



State of Louisiana

Gaming Control Board

M. J. "MIKE" FOSTER, JR.
GOVERNOR

HILLARY J. CRAIN
CHAIRMAN

DECISION OF THE LOUISIANA GAMING CONTROL BOARD

**IN RE: MOREL G. LEMOINE DISTRIBUTORS, INC.
D/B/A CAFÉ MANGEUR
NO. VP4900512513**

This is an appeal by the Louisiana State Police Video Gaming Division from the decision of the Hearing Officer ordering the recall of the recommendation of suspension issued to and dismissal of proceedings initiated against Morel G. Lemoine Distributors, Inc. d/b/a Café Mangeur (Café Mangeur). The Division alleges as error: the ruling of the Hearing Officer that the statement of Ms. Paula Navarre to the investigating officer was inadmissible hearsay and the finding that at least 4 of the amenities required by La. R.S. 27:306(A)(4)(c)(vi) were offered by the licensee on October 24, 2002.

Hearsay

The licensee did not make a contemporaneous objection to Trooper Walton's testimony that on October 24, 2002, the contact person at the truck stop, a manager, told him the truckers' area had been closed since October 3rd due to hurricane damage. That statement is hearsay. Hearsay is admissible in administrative proceedings. It may also be determined to be "competent" evidence in administrative proceedings if the evidence has some degree of reliability and trustworthiness and is of the type upon which reasonable persons can rely. The determination of the reliability of the evidence is made on a case by case

basis. **Chaisson v. Cajun Bag & Supply Co.**, 97-1225 (La. 3/4/98), 708 So.2d 375.

In written reasons for judgment the Hearing Officer considered both the weight to be given to this statement as well as its admissibility. The investigating officer testified that Paul Navarre told him that the truckers' area had been closed since October 3rd; Exhibit 6 (the Video Gaming Division Inspection Guidelines for Type 5 establishment) named Paula Navarre as the contact person for the visit; another person signed the form as the contact person. Even if the Hearing Officer erred in finding, after the fact, that the statement was inadmissible hearsay, it would be harmless error. The Hearing Officer could have correctly found the statement was not entitled to great weight or that it was not competent evidence under the supreme court's ruling in **Chaisson v. Cajun Bag & Supply Co.**, 97-1225 (La. 3/4/98), 708 So.2d 375.

La.R.S.27:306(A)(4)(c)(vi)
La. R.S. 27:310(C)

La.R.S.27:306(A)(4)(c) provides as follows:

(c) As used in this Section a qualified truck stop facility shall mean a facility covering at least five developed contiguous acres which sells fuel, lubricating oil, and other vehicular merchandise, such as batteries, tires, or vehicle parts for eighteen-wheel tractor-trailers, and which also meets all of the following criteria:

...

(vi) It must have at least four of the following amenities:

(aa) A separate truckers' television lounge.

(bb) A full-service laundry facility located in a convenient area for truckers' use.

(cc) Private showers for men and women and not located in an area open to general public restroom facilities.

(dd) A travel store with items commonly referred to as truckers' supplies (items commonly used only by commercial motor vehicles).

(ee) Truck scales.

- (ff) Separate truckers' telephones.
- (gg) Permanent storage facilities for fuel.

La. R.S. 27:310(C) provides as follows:

All licensees and persons required to be qualified under this Chapter shall have a continuing duty to inform the division of any action which they believe would constitute a violation of this Chapter. No person who so informs the division shall be discriminated against by an applicant or licensee because of supplying such information.

Café Mangeur is licensed as a qualified truck stop facility under the Video Draw Poker Devices Control Law, La. R.S. 27:301 - 324. It is undisputed that Hurricane Lily caused severe damage to the truck stop when it struck the area on October 3, 2002. It is also undisputed that there were no truck scales at the facility and that two of four amenities required by La. R.S. 27:306(A)(4)(c)(vi) were present on October 24th, the permanent storage fuel facilities and the travel store selling truckers' supplies.

On October 24th Trooper Shane Walton conducted a compliance inspection of the facility, completed the inspection guidelines form (Exhibit 6) and found the truck stop facility was out of compliance with La. R.S. 27:306(A)(4)(c)(vi), only two of the four amenities were present. Trooper Walton returned to the truck stop on the following day and issued Violation/Inspection Report No. 13664 to the licensee (Exhibit No. 7), citing the licensee with violation of La. R.S. 27:306(A)(4)(c)(vi) and La. R.S. 27:310(C). A "Notice of Recommendation of Suspension" was subsequently issued.

The investigating officer testified that upon his initial arrival at the truck stop he "spoke with manager Paul Navarre and he advised that the Hurricane Lily had come through and done major damage to that portion of the truckstop, and it had been closed since October 3rd of that time due to the damages." Trooper Walton stated that the Division had not been contacted about the damage to the facility and at the

time of inspection, the door to the truckers' area was closed and a sign reading "Out of Order" was posted on the door. He further stated that he entered the truckers' area and noted a lot of construction taking place; there were no telephones in the truckers' area; the laundry facility had been pulled out and the showers were not accessible to truckers because they were located in the truckers' area, behind the closed door with the "Out of Order" sign.

Mr. Normand Ryan, a contractor, was hired on October 7, 2002, by the licensee to repair the damage to the facility caused by the storm. Mr. Ryan testified that he had been instructed by the owner, Mr. Morel Lemoine, to at all times have 4 of the amenities in operating order; at no time from October 7, 2002 to completion of the repairs in November were there fewer than 4 of the amenities in operation at any given time; and upon his arrival on October 7th at least 4 of the amenities were in operating order. He stated that a temporary truckers' lounge was set up by temporarily partitioning a section of the restaurant for truckers, maintaining telephone service for truckers, and by having at least one of three private shower rooms available for truckers (although they were located beyond the closed door to the former truckers' area mentioned by the investigating officer). Mr. Ryan maintained that a shower was accessible to truckers even though during the repair period, a trucker had to request a key to the shower from the convenience store personnel.

Reasoning "[t]his is a case where all witnesses saw the same things but interpreted those visions differently," the Hearing Officer found that at least four of the amenities required by La. R.S. 27:306(A)(4)(c)(vi) were offered by the licensee on October 24, 2002. A review of the record adequately supports this finding.

The Hearing Officer did not make any findings about whether four of the amenities required by La.

R.S. 27:306(A)(4)(c)(vi) were present and in operating order at any given time from the date the hurricane damage occurred, October 3, 2002 through October 23, 2002. If four of the required amenities were not present and in working order and available for use by truckers as required by statute, for any period of time, the licensee violated La. R.S. 27:306(A)(4)(c)(vi).

The Hearing Officer additionally determined that the duty imposed by La. R.S. 27:310(C) was not applicable to the licensee under the facts and circumstances in this case because the evidence shows efforts were made to comply with the statute. We disagree. If four of the required amenities were not present and in working order and available for use by truckers for any period of time after the storm damage occurred, the licensee is required by La. R.S. 27:310(C) to report such information to the Division. Video gaming could be temporarily suspended by shutting down the video gaming devices at Division headquarters until the facility returns to compliance. Merely attempting to comply with La. R.S. 27:306(A)(4)(c)(vi) is not sufficient under La. R.S. 27:310(C).

This case should be remanded to the Hearing Officer to make a finding on whether four of the amenities required by La. R.S. 27:306(A)(4)(c)(vi) remained present, in operation and available to truckers from October 3rd through October 23rd. If a finding is made that at least four of the amenities were not available for any period of time from the October 3rd to the 23rd and the licensee failed to notify the Division that it was no longer in compliance, the Hearing Officer is to determine the appropriate penalty to be imposed.

ORDER

This matter having been considered by the Louisiana Gaming Control Board in open meeting of August 19, 2003:

IT IS ORDERED THAT this matter is **REMANDED** to the Hearing Officer for proceedings in accordance with this decision.


THUS DONE AND SIGNED on this the 20th day of August, 2003.

LOUISIANA GAMING CONTROL BOARD

BY:



HILLARY J. CRAIN, CHAIRMAN

LOUISIANA GAMING CONTROL BOARD
I HEREBY CERTIFY THAT A CERTIFIED
COPY HAS BEEN MAILED OR SERVED ON
ALL PARTIES THIS 21st DAY
OF Aug 2003

APPEAL DOCKET CLERK