

DIVISION OF MOTOR VEHICLES,
Petitioner,
v.
JOSEPH E. EGAN,
Respondent.

Initial Decision: January 3, 1984

Final Agency Decision: February 9, 1984

Supreme Court of New Jersey Decision

Appears at: 103 *N.J.* 350 (1986)

Selected for publication in *N.J.A.R.* because the
court appeal of this case was published.

SYNOPSIS

The Division of Motor Vehicles proposed suspending respondent's driving privileges for six months. Respondent requested a hearing and the matter was transmitted to the Office of Administrative Law.

Respondent, a New Jersey resident, had his reciprocity driving privileges suspended in Ohio for failing to submit to a breath alcohol test. The Ohio suspension permitted respondent to drive within the state in the course of his employment. New Jersey proposed to suspend respondent's driving privileges because of the Ohio incident. One of respondent's arguments was that New Jersey must give full faith and credit to the terms of the Ohio suspension by allowing him to drive for occupational purposes.

The administrative law judge assigned to the case concluded that the Division was not required to impose the same suspension applied in another state. *N.J.S.A.* 39:5-30.1 gives the Division discretion to impose either the suspension applied in the other state or the penalty that would apply in New Jersey. The penalty in New Jersey for respondent's offense is a six-month suspension and participation in an alcohol education or rehabilitation program. The administrative law judge ordered that respondent was subject to the New Jersey penalty.

Upon review, the Director of the Division of Motor Vehicles affirmed this initial decision. When there has been a foreign state drinking-driving conviction and/or suspension, the policy of the Division is to impose the same penalty as if the offense had taken place in New Jersey. The purpose is to provide uniformity and equity

in the imposition of penalties for New Jersey licensees, regardless of where the violation occurred.

The Appellate Division affirmed the six-month suspension but remanded the matter to the Director of the Division of Motor Vehicles to reconsider the request for occupational driving privileges. The New Jersey Supreme Court affirmed part of the judgment; the portion of the decision remanding the matter was reversed.

Division of Motor Vehicles, unrepresented

Peter T. Harris, Esq., for respondent (Einhorn, Harris & Platt, attorneys)

SUKOVICH, ALJ:

This matter concerns a proposal by the director of the Division of Motor Vehicles to suspend the driving privileges of Joseph E. Egan for six months. By notice dated March 8, 1983, the Division proposed to suspend respondent's driving privileges effective March 23, 1983 pursuant to *N.J.S.A.* 39:5-30, 5-30.1, and 3-10. The reason stated on the notice for the suspension was that respondent refused to submit to a breath chemical test in the State of Ohio on December 8, 1982. Respondent requested a hearing, and the matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to *N.J.S.A.* 52:14F-1 *et seq.*

A hearing was held in Newark, New Jersey, on November 3, 1983. The record was closed on November 17, 1983, the date of receipt of a legal memorandum submitted on behalf of respondent. Attached herewith is a list of the exhibits and witnesses.

Respondent was the only witness testifying at the hearing. It is clear that the material facts are not in dispute. Based upon a review of the entire record, I **FIND** the following to be facts.

By notice dated November 18, 1982, the Ohio Bureau of Motor Vehicles proposed to suspend respondent's driving privileges for six months effective December 8, 1982 for a failure to submit to a breath alcohol test within the State of Ohio on October 14, 1982. The notice also stated that respondent could petition for a hearing within 20 days. On December 6, 1982, respondent requested a hearing in Ohio and subsequently appeared before a judge in that state. Although the nature of the proceedings is not entirely clear from the record, it

appears that respondent pleaded guilty to speeding and was found to have refused a breath test. As a result, respondent's driving privileges in Ohio were suspended, with limited driving privileges, for six months effective May 26, 1983. Respondent was allowed to drive within the State of Ohio in the course of his employment. Respondent was represented by counsel in Ohio.

Respondent lives in Landing, New Jersey and is employed as a driver of a tractor trailer for CBS television.

Whenever the reciprocity driving privileges of a New Jersey resident are suspended in another state upon a conviction of a violation of that state's motor vehicle statutes, and the report of such conviction is transmitted to the Division pursuant to any law providing for reciprocal exchange, the Division may suspend or revoke the driving privileges of the motorist in New Jersey, *N.J.S.A.* 39:5-30.1. The Division has discretionary authority to suspend the motorist's driving privileges for a period not less than that for which the reciprocity driving privileges were suspended or revoked in the other state nor more than the period for which the driving privileges would have been suspended or revoked had a conviction of a like offense occurred in this State, *Id.* At the time of the incident in question, October 14, 1983, the period of suspension applicable in New Jersey for failure to submit to a chemical breath test was six months. In addition, the motorist was required to participate in an alcohol education or rehabilitation program approved by the Division as a prerequisite to restoration of driving privileges. *N.J.S.A.* 39:4-50.4.

The Division also has broad discretion pursuant to *N.J.S.A.* 39:5-30 to suspend a motorist's driving privileges for a violation of any of the provisions of the motor vehicle statutes or for "any other reasonable grounds." Pursuant to *N.J.S.A.* 39:5-30, a conviction in a court is not a condition prerequisite to the exercise of the Division's discretionary authority, and a suspension may be imposed even if the licensee has not been prosecuted or has been acquitted. *Atkinson v. Parsekian*, 37 *N.J.* 143 (1962). *Howe v. Strelecki*, 98 *N.J. Super.* 513 (App. Div. 1968). However, the Division's reliance upon *N.J.S.A.* 39:3-10 is misplaced. On its face, that provision mandates that an individual cannot drive in New Jersey unless he has been duly licensed by the Division. It also sets forth procedures regarding licensing and relicensing of individuals and makes it an offense to operate a motor vehicle without a valid driver's license. It does not give the Division authority to suspend a motorist's driving privileges on the basis of reciprocity.

Respondent argues, through his counsel, that the Division cannot give full faith and credit to the Ohio conviction because the Ohio proceedings placed the burden of proof in the hearing upon respondent, thereby violating his due process rights. Respondent also argues that if a suspension is effected in New Jersey, the Division is required to give full faith and credit to the terms of the suspension imposed in Ohio, which would result in a suspension with an allowance to drive for occupational purposes. I am not persuaded by these arguments.

Ohio's implied consent law, *O.R.C.* §4511.19.1, places the burden of proof upon the motorist who seeks reversal of an order of the Bureau of Motor Vehicles suspending his driver's license. These proceedings are deemed to be civil and administrative in nature. *Hoban v. Rice*, 220 *App.* 2d 130, 250 *N.E.* 2d 136 (1970). *Accord*, *Andrews v. Turner*, 520 *S.* 2d 31, 368 *N.E.* 2d 1253 (1977). Ohio courts have held that the Ohio implied consent statute is on its face constitutional, *In re Williamson*, 470 *O.* 2d 125, 246 *N.E.* 2d 618 (C.P. 1969). The licensee can appeal to an appropriate court concerning whether the application of the law to him was constitutional. *Williamson*, *supra*.

As discussed, the Ohio implied consent statute has been found constitutional by Ohio courts. Respondent's argument that he was denied due process in Ohio therefore has no merit. In addition, any appeal and remedy sought by respondent in that regard should have been pursued in the Ohio courts. Although not stated as explicitly as in the Driver's License Compact, *N.J.S.A.* 39:5D-1 *et seq.*, the reciprocity statute, *N.J.S.A.* 39:5-30.1, embodies an apparent public policy that compliance with motor vehicle laws is a requirement for continued licensure, regardless of the jurisdiction in which the violation is operated. To allow a motorist to attack collaterally a proceeding or judgment in a sister state would make a nullity of the reciprocity statute. The basis for the Division's authority to suspend pursuant to this statute in this proceeding is the Ohio conviction for refusal to submit to a breath test. For the foregoing reasons, I **CONCLUDE** that the Division is not precluded from suspending respondent's driving privileges pursuant to *N.J.S.A.* 5-30.1 because the Ohio implied consent act placed the burden of proof upon respondent.

N.J.S.A. 39:5-30.1 clearly gives the Division discretionary authority to impose either the suspension applicable in the sister state or the suspension which would apply in New Jersey. Where the wording of a statute is clear and explicit, it must be given no interpretation other than that called for by the express words set forth,

Duke Power Co. v. Patten, 20 *N.J.* 42 (1955). I **CONCLUDE** that the Division is not required to impose the suspension imposed upon respondent in Ohio if a suspension is imposed in New Jersey.

Respondent also argues that the proposed suspension should not be implemented because it is clear from the procedural history of this case that the Division obviously did not exercise discretion but sought to suspend respondent's driving privileges based upon a policy of a uniform and automatic suspension. In this respect, respondent notes that the Division's proposed notice of suspension was sent prior to the actual suspension of respondent's driving privileges in Ohio. Although the Division may have acted prematurely in sending the notice of suspension based upon receipt of the November 18, 1982 Ohio notice, I am not persuaded that such a uniform policy is unreasonable on its face. In this respect, I note that the Division has subsequently adopted regulations providing that out-of-state convictions for a failure to submit to a breath test shall be given the same effect as if such conviction or administrative determination occurred in this State. 15 *N.J.R.* 1010 and 1481. However, I do not rely upon this regulation because it was effective subsequent to the date of the incident in question and the Division's proposed notice of suspension. Respondent was not prejudiced by the fact that the Division sent the notice prior to the actual hearing in Ohio in light of the fact that he was found ultimately to have refused to take a breath test in Ohio. The only apparent remedy which could be applied would be for the State of New Jersey to have waited until the actual suspension in Ohio prior to seeking to suspend respondent's driving privileges in New Jersey, which action would have resulted in a delay in the administrative hearing in New Jersey.

Although respondent is no doubt dependent upon the ability to drive for his current employment, the record is devoid of evidence concerning whether or not it is likely he would be fired if his driving privileges are suspended, or of the details of his financial status. In contrast to New Jersey's implied consent act, *N.J.S.A.* 39:4-50.2 *et seq.*, the Ohio statute explicitly provides for suspensions with occupational driving privileges, *O.R.C.*, §4511.19.1(5).

In *Fosgate v. Strelecki*, 103 *N.J. Super.* 435 (App. Div. 1968), *aff'd* 53 *N.J.* 55 (1968), a police officer who was involved in a fatal accident was granted occupational driving privileges pursuant to a suspension because he was a member of the police force of a small municipality which had an entirely motorized police force. There are no public

policy reasons in this case for granting respondent occupational driving privileges. In light of the public policy embodied in the statute in the Division's apparent policy of providing uniform suspensions, which policy should be given weight if not clearly unreasonable, I **CONCLUDE** that respondent's driving privileges should be suspended for six months as proposed by the Division.

Based upon the above findings and conclusions, it is hereby **ORDERED** that respondent's driving privileges be suspended for 180 days beginning on the 61st day from the date of this decision. It is further **ORDERED** that respondent submit his driver's license to the Driver Improvement Bureau, 25 South Montgomery Street, Trenton, New Jersey 08666, no later than the effective date of the suspension. Finally, it is **ORDERED** that respondent's driving privileges not be restored until such time as he successfully completes a program of alcohol rehabilitation or education satisfactory to the Division.

This recommended decision may be affirmed, modified or rejected by the **DIRECTOR OF THE DIVISION OF MOTOR VEHICLES, Clifford W. Snedeker**, who by law is empowered to make a final decision in this matter.

FINAL DECISION BY THE DIRECTOR OF THE DIVISION OF MOTOR VEHICLES, CLIFFORD W. SNEDEKER:

The Division of Motor Vehicles hereby determines the matter concerning the proposed suspension of the driving privileges of Joseph E. Egan as a result of his conviction in the State of Ohio for his refusal to submit to the breath test, pursuant to the authority contained in *N.J.S.A.* 39:5-30, *N.J.S.A.* 39:5-30.1 and *N.J.S.A.* 39:3-10. Prior to this final determination, I have reviewed the administrative law judge's initial decision. Based upon the record presented, I shall affirm the administrative law judge's initial decision.

In respondent's letter of exceptions, he alleges that the Division of Motor Vehicles has failed to exercise sound discretion by adopting a blanket policy of imposing suspensions on all New Jersey licensees convicted of an out-of-state drinking-driving offense without evaluating each case on its merits. Further, respondent contends that if the Division of Motor Vehicles determines that there exists reasonable grounds for the suspension of his New Jersey driving privileges, based upon his out-of-state drinking-driving conviction, the Division must grant full faith and credit to the Ohio Court's determination and grant respondent a conditional license for occupational purposes.

The record indicates that respondent's Ohio reciprocity driving privileges were suspended and he was granted a conditional license for occupational purposes during his period of suspension. Said suspension was reported to the Division of Motor Vehicles and constitutes reasonable grounds for the suspension of a motorist's New Jersey driving privileges. *Tichenor v. Magee*, 4 *N.J. Super.* 467, 471 (App. Div. 1949). See also, *Farrell v. Strelecki*, 88 *N.J. Super.* 221, 222-223 (App. Div. 1965); *Hinnekins v. Magee*, 135 *N.J.L.* 537 (Sup. Ct. 1947). I therefore conclude that pursuant to *N.J.S.A.* 39:5-30(a) and *N.J.S.A.* 39:5-30.1, said Ohio suspension and conviction warrants the suspension of respondent's New Jersey driving privileges.

As to the penalty to be imposed, I note that when there has been a foreign state drinking-driving conviction and/or suspension in a noncompact member state, the policy of the Division of Motor Vehicles is to impose the same penalty as if the offense had taken place in New Jersey. The purpose is to provide uniformity and equity in the imposition of suspensions of New Jersey licensees for drinking-driving convictions in all states, without regard to the penalties of the state where the alcohol-related offense occurred. Pursuant to the applicable New Jersey statute which was in effect at the time of respondent's arrest, i.e., *N.J.S.A.* 39:4-50.4a, respondent would be subject to a mandatory license suspension of six (6) months for a first offense.

I note parenthetically that the Division's policy of imposing the same suspension upon a New Jersey licensee convicted and/or suspended in a foreign state for a drinking-driving violation is now set forth in *N.J.A.C.* 13:19-11.1. This regulation embodies one of the major objectives of both the executive and legislative branches of government in New Jersey, that is, to discourage motorists from drinking and driving. See, *In re Kallen*, 92 *N.J.* 14, 28 (1983).

As to respondent's other exceptions, I find that they were either amply dealt with by the administrative law judge or they are devoid of merit.

It is, therefore, on this 9th day of February, 1984, **ORDERED** that the driving privileges of Joseph E. Egan be and the same are hereby suspended for a period of six (6) months.

It is further **ORDERED** that Joseph E. Egan complete an alcohol education or rehabilitation program.

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