

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

:

v.

:

:

CA No. T17-0002

:

16001529169

:

DONALD SHOLES

DECISION

PER CURIAM: Before this Panel on May 31, 2017—Magistrate Goulart (Chair), Magistrate Abbate, and Magistrate Kruse Weller, sitting—is Donald Sholes’ (Appellant) appeal from a decision of Associate Judge Edward C. Parker (Trial Judge) of the Rhode Island Traffic Tribunal, sustaining the charged violation of G.L. 1956 § 31-13-4, “Obedience devices.” The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On October 31, 2016, Rhode Island State Trooper James Donnelly-Taylor (Trooper Donnelly-Taylor) was stationed at a fixed traffic post on Route 95 south near the Route 37 overpass. (Tr. at 5.) As he monitored traffic, Trooper Donnelly-Taylor observed a “five-axle tractor-trailer” (dump truck) traveling southbound in the third lane of travel. *Id.* at 5, 7. Trooper Donnelly-Taylor conducted a traffic stop of the dump truck, which resulted in the issuance of a citation to Appellant for the aforementioned violation. *Id.* at 6, 14.

A trial for Appellant’s violation was held on January 23, 2017. *Id.* at 2. At trial, Trooper Donnelly-Taylor testified that he was monitoring traffic from a fixed post on Route 95, just south of the Route 37 overpass when he observed the dump truck traveling south in the third lane of travel.¹ *Id.* at 3. Trooper Donnelly-Taylor explained that he first observed the dump truck in his rear-view mirror travelling in one of the left travel lanes as it approached and passed his location. *Id.* He indicated that beginning at the Massachusetts border there are posted signs that prohibit trucks, campers, and buses from traveling in the two left travel lanes. *Id.* Trooper Donnelly-Taylor specified that a sign is “posted at each and every overpass,” which the dump truck would have encountered prior to passing his location. *Id.* at 6.

Trooper Donnelly-Taylor then left his traffic post and began travelling behind the dump truck. *Id.* At some point after he began following the dump truck, it merged into the right travel lane. *Id.* As the vehicles approached Exit 12 on Route 95 south, Trooper Donnelly-Taylor initiated a traffic stop of the dump truck. *Id.* at 5. During the stop, Trooper Donnelly-Taylor identified Appellant as the truck’s operator and issued Appellant a summons for his failure to obey the posted signs. *Id.*

The Appellant also testified at trial. *Id.* at 16. The Appellant stated that on the day the traffic stop occurred, he was “coming from the Cranston Landfill on Pontiac Avenue [in] Cranston.” *Id.* After leaving the landfill, Appellant used Route 37 to merge onto Route 95 south. *Id.* As he was travelling on Route 95 south, Appellant noticed Trooper Donnelly-Taylor flash his cruiser’s lights. *Id.* The Appellant then pulled over into the right shoulder of the

¹ At trial, witnesses referred to a “diagram board” to illustrate the events that occurred on October 31, 2016. (Tr. at 9.) However, the record does not indicate that either party moved for the diagram to be entered into evidence. As this Panel’s authority is “confined to a review of the record,” this Panel cannot consider the “diagram board” in its review of this matter. *Link*, 633 A.2d at 1348 (citing *Envtl. Scientific Corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)).

highway. *Id.* at 18. He added that he first noticed a sign prohibiting trucks from traveling in the two left lanes at “the second overpass” as Trooper Donnelly-Taylor was pulling him over.² *Id.* at 17, 19.

After hearing the witnesses’ testimony and each party’s arguments, the Trial Judge found that Trooper Donnelly-Taylor’s testimony was credible and that Appellant had committed the charged violation based on the credible evidence. *Id.* at 29. Specifically, the Trial Judge found that Trooper Donnelly-Taylor “observed the [Appellant] driving in the third lane . . . [and that] there [was] no question that [Appellant] passed a couple of signs” prohibiting his travel in the two left travel lanes. *Id.* The Trial Judge concluded by sustaining Appellant’s violation. *Id.*

The Appellant filed a timely appeal of the Trial Judge’s decision to this Appeals Panel. Forthwith is this Panel’s decision.

II

Standard of Review

Pursuant to § 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) delineates the scope of the panel’s 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 remand the case for further proceedings or reverse or modify the decision if the substantial rights of the

² Once again, Appellant referred to “a diagram board” to illustrate the overpass at which he first noticed the signage. (Tr. at 17.) As the witnesses used the diagram board to describe their movements, the exact overpass that he alleges to have seen the signs remains unclear as the specific name of the overpass was never clarified. It can be surmised from the record that Appellant is referring either to the “Route 37 overpass”—to which Trooper Donnelly-Taylor was positioned just south of—or the “Service overpass.” *See* Tr. at 11, 21.

appellant have been prejudicial 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 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.”

In reviewing a hearing Judge or Magistrate'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 [or Magistrate] concerning the weight of the evidence on questions of fact.” *Link v. State*, 633 A.2d 1345, 1348 (R.I. 1993) (citing *Liberty Mutual Ins. 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 [or Magistrate's] decision is supported by legally competent evidence or is affected by an error of law.” *Link*, 633 A.2d at 1348 (citing *Envtl. 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 [or Magistrate's] conclusions on appeal. *See Janes*, 586 A.2d at 537.

III

Analysis

The Appellant argues on appeal that the Trial Judge's decision is affected by error of law and is “clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record” as it “does not comport with the facts of the case.” *See* § 31-41.1-8(f); Appellant's

Notice of Appeal at 3. Moreover, Appellant contends that the Trial Judge made his decision “upon unlawful procedure” by allowing testimony from Trooper Donnelly-Taylor regarding Appellant’s truthfulness. *See* § 31-41.1-8(f); Appellant’s Notice of Appeal at 3.

In Rhode Island, the driver of a 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.” *See* § 31-13-4. Moreover, § 31-12-1, which establishes the applicability of traffic violations, states that “[t]he provisions of chapters 12 – 27 of this title relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways and on all state, city or town owned public property. . . .”³

As Appellant in this matter is charged with violating § 31-13-4, it is clear that the general applicability provision of § 31-12-1 applies. *See* § 31-12-1. Therefore, while he was traveling on Route 95 south, Appellant was required to “obey the instructions of any official traffic control device applicable to him or her.” Sec. 31-13-4.

It is undisputed that there a number of signs placed along Route 95 south alerting the drivers of trucks, campers, and buses that travelling in the two left lanes is prohibited. (Tr. at 29.) Trooper Donnelly-Taylor testified that these signs are posted “from the Mass[achusetts] line down to the Route 295 split, both north and southbound [A]t each and every overpass as well as on . . . the right side of the highway.” *Id.* at 3.

It is also undisputed that Appellant was driving a dump truck while traveling in the one of the two left lanes on Route 95 south. *Id.* at 21. Trooper Donnelly-Taylor stated that he observed

³ Section 31-12-1 creates two exceptions to the general applicability provision, which are not relevant to the statute at issue. *See* §§ 31-12-1(1), (2) (establishing that chapters 12-27 are applicable “upon highways and on all state, city or town owned public property except: (1) Where a different place is specifically referred to in a given section. (2) The provisions of Chapter 26 of this title and §§ 31-27-1 – 31-27-4 shall apply upon highways and elsewhere throughout this state”).

the dump truck in his rearview mirror traveling “southbound in the third lane of travel.” *Id.* at 7. He further testified that “[Appellant] passed [his] location [and] continued [in] the third lane for a distance.” *Id.* at 23; *see also* Tr. at 18, 21, 25, 29.

Based on the testimony, the Trial Judge concluded that “there’s no question that [the Appellant] passed a couple of signs” and that this case “is a question of credibility.” *Id.* at 27. Ultimately, the Trial Judge decided that he was “going to come down on the side of the Trooper, as to his observations of where he saw [Appellant’s] truck.” *Id.* As such, the record clearly reflects that the Trial Judge found Trooper Donnelly-Taylor to be a reliable and credible witness and that the weight of the evidence established that Appellant violated § 31-13-4. *See Link*, 633 A.2d at 1348.

As the Appeals 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,” this Panel will not disturb the Trial Judge’s credibility determinations or his assessment of the weight of the evidence in this case. *Link*, 633 A.2d at 1348 (citing *Liberty Mutual Ins. Co. v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). Based on its review of the record, this Panel is satisfied that the Trial Judge’s decision properly relied on the credible testimony of Trooper Donnelly-Taylor and is, therefore, “supported by legally competent evidence.” *Id.* (citing *Envtl. Scientific corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)).

Furthermore, this Panel also finds Appellant’s assertion that the Trial Judge’s decision improperly relied on testimony given by Trooper Donnelly-Taylor regarding his truthfulness to be of no moment. Each witness had an adequate opportunity to testify at trial. However, the witnesses testimony—pertaining to whether Appellant had passed one of the signs at issue from the time Appellant first approached Trooper Donnelly-Taylor’s location until the traffic stop

occurred—presented “diametrically opposed stories.” *See id.* at 3, 16-18, 27. In light of the conflicting evidence, the Trial Judge decided that “there’s no question that [Appellant] passed a couple of signs” based on the credible testimony provided by Trooper Donnelly-Taylor. *Id.* at 27, 29.

This Panel’s review of the record reveals no indication that the Trial Judge’s decision relied upon improper character testimony regarding the veracity of Appellant. Rather, the Trial Judge properly considered the testimony of each witness and weighed the evidence. *See Link*, 633 A.2d at 1348 (citing *Liberty Mutual Ins. Co. v. Janes*, 586 A.2d 536, 537 (R.I. 1991)) (reiterating that this Panel cannot “assess witness credibility or to substitute its judgment for that of the hearing Judge concerning the weight of the evidence on questions of fact”).

For the aforementioned reasons, this Panel finds that the Trial Judge’s decision is based upon lawful procedure and properly relies on reliable, probative, and substantial evidence within the record. *See* § 31-41-1.8(f).

IV

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the Trial Judge's decision was neither clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record nor made upon unlawful procedure. The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

Magistrate Alan R. Goulart (Chair)

Magistrate Joseph A. Abbate

Magistrate Erika Kruse Weller

DATE: _____