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IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

M.No.551/80

BETWEEN HARRY CHARLES HAINES
Appellant

A N D MINISTRY OF TRANSPORT
Respondent

Hearing: 4th December, 1980

Counsel: R.J. Fowler for Appellant
K.G. Stone for Respondent

Judgment: 4th December, 1980

ORAL JUDGMENT OF ONGLEY J.

Harry Charles Haines was convicted in the District Court on 1st October, 1980 on a charge laid under s.23 of the Road User Charges Act 1977 that he had operated a motor vehicle on a road when the gross weight of that vehicle was more than the maximum gross weight specified in the distance licence displayed on the motor vehicle. He was fined $750.00 and ordered to pay Court costs of $10.00.

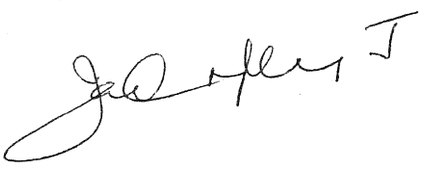
The information indicated that the charge was brought under s.23 of the Act without reference to either ss.(1) or ss.(2) of that section. Subsection (1)(a) relates to the operation of a motor vehicle on a road in contravention of the Act. Subsection (2)(a) creates an offence directed at the owner of a motor vehicle which is so operated. The legislature clearly regarded the latter offence as being much more serious than the former. The penalty for an offence by the owner is a fine not exceeding $15,000.00 whereas the maximum penalty for an offence by a person who is merely an operator is $3,000.00. Looking at the information it seems quite clear that this appellant was charged with operating a vehicle and not charged in his capacity as an owner. He did not appear at the hearing in the District Court and I am assured that there was no amendment to the charge made in that Court. Whether there was evidence that he was an owner or not I cannot say because there are no notes of evidence before me but even had there been an amendment to allege an offence by an owner it does not seem to me that the District Court Judge

could have dealt with the matter on that basis without the appellant being advised of the amendment to the charge. I have to assume therefore that he should have been dealt with under s.23(1)(a).

The District Court Judge has submitted a memorandum, there being no note of his comments at the time of sentence, and it is clear from that that he was influenced in fixing the amount of the fine by the belief that the penalty for this offence had been increased from the maximum of $3,000.00 to $15,000.00. If that had been so, then his comment that the Court should respond to that kind of intention by the legislature of whatwas appropriate would have been quite correct. I am informed that the penalty was in fact increased from $5,000.00 to $15,000.00 but really that is irrelevant. The penalty under the appropriate subsection, however, was increased from $1,000.00 to $3,000.00 and it is to that increase that the learned District Court Judge should have had regard.

I think therefore that he was led into error by the belief that the charge was laid under a different section from that under which it was in fact laid. He also referred in his memorandum to the case of Ministry of Transport v. O'Flaherty, a decision of the Chief Justice in which the penalty on appeal by the Crown was increased from an order for payment of Court costs to a fine of $500.00. He comments that that was at a time when the maximum penalty was $3,000.00. I understand that the maximum penalty then in fact was $1,000.00. So having regard to the maximum fine at that time, it was a very heavy fine. The reasons for imposing such a heavy fine were given by the Chief Justice in his judgment from which it is clear that he regarded the offence as being a deliberate and calculated attempt to evade payment of revenue. The amount which would have been properly payable and which the offender in that case sought to evade was an amount of $1,269.00. I am informed in this case the fee that would have been payable had the appellant showed the proper information on the licence would have been $97.06 and that he paid on the spot the penalty of $220.00. It seems therefore that this is quite a different case from O'Flaherty's case, and it seems possible that the fact that apenalty of $220.00 was paid may not have been taken into account by the District Court Judge.

I am of the opinion that this penalty has been imposed in error and that the appeal should be allowed and I will quash the penalty and in lieu thereof impose a fine of $200.00.



Solicitors:
Messrs Phillips, Shayle-George & Co., PETONE, for Appellant
Messrs Luke, Cunningham & Clere, WELLINGTON, for Respondent