

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

MONSTER SPECIALIZED, LLC,
Company,
and
JOSEPH KITTLE, Driver,
Petitioners,

v.

DEPARTMENT OF PUBLIC SAFETY,
Respondent.

:
:
: **Docket No.:**
: **OSAH-DPS-OWOS-1556276-11-8-15-roer**
:
: **Citation No.: 602-15-805021**



AUG 21 2015

FINAL DECISION

Victoria Hightower
Victoria Hightower, Executive Assistant

I. Introduction

Petitioner Monster Specialized, LLC (hereinafter “Monster Specialized”) appealed an overweight assessment citation issued to it on April 22, 2015 by the Department of Public Safety (“DPS”). The hearing on this matter was held via telephone on August 4, 2015. Christina Calloway, Esq., represented DPS at the administrative hearing, and Wayne Kittle represented the company. Officer Sarah Floyd, a DPS Weight Inspector, also provided testimony. For the reasons given below, DPS’s decision to issue the overweight assessment citation is **REVERSED**.

II. Findings of Fact

1. On April 22, 2015, Joseph Wayne Kittle, Jr., driver for Monster Specialized, drove a vehicle southbound on Interstate 75 in Monroe County. The vehicle was hauling a “Cat 633 E Scraper” from Tennessee to Brunswick, Georgia. *Respondent’s Exhibit 1; Testimony of Wayne Kittle.*
2. At approximately 12:35 p.m., Kittle stopped to have the vehicle and load weighed at a weigh station in Forsyth, Georgia. *Respondent’s Exhibit 1.*
3. At the time Kittle stopped to have the vehicle weighed, he had in his possession a Superload Plus Permit (Permit # P1449391) issued to Monster Specialized by the Georgia Department of Transportation (“DOT”) on April 22, 2015 at 7:19 a.m. This permit authorized Monster Specialized to operate a tractor-trailer with a gross weight of up to 192,000 pounds along a predetermined route between the dates of April 22 and May 2, 2015. The Superload Plus permit (hereinafter “the Permit”) also prescribed weight limitations for each of the tractor-trailer’s twelve axles. *Respondent Exhibits 2A, 2B, 2C; Testimony of Officer Floyd.*
4. Officer Sarah Floyd weighed the vehicle on the static scales, which are employed to measure the weight of each individual axle. The weigh station’s static scales measured weights for axles three, four, six, eight, nine, eleven, and twelve that exceeded the single axle weight limitations specified on the Permit. *Respondent’s Exhibits 1, 1A, 2A; Testimony of Officer Floyd.*

5. The static scales employed to measure the weight of the vehicle were last calibrated on November 24, 2014; approximately five months prior to the date of the weighing at issue. At the hearing on this matter, Officer Floyd testified that the static scales are typically calibrated by DPS, in cooperation with a private contractor, every ninety days. She explained, however, that there had been a considerable delay in calibrating the weigh station's static scales because the calibration equipment was "broken." *Respondent's Exhibits 3A, 3B, 3C; Testimony of Officer Floyd.*

6. Officer Floyd afforded Kittle an opportunity to shift the vehicle's load, but Kittle opted not to do so. *Respondent's Exhibit 1; Testimony of Officer Floyd.*

7. Officer Floyd assessed a fine based on the amount by which each axle exceeded the single axle weight limitation specified on the Permit as follows:

Axle	Weight Measured (lbs.)	Weight Allowed by Permit (lbs.)	Overage (lbs.)	Fine
3	12,700	12,000	700	\$43.75
4	12,140	12,000	140	\$8.75
6	15,240	14,000	1,240	\$77.50
8	21,940	21,000	940	\$58.75
9	22,740	21,000	1,740	\$108.75
11	22,820	20,000	2,820	\$176.25
12	23,600	20,000	3,600	\$225.00

Accordingly, Officer Floyd assessed a fine of \$698.75 against Monster Specialized and Kittle. *Respondent's Exhibit 1, 1A; Testimony of Officer Floyd.*

8. At the hearing on this matter, Wayne Kittle asserted that the weights measured by the static scale at the weigh station were inaccurate. According to Kittle, the above-described tractor-trailer and load had been determined to be within allowable weight limits at weigh stations in Tennessee and Ringgold, Georgia immediately prior to the weighing at the Forsyth weigh station. *Testimony of Wayne Kittle.*

9. Wayne Kittle asserted that the Forsyth weigh station's static scales were inaccurate owing to an incline at the end of the scale, which caused the weight of the load to shift toward the back of the tractor-trailer. According to Kittle, his company had been issued overweight assessment citations at the Forsyth weigh station on multiple occasions due to the inaccurate measurements caused by the unevenness of the static scale. *Testimony of Wayne Kittle.*

10. Officer Floyd acknowledged in her testimony that the static scale inclined upward after approximately fifty feet, but opined that the incline would not have rendered the weight measurements inaccurate. *Testimony of Officer Floyd.*

III. Conclusions of Law

1. Because this case concerns the issuance of an overweight assessment citation to Petitioners, DPS bears the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07. The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21.

2. Georgia law prohibits the operation of a vehicle or load upon the public roads of Georgia if the weight of such vehicle or load exceeds statutorily-prescribed weight limitations unless such operation is authorized by a permit issued by the DOT "pursuant to Code Section 32-6-28." O.C.G.A. § 32-6-20; *see* O.C.G.A. § 32-6-26(d)(1)(A); O.C.G.A. § 32-6-28. Anyone who violates these limitations shall be conclusively presumed to have damaged the roads and owes the state compensation. O.C.G.A. § 32-6-27(a). DPS is the state agency responsible for enforcing weight limitations. O.C.G.A. § 32-6-29(b).

3. In an overweight assessment case, the scope of the administrative hearing is limited to a determination of:

- (A) The weight of the offending vehicle;
- (B) The maximum weight allowed by law on the roadway upon which the offending vehicle was operated; and
- (C) Whether the operator had in his or her actual possession a valid oversize or overweight permit issued by the Department of Transportation allowing the vehicle to operate in excess of the maximum weight otherwise allowed by law on the roadway upon which the offending vehicle was operated.

O.C.G.A. § 32-6-27.

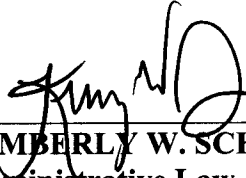
4. Pursuant to Code Section 32-6-28, the DOT may issue permits authorizing the operation of vehicles and loads with weights in excess of state limitations, including "Superload Plus" permits for vehicles and loads with gross weights exceeding 180,000 pounds. O.C.G.A. § 32-6-28(a)(1)(A); Ga. Comp. R. & Regs. 672-2-.01. Axle weights may not exceed those limitations specified on the face of the Superload Plus permit. Ga. Comp. R. & Regs. 672-2-.01.

5. In the present case, DPS failed to meet its burden to demonstrate by a preponderance of the reliable evidence that the weight of axles three, four, six, eight, nine, eleven, and twelve of the tractor-trailer exceeded the single axle weight limitations specified on the Permit. Officer Floyd testified that DPS's practice is to calibrate static scales every ninety days. However, the static scales employed to measure the weight of the tractor-trailer's axles had not been calibrated since November 24, 2014, approximately five months prior to the date of the weighing. Further, Wayne Kittle's credible testimony that the tractor-trailer had been determined to be in compliance with the specifications of the permit before the issuance of the overweight assessment citation casts further doubt upon the accuracy of the Forsyth weigh station's static scales. Having weighed the evidence in the record, the Court concludes that DPS failed to meet its burden to prove that the tractor-trailer exceeded the weight limitations specified on the permit. Accordingly, its decision to issue the overweight assessment citation should be reversed.

IV. Decision

IT IS ORDERED that DPS's decision to issue overweight assessment citation #602-15-805021 is **REVERSED**. Either party may file a motion for reconsideration within 10 days of the entry of this decision pursuant to OSAH Rule 28.

SO ORDERED, this 21st day of August, 2015.



KIMBERLY W. SCHROER
Administrative Law Judge

