

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

FRANCISCO ESPINAL

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C.A. No. T10-0049

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STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

DECISION

PER CURIAM: Before this Panel on October 13, 2010—Magistrate Cruise (Chair, presiding), Judge Almeida, and Magistrate Goulart, sitting—is Francisco Espinal’s (Appellant) appeal from Judge Parker’s decision to sustain the charged violation of Rhode Island Airport Corporation Regulation 2.2- “Permitted Use at the Airport” in conjunction with § 31-12-12, “Power of local authorities.” Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On May 23, 2010, a member of the Rhode Island Airport Police. Lieutenant Hall (Lt. Hall) observed Appellant, a commercial taxi driver, passing through the short term parking area of T.F. Green Airport in Warwick, Rhode Island. Noting that Appellant did not pick up or drop off any passengers, Lt. Hall stopped him and cited him with the aforementioned violation. The Appellant contested the charge, and the matter proceeded to trial.

At trial, Lt. Hall testified that at about 11:40 p.m. on May 23, 2010, he was positioned at an observation post near the “ground transportation center” at T.F. Green Airport. (Tr. at 2.) He witnessed Appellant’s taxi enter the portion of the ground

transportation containing the short term parking lot. Id. Since Lt Hall observed that Appellant's taxi was not registered as an authorized user in terms of the Airport Rules and Regulations, he suspected that Appellant was in violation of Rhode Island Airport Corporation Regulation 2.2.2, "Permitted Use at the Airport." That section provides in pertinent part, "[a]n [unauthorized] Driver shall not (i) enter the Airport or use the Airport roads unless: (a) the Driver is transporting a customer to the Airport; or (b) the driver has been previously summoned by a customer prior to entry; or (ii) while at the Airport, engage in solicitation." Lt. Hall testified that he then stopped the taxi, at which time Appellant admitted that he was not picking up or dropping off any passengers, but rather he was just "passing through." Id. Lt. Hall subsequently cited the Appellant. Id.

On cross examination, Lt. Hall testified that according to the statutes and rules of T.F. Green Airport, "Authorized Users" are commercial vehicles operating on behalf of the corporation, "Airport Taxi." (Tr. at 13.) He also reiterated that he observed Appellant from the time it entered the short term area, until the time it exited and that at no time did Lt. Hall observe any passengers entering or exiting his taxi. (Tr. at 22.) Lt. Hall also testified that when Appellant exited the parking area, he was not required to pay a fee indicating that his vehicle was inside the short term parking area for a period less than five minutes. (Tr. at 29.)

Next Appellant took the stand on his own behalf and recounted a different series of events. He testified that he was in the short term parking area on May 23, 2010 to drop off a passenger. (Tr. at 33.) According to Appellant, he picked a passenger up from the train station in Providence and dropped him off at his car located in the short term parking lot at T.F. Green. (Tr. at 34.) Appellant testified that Lt. Hall did not ask him any

questions, nor did he make any unsolicited comments to Lt. Hall regarding his activities. (Tr. at 37.) Lastly, Appellant testified that the May 23, 2010 incident was not his first encounter with Lt. Hall. (Tr. at 38.) He claimed that Lt. Hall has stopped him three or four different times in the past, and during one of them, Lt. Hall placed him in handcuffs. (Tr. at 40.)

Upon the completion of the testimony, the trial judge made his ruling. Finding the testimony of Lt. Hall to be credible, he found clear and convincing evidence that Appellant violated the Airport Regulations, and in turn, § 31-12-12. Appellant, aggrieved by this decision, filed this Appeal.

Standard of Review

Pursuant to G.L. 1956 § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. 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 other 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.”

In reviewing a hearing judge's decision pursuant to § 31-41.1-8, this Panel "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 v. State, 633 A.2d 1345, 1348 (R.I. 1993) (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). "The review of the Appeals Panel is confined to a reading of the record to determine whether the judge's decision is supported by legally competent evidence or is affected by an error of law." Link, 633 A.2d at 1348 (citing Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)). "In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision." Link, 633 A.2d at 1348. Otherwise, it must affirm the hearing judge's conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

For the purposes of this Appeal, Appellant stipulates to the version of events accepted by the trial judge in making his ruling. In support of his argument that the trial judge erred in sustaining the charge, Appellant raises four separate arguments. A discussion of these arguments follows.

I.

Appellant first argues that the activity alleged by the State through the testimony of Lt. Hall is not a violation under the Rhode Island Airport Rules and Regulations. For purposes of Regulation 2.2.2, Appellant interprets the term "driver" as one who is

actually engaged in commercial activity, and here, Appellant contends he was involved in nothing more than merely passing through the parking lot.

Appellant apparently ignores the definition of an authorized driver provided in Section 1.4 of the Regulations. Such a driver is defined in that section as “ a person engaged by the corporation on a contractual basis to provide goods or perform services.” Along with that, 2.2.2 clearly states that no unauthorized vehicle is allowed to enter the airport unless “(a) the Driver is transporting a customer to the Airport; or (b) the driver has been previously summoned by a customer prior to entry. . . .” There is nothing contained in the Regulations to indicate that only vehicles engaging in commercial activity are prohibited.

It is clear from the record that Appellant—as an unauthorized driver, not engaged in dropping off a passenger or picking one up—fits the definition of someone in violation of 2.2.2 of the Airport Regulations. Therefore, we hold that there was no erroneous understanding or interpretation on the part of the trial judge. See Almeida v. United States Rubber Co., 82 R.I. 264, 268, 107 A.2d 330, 332 (1954) (holding that liberally construing statutes or regulations “does not mean a court should completely nullify a clearly-expressed provision. . . .”).

II.

Appellant next argues that the Airport Corporation has no authority to enforce Regulation 2.2.2, because this rule is pre-empted by the Public Utilities Commission which regulates commercial driver’s licenses. Appellant cites no authority as to what effect the existence of the Public Utilities Commission has in the context of the Airport Corporation setting guidelines for its parking areas.

“It is well established that a mere passing reference to an argument is insufficient to merit appellate review.” Tondreault v. Tondreault, 966 A.2d 654, 664 (2008) (quoting DeAngelis v. DeAngelis, 923 A.2d 1274, 1282 n.11 (R.I. 2007)). Therefore, Appellant’s failure to address this issue results in its being waived. However, for purposes of discussion this Panel will briefly address Appellant’s contention.

The Public Utilities and Carrier regulations pursuant to § 39-13.1-17 of the Rhode Island General Laws contain no preemptory type language that would have any effect on the Airport’s ability to promulgate rules pertaining to its operations. Furthermore, it is obvious there is an inherent difference between the mission of the Public Utilities Commission (PUC) and that of the Airport Corporation security detachment. The PUC regulations noted in § 39-13.1-17 seek to regulate the licensing and certification of passenger vehicles and passenger vehicle drivers. The Airport Corporation has promulgated its rules to ensure safety and order on the premises of T.F. Green Airport. See Downey v. Carcieri, 996 A.2d 1144, 1150 (R.I. 2010) (collecting cases).

III.

Next Appellant urges us to reverse the decision of the trial judge because the Airport Corporation’s practice of awarding one taxi service the right to be an “authorized user” under its regulations is a violation of federal anti-trust laws. The record indicates that Appellant failed to make this argument at trial.

Pursuant to the ‘raise-or-waive’ rule articulated by our Supreme Court, “[i]t is axiomatic that ‘this court will not consider an issue raised for the first time on appeal that was not properly presented before the trial court.’” Pollard v. Acer Group, 870 A.2d 429

(R.I. 2005) (quoting State v. Gatone, 698 A.2d 230, 242 (R.I. 1997)). Therefore this Panel will not entertain an argument that has not been raised properly before us.¹

IV.

Lastly, Appellant challenges the Traffic Tribunal's authority to have this case brought before it. Once again, Appellant fails to provide any support for this contention. However, this Panel notes that § 8-8-2 of the Rhode Island General Laws empowers the Traffic Tribunal to hear, in addition to those cases specifically listed in the statute, "all violations in relation to motor vehicles, littering and traffic offenses, except those traffic offenses committed in places within the exclusive jurisdiction of the United States. . . ." T.F. Green Airport is not in the exclusive jurisdiction of the United States, and therefore, the member of the Traffic Tribunal who sustained the charge against the Appellant, the trial judge, had the statutory authority to do so. Therefore, we conclude that Appellant's jurisdictional argument is without merit.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial magistrate's decision is not affected by abuse of discretion, error of law, or clearly erroneous in view of the reliable, probative, and substantial record evidence.

¹ In addition to not raising this argument at trial, Appellant has offered no support for this contention.

Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED: 