12/12 NZLR

IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

M.123/84

1513

BETWEEN PERMACRETE (AUCKLAND) LIMITED)
Appellant

A N D MINISTRY OF TRANSPORT
Respondent

Counsel: A.L. Hassall for Appellant
C.Q.M. Almao for Respondent

Hearing and Judgment: 6 December 1984

ORAL JUDGMENT OF GALLEN J.

On 25 January 1984 the appellant company was convicted after the giving of formal proof, on a charge under the Road User Charges Act. The appellant company did not appear as I have already indicated, formal proof was called and the learned District Court Judge who sentenced the appellant company, imposed a fine of $2,000 and ordered it to pay Court costs of $200.

He set out his reasons for this particular conclusion in detail. He was concerned over the excess which he

considered to be substantial and not able to be accounted for by any misjudgment of weight. He referred to the fact that the appellant company was involved in the manufacture of concrete panels and therefore presumably, was aware of the weight of concrete. He had been informed by the Traffic Officer concerned with the prosecution, that the appellant company made the panels of which the load consisted and from that he referred to a conclusion that this was not the case of a carrier being in someone else's hands when the truck was loaded because the appellant company had to be regarded as an expert in the field itself. He referred to the need to get home to persons engaged in the transport business, that the Road User Charges Act was to be regarded as a revenue statute. He considered it likely that this was not the first load carried by the company in this way, although there was no evidence of previous convictions and he imposed the fine already referred to.

In the circumstances as outlined to me, I should have thought that he was justified in the conclusion to which he came. However, it appears that the appellant company when receiving the summons, did not read it with care and assumed from the words "Nil infringement relating to over-loading", that the matter was trivial and that it was unnecessary to appear. It was for this reason that the company did not appear to answer to the summons.

Mr Hassall in careful and detailed submissions, indicated that the facts were very different from those which had been disclosed to the learned District Court Judge; that although the appellant company was engaged in the construction of water reservoirs, it did not manufacture the particular panels. These had been uplifted from the manufacturer by a driver employed by the appellant - no weighing equipment was available where the panels were collected. The driver requested information as to the weight of the panels and was informed they were of a weight of 750 kgs. each. In actual fact, this was not correct. They appear to have been considerably heavier. On the basis of the information which the driver claims to have received, the actual excess loading would have been no more than 330 kgs., as compared with the 3,300 kgs. which was actually ascertained. Mr Hassall says that the learned District Court Judge was misinformed as to the manufacture of the panels and that on that basis he concluded that the appellant had the primary responsibility; that on the basis of the information before him, he had also assumed that there was a specific knowledge of the excess, or at least lack of care and that the case equated with one of deliberate breach. The circumstances are such that if the learned District Court Judge had accepted the mitigating factors now placed before him, he may well have come to a different conclusion.

However, unfortunately these facts are not accepted by the respondent. Mr Almao quite properly says that he has no information as to the correctness or otherwise, of them. I am in no position to make a decision on disputed questions of fact on an appeal and indeed there are other issues when proceeding to a re-assessment in this case since the charge is one which is normally heard in the District Court and the learned District Court Judge is in a much better position to make an assessment on the appropriate penalty once the facts are established before him. I cannot properly embark upon an enquiry into these facts, but it does appear to me that in the circumstances, there is relevant material which was not before the learned District Court Judge and which may have affected his conclusion had it been properly established before him.

Having regard to the circumstances therefore, I allow the appeal but require the charge to be re-heard under the provisions of the Summary Proceedings Act.

Solicitors for Appellant: Messrs Armstrong, Murray and Partners, Auckland

Solicitor for Respondent: Crown Solicitor, Hamilton