

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc.
SIXTH DIVISION

DISTRICT COURT

BERT SALVA

V.

RHODE ISLAND TRAFFIC
TRIBUNAL

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:
:

A.A. No. 2010 - 027

JUDGMENT

This cause came on before McLoughlin, J. on Administrative Appeal, and upon review of the record and memoranda of counsel, and a decision having been rendered, it is

ORDERED AND ADJUDGED

The decision of the Panel is hereby affirmed.

Dated at Providence, Rhode Island, this 12 day of April, 2010.

ENTER:



BY ORDER:



Melvin J. Enright
Acting Chief Clerk

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc.
SIXTH DIVISION

DISTRICT COURT

BERT SALVA	:	
	:	
V.	:	A.A. No. 2010 – 027
	:	
RHODE ISLAND TRAFFIC	:	
TRIBUNAL	:	

DECISION

McLoughlin, J. This matter is before the Court on the complaint of Bert Salva filed pursuant to Rhode Island General Laws § 31-41.1-9, seeking judicial review of a final decision rendered by the respondent, Appellant Panel of the Rhode Island Traffic Tribunal, which upheld the Decision of Judge Ciullo.

The Trial Judge found the appellant guilty of G.L. 1956 § 31-41.1-8, “Obedience to devices” and a penalty was imposed.

The Traffic Tribunal Appeals Panel determined that the decision of the Trial Judge was a proper determination of the facts and a proper application of the law.

Thereafter, motorist Salva filed a complaint for judicial review in the Rhode Island District Court.

Jurisdiction for the instant appeal is vested in the District Court by GEN. LAWS 1956 § 31-41.1-9 and the applicable standard of review is found in subsection 31-41.1-9(d).

STANDARD OF REVIEW

The standard of review which this Court must employ is enumerated in GEN. LAWS 1956 § 31-41.1.-9(d), which provides as follows:

(d) *Standard of review.* The judge of the district court shall not substitute his or her judgment for that of the appeals Panel as to the weight of the evidence on questions of fact. The district court judge may affirm the decision of the appeals Panel, or 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 appeals Panel's findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the appeals Panel;
- (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.

This standard is akin to the standard of review found in Gen. Laws 1956 § 42-35-15(g), the State Administrative Procedures Act (APA).

Under the APA standard, the District Court “* * * may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are ‘clearly erroneous.’”¹ Thus, the Court will not substitute its judgment for that of the Panel as to the weight of the evidence on questions of fact.² Stated differently, the findings of the Panel will be upheld even though a reasonable mind might have reached a contrary result.³

FACTS & TRAVEL OF THE CASE

On March 27, 2009, the Rhode Island State Trooper Number 195 (Trooper) was stationed just south of the Pawtucket River Bridge (Bridge) at exit twenty-seven (27) on Route 95 South. The Trooper watched as Appellant—operating an eighteen wheel tractor trailer with more than the permissible two axles—traveled over the Pawtucket

¹ *Guarino v. Dept. of Social Welfare*, 122 R.I. 583—84, 410 A.2d 425 (1980) *citing* R.I. GEN LAWS § 42-35-15(g)(5).

² *Cahoone v. Board of Review of the Dept. of Emp. Security*, 104 R.I. 503, 246 A.2d 213 (1968).

³ *Id.* at 506—07, 215.

River Bridge. (Tr. at 2-3). Subsequently, Appellant was stopped by the Trooper and charged with violating § 31-13-4. Appellant contested the charge, and the matter proceeded to trial.

At trial, counsel for Appellant waived his appearance pursuant to Rule 23(b) of the Traffic Tribunal Rules of Procedure.⁴ (Tr. at 2). The trial commenced with the Trooper testifying that he was stationed on Route 95 South at exit 27. He was monitoring the commercial traffic crossing over the Pawtucket River Bridge. (Tr. at 2). The operation of the commercial vehicles over the Bridge is restricted due to the structure's deteriorating condition. Therefore, if the commercial vehicle weighs more than eighteen tons per unit or has more than two axels per unit, then the operator must avoid the Bridge and follow the enumerated detour. (Tr. at 6). The Trooper explained that the first Bridge sign on Route 95 South is posted at the state line, just prior to Roosevelt Avenue. There are also "sign[s] saying to use the detour at exit thirty (30) and . . . another detour sign at exit twenty-nine (29)." (Tr. at 5—6).

On the afternoon of March 27, 2009, the Trooper observed an eighteen wheel tractor trailer operate across the Pawtucket River Bridge. (Tr. at 6). After initiating a traffic stop, the Trooper identified the driver as Appellant. The Trooper did not weigh the tractor trailer, but upon his observation of the vehicle found "three axles in the front [and] two axles in the back for the trailer." (Tr. at 9). According to the Trooper's testimony, Appellant operated this tractor trailer past the axle-restriction sign at exit

⁴ Rule 23(b) of Traffic Tribunal Rules of Procedure reads: "[a] defendant who is represented by counsel may waive his or right to be present by filing a waiver thereof."

30,⁵ ignored the enumerated detour, and crossed over the Pawtucket River Bridge. (Tr. at 8—9). Subsequently, the Trooper charged Appellant with violating § 31-13-4.

At the close of the prosecution's case, Appellant sought to dismiss the charged violation pursuant to Rule 16 of the Traffic Tribunal Rules of Procedure.⁶ As grounds for dismissal, counsel argued that the record was insufficient to prove to a standard of clear and convincing evidence that Appellant had, in fact, operated his tractor trailer past the posted signage at exit 30 on Route 95 South. Counsel for Appellant reasoned that to violate § 31-13-4, Appellant would have had to operate his vehicle past the posted sign at exit 30 and subsequently disobey the instructions thereon. Appellant stated that there was no direct evidence proffered by the Trooper that he had, in fact, operated his vehicle past the signage at exit 30. Appellant argued that the reliance of the Trial Judge on "an inference upon an inference," as to which on-ramp Appellant used to enter Route 95 South, was improper. (Tr. at 10—11).

The Trial Judge disagreed with Appellant's argument finding that Route 95 South, from Massachusetts to the Pawtucket River Bridge, is sufficiently marked with signs depicting the weight limit and axle restrictions. (Tr. at 15). Specifically, the Trial Judge relied on the Trooper's testimony regarding his personal observation of Appellant's tractor trailer crossing over the Pawtucket River Bridge. (Tr. at 3, 14). The Trial Judge found that Appellant traveled past the signage at exit 30 and continued

⁵ According to the testimony of the Trooper, the sign at exit 30 directs the motorists to follow the stated detour if the motorist's vehicle is "overweight, 18 tons per unit, or in violation of two axles per unit." (Tr. at 6).

⁶ Rule 16 of the Traffic Tribunal Rules of Procedure reads:

The Court on motion of a defendant or of its own motion shall, at the close of the evidence offered by the prosecution, order the dismissal of one or more offenses charged in the summons if the evidence is insufficient to sustain a conviction of such offense or offenses to a standard of clear and convincing evidence. If a defendant's motion to dismiss is not granted, the defendant may offer evidence without having reserved the right.

over the Bridge choosing not to “obey the instructions of [the] official traffic control device applicable to him placed in accordance with § 31-25-30,” thus violating § 31-13-4.

Following the trial, the Judge sustained the charged violation of § 31-13-4. The Appellant, aggrieved by this decision, filed a timely appeal to the Panel and now to this Court.

ANALYSIS

On appeal, Appellant argues that the Trial Judge’s decision to sustain the charged violation is affected by an error of law and clearly erroneous due to the lack of probative evidence on the record. Appellant contends that the prosecution failed to prove the charged violation is affected by an error of law and clearly erroneous due to the lack of probative evidence on the record. 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 Traffic Tribunal Rules of Procedure.⁷ According to Appellant, there is no evidence in the record that he failed to “obey the instructions of any official traffic control device applicable to him.” Specifically, Appellant argues that the record is devoid of direct evidence that he operated a tractor trailer past the Pawtucket River Bridge detour sign posted at exit 30. Additionally, Appellant asserts that the Trial Judge’s decision was affected by an error of law when he relied upon an inference drawn from another inference in making his decision to sustain the charged violation of § 31-13-4.

⁷ Rule 17 of Traffic Tribunal Rules of Procedure reads, in relevant part: “The burden of proof shall be on the prosecution to a standard of clear and convincing evidence.”

On June 12, 2008, the General Assembly made it “unlawful to transport or operate over or upon the Pawtucket River Bridge. . . any single vehicle equipped with more than two (2) axles or any combination vehicle equipped with more that two (2) axles per unit except those listed in § 31-25-30. Pursuant to § 31-25-30, the Department of Transportation was “directed to post signs to limit access” to the Bridge due to its structural deficiencies. Section 31-13-4 provides in pertinent part that “[t]he driver of any vehicle shall obey the instructions of any official traffic control device applicable to him or her . . . unless otherwise directed by a traffic or police officer. . . .”

Clear and Convincing Evidence

During Appellant’s trial and subsequent appeal, he replied on the arguments set forth in State v. Wood, C.A. T09-0023 (R.I. Traffic Trib.) (filed April 27, 2009). Similarly to the appellant in Wood, 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 Traffic Tribunal Rules of Procedure. Although our rules do not expressly define “clear and convincing evidence,” this Court is guided by the definition that appears in the 1968 case of Parker v. Parker, 103 R.I. 435, 238 A.2d 57. 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 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.* (*emphasis added*).

Thus this Court’s task on appeal is to review the evidentiary record to determine whether the Trial Judge 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 Court is satisfied that the prosecution met the burden of proof set forth in Rule 17. This Court concludes that there is direct testimonial evidence from the Trooper, found to be credible by the Trial Judge, that Appellant disobeyed posted signs when the Trooper watched him operate his tractor trailer over the Pawtucket River Bridge. (Tr. at 6). Although the Trooper did not personally observe Appellant drive past the axle restriction sign posted at exit 30, he did witness Appellant travel southbound on Route 95 toward his stationary post at exit 27, which is past the Bridge. From these personal observations, the Trooper reasonably inferred that Appellant must have traveled past the posted sign at exit 30, ignored the detour, and continued over the Bridge. Accordingly, after reviewing the evidentiary record, this Court agrees with the Trial Judge that it is “highly probable” that Appellant operated his tractor trailer over the Pawtucket River Bridge in violation of the sign posted at exit 30. Thus this Court finds the Trial Judge’s finding of a charged violation of § 31-13-4 is not affected by error of law or clearly erroneous.

Inference upon Inference

Counsel for Appellant argued that the Trial Judge incorrectly relied on an inference upon an inference when he sustained the charged violation of § 31-13-4. Appellant relied on the argument set forth by the Supreme Court in Tot v. United States that “a statutory presumption cannot be sustained if there [is] no rational connection between the fact proved and the ultimate fact presumed, if the inference of the one from proof of the other is arbitrary because of lack of connection between the two in common experience.” 319 U.S. 463 (1943). Appellant attempts to use this language to prove the lack of connection between the Trooper’s observation of Appellant crossing the Bridge and the Trooper’s presumption that he drove past the subject signage at exit 30.

However, this Court notes that the Supreme Court in Tot further stated:

This is not to say that a valid presumption may not be created upon a view of relation broader than a jury might take in a specific case. But where the inference is so strained as not to have a reasonable relation to the circumstances of life as we know them it is not competent for the legislature to create it as a rule governing the procedure of the courts. Id. at 468.

The Trooper inferred that Appellant operated the tractor trailer past the posted sign at exit 30 because he watched Appellant’s vehicle travel southbound on Route 95 and cross the Pawtucket River Bridge. This Court agrees that it is reasonable to infer that when an eighteen wheel tractor trailer is traveling from a northerly direction through Rhode Island, the vehicle would continue to solely operate on Route 95 South. It would be unreasonable to infer that the vehicle would exit the highway only to avoid Pawtucket River Bridge detour signs, drive through the city of Pawtucket and then re-enter the highway to cross over the Bridge.

Furthermore, our Supreme Court made clear in Link that this Court “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, 633 A.2d at 1348 (*citing Liberty Mutual Insurance Co. v. Janes*, 586 A.2d 536—37 (R.I. 1991)). As this Court did not have an opportunity to view the live trial testimony of the Trooper, it would be impermissible to second-guess the Trial Judge’s “impressions as he . . . observe[d] [the Trooper] [,] listened to [his] testimony [and] . . . determine[d] . . . what to accept and what to disregard . . . what . . . [to] believe and disbelieve.” Environmental Scientific Corp., 621 A.2d 206. The Trial Judge found that the Trooper made a valid inference based upon a broad view of the circumstances, taking into account his knowledge of the location of the signs, his prior experience as an officer of the State Police and his assignment “to the Pawtucket River Bridge detail.” (Tr. at 2—3).

Accordingly, as there is legally competent 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.” The charged violation of § 31-13-4 is supported by the reliable, probative and substantial evidence of record.

CONCLUSION

A review of the entire record demonstrates that there is substantial, probative and reliable evidence to support the findings of fact, conclusions and decisions of the Trial Judge and the determination of the Appeals Panel.

On findings of fact, as to the weight of the evidence, this Court finds that the decision of the Traffic Tribunal was not “clearly erroneous in view of the reliable,

probative and substantial evidence on the whole record,” and that said decision was not “arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

Accordingly, the decision of the Traffic Tribunal is hereby affirmed.