

NZLR

IN THE SUPREME COURT OF NEW ZEALAND
NORTHERN DISTRICT
AUCKLAND REGISTRY

M.403/71

No Special
Consideration

BETWEEN BRIAN ROBERT EVERETT of
Auckland, Solicitor

Appellant

A N D MINISTRY OF TRANSPORT

Respondent

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194

Hearing: 2nd July, 1971.

Counsel: Barker for Appellant.
Nicholson for Respondent.

Judgment: 5th July, 1971.

JUDGMENT OF HENRY, J.

This was an appeal against the imposition of a term of disqualification from holding a driver's licence for one month. Appellant was convicted for a breach of the By-Laws of the Mt. Eden Borough Council in that he made a right hand turn when not so permitted. It is clear that since Part IV of the Transport Act, 1962, was repealed and substituted by a new Part IV set out in the Transport Amendment Act, 1970, disqualification can now result only from breaches of the Act and Regulations made under it. This is in contrast with the earlier provisions which also included breaches of by-laws as a source of jurisdiction. Accordingly the appeal against disqualification is allowed and the order made in respect thereof is quashed.

At the hearing Appellant's Counsel sought leave to amend the notice of appeal by including therein an appeal against the conviction itself. It transpired that an attack was to be made on the validity of the by-law itself. This was shortly argued. Having since looked into the statutory provisions I am not prepared to determine a point of this importance on the argument I heard. The source of by-laws

concerning roads and streets was originally local body acts in conjunction with the Public Works Act from time to time in force. This latter Act was later superseded by the Transport Acts.

Local bodies have traditionally exercised control over roads and streets in their areas. It seems to me unlikely that a similar type of by-law has not been earlier dealt with. In any event it is a matter of great importance to a local body which has busy traffic. I realise the amendment of 1970 now specifically brings this type of by-law under the jurisdiction of the Minister of Transport but that is no argument that no power so to control traffic did not formerly exist. I am adjourning the request that an appeal be considered so far as concerns the conviction. In my judgment the matter ought to be tested under the By-Laws Act, 1910, or, at least, the local body concerned should be consulted and the point should be more comprehensively argued. It is too important to be brought in as a long delayed and last minute side wind on a simple appeal against penalty.

The appeal against disqualification is accordingly allowed and the order quashed and the further consideration of the matter is adjourned.

Solicitors:

Duthie & Whyte, Auckland, for Appellant.

Crown Solicitor, Auckland, for Respondent.