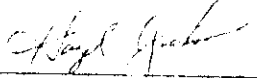




BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS JUL 11 2017
STATE OF GEORGIA

JOEY MCMILLAN
Petitioner,

Docket No.: 1736154
1736154-OSAH-DPS-OWOS-137-Brown


Hazel Jackson, Legal Assistant

v.

DEPARTMENT OF PUBLIC SAFETY,
Respondent.

Agency Reference No.: 810-17-000001

FINAL DECISION

I. Introduction

Petitioner Joey McMillan, owner of JS & A Trucking, appealed an overweight assessment citation issued on January 4, 2017 (Citation No. 810-17-000001) by the Department of Public Safety ("DPS"). The hearing in this matter was conducted by telephone on June 29, 2017. Mr. McMillan represented himself at the hearing and Zachary Howard, Esq., represented DPS. Officer Jared Boyd, DPS, Motor Carrier Compliance Division, also provided testimony by telephone. For the reasons given below, DPS's issuance of the overweight assessment citation is **REVERSED**.

II. Findings of Fact

1. On January 4, 2017, Officer Jared Boyd was in his vehicle on State Route 133 in Berlin, Georgia when he observed a vehicle hauling forestry products turn onto State Route 133 from Cannon Road. (Exhibit R-1; Testimony of Officer Boyd).
2. Because Cannon Road is a county-maintained road, Officer Boyd determined that the weight of the vehicle and load likely exceeded statutory limits. Accordingly, he initiated a traffic stop of the vehicle. At some point, a member of local law enforcement arrived to assist Officer Boyd with the stop. (Testimony of Officer Boyd).

3. The vehicle, a Mack truck, was owned by Petitioner Joey McMillan, and operated by Stephen Johnson. (Exhibit R-1; Testimony of Officer Boyd).
4. Officer Boyd made contact with Mr. Johnson and attempted to determine whether there was logging activity in the area of Cannon Road. Mr. Johnson indicated that he had just picked up the trailer loaded with forestry products, which had been left alongside the road. However, Mr. Johnson could not identify the road by name. (Testimony of Officer Boyd).
5. Officer Boyd also spoke with the local law enforcement officer, who said that he had not seen a pattern of trucks entering or leaving Cannon Road such as would indicate logging activity in that area. (Testimony of Officer Boyd).
6. Officer Boyd weighed the vehicle and load on "Haenni" Model WL101 portable scales. The scales were calibrated and in good working order at the time they were used to measure the weight of the vehicle and load. (Exhibit R-1; Testimony of Officer Boyd).
7. The portable scales measured a weight of 82,900 pounds for the gross weight of the vehicle and load, which exceeded the weight limit for county-maintained roads by 26,900 pounds. Mr. McMillan stipulated to the accuracy of the weight calculation at the evidentiary hearing. (Exhibit R-1; Testimony of Officer Boyd; Testimony of Joey McMillan).
8. Officer Boyd calculated an overweight assessment in the amount of \$1,345.00 for the vehicle's excess weight of 26,900 pounds and issued a citation to Mr. Johnson. (Exhibit R-1; Testimony of Officer Boyd).
9. After issuing the citation to Mr. Johnson, Officer Boyd drove down Cannon Road and found no signs of recent logging activity. (Testimony of Officer Boyd).
10. At the hearing, Mr. McMillan testified that his company had been involved in hauling forestry products from a tract located off of Cannon Road a few days prior to the stop. However,

due to a severe rainstorm, they were forced to abandon one trailer of forestry products, which they were unable to retrieve for several days due to the weather and the condition of the dirt road. Eventually, when the weather cleared and the condition of the road improved, Mr. McMillan dispatched Mr. Johnson to pick up the trailer of forestry products, which led to the above-described traffic stop and the overweight citation at issue. Mr. McMillan asserted that Officer Boyd's issuance of the overweight citation was improper, as Mr. Johnson was making a pickup on the county-maintained road and the vehicle and load were therefore not required to conform to the maximum weight limit of 56,000 pounds. (Testimony of Joey McMillan).

III. Conclusions of Law

1. 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 the weight limitations prescribed in Code Section 32-6-26 unless such operation is authorized by a permit issued by the Georgia Department of Transportation (GDOT). O.C.G.A. §§ 32-6-20, -26, -27; see also 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).

2. 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 [GDOT] 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.

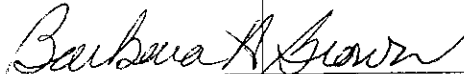
3. With regard to county-maintained roads, Georgia law provides that “the maximum total gross weight of a vehicle and load shall not exceed 56,000 pounds *unless the vehicle is making a pickup or delivery on such road.*” O.C.G.A. § 32-6-26(f) (emphasis added). Here, Mr. McMillan argues that the limit for the gross weight of 56,000 pounds for a vehicle and load on a county-maintained road did not apply because the vehicle drove onto Cannon Road in order to complete a pickup of forestry products. Id.

4. In the present case, the undersigned concludes that issuance of the overweight citation was improper, as Mr. Johnson was making a pickup from Cannon Road. Mr. McMillan credibly and persuasively testified that his company had been hauling forestry products from Cannon Road prior to the time of the traffic stop, and that the vehicle drove onto the road only make a pickup of one trailer of forestry products that had been left behind due to inclement weather. Mr. McMillan’s testimony provided the only reason the vehicle would have entered onto Cannon Road. It is unclear why Mr. Johnson would have driven the vehicle onto the dirt road other than for the reason Mr. McMillan supplied. Moreover, Mr. McMillan’s testimony is consistent with Mr. Johnson’s initial statements to Officer Boyd during the traffic stop.

IV. Decision

Based on the foregoing Findings of Fact and Conclusions of Law, it is the Final Decision of the undersigned that DPS’s issuance of overweight assessment citation number 810-11-000001 is **REVERSED**. The amount of \$1,345.00 shall be refunded to Petitioner.

SO ORDERED, this th 24 day of July, 2017.


BARBARA A. BROWN
Administrative Law Judge