

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

ANDERSON SZYTKO

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C.A. No. T08-0042

DECISION

09/10/10 PM 1:46
STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

PER CURIAM: Before this Panel on July 9, 2008, Judge Ciullo (Chair), Judge Parker, and Magistrate DiSandro sitting, is Anderson Szytko’s (Appellant) appeal from Magistrate Noonan’s imposition of a \$3,000 fine pursuant to G.L. 1956 § 31-25-27, “Weight restrictions on state highways.” Appellant appeared before this Panel pro se. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On November 21, 2007, the Rhode Island Department of Transportation, acting pursuant to § 31-25-27, restricted vehicle weight on the Pawtucket River Bridge to 22 tons, or 44,000 pounds. On November 28, 2007, Appellant crossed the Pawtucket River Bridge on the southbound lane of Route 95 in a fully loaded car-carrier owned by A&P Auto Transportation Inc. (Tr. at 1.)

Upon crossing the bridge, Appellant was stopped by Trooper Michael Capone of the Rhode Island State Police (Trooper Capone) and was instructed to follow him to the State Police’s scale set number 7. Id. Trooper Capone testified that the scale—which had been calibrated on October 22, 2007—recorded the total weight of Appellant’s vehicle as 75,100 pounds, or 31,100 pounds over the bridge’s reduced weight limit. Id. Pursuant to § 31-25-27,

Trooper Capone assessed Appellant a fine of \$4000 after rounding the vehicle's weight down to 31,000 pounds.¹ Id.

At trial, Appellant asserted that he did not see the road signs that notified motorists of the weight restriction on the Pawtucket River Bridge. (Tr. at 2.) However, Trooper Capone testified that there were eight signs warning of the restriction, and that Appellant passed them as he traveled southbound on Route 95. (Tr. at 1.)

Following the trial, the trial magistrate found that Appellant was adequately notified of the weight restriction, and that the scale accurately reflected the weight of Appellant's vehicle. (Tr. at 2.) Consequently, he sustained Appellant's violation of § 31-25-27. However, the trial magistrate reduced the fine from \$4000.00 to \$3000.00 in the interest of justice. Id. The Appellant has filed a timely appeal. Forthwith is this Panel's decision.

Standard of Review

The Appeals Panel of the Rhode Island Traffic Tribunal exercises appellate jurisdiction to review an order of a Rhode Island Traffic Tribunal judge or magistrate. See G.L. 1956 § 31-41.1-8(f). 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 another 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.”

¹ Trooper Capone assessed Appellant's fine at \$125.00 per ton over the reduced weight limit. This rate is set forth in G.L. 1956 § 31-25-16(c).

Regarding questions of fact, this Panel does not assess witness credibility or substitute its judgment for that of the hearing judge or magistrate on the weight afforded evidence or on questions of fact. Link v. State, 633 A.2d 1345 (R.I. 1993). Review of factual conclusions 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) (citing Link, 633 A.2d at 1348).

Analysis

On appeal, Appellant argues that the trial magistrate’s decision is affected by error of law and clearly erroneously in light of the record evidence. Specifically, Appellant asserts that the trial magistrate misapplied the fee schedule outlined in § 31-25-16(c). In addition, he contends that the trial magistrate erred in finding that the signs placed on Route 95 to notify motorists of the weight restrictions on the Pawtucket River Bridge were sufficient to put Appellant on notice of the restrictions.

“The overweight penalties for vehicles exceeding ten thousand pounds (10,000 lbs.) gross vehicle weight shall be one hundred twenty-five dollars (\$ 125.00) per thousand pounds overweight or portion of it.” § 31-25-16(c)(3). The testimony of Trooper Capone clearly supports a finding that the gross weight of the Appellant’s vehicle was 75,100 pounds, or 31,100 pounds over the bridge’s weight limit. Rounding this number down to a 31,000 pound overage, and then multiplying it by the fine of \$125.00 per thousand pound overage, brings the total fine that could have been assessed to 3,875.00. The trial magistrate assessed a fine of \$3,000.00. Clearly, there is no indication that such figure is not supported by the evidence and there was no error of law in this calculation. Consequently, the Appellant’s appeal on this ground must be denied.

Next, it is clear that there was reliable, probative, and substantial evidence in the record that the posted signage on Route 95 was adequate. Section 31-25-27(a) states that weight “restrictions shall be effective when signs giving notice of them are erected upon the highway or portion of any highway affected by the resolution.” At trial, Trooper Capone testified that there were eight signs on Route 95 South on November 28, 2007, notifying motorists of the weight restrictions on the Pawtucket River Bridge. Such testimony was sufficient for the trial magistrate to conclude that Appellant had adequate notice of the weight restrictions. As such, Appellant’s appeal on this issue also is denied.

Conclusion

The Appellant’s appeal on the grounds of inaccurate calculation of the fine and inadequate signage of notifying him of the weight restrictions is denied. Accordingly, the Panel sustains Appellant’s violation and dismisses his appeal. In the interests of justice, this Panel will further reduce the fine to \$2,000.00.

ENTERED: 