

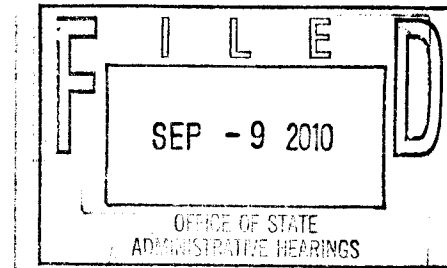
**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

**PHOENIX CRANE RENTAL CO INC, Owner,
JOHN CARRIO, Driver,
Petitioners,**

v.

**DEPARTMENT OF PUBLIC SAFETY,
Respondent.**

: **Docket No.: OSAH-DPS-OWOS-1100399-60-**
: **Woodard**
:
: **Citation No.: 121-10-000025**



FINAL DECISION

I. Introduction

The above matter came before the undersigned Administrative Law Judge pursuant to a request for an administrative hearing by the Petitioner. For the reasons given below, the assessment is **REVERSED**.

II. Findings of Fact

The Administrative Law Judge has considered the entire evidence presented at the hearing on August 23, 2010, and based upon a preponderance of the credible evidence makes the following specific findings of fact:

1. On April 14, 2010, John Carrio operated a self-propelled crane on Interstate 75 in North Georgia. The vehicle was weighed by a member of DPS' Motor Carrier Compliance Division. The vehicle was 27 feet 0 inches in length, and according to the Federal bridge formula, the gross weight limit for this vehicle was 58,000 pounds.
2. Phoenix Crane Rental Co., Inc., owner of the crane, obtained a Georgia permit which allowed the vehicle to operate on the highways of Georgia with a gross weight of more than 100,000 pounds.
3. The MCCD officer weighed the vehicle at 99,800 pounds, which is less than the maximum allowed by the permit. However, the officer found that the vehicle included two large, but movable, counter balance weights mounted in the center of the vehicle, in addition to the boom-mounted weights usually carried on self-propelled cranes. The officer also noticed that a large metal box mounted on the vehicle contained several items, including scaffolding and blocking gear, which easily could be removed and carried to the jobsite in another vehicle. The officer concluded that the counter weights and the contents of the metal box were not required for the safe operation of the vehicle, and constituted a divisible load which violated the permit.
4. The MCCD officer invalidated the permit, and assessed an overweight citation for 41,800 over the gross vehicle limit. He issued a fine in the amount of \$2,090.00. Petitioner paid the fine, and requested a hearing.
5. Carrio testified credibly that two counter weights (which weigh 4,000 pounds each) are mounted in the center of the vehicle as a safety measure, as they add to the crane's stability as it travel on roadways. Petitioner's safety director, Rick Baker, testified that the manufacturer delivered the crane with the center-mounted counter weights as original equipment. Carrio and Baker also testified that the vehicle was equipped with a permanently mounted "rigging box" used to carry items necessary for the crane's operation at the worksite.

III. Conclusions of Law

Based upon the foregoing findings of fact, the Judge makes the following conclusions of law:

1. O.C.G.A. 32-6-28(1)(1)(A) provides as follows:

The commissioner or an official of the department designated by the commissioner may, in his or her discretion, upon application in writing and good cause being shown therefore, issue a permit in writing authorizing the applicant to operate or move upon the state's public roads a motor vehicle or combinations of vehicles and loads whose weight, width, length, or

height, or combination thereof, exceeds the maximum limit specified by law, **provided that the load transported by such vehicle or vehicles is of such nature that it is a unit which cannot be readily dismantled or separated...**


(Emphasis added).

2. The centrally-mounted counter balance weights on Petitioners' vehicle weigh 4,000 pounds each, and were provided by the manufacturer for the safe operation of the vehicle on the road. Due to their size and importance to the vehicle's operation, the weights cannot be readily separated from the vehicle. The rigging box is a permanent attachment to the vehicle. It contains equipment needed to perform the essential functions of a crane. For these reasons, the Administrative Law Judge concludes that the vehicle's load cannot be readily dismantled or separated, and the permit was valid.

IV. Decision

IT IS HEREBY ORDERED that the overweight or oversize assessment made in this case be **REVERSED**. Respondent shall pay Petitioner the sum of \$2,090.00. Either party may file a motion for reconsideration of this decision within 10 days of the entry of the decision pursuant to OSAH Rule 28.

SO ORDERED this 9th day of September 2010.


M. PATRICK WOODARD JR.
Administrative Law Judge