury.

The employee also introduced notes from Pappas OTP Physical and Hand Therapy. At the initial visit on May 18, 2021, the employee complained of chronic recurrent lower back pain radiating into her right leg. The employee related that she experienced the pain off and on over time, but it got progressively worse about a month ago. She also informed them that she believed the pain was from reaching for the pedal of the bus she drove at work.

The trial judge issued a bench decision denying and dismissing the employee's petition for workers' compensation benefits. In assessing the evidence provided by the employee, the trial judge noted that the records of Dr. Shiqiang Tian, the records of the employee's primary care provider Comprehensive Community Action Program, and the records of Dr. Kleinhenz did not contain a description of any work-related mechanism of injury. Dr. Kleinhenz' note from August 3, 2021, stated that the employee's condition was related to the work injury on April 29, 2021, but there was no mention of the mechanism of injury or the employee's job duties. Additionally, although Dr. Kleinhenz performed surgery and provided treatment to the employee into 2022, none of his records mention a work injury after August 3, 2021. The trial judge found

that the notes of Pappas Physical Therapy revealed that on May 18, 2021, the employee provided a history that she believed her complaints were a result of having to reach for the pedal at work.

The trial judge noted that the employee was able to answer questions posed in English and Spanish without difficulty. The trial judge rejected the employee's assertion that she did not know her injury was related to work until her conversation with Dr. Kleinhenz as inaccurate due to her statement recorded in the physical therapy notes. The trial judge also rejected the employee's assertion that she could not see over the front of the bus if the seat were lowered. Based on the trial judge's review of the photograph marked as Employee's Exhibit 4, the trial judge concluded that the seat could be lowered so that the employee's foot would fully contact the pedal and the employee would be able to see in order to drive safely.

The trial judge did not find Dr. Kleinhenz' testimony persuasive on the issue of causation for several reasons. Dr. Kleinhenz was not asked any questions relative to Employee's Exhibit 4 that showed the employee seated in the driver's seat of the bus. The trial judge noted that it appeared that Dr. Kleinhenz first learned of the employee's prior history of back issues at the time of his deposition. Also, the trial judge noted that it appeared that Dr. Kleinhenz first heard the history of the employee reaching for the pedal after the MRI results. The trial judge found that while, when presented with a hypothetical question, Dr. Kleinhenz testified that the employee reaching for the pedal at work was the mechanism of injury, Dr. Kleinhenz did not explain how reaching for the pedal brought about the injury and herniated disc at L5-S1 that ultimately resulted in surgery. Consequently, the trial judge concluded that the employee failed to satisfy her burden of proof.

Our Appellate Division standard of review is highly deferential. When reviewing the decision of a trial judge, we are guided by the standard set forth in Rhode Island General Laws §

28-35-28(b), which states that “[t]he findings of the trial judge on factual matters shall be final unless an appellate panel finds them to be clearly erroneous.” Accordingly, our panel is prohibited from engaging in a *de novo* review of the record without first determining that the trial judge was clearly wrong or overlooked or misconceived material evidence. *Diocese of Providence v. Vaz*, 679 A.2d 879, 881 (R.I. 1996).

The employee has presented one reason for appeal: that the trial judge erred in questioning the employee on the witness stand, as it amounted to inappropriate cross-examination by the court. The employee argues that the trial judge took on the role of counsel for the employer to discredit the employee’s explanation of her injury.

Rule 614(b) of the Rhode Island Rules of Evidence states, “The court may interrogate witnesses, whether called by itself or by a party.” *R.I. R. Evid. 614*. Objections to such interrogation may be made at the time of the questioning by the judge or at the next available opportunity. *Id.* An objection made after the interrogation, not on the record, and without reference to specific questions is too late and too general to preserve the issue for review. *State v. Phommachak*, 674 A.2d 382, 389 (R.I. 1996). The examination of a witness by a judge is governed by the same rules that govern counsel and limited to relevant matters. *State v. Amaral*, 132 A. 547, 549–50 (R.I. 1926). A judge must use caution to guard against even the appearance of changing position from an impartial judicial officer to that of a partisan advocate. *Id.*

The Rhode Island Supreme Court in *State v. Nelson* found that if a court’s questioning leads to devastating testimony that prejudices a criminal defendant, there may be grounds to vacate a conviction, holding, “Judicial interrogation that elicits inflammatory information from a witness is beyond the narrow parameters allowing only for clarification of confusing issues for the jury.” *State v. Nelson*, 982 A.2d 602, 615 (R.I. 2009). However, the Supreme Court’s order

in *Rodrigues v. Cantone* emphasized that *Nelson* applies to a judge presiding in a jury trial: “Whereas here, the matter before the Court was a motion for a preliminary injunction—there was no trial, or jury. We therefore are of the opinion that *Nelson* is not applicable to this proceeding.” *Rodrigues v. Cantone*, 326 A.3d 1091, 1092 (R.I. 2024).

In her reasons of appeal, the employee cited the case *City of East Providence v. Vasquez*, a Traffic Tribunal decision, which she claimed cited *Nelson* and applied it to non-jury trials. However, the quote, “it is improper for the trial judge, sitting as the finder of fact in a non-jury trial, to exceed the boundaries of questioning for the function of clarification and to, instead, steer the course and content of the witness’s testimony,” does not appear to exist in *Nelson* or any other case. *City of East Providence v. Vasquez*, No. M17-0023, at 5, n. 2 (R.I.T.T. Aug. 7, 2018). This statement appears in a footnote of the Traffic Tribunal decision as a quotation, seemingly from the *Nelson* decision. In that footnote, the Traffic Tribunal stated that their decision was based upon other grounds, and they were not addressing whether the trial judge improperly questioned a witness. As such, the statement is basically dicta from the Traffic Tribunal and does not constitute a directive from the Rhode Island Supreme Court to apply *Nelson* in non-jury trials.

In the present matter, the issue whether the trial judge improperly questioned the employee was not properly preserved for review. As stated in Rule 614(b), an objection to the trial judge’s questioning needed to be made at the time of the questioning or at the next available opportunity. The employee offered no explanation as to why she did not object to the questioning at the time, at the next available opportunity, or at all. The issue only came to light with the filing of her reasons of appeal. In addition, the employee did not point to specific objectionable questions, but rather an entire page of the trial transcript.

Nevertheless, even with appropriate objections, we would conclude that the trial judge committed no error in the questioning. The trial judge's questions were relevant to clarify the mechanism of injury. Understanding the arrangement of the seat compared to the pedals of the bus would be helpful to understand the employee's claim that she had to move and stretch to reach the pedals and this activity caused her injury. Contrary to the employee's argument, the trial judge was not acting as a partisan advocate. Asking if the seat could be lowered while still allowing the employee to see over the steering wheel was for the purpose of clarification and, in fact, accomplished it. The employee was able to explain how she believed she positioned the seat not only to see over the steering wheel but also the front of the bus. The trial judge's questions were appropriate for his role as the factfinder in a non-jury proceeding.

There are no grounds to reverse the decision and decree as requested by the employee. While there was a trial, there was no jury. *Nelson* is not applicable. If *Nelson* were applicable, there was still no inflammatory information elicited by the court's questioning. As the employee argued, had the trial judge accepted it, her explanation about the front of the bus would have helped her case, not discredited it.

The trial judge considered all of the evidence presented in this matter to make his determination, and it will not be disturbed on appeal. The employee's assertions that the trial judge incorrectly ignored the testimony of the employee and that of Dr. Kleinhenz despite the absence of contradictory medical evidence are without merit. The trial judge is in the best position to observe a witness' appearance, demeanor, and manner in which they answer questions in order to assess credibility and determine what evidence to accept and reject. *Davol, Inc. v. Aguiar*, 463 A.2d 170, 174 (R.I. 1983). Uncontradicted evidence can be rejected if it

contains improbabilities, other circumstances tend to contradict it, or on credibility grounds.

Hughes v. Saco Casting Co., 443 A.2d 1264, 1266 (R.I. 1982).

In the present matter, the trial judge found that the employee was not credible. He cited the employee's assertion that she was unaware that her condition may be work-related until she saw Dr. Kleinhenz in August 2021 which was contradicted by her statement to Pappas Physical Therapy in May 2021. The employee also did not inform Dr. Kleinhenz of her history of prior back issues for which she sought treatment. In addition, the trial judge found that based upon his review of the photograph admitted as Employee's Exhibit 4, the employee would be able to see well enough to drive and her foot would contact the pedal without reaching if she lowered the seat. Contrary to the employee's assertion on appeal, the trial judge acknowledged the employee's testimony on two (2) occasions that she could not lower the seat because she would not be able to see over the front of the bus, but he rejected that explanation as is his prerogative.

The trial judge also found that the testimony of Dr. Kleinhenz was not persuasive, particularly because he failed to explain how the action of reaching for the pedal could cause a herniated disc which ultimately required surgery. The doctor was never provided with the photograph of the bus seat, had limited knowledge of the employee's history of back issues, and was unaware of the physical layout of the bus and the seat and the employee's job duties. The hypothetical question asked by employee's counsel inaccurately stated that the employee worked 35 to 38 hours a week, when in fact she worked three (3) hours in the morning and three (3) hours in the afternoon. Consequently, the trial judge rejected Dr. Kleinhenz's opinion as to the cause of the employee's alleged injury.

In conclusion, we do not find that the trial judge was in clear error or misconceived or overlooked material evidence in arriving at his decision to deny the employee's petition.

Based on the foregoing reasons, the employee's appeal is denied and dismissed, and the decision and decree of the trial judge are affirmed. In accordance with Rule 2.20 of the Rules of Practice of the Workers' Compensation Court, a final decree, a proposed version of which is enclosed, shall be entered on **June 17, 2026**.

ENTER:

/s/ Olsson, J.

/s/ Feeney, J.

/s/ Conte, J.