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September 15, 2025

Via Electronic Filing

The Honorable Dean R. Marcolongo, J.S.C.
Atlantic County Courthouse
1201 Bacharach Boulevard
Atlantic City, NJ 08401

Re: New Jersey Turnpike Authority v. Devon Tyler Barber
Docket No.: ATL-DC-007956-25
Our File No.: 4320-73

Dear Judge Marcolongo,

This office is counsel to the Plaintiff, New Jersey Turnpike Authority ("NJTA"), in the above-referenced matter. Please accept this letter brief, in lieu of a more formal submission, in opposition to Defendant's Motion to Dismiss Plaintiff's Complaint. As is clear from a review of the Complaint, it is undeniable that as a result of Plaintiff's repeated toll violations, a cause of actions has been stated. As such, it is respectfully submitted that the Defendant's motion be denied.

The New Jersey Supreme Court set forth the standard for evaluating a motion pursuant to R. 4:6-2(e) over 30 years ago in Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989). The Supreme Court recognized that in reviewing the motion, it must be mindful of the test for determining the adequacy of a pleading: whether a cause of action is "suggested" by the facts. Id. citing Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988).

In reviewing a complaint…a court's inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint. Id. citing Rieder v. Department of Transp., 221 N.J. Super. 547, 552 (App.Div.1987). However, a reviewing court "searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Id. citing Di Cristofaro v. Laurel Grove Memorial Park, 43 N.J. Super. 244, 252 (App.Div.1957). At this preliminary stage of the litigation the Court is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint. Id. citing Somers Constr. Co. v. Board of Educ., 198 F. Supp. 732, 734 (D.N.J.1961). For purposes of analysis plaintiffs are entitled to every reasonable inference of fact. Independent Dairy Workers Union v. Milk Drivers Local 680, 23 N.J. 85, 89 (1956). The examination of a complaint's allegations of fact required by the aforestated principles should be one that is at once painstaking and undertaken with a generous and hospitable approach. Printing Mart-Morristown 116 N.J. at 746 (1989). Further, if the Court decides that the complaint should be dismissed as to Defendant, such dismissal should be without prejudice as to a Plaintiff's filing of an amended complaint. Id at 772.

Succinctly stated, the Court's task is to search the complaint to determine whether a cause of action exists. Craig v. Suburban Cablevision, Inc., 140 N.J. 623 (1995). New Jersey courts approach with considerable judicial reluctance and great caution applications for dismissal under R. 4:6-2 (e) for failure of a complaint to state a claim upon which relief can be granted. Printing Mart-Morristown 116 N.J. at 771-72. In fact, our Supreme Court has continuously declared that such motions on R. 4:6-2 (e) are to be granted only in the rarest of instances. Banco Popular North America v. Gandi, 184 N.J. 161, 165, (2005); Lieberman v. Port Authority of New York and New Jersey, 132 N.J. 76, 79 (1993).

On a R. 4:6-2 (e) motion litigants are entitled to a liberal interpretation of the contents of their pleadings and to the most favorable inferences that may be recently drawn there from. Berg v. State, 147 N.J. Super. 316, 319 App. Div., quoting Rappaport v. Nichols, 31 N.J. 188, 193 (1959), certif. denied, 75 NJ 11 (1977). Moreover, the litigant 's obligation in response to a motion to dismiss is "not to prove the case but only to make allegations which if proven would constitute a valid cause of action." Sickles v. Cabbot Corp., 379 N.J. Super. 100, 106 (App. Div. 2001). The court need not address the litigant's ability to prove those facts when conducting its review of a motion to dismiss, the relative strength of the litigant' s claims is irrelevant to the court's analysis. Id.

In light of the standard of review, and "the extraordinarily limited scope of R. 4:6-2(e), these motions are rarely if ever granted. See e.g. Lieberman, supra. 132 N.J. at 79. Such has long been the law of this State and "the continuing viability of these precepts is not open to question. Leon v. Rite Aid Corp., 340 N.J. Super. 462, 466 (App. Div. 2001).

As set forth above, the Plaintiff's Complaint clearly sets out a cause of action based upon the repeated failure to pay the statutorily required tolls on the highways of the State of New Jersey.

Furthermore, Defendant's claims that the administrative fees imposed by Plaintiff NJTA for his respective toll violations are unreasonable and invalid are without merit. Defendant cites to the language in N.J.S.A. 27:23-34.3 that an administrative feel shall be "reasonable" and "based upon the actual cost of processing and collecting the violation." See N.J.S.A. 27:23-34.3(a). Likewise, Defendant further cites to the administrative code at N.J.A.C. 19:9-9.2(b), and claims that it requires the administrative fees to be tied to actual costs. However, N.J.A.C. 19:9-9.2(b) *actually* says that the administrative fee shall be "in the amount of $50.00 per violation or such other amount as may be established by duly adopted rule." See N.J.A.C. 19:9-9.2(b). Clearly, an

administrative fee in the amount of $50.00 per toll violation is expressly provided for in the administrative code, and the NJTA has not exceeded its authority, nor are its actions "ultra vires" as the Defendant claims.

As to whether the $50.00 administrative fee is "tied to actual costs" as required by N.J.S.A. 27:23-34.3(a), this issue has already been adjudicated at length by the Appellate Division. In Long v. New Jersey Turnpike Authority[1] the plaintiffs challenged the $50.00 administrative fees as excessive and exceeding the "actual cost" of the processing of toll violations. Long v. New Jersey Turnpike Authority, Not Reported in Atl. Rptr. (2023) 2023 WL 3362859. The New Jersey Appellate Division, affirming the trial court, found the $50.00 administrative fee per toll violation to be reasonable. The trial court concluded via NJTA's expert (who was found more credible than the Plaintiffs' expert), that the full cost to the NJTA for collection from toll violators included the following: 1.) fees paid to the contractor running the Customer Service Center; 2.) costs of toll lane maintenance; 3.) costs for the toll collection equipment; 4.) costs of the fiber optic network equipment; 5.) costs to maintain the toll collection equipment; 6.) costs to maintain the fiber optic network; 7.) transponder costs; 8.) costs associated with NJTA's internal staff; 9.) write-offs of uncollected tolls and violations. Long at *4. Based on this evidence, the court found the $50.00 administrative fee to be "based upon the actual cost of processing and collection a toll violation as mandated by statute," and that the regulation setting the imposition of an administrative fee was "clearly reasonable and is neither arbitrary nor capricious." Long at *8.

Thus, Defendant's contention that the administrative fees are unreasonable or invalid lacks any support in law. Instead, NJTA is fully within its statutory and regulatory authority to assess

[1] In accordance with R. 1:36-3, a copy of the opinion in Long v. New Jersey Turnpike Authority, Not Reported in Atl. Rptr. (2023) 2023 WL 3362859 has been annexed to the Certification of Counsel, filed concurrently with the Court, and served on the Defendant.

the $50.00 fees to toll violators. New Jersey courts should give "considerable weight to a state agency's interpretation of a statutory scheme that the legislature has entrusted to the agency to administer." In re Election law Enforcement Com'n Advisory Opinion No. 01-2008, 201 N.J. 254, 262 (2010). This deference stems from the understanding that a state agency will "bring experience and specialized knowledge to its task of administering and regulating a legislative enactment within its field of expertise." Id.

In light of that set forth above, Plaintiff has validly plead a cause of action against Defendant. Plaintiff's complaint alleges violations of the relevant New Jersey statute and administrative regulation that empowers the NJTA to assess tolls and administrative fees on toll violators. Defendant's contention that the administrative fees are unreasonable lacks any support in applicable law. Clearly, Defendant has failed to meet the stringent standard required to dismiss a complaint for failure to state a claim under R. 4:6-2(e). Likewise, Defendant's claim that Plaintiff's Complaint must be dismissed for lack of subject matter jurisdiction under R. 4:6-2(a) lacks any merit, and indeed, is not supported by any point of law. As such, it is respectfully requested that Defendant's Motion to Dismiss Plaintiff's Complaint be denied.

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NEW JERSEY TURNPIKE AUTHORITY **Plaintiff,** **v.** **DEVON TYLER BARBER** **Defendant.**	**SUPERIOR COURT OF NEW JERSEY** **ATLANTIC COUNTY – LAW DIVISION** **SPECIAL CIVIL PART** **DOCKET NO: ATL-DC-007956-25** **CIVIL ACTION** **CERTIFICATION OF SERVICE**

GREGORY F. KOTCHICK, ESQ. certifies that the Plaintiff New Jersey Turnpike Authority's Letter Brief in Opposition to Defendant's Motion to Dismiss Complaint and Certification of Counsel were this date electronically filed with the Court, and a copy of same was served via e-mail as follows:

DEVON TYLER BARBER
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e-mail: devon@tiller.earth

I certify that the foregoing statements made are true. I am aware that if any of the foregoing statements are knowingly false that I am subject to punishment.

DURKIN & DURKIN, LLC
Attorneys for Plaintiff
New Jersey Turnpike Authority

By: /s/ *Gregory F. Kotchick*
Gregory F. Kotchick

Dated: September 15, 2025

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NEW JERSEY TURNPIKE AUTHORITY, **Plaintiff,** **v.** **DEVON TYLER BARBER,** **Defendant.**	**SUPERIOR COURT OF NEW JERSEY** **ATLANTIC COUNTY – LAW DIVISION** **SPECIAL CIVIL PART** **DOCKET NO.: ATL-DC-007956-25** **CIVIL ACTION** **CERTIFICATION OF COUNSEL**

GREGORY F. KOTCHICK, of full age hereby certifies as follows:

1. I am an attorney-at-law admitted to practice in the State of New Jersey and am a partner in the law firm of Durkin & Durkin, LLC, attorneys for the Plaintiff, New Jersey Turnpike Authority ("Plaintiff") in the above-captioned matter. I am responsible for the day-to-day handling of this matter, and as such, I am competent to make this Certification and do so in support of Plaintiff's Opposition to Defendant's Motion to Dismiss the Complaint.

2. Annexed hereto as Exhibit A is a copy of the unpublished opinion of Long v. New Jersey Turnpike Authority, Not Reported in Atl. Rptr. (2023) 2023 WL 3362859, pursuant to R. 1:36-3.

I hereby certify that the foregoing statement made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

DURKIN & DURKIN, LLC
Attorneys for Plaintiff
New Jersey Turnpike Authority

Dated: September 15, 2025 By: /s/ *Gregory F. Kotchick*
Gregory F. Kotchick

EXHIBIT “A”

2023 WL 3362859
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of New Jersey, Appellate Division.

James LONG and Homer Walker, Petitioners-Appellants,
v.
NEW JERSEY TURNPIKE AUTHORITY, Respondent-Respondent.

DOCKET NO. A-1557-17
|
Argued February 4, 2019
|
Remanded March 8, 2019
|
Reargued May 3, 2023
|
Decided May 11, 2023

On appeal from the New Jersey Turnpike Authority.

Attorneys and Law Firms

Matthew Faranda-Diedrich argued the cause for appellants (Royer Cooper Cohen Braunfeld, LLC, attorneys; Matthew Faranda-Diedrich, Joshua Upin (Royer Cooper Cohen Braunfeld, LLC) of the Pennsylvania bar, admitted pro hac vice, and Alexander J. Nassar, on the briefs).

Christopher R. Paldino argued the cause for respondent (Chiesa Shahinian & Giantomasi, PC, attorneys; Christopher R. Paldino and Elisa M. Pagano, on the brief).

Before Judges Haas and Gooden Brown.

Opinion

PER CURIAM

***1** This is an appeal from the denial of a petition for rulemaking that petitioners James Long and Homer Walker filed with respondent, New Jersey Turnpike Authority (NJTA). Petitioners alleged that the $50 administrative fee that NJTA assessed for their toll violations (permitted by N.J.A.C. 19:9-9.2(b)) was excessive and exceeded the actual cost of processing and collecting a toll violation in contravention of N.J.S.A. 27:23-34.3(a).

On March 8, 2019, we remanded the matter to the Middlesex County Law Division for an evidentiary hearing on the issue of whether the $50 administrative fee was based upon the actual cost of processing and collecting a toll violation as mandated by statute. Long v. N.J. Tpk. Auth., No. A-1557-17 (App. Div. Mar. 8, 2019) (slip op. at 9-12) (Long I). At the conclusion of the remand proceedings, upon finding that NJTA's expert was more credible than petitioners' expert, the remand court issued a comprehensive written opinion concluding that the administrative fee was reasonable and comported with the statute.

Petitioners now contend that the remand court failed to follow the remand instructions, made unsupported factual findings, and applied the wrong legal standard. Having considered petitioners' contentions in light of the record and the applicable law, we conclude that the $50 administrative fee is based upon the actual cost of processing and collecting a toll violation, in compliance with N.J.S.A. 27:23-34.3(a); and that N.J.A.C. 19:9-9.2(b), the regulation setting the fee amount at $50, is neither arbitrary, nor capricious, nor unreasonable. Therefore, we affirm the NJTA's October 18, 2017 final decision, which denied petitioners' petition for a rule change and related relief.

I.

A. NJTA's Statutory Authority to Charge and Collect Tolls

NJTA is "a body corporate and politic" established in the Department of Transportation that owns and operates two express highways: the New Jersey Turnpike and the Garden State Parkway. N.J.S.A. 27:23-3(a); N.J.A.C. 19:9-1.1. It is "an instrumentality exercising public and essential government functions" which include "the acquisition, construction, operation, improvement, management, repair and maintenance of transportation projects." N.J.S.A. 27:23-3(a).[1] It may "make and enter into contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers." N.J.S.A. 27:23-6.1(a).

Of particular relevance to this appeal, N.J.S.A. 27:23-5(g) empowers NJTA to "charge and collect tolls, fees, licenses, rents, concession charges and other charges for each transportation project or any part thereof constructed or acquired by it." Absent limited exemptions, "[n]o vehicle shall be permitted to make use of any highway project or part thereof operated by the New Jersey Turnpike Authority ...

except upon the payment of such tolls, if any, as may from time to time be prescribed by the Authority." N.J.S.A. 27:23-25; N.J.A.C. 19:9-9.2(a). It is "unlawful for any person to refuse to pay, or to evade or to attempt to evade the payment of such tolls." Ibid.

***2** N.J.S.A. 27:23-34.2(a) authorizes NJTA to "adopt toll collection monitoring system regulations" which "shall include a procedure for processing toll violations and for the treatment of inadvertent violations." Those regulations provide that tolls must be paid "at the time of vehicle operation on the Roadway" in one of three ways: (1) "with United States currency in a staffed toll lane"; (2) with "United States coin in an 'Exact Change' lane"; or (3) "by means of an electronic toll collection system in a lane designated for E-ZPass." N.J.A.C. 19:9-1.19(b).

An electronic toll collection system or "ETC system" is "the electronic system employed or utilized by the Authority to register and collect the toll required to be paid for a vehicle entering a toll plaza owned and/or operated by, or upon the behalf of, the Authority." N.J.A.C. 19:9-9.1. It is "unlawful ... for any person to operate, or owner to permit to be operated, a vehicle in an 'E-ZPass Only' toll lane of the Roadway, unless the vehicle contains a functioning and registered [ETC] device compatible with the [ETC] employed or utilized by the Authority." N.J.A.C. 19:9-1.19(f).

NJTA identifies toll violations via its toll collection monitoring system, which is comprised of "a vehicle sensor, placed in a location to work in conjunction with a toll collection facility, that produces one or more photographs, one or more microphotographs, a videotape or other recorded images, or a written record, of a vehicle at the time the vehicle is used or operated in violation of the toll collection monitoring system rules." N.J.A.C. 19:9-9.1. It also includes "any other process that identifies a vehicle by photographic, electronic or other method." Ibid.

N.J.S.A. 27:23-34.3, "[v]iolations of toll collection monitoring system regulations; penalties," provides that "[i]f a violation of the toll collection monitoring system regulations is committed as evidenced by a toll collection monitoring system," the NJTA may request in writing via an "advisory and payment request [APR] within 60 days of the date of the violation" that the owner of a violating vehicle pay the proper toll along with "a reasonable administrative fee established by the authority and based upon the actual cost of processing and collecting the violation." N.J.S.A. 27:23-34.3(a). This process "provid[es] the owner with the opportunity to resolve the matter prior to the issuance of a summons and complaint that charges a violation of the toll collection and monitoring system regulations." Ibid.

"The [APR] shall contain sufficient information to inform the owner of the nature, date, time and location of the alleged violation." Ibid. N.J.A.C. 19:9-9.2(b) provides that "[u]pon receipt of the [APR], the owner of the violating vehicle shall pay to the Authority or its agent, the proper toll and an administrative fee in the amount of $50.00 per violation or such other amount as may be established by duly adopted rule." "[A]n owner that proves an inadvertent toll violation has occurred shall be required only to pay the toll." Ibid. An inadvertent toll violation "occurs when a person who enters a toll collection plaza and takes every reasonable action to pay the required toll ... is prevented by circumstances beyond his or her reasonable ability to control from paying the required toll." N.J.A.C. 19:9-9.1. That definition does not encompass:

> 1. Failure to have the coinage, currency or other authorized means necessary to pay the required toll;
>
> 2. Entering a dedicated ETC system lane with a vehicle that is not equipped for the electronic toll collection system; or
>
> ***3** 3. Failure to adequately deposit the full amount of the toll in a toll collection basket.
>
> [Ibid.]

B. Petitioners Receive APRs for Toll Violations

Petitioner Long is a resident of Virginia. Petitioner Walker is a resident of Florida. In 2015, they received APRs, also referred to as notices of violation, for E-ZPass toll violations in New Jersey. They "apparently paid the toll violations" and the administrative fees. Long I, slip op. at 2, 13.

Long received an APR (First Notice of Enforcement Action) dated August 26, 2015, from the South Jersey Transportation Authority (SJTA) concerning a toll violation that occurred on the Atlantic City Expressway on August 11, 2015. [2] The APR stated that the total amount due was $50.75 ($0.75 for the unpaid toll, $50 for the administrative fee). Walker received five APRs (First Notices of Enforcement Action) from NJTA between November and December 2015 for toll violations that occurred on the Garden State Parkway:

APR Date	Date of Toll Violations	Total Amount Due

11/3/15	10/18/15	$2 unpaid toll $50 admin fee
12/10/15	11/12/15	$1.50 unpaid toll $50 admin fee
12/10/15	12/3/15	$1.50 unpaid toll $50 admin fee
12/11/15	12/3/15	$1.50 unpaid toll $50 admin fee
12/16/15	12/9/15	$1.50 unpaid toll $50 admin fee

C. Petition for Rulemaking

Long and Walker's petition claimed that N.J.A.C. 19:9-9.2, "on its face and as applied," violates N.J.S.A. 27:23-34.3 "and is therefore invalid" in that the $50 administrative fee is neither reasonable nor based upon the actual cost of processing and collection a toll violation. NJTA denied the petition and published a Statement of Reasons in the New Jersey Register. 49 N.J.R. 3623(b) (Nov. 20, 2017). It concluded, after its Chief Financial Officer and Chief Information Officer took "a fresh look ... that $50 is a reasonable administrative fee considering all of the actual costs associated with the system of collecting tolls from violators." It further found that "the current administrative fee represents a substantial decrease, almost 38%, from the $80 calculated cost per violation."

NJTA explained that when the E-ZPass system was implemented in the late 1990's, it assessed a $25 administrative fee "to partially compensate it for the actual costs of pursuing toll violators." In 2011, it increased the administrative fee to $50 upon conducting "a limited financial analysis of some of the external costs associated with collecting tolls from toll violators," namely its payments for violations processing to ACS State and Local Solutions, Inc./Xerox State and Local Solutions, Inc., now known as Conduent State and Local Solutions, Inc. (Conduent). That limited financial analysis, which excluded other internal and external costs, yielded an actual cost per violation of $51.36.

***4** On February 1, 2017, NJTA's new contract with Conduent took effect. Under the new contract, Conduent's customer service representatives handle "both valid E-ZPass transactions and violation transactions." This "resulted in changes to the pricing terms and the calculation of the Authority's external costs related to collection of E-ZPass violations." Conduent now bills the NJTA under three categories: (1) a fixed fee for its Customer Service Center (CSC); (2) a per item transaction fee; and (3) a percentage share of the administrative fees it collected.

NJTA explained the ramifications of the new pricing terms as follows:

> While the combined service center approach and the "single account" concept have simplified the experience for E-ZPass customers, the new contract pricing parameters do not allow for a simple calculation of how much Conduent charges the Authority per E-ZPass violation or per administrative fee collected. Rather, the amounts billed to the Authority by Conduent for the processing and collection of toll violations that were previously billed as separate line items are now likely subsumed by the per item transaction fees now paid to

> Conduent pursuant to the new contract pricing parameters.

NJTA concluded that "[t]he entire toll collection system is interconnected and must be considered in its entirety, and the cost of the entire system must be taken into account in determining a reasonable administrative fee." It highlighted its use of sophisticated equipment as part of this process:

> [T]he entire system uses sophisticated electronic equipment, including radar, underground treadles, antennas, and cameras to detect and record each vehicle that travels through a toll plaza. That system reads transponders issued to E-ZPass account holders to debit those drivers' accounts. The system also determines if vehicles have violated the law by either passing through the E-ZPass toll lanes without having valid or sufficiently funded E-ZPass accounts or passing through the exact change lanes or the manual payment lanes without paying the required toll.

NJTA's equipment identifies toll violators at the toll plaza. The data captured by its equipment is sent to various NJTA servers and its own data center prior to transmission to Conduent's data center. Conduent's employees then review the data and either bill the customer's E-ZPass account for the unpaid toll, or, if the motorist does not have an E-ZPass account, mail an APR to the address it locates for the registered vehicle owner and attempts to collect the unpaid toll plus the administrative fee.

NJTA determined that "the full cost to the Authority for toll collection from potential toll violators includes" the following: (1) "Fees paid to Conduent for operation of the CSC"; (2) "Costs of toll lane maintenance"; (3) "Costs of the toll collection system equipment"; (4) "Costs of the Authority's fiber optic network equipment"; (5) "Costs to maintain the toll collection system equipment"; (6) "Costs to maintain the Authority's fiber optic network equipment"; (7) "Transponder costs"; (8) "Costs associated with the Authority's internal staff"; and (9) "Write-offs associated with uncollected tolls and toll violations."

Next, "to determine the cost of processing toll violations," NJTA "allocated total toll collection costs" in the following manner: 100% of costs specific to collecting tolls and administrative fees from violators; 50% of costs that NJTA is billed by Conduent for operating the CSC; and 5% of NJTA's other internal and external costs related to the toll collection system as a whole. In short, it reasoned that this allocation was appropriate because 50% of toll violators are later identified as E-ZPass customers, Conduent's CSC handles both violation-related and non-violation-related inquiries although violation inquiries take up more time, and toll violators account for about 5% of all toll transactions.

***5** In further support of its decision, NJTA included several exhibits that itemized how it calculated its actual cost to collect violations in 2010, its actual cost to collect violations in 2016, as well as its estimated cost to collect violations in 2017 under the new contract with Conduent.

D. Long I

In Long I, we held a remand was warranted because the "record [was] insufficient to support the calculation of the $50 fee as matching 'the actual cost of processing and collecting the violation' mandated by N.J.S.A. 27:23-34.3(a)." Long I, slip op. at 9. We instructed the remand court, pursuant to Rule 2:5-5(b), to conduct the remand proceedings as follows:

> [A] full evidentiary hearing is vital to explore the foundation for NJTA's assertion that the $50 fee is a "reasonable administrative fee considering all of the actual costs associated with the system of collecting tolls from violators." 49 N.J.R. 3623(b). That is, whether the $50 fee is "based upon the actual cost of processing and collecting the violation" under the authorizing statute. Such a hearing ideally should encompass expert testimony, cross-examination, and neutral judicial inquiry. At such a hearing, there should be ample findings of fact, including findings of credibility, and conclusions of law.
>
> [Id. at 11-12.]

Additionally, although this court questioned "the propriety" of petitioners' damages claims, we determined that the parties could address those claims on remand. Id. at 13.

E. Evidentiary Hearing on Remand

Beginning in June 2021, following more than two years of protracted discovery with oversight by a Special Discovery Master, the remand court conducted a six-day evidentiary hearing which featured both lay and expert testimony. The following witnesses testified: Jose Dios, Chief Information Officer (CIO) at NJTA; Donna Manuelli, Chief Financial Officer (CFO) at NJTA; Robert Williams, Program Manager for NJ E-ZPass at Conduent; Carlos Caraballo, Violations Manager for NJ E-ZPass at Conduent; Steven E. Turner, NJTA's expert; and Jonathan Peters, petitioners' expert. The parties submitted over 100 exhibits that included detailed budgetary and financial information from NJTA, NJTA's contract with Conduent, E-ZPass transaction data, and expert reports.

F. The Remand Court's Opinion

On January 7, 2022, the remand court rendered a comprehensive written opinion detailing its findings of fact and conclusions of law. The remand court concluded that the $50 administrative fee was reasonable and based upon the actual cost of processing and collecting a toll violation. Overall, it held that NJTA's cost analysis methodology, endorsed by Turner, NJTA's expert, was "more credible than ... [p]etitioners' model" and that petitioners were "not entitled to refunds or any further relief."

More specifically, the remand court found that "[b]etween 2016 and 2020, the NJTA conducted a review of its costs for processing and collecting toll violations" in order "to identify and allocate those costs that were directly associated with the collection of unpaid toll violations." NJTA determined the annual cost per violation as follows:

2016	$100
2017	$102
2018	$59
2019	$77
2020	$80

The remand court cited witness testimony from NJTA and Conduent employees "who provided background information on the processing and collection costs associated with toll violations that were used as the underlying evidence in their analysis." It observed that "NJTA's analysis was based on the premise that a toll 'violation' takes place when a customer's vehicle traverses a toll plaza, gantry, or exit point without properly registering a payment transaction."

***6** The remand court found that NJTA's ETC equipment, which it maintains, was crucial to the violations process as it photographs motorists' license plates when violations occur "to attempt to identify the registered owner of the vehicle." The remand court agreed with NJTA

> that a toll violation occurs at the time a vehicle goes through a toll lane and the toll is not collected; intent is irrelevant to this definition of a toll violation. The process to mitigate and collect the unpaid toll is clearly dependent on the equipment and resources employed by the NJTA and is not entirely predicated on the costs associated with their contractual relationship with Conduent. The financial allocations made by the NJTA to the equipment and resources used are reasonable and fall within the scope of accepted accounting principles.
>
> The financial analysis presented by the NJTA is not necessarily perfect; their own expert testified to modifications that both included and excluded some costs. Notwithstanding their expert's belief that the NJTA had utilized a conservative approach in determining the cost associated with processing and collecting a toll violation, the cost still exceeds the assessed $50 administrative fee.

The remand court determined that NJTA's methodology, supported by Turner, was reasonable, and described petitioners' expert Peters's proposed alternative methodology as "unduly restrictive and unreasonably narrow in its approach." It noted that in rendering his opinion, Turner "reviewed the NJTA's final action calculations," cost studies, and supporting "financial records and documents." It found that Turner, "[i]n contrast to Dr. Peters ... has very extensive prior involvement with toll roads" and "opined that the effort[s] to collect unpaid tolls involves much more than simply mailing an APR to the registered owner of the vehicle."

Indeed, the remand court found that Turner considered numerous other costs as part of the actual cost to process and collect a toll violation, including:

> a. cost of construction, installation, maintenance, and replacement of the infrastructure that captures, processes, and records violations;
>
> b. operating costs associated with image review, payment to contractors tasked with processing and collecting the violation and expenses incurred to oversee the violations process; and resolve disputes; and
>
> c. overhead costs, support costs, financing costs, cash reserves, and allowance for bad debt.

The remand court found that Turner described NJTA's direct cost methodology as "conservative" in that it excluded "other joint and common costs" that should have been included. It noted that while Turner's sensitivity analysis excluded or reduced certain costs that NJTA had included, it still yielded a cost per violation of $77.05 before adding in any joint and common costs.

As for Peters's opinion and proposed methodology, the remand court found that his "analysis was driven by the premise that the label of 'violator' is applicable only after a motorist is issued an [APR]." It reasoned that "[p]art of th[is] argument is premised on the notion that the only party involved in the collection of an unpaid toll is Conduent." It explained that Peters opined that only the fees Conduent receives for collecting administrative fees, i.e., the third component of the payment structure set forth in their contract, should be considered in determining the actual cost to process and collect toll violations. Thus, Peters determined that the " 'actual cost of processing and collecting a toll violation is $7.50, $10.00, or $20.00,' depending on whether the payment is made after the first, second, or third APR notice."

***7** The remand court found that Peters's analysis was flawed for several reasons. It cited the fact that "[c]onspicuously absent from Dr. Peters'[s] financial analysis were any costs associated with the [CSC], an entity that Conduent was required to establish pursuant to its contract with the NJTA" and further found that "[a] significant portion of the CSC's work is responding to and addressing issues related to unpaid tolls and fees." It further found that Peters's analysis "is completely devoid of any reference as to how the information in the APR was ascertained." In other words, Peters failed to account for the fact that, without the data collected via NJTA's equipment and infrastructure, Conduent cannot issue APRs to motorists.

The remand court also recognized that notwithstanding his narrowly-focused opinion, Peters conceded when testifying "that analyzing toll violation costs involves more than just merely sending out an APR" in that "there's a lot of technology and a lot of equipment and that equipment will have to be maintained and replaced." The court emphasized that "[a]lthough he did acknowledge that certain equipment would be necessary to establish a viable violation enforcement system," Peters "disregarded the NJTA's equipment when he opined that the cost of mailing APR notices was the sine qua non for determining the costs of a toll violation collection system."

In addition, the remand court found that Peters "buttressed his opinion in a further opinion that the costs of collecting toll violations are [already] included in the costs of the base toll rates." However, it recognized that "[t]his opinion was first proffered during testimony" and "not set forth in Dr. Peters'[s] expert report." Furthermore, it found that "[t]he evidence in support of this corollary opinion is scant and not particularly persuasive." It added that this approach would result in toll-paying motorists "subsidizing" violators and concluded that "[a] fair reading of the applicable statute would suggest this was not the intent of the New Jersey Legislature."

Regarding the 5% allocation percentage, the remand court cited Turner's determination that it "was a reasonable approach." It also found that NJTA's exhibits supported a finding that the manner in which it allocated its expenses was reasonable. It determined that NJTA's "figures were credible and based on records kept by the NJTA." As for the CSC, the remand court cited Turner's opinion that "the fifty-percent allocation for toll violations in calculating the costs associated with the [CSC] was too low."

Concerning NJTA's inclusion of the net uncollected tolls or leakage in its cost analysis, the remand court found that those costs are "inherent" in the ETC program and "are properly allocated to the overall costs of collecting tolls" based upon "a rational fiscal and policy decision within the authority of the NJTA." It rejected petitioners' claim that transponder errors "result in a higher number of violations" by citing Turner's testimony "that transponder readings are +99% accurate" and that NJTA proactively replaces the transponders.

As for the Toll-by-Mail program, the remand court found that it "was a unique stop-gap measure" that did not constitute "persuasive evidence as to the cost [of] the collection of unpaid tolls." It noted that the program was "instituted by the NJTA in the spring of 2020, at the height of the COVID-19-induced sequestration." In the interest of its employees' health and safety, "NJTA pulled all personnel from toll booths," which meant that motorists without an E-ZPass transponder had no way of paying tolls in cash at the toll lane. To collect these unpaid tolls, Conduent employees reviewed the photographs of the motorists' license plates—obtained via NJTA's existing ETC system equipment and transmitted to Conduent—to identify the motorists and mailed them a bill.

***8** The remand court further found that because the Toll-by-Mail program was "outside the scope" of Conduent's existing contract with NJTA, "negotiations began to determine how the costs of this additional responsibility would be allocated." It concluded that these negotiations "were analogous to settlement discussions" and "not truly evidential on the issue of the inherent costs for collecting toll violations." Even more, it determined that "the final cost agreement between the NJTA and Conduent did not capture the full scope of the cost of collecting unpaid tolls during this period" because "[t]he mailing costs associated with the Toll-By-Mail notices were not reflective of the infrastructure costs that existed both prior to and after the termination of this program."

Based upon the testimony and the financial records in evidence, the remand court concluded that "the $50 administrative fee is neither a fine nor represents unauthorized 'profit' " and found that credible testimony from NJTA's witnesses regarding its efforts to collect tolls without assessing administrative fees "significantly undermine[d]" petitioners' claims "that the NJTA is engaged in either profiteering or assessing fines." In the end, the remand court credited Turner's testimony that NJTA's cost study "was appropriate and relied on reasonable assumptions, allocations and methodologies" and his conclusion "that the costs connected to processing toll violations exceeded the $50 administrative fee," thereby establishing the fee's reasonableness and compliance with the governing statute.

II.

In Long I, we set forth our governing standard of review as follows:

> We owe no deference to a regulation that runs contrary to its authorizing statute. In re Regulation of Operator Serv. Providers, 343 N.J. Super. 282, 327 (App. Div. 2001). The fee imposed must properly be based on the average cost of processing and collection of unpaid tolls and may not be an arbitrary estimation. The basis for the fee must substantiate the need to mitigate the cost of collection, and not to assess a disguised fine. Compare Fee, Black's Law Dictionary (9th ed. 2009) (defining fee as "a charge for labor or services"), with Fine, Black's Law Dictionary (9th ed. 2009) (defining fine as "a pecuniary criminal punishment or civil penalty").
>
> We recognize that "[a] regulation adopted by a state agency is presumed to be reasonable and valid." In re Repeal of N.J.A.C. 6:28, 204 N.J. Super. 158, 160 (App. Div. 1985). "If procedurally regular, it may be set aside only if it is proved to be arbitrary or capricious or if it plainly transgresses the statute it purports to effectuate, or if it alters the terms of the statute or frustrates the policy embodied in it." Id. at 160-61 (citations omitted). Here, the regulation needed to meet two requirements; it had to be (1) "reasonable" and (2) "based upon the actual cost of processing and collecting the violation." N.J.S.A. 27:23-34.3(a).
>
> [Long I, slip op. at 10-11.]

Applying this standard, we conclude that NJTA's $50 administrative fee is based upon the actual cost of processing and collecting a toll violation as mandated by statute. Under the circumstances presented in this case, as found by the remand court in its comprehensive opinion, the regulation is clearly reasonable and is neither arbitrary nor capricious. Therefore, we affirm the NJTA's denial of petitioners' petition for rulemaking.

III.

In reaching this conclusion, we considered, but rejected, each of the arguments petitioners raise in their supplemental brief. In Point I, petitioners argue that the remand court failed to follow the remand instructions in that it: (1) "failed to use the established record to make ample findings of fact and conclusions of law"; (2) misunderstood its role because it "believed that [it] was charged with determining 'if the $50 administrative fee complies with' the enabling statute"; and (3) "rejected the typical preponderance of the evidence standard."

***9** When adjudicating a matter returning to the Appellate Division following a remand, the scope of our review is limited. Deverman v. Stevens Builders, Inc., 35 N.J. Super. 300, 302 (App. Div. 1955). "It is not [the Appellate Division's] function ... to allow a collateral review of the first decision of this Division but only to adjudge whether it has been complied with." Ibid. "The ruling on the first appeal is the law of the case." Ibid. "It is the peremptory duty of the trial court, on remand, to obey the mandate of the appellate tribunal precisely as it is written." Jersey City Rede v. Agency v. Mack Props. Co. No. 3, 280 N.J. Super. 553, 562 (App. Div. 1995).

In accordance with the remand instructions in Long I, the remand court's written opinion contains ample findings of fact based upon the evidentiary hearing record as to the reasonableness of the $50 administrative fee, as well as related conclusions of law. The remand court made factual findings concerning, but not limited to, the ETC process; the roles of NJTA employees and Conduent employees; violation processing and collection costs; the Conduent contract; Conduent's CSC; and the Toll-By-Mail program. It discussed the critical expert testimony at length, assessed the experts' credibility, and analyzed whether the $50 administrative fee comported with the authorizing statute.

Petitioners' assertion that the remand court misunderstood its role is belied by the plain language of our remand instructions, which specifically instructed the court to render conclusions of law on the issue of "whether the $50 fee is 'based upon the actual cost of processing and collecting the violation' " under the authorizing statute. Long I, slip op. at 11-12. Contrary to petitioners' claims, nothing in the record suggests that the remand court had a "flawed starting belief that [it] was sitting as the reviewing court."

The remand court applied the correct legal standard and properly rejected petitioners' contention that a preponderance of evidence standard applied. Respecting the law of the case, the remand court recognized that it was tasked with determining whether the regulation setting the $50 administrative fee was "reasonable" and "based upon the actual cost of processing and collecting the violation" in accordance with the authorizing statute. Long I, slip op. at 11. Its opinion quoted the arbitrary and capricious standard expressed in Long I. Id. at 10-11.

The preponderance of evidence standard urged by petitioners does not apply to this inquiry and its application would have contravened the remand instructions that the remand court was required to follow. See N.J. Ass'n of Sch. Adm'rs v. Schundler, 211 N.J. 535, 548 (2012) ("[T]he party challenging a regulation has the burden of proving that the agency's action was 'arbitrary, capricious or unreasonable.' ") (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)). Although the remand proceedings were conducted in the Law Division, they involved a final agency decision and not a civil judgment.

Therefore, we are satisfied that the remand court followed our instructions in all respects.

IV.

In Points II through VIII, petitioners contend that certain factual findings made by the remand court are unsupported by the record, including those pertaining to: (1) the respective roles of NJTA and Conduent employees; (2) NJTA's methodology to determine the actual cost of processing and collecting toll violations; (3) the CSC; and (4) the Toll-By-Mail program. For the reasons that follow, we conclude the remand court made only one mistake in its findings of fact, and that was concerning the roles of NJTA and Conduent employees in the process of collecting toll violations. However, this error was harmless and had no impact upon the viability of the remand court's ultimate findings.

***10** "When error in factfinding of a judge or administrative agency is alleged, the scope of appellate review is limited." Cannuscio v. Claridge Hotel & Casino, 319 N.J. Super. 342, 347 (App. Div. 1999). An appellate panel "will decide whether the findings made could reasonably have been reached on 'sufficient' or 'substantial' credible evidence present in the record considering the proofs as a whole." Ibid. "Deference must be given to those findings of the trial judge which are substantially influenced by [the] opportunity to hear and see witnesses and to have the feel of the case." Ibid.

In particular, "[a]ppellate courts should defer to trial courts' credibility findings that are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463, 474 (1999). See also Walid v. Yolanda for Irene Couture, 425 N.J. Super. 171, 179 (App. Div. 2012) (holding that "the scope of appellate review is expanded when the alleged error on appeal focuses on the

trial judge's evaluations of fact, rather than his or her findings of credibility"). However, if a reviewing court is "thoroughly satisfied that the findings and the ultimate conclusions are clearly mistaken and so plainly unwarranted that the interests of justice demand intervention and correction, [it] should appraise the record as if ... deciding the matter at inception and make [its] own findings and conclusions." Pioneer Nat'l Title Ins. Co. v. Lucas, 155 N.J. Super. 332, 338 (App. Div.), aff'd, 78 N.J. 320 (1978). Accord N.J. Div. of Youth & Fam. Servs. v. N.M., 438 N.J. Super. 419, 429 (App. Div. 2014).

Petitioners assert in Point II that the remand court incorrectly determined that the majority of the processing and collecting of toll violations was done by NJTA employees. Specifically, it found that NJTA employees: (1) "review[ ] a photographic image of the license plate"; (2) "conduct[ ] research to identify the registered owner of the vehicle that committed a violation"; and (3) charge the unpaid toll to the customer's E-ZPass account, if the violator is an account holder, or conduct further research to identify the violator through MVC records if no account is found. The court also found that Conduent employees mail APR notices to registered owners of vehicles and refer violations to a collection agency if the toll remains unpaid after three attempts to collect it.

Petitioners assert that the remand court's findings that NJTA employees "are responsible for many of the toll processing and collecting" tasks are unsupported by, and instead contradicted by, undisputed facts in the record. We agree. [3]

The remand court's findings in this regard are clearly mistaken. The record reflects that Conduent employees, not NJTA employees, perform the image review, research, and billing functions pursuant to Conduent's contract with NJTA. Dios testified that upon receiving data collected via NJTA's equipment, Conduent employees review the photographic image files, conduct research to identify registered owners of violating vehicles, and either bill the violator's existing E-ZPass account or send out an APR in an effort to collect the unpaid toll. Williams testified that Conduent's CSC staff researches disputes, performs image review, locates registered vehicle owners, and processes toll payments. The Request For Proposal's Scope of Work, incorporated into the Conduent contract, confirms that Conduent is responsible for image processing, registered vehicle owner identification, and the posting of toll transactions.

***11** However, this mistake does not require a remand. Under the unique circumstances presented here, we exercise our original jurisdiction under Rule 2:10-5 to correct the remand court's fact-finding errors on this single topic. Pioneer, 155 N.J. Super. at 338. Rule 2:10-5 provides that "[t]he appellate court may exercise such original jurisdiction as is necessary to the complete determination of any matter on review." Indeed, the Supreme Court has endorsed the appellate court's exercise of original fact-finding jurisdiction in a "clear case where there is no doubt about the matter." Rova Farms Resort, Inc. v. Invs. Ins. Co., 65 N.J. 474, 484 (1974).

Here, it is appropriate to exercise original fact-finding jurisdiction to resolve this limited issue. In Long I, slip op. at 12, we recognized this litigation's "wide-spreading" effect on the public interest. Additionally, the NJTA concedes that the "image review tasks mistakenly identified by the trial court as being performed by NJTA are actually performed by Conduent." In other words, the division of labor between the NJTA and Conduent was, and remains, clear and undisputed. Moreover, "the record is adequate" to permit fact-finding on this limited issue and "considerations of efficiency ... militate in favor of bringing [this] dispute to a conclusion" as opposed to remanding it a second time. Price v. Himeji, LLC, 214 N.J. 263, 294-95 (2013).

Petitioners' contention on appeal that the remand court's fact-finding error on this single issue "permeate[d] the rest of the conclusions reached" and "infect[ed]" the "entire opinion" is unavailing. The sole question to be resolved on appeal is whether the $50 administrative fee specified in N.J.A.C. 19:9-9.2(b) is based upon the actual cost of processing and collecting a toll violation. Regardless of whether NJTA or Conduent is responsible for performing certain tasks, the actual cost of processing and collecting toll violations—as demonstrated through ample evidence in the record—does not change. And, as the NJTA clearly demonstrated through its proofs, the $50 administrative fee exceeded the actual cost of processing and collecting toll violations. Thus, the fee was clearly appropriate. Long I, slip op. at 9.

We have carefully reviewed petitioners' other claims of factual errors by the remand court. However, we discern no basis for them. Contrary to petitioners' contentions, the remand court fully explained why he found Turner's expert explanation of NJTA's methodology for determining the actual cost of processing and collecting toll violations to be more persuasive than that offered by Peters, who was petitioners' expert. In addition, the remand court properly

gave deference to the NJTA's interpretation of the laws governing the collection process. See Metromedia, Inc. v. Dir., Div. of Tax'n, 97 N.J. 313, 327 (1984).

We are also satisfied that the remand court's findings regarding the CSC were supported by substantial, credible evidence in the record. We also detect no errors in the court's consideration of the relevance of the Toll-By-Mail program to the determination of the reasonableness of the $50 administrative fee. Therefore, we reject petitioners' contentions on these points.

V.

In Point IX, petitioners argue that the remand court did not consider the entire record of Turner, NJTA's expert, before determining that his opinions were more persuasive than those proffered by their expert. However, the remand court had the prerogative to find the expert opinions of Turner more credible than those of Peters. City of Long Branch v. Liu, 203 N.J. 464, 491-92 (2010); Angel v. Rand Express Lines, Inc., 66 N.J. Super. 77, 85-86 (App. Div. 1961) (recognizing the trier of fact's ability to accept, in full or in part, the testimony of one expert over another).

***12** Contrary to petitioners' contentions, the remand court considered the evidence they submitted concerning Turner's prior "actual cost analysis" work in other cases, but appropriately assigned it little or no evidentiary weight in light of the "evidentially grounded assessment" he presented on the reasonableness of the $50 administrative fee in this case. Therefore, petitioners' contention lacks merit. [4]

VI.

In Point X, plaintiffs assert that because the remand court allegedly "failed to use" the evidentiary record when rendering its factual findings and legal conclusions, this court should "appraise the record and mak[e] its own findings and conclusions." In Point XI, petitioners contend that this matter should be remanded for another evidentiary hearing before a different trial judge. We reject both contentions.

As discussed above, the remand court made ample findings of facts that are supported by the evidentiary record, correctly applied the law, and drew pertinent legal conclusions. As required by Long I, the record is clearly sufficient to enable us to reach an "informed ultimate resolution of the competing interests at stake" in this matter. Long I, slip op. at 12.

For these same reasons, the relief petitioners seek in Point XI is clearly not warranted. The remand court followed the remand instructions as evidenced by the hearing record and its written opinion. Petitioners are clearly not entitled to "another bite of 'this thoroughly chewed apple.' " Sipko v. Koger, Inc., 251 N.J. 162, 191 (2022) (quoting Whitfield v. Blackwood, 101 N.J. 500, 500 (1986) (Clifford, J., concurring)). [5]

VII.

Finally, we address the impact, if any, of L. 2023, c. 7 (the Act), which took effect February 2, 2023, on the issues presented in this appeal. Petitioners raised this issue shortly before the first scheduled date of oral argument by submitting a letter to the court pursuant to Rule 2:6-11(d)(1). We thereafter directed the parties to submit supplemental briefs.

Petitioners argue the new legislation should be applied retroactively, and that, so viewed, the Act supports their position that: (1) a violation requires intentional conduct by a motorist to evade a toll; and (2) because a violation can only occur after the NJTA determines that a motorist is not an E-ZPass account holder in good standing, "iToll" and "vToll" transactions are not violations and thus should be excluded when calculating the actual cost to process and collect toll violations. We disagree with these contentions.

The Legislature described L. 2023, c. 7 as an Act "concerning certain electronic toll collection system processes and amending and supplementing P.L. 1997, c. 59." Section three of the Act, codified at N.J.S.A. 27:23-34.8, states:

> Notwithstanding any law, rule, or regulation to the contrary, the [NJTA] shall not issue a notice of violation or charge any administrative fees to the owner of a vehicle that travels through a lane at a toll plaza or facility dedicated for the electronic toll collection system unless the authority has first determined that the vehicle is not associated with an existing electronic toll collection system account. If the vehicle is associated with an existing electronic toll collection system account, the authority shall relay the license plate information to the lead agency of the electronic toll collection system for toll payment from the appropriate electronic toll collection system account

holder, provided that the account holder shall have the right to dispute any such toll charge.

***13** An electronic toll collection system account holder shall provide accurate and updated information for the electronic toll collection system account, including updating the license plate numbers associated with the account. If an account holder fails to update the license plate numbers associated with the account, the electronic toll collection system may issue a notice of violation to the account holder for any violation committed and may charge an administrative fee for the violation. The authority shall conduct outreach to encourage account holders to comply with the provisions of this section by maintaining accurate and updated information for electronic toll collection system accounts.

Section one of the Act clarifies that the existing definitional section, codified at N.J.S.A. 27:23-34.1, applies to N.J.S.A. 27:23-34.8. Section five provides that the Act "shall take effect immediately, but the provisions of section 3 and 4 of P.L. 2023, c. 7 (C.27:23-34.8 and C.27:25A-21.8) shall not be construed as affecting the terms of any contract or agreement in effect as of the effective date of this act." P.L. 2023, c. 7, § 5. [6]

We first address petitioners' contention that the Act should be applied to the case at hand. As previously stated, the NJTA denied the petition for rulemaking on October 18, 2017. This court affirmed in part and remanded the matter to the Law Division on March 8, 2019. The remand court filed its written opinion at the conclusion of the remand proceedings on January 7, 2022, more than a year before the Act took effect.

In their supplemental brief, petitioners assert that N.J.S.A. 27:23-34.8 should be applied to these proceedings. Initially, they claim that "[g]iven the manifestly prospective nature of the current rulemaking dispute, there is no need to resort to the concept of retroactivity for purposes of considering and applying Section 34.8." In the alternative, they claim that N.J.S.A. 27:23-34.8 "meets the standard for retroactive application" set forth in Nelson v. Board of Education of the Township of Old Bridge, 148 N.J. 358, 369 (1997).

Courts apply "a two-part test to determine whether a statute should be applied retroactively." Nelson, 148 N.J. at 369. "The first question is 'whether the Legislature intended to give the statute retroactive application.' " Ibid. (quoting In re D.C., 146 N.J. 31, 50 (1996)). "The second inquiry is 'whether retroactive application of the statute will result in either an unconstitutional interference with "vested rights" or a "manifest injustice." ' " Ibid. (quoting D.C., 146 N.J. at 50).

Only "[w]hen the Legislature does not clearly express its intent to give a statute prospective application" must the court "determine whether to apply the statute retroactively." Ibid. (quoting Twiss v. State, Dep't of Treasury, 124 N.J. 461, 466 (1991)). Accord State v. Lane, 251 N.J. 84, 95 (2022). Consequently, in evaluating whether a statute should be applied retroactively, courts must "follow familiar principles of statutory construction." Lane, 251 N.J. at 94.

The goal of statutory construction "is to determine ... the intent of the Legislature, and to give effect to that intent." Ibid. (quoting State v. Robinson, 217 N.J. 594, 604 (2014)). Generally, "the 'best indicator of that intent is the statutory language.' " Ibid. (quoting DiProspero v. Penn, 183 N.J. 477, 492 (2005)). "Thus, if the statutory terms, given their plain and ordinary meaning, 'are clear and unambiguous, then the interpretive process ends, and "we apply the law as written." ' " Ibid. (quoting State v. J.V., 242 N.J. 432, 442 (2020)).

***14** Additionally, "[o]ur courts 'have long followed a general rule of statutory construction that favors prospective application of statutes.' " Ibid. (quoting Gibbons v. Gibbons, 86 N.J. 515, 521 (1981)). In fact, the Supreme Court has "repeatedly construed language stating that a provision is to be effective immediately, or effective immediately on a given date, to signal prospective application." Id. at 96.

Here, nothing in the Act's plain language "warrants a determination that the presumption of prospective application is overcome." Id. at 97. Indeed, the Act "is devoid of the slightest hint that the Legislature intended [it] to apply retroactively." Id. at 96. On the contrary, the Legislature's use of the phrase "take effect immediately" signals its intent to apply the Act prospectively. Moreover, the Legislature went a step further to rule out retroactive application by adding that N.J.S.A. 27:23-34.8 "shall not be construed as affecting the terms of any contract or agreement in effect as of the effective date of this act." L. 2023, c. 7, § 5. Thus, it is clear from the Act's plain language that the Legislature intended for it to apply prospectively.

Petitioners' contentions to the contrary are unavailing. They unsuccessfully attempt to apply In re Provision of Basic Generation Service for Period Beginning June 1,

2008, 205 N.J. 339, 350 (2011), which concerned a state agency's compliance with the Administrative Procedure Act's rulemaking requirements, out of its original context to the distinguishable set of facts presented here. While it is true that state agencies "act through rulemaking procedures when the action is intended to have a 'widespread, continuing, and prospective effect,' " ibid. (quoting Metromedia, 97 N.J. 313, 329-331 (1984)), that legal principle does not require a retroactive application of N.J.S.A. 27:23-34.8—in a manner contrary to what the Legislature clearly intended—simply because this appeal involves an agency's denial of a petition for rulemaking.

Accordingly, we need not consider the second part of the two-part retroactivity test, i.e., whether retroactive application of N.J.S.A. 27:23-34.8 will result in an unconstitutional interference with vested rights or a manifest injustice. As noted, under Nelson, 148 N.J. at 369, only "[w]hen the Legislature does not clearly express its intent to give a statute prospective application" must the court "determine whether to apply the statute retroactively."

In Nelson, the Court held that the plain language of a curative amendment to N.J.S.A. 18A:28-5 demonstrated that the Legislature intended it to apply retroactively as it stated that the amendment "shall take effect immediately and shall apply to all individuals who have acquired tenure pursuant to N.J.S. 18A:28-5 or any prior statute." 148 N.J. at 369 (emphasis added). For that reason, the Court in Nelson proceeded to evaluate the second part of the two-part retroactivity test. Id. at 369-71.

By contrast, in this case, which does not involve a curative amendment but rather an entirely new statutory provision, the Legislature clearly expressed its intent to give N.J.S.A. 27:23-34.8 prospective application only by stating that it "shall not be construed as affecting the terms of any contract or agreement in effect as of the effective date of this act." L. 2023, c. 7, § 5. Because the answer to the first part of the retroactivity test is that the Legislature did not intend for the statute to apply retroactively, our inquiry ends there. Therefore, the Act applies only prospectively and is not relevant to the issues presented in the case at hand.

***15** However, even if we could consider petitioners' contentions concerning the substance of the Act, we would conclude they lacked merit. Petitioners claim that N.J.S.A. 27:23-34.8 "confirms that intentional conduct by the motorist is an absolute prerequisite for concluding that a violation has occurred," thereby bolstering their position on appeal that the NJTA's "inclusion of alleged costs related to transactions that have never been determined to be 'violations' [in its methodology to determine the reasonableness of the $50 administrative fee] contravenes the statutory scheme." We disagree.

The procedure now codified at N.J.S.A. 27:23-34.8 requires the NJTA to refrain from issuing notices of violation or demanding administrative fees from motorists who fail to pay the toll on the roadway but are later determined to be E-ZPass account holders in good standing. That said, if motorists fail to keep their license plate numbers up to date on their account, the NJTA may issue notices of violation and charge administrative fees "for the violation." Ibid. Indeed, the testimony of Jose Dios established that the NJTA's contractor, Conduent, has utilized this procedure for years.

As Dios made clear, if no tag is read in the toll lane, then Conduent performs an image review to see if the license plate is linked to a valid E-ZPass account. If an E-ZPass account in good standing is found, then Conduent posts the toll transaction to the account and does not mail a violation notice to the motorist or impose the administrative fee. This is known as an iToll transaction. Similarly, if the tag yields an "invalid status" and the toll goes unpaid in the toll lane, Conduent later checks the motorist's E-ZPass account status. If the account is in good standing, then Conduent posts the toll due to the account without sending a violation notice to the motorist or imposing the administrative fee. This is known as a vToll transaction.

N.J.S.A. 27:23-34.8 does not, as petitioners claim, expressly or impliedly require intentional conduct for a violation to have occurred at the toll lane. Petitioners reason that unless and until a notice of violation is sent to a motorist, no violation has occurred. However, that interpretation of the controlling statutory scheme is unsupported by its plain language.

As previously noted, absent limited exceptions, not applicable here, no vehicle is permitted to travel on highways operated by the NJTA except upon the payment of tolls prescribed by NJTA. N.J.S.A. 27:23-25; N.J.A.C. 19:9-9.2(a). It is "unlawful for any person to refuse to pay, or to evade or to attempt to evade the payment of such tolls." Ibid. N.J.S.A. 27:23-34.3(a) confirms that "a violation of the toll collection monitoring system regulations is committed as evidenced by a toll collection monitoring system," which is located at the toll lane.

Moreover, N.J.S.A. 27:23-34.2(a) authorizes NJTA to "adopt toll collection monitoring system regulations" which "shall include a procedure for processing toll violations and for the treatment of inadvertent violations." By instructing the NJTA to implement procedures for the treatment of "inadvertent violations," N.J.S.A. 27:23-34.2(a) makes clear that even unintentional refusals to pay the toll due at the toll lane are still considered violations that the NJTA is authorized to process differently than other violations. The Act is entirely consistent with N.J.S.A. 27:23-34.2(a) as it proscribes a procedure for treatment of certain categories of violations and does not establish, as petitioners claim, that motorists with an E-ZPass account in good standing have not committed a toll violation when the toll goes unpaid in the toll lane.

***16** Accordingly, we are satisfied that the plain language of L. 2023, c. 7 demonstrates that the Legislature intended for it to apply prospectively and that, in any event, its substance does not alter the outcome of this matter because its plain language does not support petitioners' assertion that a toll violation requires intentional conduct by the motorist.

VIII.

In sum, we conclude that the NJTA's $50 administrative fee is based upon the actual cost of processing and collecting a toll violation and, therefore, it complies with N.J.S.A. 27:23-34.3(a). Under these circumstances, N.J.A.C. 19:9-9.2(b), the regulation setting the fee, is neither arbitrary, nor capricious, nor unreasonable. Therefore, we affirm the NJTA's October 18, 2017 final decision, which denied petitioners' petition for a rule change and related relief.

Affirmed.

All Citations

Not Reported in Atl. Rptr., 2023 WL 3362859

Footnotes

1 Transportation projects encompass "highway projects" as defined in the enabling statute as well as "any other transportation facilities or activities determined necessary or appropriate by the authority in its discretion to fulfill the purposes of the authority, and the costs associated therewith." N.J.S.A. 27:23-4.

2 The SJTA owns and operates the Atlantic City Expressway. N.J.S.A. 27:25A-23. It has its own statutes and regulations pertaining to electronic toll collection and monitoring that are not challenged in this appeal. See N.J.S.A. 27:25A-21.1 to -21.7; N.J.A.C. 19:2-8.1 to -8.4. NJTA was never involved with Long's violation.

3 The NJTA also concedes that the remand court did not correctly state the full extent of Conduent's involvement in the toll collection process.

4 Petitioners also argue in Point IX that the remand court should have given more weight to the reports prepared for NJTA by CDM Smith, an engineering and construction firm, as to how certain types of violations should be processed. This contention lacks sufficient merit to warrant discussion in this opinion. See 2:11-3(e)(1)(D) and (E).

5 To the extent we have not specifically addressed some of the parties' arguments, we have found them to be without sufficient merit to warrant discussion. See 2:11-3(e)(1)(D) and (E).

6 N.J.S.A. 27:25A-21.8 concerns the South Jersey Transportation Authority only and is therefore not relevant to this appeal.

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