

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC

DISTRICT COURT
SIXTH DIVISION

MARIO ANDRADE

VS.

A.A. NO. 04-61

RHODE ISLAND TRAFFIC TRIBUNAL :

JUDGMENT

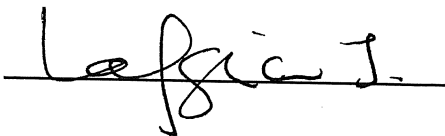
This cause came on before LaFazia, J. on an appeal from the Rhode Island Traffic Tribunal Appeals Panel, and upon review of the record and memoranda of counsel, and a decision having been rendered, it is

ORDERED AND ADJUDGED

The decision of the Traffic Tribunal is hereby affirmed.

Dated at Providence, Rhode Island, this 27th day of October, 2005.

ENTER:



BY ORDER:


CHIEF CLERK

appellant was traveling at 57 m.p.h. in a 35 m.p.h. zone. Appellant denies that he was speeding.

The officer testified that he had originally cited the appellant for traveling at 45 m.p.h. and had accordingly given him a reduced fine. The officer testified that the appellant became contentious, after which the officer amended the ticket to reflect the actual speed which carried an increased fine of \$295.00 (two hundred ninety-five dollars).

Appellant, who denies that he was speeding, asserted that the officer could not have obtained an accurate reading because of various obstructions. He further denies that he became contentious; he argues that he was merely asserting his First Amendment rights.

Appellant also claims that he signed the ticket, after which, the officer took back the ticket, amended it, and then returned it to him with an increased fine. Appellant argues that this fact is relevant to the credibility of the officer, who testified that if the ticket had already been signed, he would not have taken it back or made any changes. Appellant argues therefore, that the Trial Judge committed judicial error when he did not allow the appellant to introduce his copy of the ticket into evidence but instead relied upon the Court's copy of the ticket.

The Trial Judge however, found that it was irrelevant as to whether or not the ticket was signed by the Appellant before or after the final charge was made. The Trial Judge explained the purpose of the signature to the parties. The Trial Court clearly placed no weight on the testimony of either party with respect to

that particular issue. The Trial Judge was clear in stating that it was irrelevant for credibility issues as well as for substantive issues.

The Trial Judge stated, in part, "I'm not giving any weight to what took place after the initial pullover."

The Appellant argues that he was prejudiced by the Trial Judge's ruling. The Board of Review disagreed and affirmed the Trial Judge's decision.

The standard of review is provided by Rhode Island General Laws 31-41.1-9(d):

- (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 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 proceeding or reverse or modify the decision if the substantial rights of the appellant have been prejudiced 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.

On questions of fact, 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." Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing Rhode Island General Laws § 42-35-

15(g)(5). The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact. Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968). Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result. Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 246 A.2d 213, 215 (1968). See also D'Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986).

The Court, after a review of the entire record, finds the following.

That the standard of review of the appeals panel is controlled by section 31-41.1-8 which provides:

- (f) **Standard of review.** The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may modify the decision if the substantial rights of the appellant have been prejudicial because the judge's findings, inferences, conclusions or decisions are:
- (1) In violation of constitutional or statutory provisions in excess of the statutory authority of the judge or magistrate;
 - (2) Made upon unlawful procedure;
 - (3) Affected by other error of law;
 - (4) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
 - (5) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

The standard of review that the District Court must apply to the findings, conclusions of law and decision of the Appeals Panel of the Traffic Tribunal are

the same standards that the Appeals Panel must apply to the Trial Magistrate's findings, conclusions of law and decision.

The Appeals Panel has made determinations based on the record and arguments presented to them.

On reviewing the entire record, the Court must determine if the Appeals Panel's decision was improper in view of the evidence and record it reviewed.

The Court has reviewed the entire record of the Trial Magistrate and the Appeals Panel.

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, neither this Court nor the Traffic Tribunal shall substitute its judgment for that of the Trial Judge.

The scope of judicial review by the Court is limited by Section 31-41.1-9(d).

Upon careful review 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.