

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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v.

C.A. No. T08-0067

ANN GORDON

STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
PROVIDENCE, R.I.

DECISION

PER CURIAM: Before this Panel on August 6, 2008, Magistrate Noonan (Chair), Chief Magistrate Guglietta, and Magistrate DiSandro sitting, is Ann Gordon’s (Appellant) appeal from Judge Almeida’s decision, sustaining the charged violation of G.L. 1956 § 31-13-4, “Obedience to Devices.” The Appellant appeared pro se before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On December 7, 2007, Appellant was cited by a Trooper of the Rhode Island State Police (Trooper) for the aforementioned violation. The Appellant contested the charge, and the matter proceeded to trial.

At trial, the Trooper testified that prior to citing Appellant, he was on a fixed traffic post on Route 95 North near Pawtucket. (Tr. at 2.) The Trooper testified that he was conducting traffic stops of tractor trailers that were potentially over the posted 22 ton limit on a nearby bridge. Id. From his post, the Trooper observed a tractor trailer, which was subsequently found to be operated by Appellant. Id. The Trooper then initiated a traffic stop of the tractor trailer. Id. During the stop, Appellant produced a bill of lading which indicated that her load was 35,249 lbs. Id. At the time of the stop, the Trooper did not have weighing scales to independently measure the vehicles actual weight. Id.

Instead, he relied on the bill of lading to cite Appellant for violating the weight limit on the bridge. Id.

The Appellant argued that bill of lading represented her gross vehicle weight at the origin of its transportation in Virginia. (Tr. at 2-4) The Appellant contended that her weight at the time of the traffic stop in Rhode Island was significantly less because she had already delivered a portion of her load in New York. Id.

Following trial, the trial judge sustained Appellant's violation of § 31-13-4. The Appellant has filed a timely appeal of the trial judge's decision. Forthwith is this Panel's decision.

#### **Standard of Review**

Pursuant to G.L. 1956 § 31-41.1-8(f), 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 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.”

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 (R.I. 1993). The Appeals Panel 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). The Panel may reverse a decision of a hearing judge where the decision is “clearly erroneous in view of the reliable, probative, and substantial evidence contained in the whole record.” Costa v. Registry of Motor Vehicles, 543 A.2d 1307, 1309 (R.I. 1988).

### Analysis

On appeal, Appellant contended that the State failed to prove by clear and convincing evidence that her gross vehicle weight was in excess of the posted 22 ton limit. The Appellant argued that without the Trooper’s independent weight measurement of her vehicle at the time of the stop, there was insufficient evidence to prove her violation of § 31-13-4 by clear and convincing evidence.

This Panel notes that the scope of review on appeal is “limited to a determination of whether the hearing justice’s decision is supported by legally competent evidence.” See Marran, 672 A.2d at 876. Accordingly, this Panel reviews whether the trial judge’s decision was supported by the reliable, probative, and substantial evidence in the record in order to sustain the charge.

This Panel has reviewed the entire record before it. This Panel concludes that in order to sustain a violation of § 31-13-4, there must be clear and convincing evidence of the vehicle’s weight at the time of the stop. In the case before us, the absence of the Trooper’s independent weight measurement at the time of the stop without any other direct uncontradicted evidence of the weight of the vehicle fails to meet the required

standard of clear and convincing evidence for the violation of § 31-13-4. Accordingly, this Panel grants Appellant's appeal and dismisses the violation charged against her.

**Conclusion**

Upon a review of the entire record, this Panel concludes that the trial judge's decision was clearly erroneous and was affected by error of law. Substantial rights of the Appellant have been prejudiced. Accordingly, this Panel dismisses the violation charged against the Appellant and grants her appeal.

ENTERED: