

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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:
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v.

**C.A. No. T12-0073
12001529246**

JOHN NGOTHO

DECISION

PER CURIAM: Before this Panel on February 20, 2013—Magistrate Goulart (Chair, presiding), Chief Magistrate Guglietta, and Magistrate Noonan sitting—is John Ngotho’s (Appellant) appeal from a decision of Judge Parker (trial judge), sustaining the charged violation of G.L. 1956 § 31-14-23-1(b), “Driving of unsafe vehicle—commercial motor vehicle violation.” The Appellant appeared pro se before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On June 26, 2012, a Trooper of the Rhode Island State Police Department charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charges, and the matter proceeded to trial.

At trial, the Trooper testified that he was at a fixed traffic post conducting routine random commercial motor vehicle inspections. (Tr. at 1.) The Trooper continued his trial testimony by describing his professional training as a commercial motor vehicle inspector. Id.

The Trooper testified that on the date in question, at approximately 7:44 p.m., he observed a two axle box truck labeled in a commercial manner traveling northbound on Route 95 in Richmond. Id. Trooper initiated a traffic stop of the vehicle and made contact with the operator, Appellant. Id. Trooper then conducted a commercial vehicle inspection in accordance

with § 31-23-1, the statute providing for the inspection of motor carriers.¹ Id. In addition to the vehicle's tires being significantly low, Trooper determined that Appellant did not possess a medical certificate to show that he was fit to operate a commercial vehicle,² and that Appellant was under twenty-one years of age,³ both violations of the Federal Motor Carrier Safety Regulations. Id. Trooper then issued a citation to the Appellant for three out of the four tires that were defective. Id.

At trial, Appellant testified that he was unaware that the tires were defective. Id. Appellant further testified that he was under the assumption the tires would be maintained by the company. Id. Consequently, Appellant argued the ticket should have been issued to the company as opposed to the Appellant. Id.

The trial judge adopted the Officer's testimony and sustained the charged violation. Id. Aggrieved by the trial judge's decision, the Appellant timely filed this appeal.

¹ Section 31-23-1(b)(1) reads, in pertinent part:

“For the purpose of reducing the number and severity of accidents, all commercial motor vehicles must meet applicable standards set forth in this chapter and chapter 24 of this title and in the federal motor carrier safety regulations (FMCSR) contained in 49 CFR Parts 387 and 390-399. . . . Part 391.11(b)(1) of FMCSR, 49 CFR 391.11(b)(1) shall not apply to intrastate drivers of commercial motor vehicles except for drivers of school buses and vehicles placarded under 49 CFR Part 172, Subpart F. Rules and Regulations shall be promulgated by the director of the department of revenue for the administration and enforcement of motor carrier safety.”

² Title 49 C.F.R. § 391.11 reads, in pertinent part: “a person is qualified to drive a [commercial] motor vehicle if he/she . . . is physically qualified to drive a commercial motor vehicle in accordance with subpart E--Physical Qualifications and Examinations of this part.” Section 391.41 reads, in pertinent part: “a person subject to this part must not operate a commercial motor vehicle unless he or she is medically certified as physically qualified to do so, and, when on-duty has on his or her person the original, or a copy, of a current medical examiner's certificate that he or she is physically qualified to drive a commercial motor vehicle. . . .”

³ Pursuant to 49 C.F.R. § 391.11, “a person is qualified to drive a [commercial] motor vehicle if he/she . . . is at least 21 years old”

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 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 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 [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 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 [or magistrate’s] conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, the Appellant argues that the trial judge’s decision was clearly erroneous and was not supported by the reliable, probative, and substantial evidence of record. Specifically, the Appellant alleges that he should not have received the citation since the truck was owned by the company he was working for at the time of the infraction.

Title 31, Chapter 23 of the Rhode Island General Laws contains a penalty provision for owners, employers, and employees. That general provision provides that “any carrier convicted of violating the rules and regulations established pursuant to this subsection shall be fined . . . for each offense.” Sec. 31-23-1. Subsection (b)(2)(c) of the statute defines a carrier as “. . . any company or person who furthers their commercial or private enterprise by use of [the] vehicle.” Id.

The Rhode Island Supreme Court has made clear that when interpreting a statute, if the language of a statute is clear and unambiguous, the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meaning. State v. Clarke, 974 A.2d 558, 571-72 (R.I. 2009); State v. Santos, 870 A.2d 1029, 1032 (R.I. 2005). Appellant’s argument that § 31-23-1(b) applies only to the company is without merit. The statute states plainly that “. . . any company or person who furthers their commercial or private enterprise by use of [the] vehicle.” Id. (emphasis added.) Here, the statute clearly provided that either the Appellant or the company that he worked for could be held liable for the violation. As Appellant was found to be operating a commercial motor vehicle for his financial gain, the trial judge’s decision to impose the fine for the violation was not affected by error of law.

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 not clearly erroneous and was supported by the reliable, probative, and substantial evidence of record. Substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

Magistrate Alan R. Goulart (Chair)

Chief Magistrate William R. Guglietta

Magistrate William T. Noonan

DATE: _____