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BETWEEN

KNOESTER

Appellant

A N D MINISTRY OF TRANSPORT

Respondent

Hearing: 3 February 1984

Counsel: G.K. Panckhurst for Crown
No Appearance of Appellant

Judgment: 3 February 1984

ORAL JUDGMENT OF HOLLAND, J.

The appellant who resides in Auckland did not appear in the District Court on two charges brought against him, one of careless use of a motor vehicle and the other of operating a motor vehicle when there was fixed to that vehicle a licence under the Road User Charges Act 1977 that was no longer valid. He was fined \$200 and ordered to pay Court costs of \$20 on the careless driving charge and \$150 and ordered to pay Court costs of \$20 on the invalid licence charge.

Normally a charge of operating a heavy vehicle without a licence issued under the Road User Charges Act 1977 incurs a substantial fine because there is an element of avoiding revenue obligations involved in the offence. In this case the appellant says, and it is accepted by counsel for the Crown, that although he was obliged to have a licence the type of vehicle that he was operating, namely a mobile home, was one whereby after having paid the licence fee he was entitled to rebates of cost of petrol which would render the nett amount of the licence fee a nominal sum. In those circumstances I am satisfied that the fine of \$150 was out of line and the matter could have been dealt with more appropriately in line with the

finer for people who operate vehicles without warrants of fitness and the like. It cannot be said that the fine of \$200 on careless driving is out of line but that offence covers a very wide spectrum. In this case there was no injury to any person and practically no property damage. The careless driving was that the appellant did not see an obstruction on the road. The obstruction on the road was the rear end of a truck parked on an angle and going out on to the carriageway. Although the appellant submits that he was not driving carelessly, there is no doubt that he simply did not see something that was there to be seen and there is no doubt about his guilt. On the other hand in relation to careless driving, it was a relatively minor offence.

I am satisfied that in both cases the fines imposed were excessive. The appeal will be allowed. In lieu of the fine of \$150 on the offence under the Road User Charges Act 1977 he will be fined \$30 and ordered to pay Court costs of \$20. On the charge of careless driving in lieu of the fine of \$200 he will be fined \$100 and ordered to pay Court costs of \$20.

A. O. Hareland J.