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BETWEEN FREIGHTWAYS ROAD (CANTERBURY) LIMITED
and MOUNT COOK FREIGHTLINES LIMITED

Appellants

A N D MINISTRY OF TRANSPORT

Respondent

Hearing: 16 February 1984

Counsel: Mrs Marion R. Abrams for Appellants
B.M. Stanaway for Respondent

Judgment:

17 FEB 1984

17 FEB 1984

JUDGMENT OF COOK J.

These two appeals have been heard together, the same point having been taken in each. In either case the appellant was convicted in the District Court on a charge under Sections 5(b) and 23(2) of the Road User Charges Act 1977; operating a motor vehicle when the gross weight was more than the maximum gross weight specified in the distance licence.

The point taken on appeal is whether, when the vehicle was weighed on a weighing device used for the purposes of the Road User Charges Act, this was done in a manner prescribed by the Minister of Transport by notice in the Gazette, as required by the definition of "weight" in Section 2 of that Act.

The relevant portion of Section 5 of the Road User Charges Act provides:-

"Certain motor vehicles to have distance licences -
Subject to section 7 of this Act, no person shall operate a motor vehicle (other than an off-road motor vehicle, as defined in section 2 of this Act) on a road unless -

- (a) There is displayed on the motor vehicle in accordance with this Act a distance licence
- (b) The gross weight of the motor vehicle is not more than the maximum gross weight specified in that licence; and

"Gross weight" is defined, but nothing turns on that definition. The point in issue arises from the definition, also included in the Act, of the word "weight". It is as follows:-

"'Weight', in relation to an axle, a group of axles, or a motor vehicle, means the weight, or (as the case may be) the sum of the weights, recorded on a weighing device of a type approved for the purposes of the definition of the term 'weight' in the Transport Act 1962, and used in a manner prescribed by the Minister of Transport by notice in the Gazette:"

As to the definition in the Transport Act, the portion which contains reference to a weighing device is as follows:-

"Weight:

- (a) In relation to a wheel, an axle, a group of axles, or a vehicle, means the weight, or, as the case may be, the sum of the weights, recorded on a weighing device of a type approved for the purpose by the Minister, by notice in the Gazette, and used in a manner prescribed by the Minister, by notice in the Gazette:
- (b)

In 1974, the Transport (Measurement Weight) Notice was gazetted, the notice being given pursuant to Section 2(1) of the Transport Act. In its first schedule it sets out two types of approved weighing device and, in the second schedule, the manner of use.

For the appellant, Mrs Abrams accepted that the vehicle in question had been weighed on an approved device, but argued that it was not done "in a manner prescribed" as that could only be pursuant to a notice under the Road User Charges Act, not the 1974 notice under the Transport Act. She submitted that, if the legislature had intended that both the weighing device and the manner of weighing (as opposed to the device

alone) were to be specified by notice under the Transport Act, then it is to be expected that this would have been made clear; further, that the reason why reference is not made to the Transport Act Notice must be that it was intended that a specific, independent method of weighing was to be specified under the Road User Charges Act.

It appears that there have been a number of decisions in the District Court to the effect that a separate notice under the Road User Charges Act, prescribing the manner in which the weighing device is to be used, is not necessary; that the manner prescribed is that set out in the 1974 notice referred to above. In Ministry of Transport v. Priestly (Wellington CR 28639/82 - 30th August 1982), however, Judge Kearney held that the definition of "weight" in the Act required the Minister of Transport, by notice in the Gazette under that Act, as opposed to the Transport Act, to prescribe the manner in which the weighing device is to be used for the purposes of the Act.

The question was raised before Roper J. in Winstone (S.I.) Limited v. Ministry of Transport (Timaru GR 60/83 unreported, 9th September 1983) in an appeal of a similar nature to the present one. The appeal was upheld on a different ground, but Roper J. did consider the question now at issue, though on the basis of a different submission. He rejected the view taken by Judge Kearney and found the manner of use of the approved weighing device to be as prescribed in the 1974 Notice, basically for the reasons which had been given by Judge Laing in A.S.C. Flowers Transport (CR 6971/81 Wellington; decision 27 July 1981). That decision appears to have turned on the meaning to be given to the word "prescribed", which is defined in the Act as meaning "prescribed by regulations made under the Act". The interpretation section, in the normal way, commences with the words: "In this Act, unless the context otherwise requires ..." and, as I understand it, the point decided by Judge Laing, with which Roper J. agreed, is that the context is such, - "prescribed by the Minister of Transport by notice in the Gazette" - as to preclude the meaning given in the definition. It was accepted by Mrs Abrams that that was so, but she still submitted that a notice under the Road User Charges Act had to be granted and that, as this had not been done, the weighing could not have been carried out in a manner

—prescribed.

The question is to be resolved by a reading of the definition. The weight of a vehicle, or whatever else is to be weighed, is to be taken on a weighing device of which the particular type to be used may readily be determined; the wording of the definition in this respect leads one to the definition in the Transport Act and that, in turn, to the 1974 Notice. The final words of the definition I read as meaning used in a manner prescribed for that particular device. If there is in existence, as there is, a notice given by the Minister of Transport which prescribes the manner of using that particular device, I am unable to see that that cannot have application by reason of the fact that it was gazetted under the Transport Act. So far as the items to be weighed are concerned, the only material difference in the two definitions lies in the fact that, in the Transport Act, "wheel" is included. It was suggested that, had the intention been that the one notice would apply to both, some other expression would have been used, e.g. reference would have been to "the manner prescribed", but that would limit the reference to a manner already prescribed at the passing of the Act and not include any notice which might subsequently be gazetted. Judge Kearney thought that, if it was the intention of Parliament not to have a separate manner of weighing prescribed by the Minister under the Road User Charges Act, this could have been clearly conveyed by omitting the comma after the words "in the Transport Act 1962," and adding words such as "and used in the manner prescribed therein", but that would limit the reference to the particular notice in which the weighing device was approved. I do not find that line of argument persuasive. It seems to me that the important thing is that the manner of using the device should be clearly ascertainable and, in my view, that is the situation. There would appear to be no reason why the manner should vary according to the purpose for which the weight has to be ascertained.

It was strongly submitted that, if there is doubt, that should operate in favour of the appellant, but I am unable to see that there is any. The appeal must be dismissed.

Solicitors:

Duncan, Cotterill & Co., Christchurch, for Appellants

