

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

:

v.

:

C.A. No. T18-0018

:

18414500254

:

JESSICA HOPKINS

:

DECISION

PER CURIAM: Before this Panel on November 21, 2018—Magistrate Kruse Weller (Chair), Magistrate Goulart, and Associate Judge Almeida, sitting—is the Town of Glocester’s (Appellant) appeal from a decision of Magistrate William T. Noonan (Trial Magistrate) of the Rhode Island Traffic Tribunal, dismissing Jessica Hopkins’ (Ms. Hopkins) charged violations of G.L. 1956 § 31-16.1-3, “Restrictions on idling for diesel engines,” and § 31-22-1, “Unattended vehicles.” The Appellant and Ms. Hopkins appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On March 2, 2018, Patrolman Daniel Lefebvre (Patrolman Lefebvre) of the Glocester Police Department issued Ms. Hopkins a citation for the above-mentioned violations involving a 1997 tow truck with commercial plates. *See* Summons No. 18414500254. The matter proceeded to trial on September 21, 2018. Before the trial began, Ms. Hopkins moved to have the charged violations dismissed based on her good driving record pursuant to § 31-41.1-7. *Id.* at 3:14-19.

Ms. Hopkins’ counsel asserted at trial that the Trial Magistrate is permitted to dismiss the charged violations under § 31-41.1-7, entitled “Application for dismissal based on good driving

record,” because “neither one of those particular [violations] are [] prohibited from being used under the good driving statute.” *Id.* at 3:16-19. In contrast, Appellant’s counsel argued that § 31-41.1-7 was not applicable because the charged violations “have to be enumerated to be included under the good driver’s statute.” *Id.* at 3:22-24. Appellant’s counsel further objected, stating that in order for violations to be dismissed pursuant to § 31-41.1-7, “they ha[ve] to be moving violations. . . . These are not.” *Id.* at 5:2-5.

In interpreting § 31-41.1-7, the Trial Magistrate determined that violations “have to be enumerated to be *excluded* from the good driving statute.” *Id.* at 4:1-3 (emphasis added). After reading a portion (but not the entirety) of the enumerated exclusions in § 31-41.1-7 into the record, the Trial Magistrate determined that none of the exclusions prohibiting dismissal applied to Ms. Hopkins. *Id.* at 6:24-7:1. The Trial Magistrate further found that “the language of the statute appears to be mandatory. It’s not discretionary. So it would seem that 3-41.1-7 [sic], upon application for dismissal, is mandatory unless one of these exceptions applies and none of them apply.” *Id.* at 7:2-6. Therefore, the Trial Magistrate dismissed the charged violations pursuant to § 31-41.1-7. *Id.* at 8:4-6. Appellant subsequently filed a timely appeal. 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) provides in pertinent part:

“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 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 Mut. 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.” *Id.* (citing *Envtl. Sci. 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.” *Id.* Otherwise, it must affirm the hearing judge's (or magistrate's) conclusions on appeal. *See Janes*, 586 A.2d at 537.

III

Analysis

On appeal, the Appellant contends that the Trial Magistrate's decision dismissing the charged violations pursuant to § 31-41.1-7 is “[a]ffected by other error of law[.]” Sec. 31-41.1-

8(f)(4); Appellant’s Notice of Appeal at 2. Specifically, Appellant asserts that the charged violations are ineligible to be dismissed because they were committed in connection with a commercial vehicle, and further that the violations constitute non-moving violations and therefore cannot be dismissed under § 31-41.1-7.¹ See Tr. at 5: 2-5.

Since the Trial Magistrate’s decision is one of statutory interpretation, this Panel reviews the Trial Magistrate’s ruling *de novo*. *Alessi v. Bowen Court Condo.*, 44 A.3d 736, 740 (R.I. 2012) (citing *Waterman v. Caprio*, 983 A.2d 841, 844 (R.I. 2009)). It is well-settled that “when the language of a statute is clear and unambiguous, [a] [c]ourt must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Iselin v. Ret. Bd. of Emps’ Ret. Sys. of Rhode Island*, 943 A.2d 1045, 1049 (R.I. 2008) (quoting *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1226 (R.I. 1996)). However, when the language of the statute is ambiguous, the Court “must examine [the] statute in its entirety and determine ‘the intent and purpose of the Legislature.’” *State v. Peterson*, 772 A.2d 259, 264 (R.I. 1998) (quoting *In re Advisory to the Governor*, 688 A.2d 1246, 1248 (R.I. 1996)).

The plain language of § 31-41.1-7 provides, in pertinent part: “Any person who has had a motor vehicle operator’s license for more than three (3) years, and who has been issued traffic violations which are his or her first violations within the preceding three (3) years, may request a hearing seeking a dismissal of the violations based upon the operator’s good driving record.” Sec. 31-41.1-7(a). Therefore, a person charged with a traffic violation who has possessed a

¹ During oral argument before this Panel, Ms. Hopkins asserted that she was not “operating” the vehicle at the time of the violation because the vehicle was unattended. Conversely, however, Ms. Hopkins also argued that the violation can be dismissed pursuant to § 31-41.1-7 based on the “operator’s good driving record” notwithstanding this assertion. Ms. Hopkins failed to raise this factual issue at trial and did not submit a legal briefing of this issue on appeal. As such, this Panel is unable to review Ms. Hopkins’s argument on appeal. *Union Station Associates v. Rossi*, 862 A.2d 185, 192 (R.I. 2004) (“It is an established rule in Rhode Island that this Court will not review issues that are raised for the first time on appeal.”).

driver's license for more than three years, and who has not received any traffic violations within the preceding three years, may move to dismiss the charged traffic violation pursuant to this statute. *Id.* The statute then provides in subsection (d) for the circumstances in which a violation may *not* be dismissed:

“(d) The following violations shall not be dismissed pursuant to this statute:

“(1) Any violation within the original jurisdiction of superior or district court;

“(2) A refusal to submit to a chemical test of breath, blood or urine pursuant to § 31-27-2.1;

“(3) Any violation involving a school bus;

“(4) Any violation involving an accident where there has been property damage or personal injury;

“(5) Any speeding violation in excess of fourteen miles per hour (14 m.p.h.) above the posted speed limit;

“(6) Any violation involving child restraints in motor vehicles pursuant to § 31-22-22;

“(7) **Any violation committed by a holder of a commercial license as defined in § 31-10.3-3 or any violation committed in a commercial motor vehicle as defined in § 31-10.3-3 by an operator who does not hold a commercial license.**”

Sec. 31-41.1-7(d) (emphasis added).

In the case at bar, Patrolman Lefebvre charged Ms. Hopkins, who does not hold a commercial license, with § 31-16.1-3, “Restrictions on idling for diesel engines” and § 31-22-1, “Unattended vehicles” in connection with a commercial vehicle as evidenced by its commercial plate, which was undisputed. *See* (Tr. 6:16-24); Summons No. 18414500254. While the Trial Magistrate considered the beginning of subsection (7) in his analysis, he omitted the remainder of the paragraph which applies in the instant matter. As a result, and as a matter of law, these violations are ineligible for dismissal based on subsection 31-41.1-7(d)(7) because they were “committed in a commercial motor vehicle . . . by an operator who does not hold a commercial

license.” Therefore, this Panel concludes that the Trial Magistrate erred by dismissing the charges pursuant to § 31-41.1-7.

IV

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 affected by error of law. Accordingly, Appellant's appeal is granted, the dismissal is reversed, and the matter is remanded for further proceedings.

ENTERED:

Magistrate Erika L. Kruse Weller (Chair)

Magistrate Alan R. Goulart

Associate Judge Lillian M. Almeida

DATE: _____