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IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

Nos.M552/84

1660

BETWEEN MADDENS & RICHARDS LTD

First Appellant

A N D MINISTRY OF TRANSPORT

Respondent

A N D

M.554/84

BETWEEN WAIRAKEI CARTAGE LTD

Appellant

A N D MINISTRY OF TRANSPORT

Respondent

Hearing: 16 November 1984

Counsel: N.J. Dunlop for Maddens & Richards Ltd,
H.D.P. van Schreven for Wairakei Cartage Ltd,
G.K. Panckhurst for Respondent

Judgment: 16 November 1984

ORAL JUDGMENT OF HARDIE BOYS J

These two appeals against the penalty imposed on a charge of operating a vehicle carrying a gross weight in excess of the maximum specified in the distance licence displayed were heard together because the penalties were the same, $750.00 and costs of $20 in each case, and they were heard together by the same District Court Judge.

The submissions advanced in support of each appeal were

rather different and counsel for the Ministry did not make any submissions in reply. The question of the appropriate penalty to apply in respect of this particular offence is a very difficult one, partly, I suspect, because the maximum penalty of $15,000 is so out of proportion to anything else of comparable criminality, that the Courts find difficulty in adjusting themselves to the level of penalty that the Legislature clearly contemplates ought to be imposed. And I think it is fair to say that opinions differ around the country as to what is proper and vary from one District Court to another according to the extent that offences occur in that district and according probably to their relative flagrancy.

The matter is discussed in Judge Graham's book where he suggests that first offenders should expect a fine of about $400 and he refers to a judgment of O'Regan J in Nelson which I do not have before me. I have had occasion to consider the matter several times but I think most Judges have declined to attempt to lay down any guidelines as to what is appropriate, no doubt for the reason I have already mentioned that what is appropriate may vary from one district to another.

In the case of Madden & Richards Ltd, the short fall in the revenue paid was $54.74 and the weight difference was 10.5%. The company had no previous convictions. It was not the driver who was charged. The driver, however, was an experienced driver who merely made a mistake, thinking that the load of coal he took on was within the load permitted by his licence.

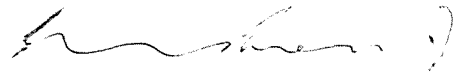
In the case of Wairakei Cartage Ltd, the shortfall in revenue was $81.11 and the weight differential 15.5%. In this

case the driver collected a consignment of printing plates and corn sacks from the Lyttelton wharf. The order was telephoned through from Lyttelton and the weight of the load to be collected was either given or was able to be calculated from the information given and on the basis of that advice the company selected the vehicle and the distance licence appropriate for it. It transpired, however, that between the time the corn had been weighed and the time it was collected the load had got wet, and being of highly absorbent material the weight had increased considerably. But the fact that it was wet and the fact that it was now overweight was not apparently discernible by the driver. The only steps that could be taken by the company to avoid this kind of situation occurring would be to weigh the complete unit once loaded at the wharf, but there is only one weighbridge there and there are obvious practical difficulties about that. This company has one prior offence committed in December 1983, convicted in February 1984 and fined $100. Prior to that its proprietor had operated the business on his own account for a number of years and had not offended at all. There are seven vehicles in the fleet.

The best I can do in view of the difficulties of this legislation is to compare the penalties in this case with one I had to deal with on 12 September 1984 involving Transport (North Canterbury) Limited where I upheld a fine imposed by the same District Court Judge of the same amount. That was a different case because it was one where the company although a large fleet operator had offended on a number of occasions, the overloading of the truck was obvious, it was not a case of

inadvertence or ignorance and it seemed to me that the problem there was a management one which could easily be overcome. I think that in these cases one of the critical tests must be the extent to which the offending could have been averted by conscientious management procedures or by conscientiousness on the part of the driver.

In the present cases, by comparison with the Transport (North Canterbury) Limited case, I think the penalties are shown to have been manifestly excessive. But I do not think that the two cases ought to be treated alike. Wairakei Cartage Limited had a problem which it would have been extremely difficult to appreciate even existed, whilst Maddens & Richards Ltd could have dealt with the problem, but for natural and no doubt understandable human error. On that basis I think some distinction ought to be made, even though Maddens & Richards offending was quantitatively a little less. It however, must have the benefit of the fact that it has no previous convictions. In its case the appeal is allowed and the fine is reduced to the sum of $200 and in the case of Wairakei Cartage Ltd the appeal is allowed and the fine is reduced to $100.00



Solicitors:

Duncan Cotterill & Co, CHRISTCHURCH, for Maddens & Richards
Clark, Boyce & Co, CHRISTCHURCH, for Wairakei Cartage Ltd
Crown Solicitor, CHRISTCHURCH, for Respondent.