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IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY

NZLR

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M.27/84

BETWEEN GARY RORISON
Appellant

AND MINISTRY OF TRANSPORT
Respondent

Hearing: 13th April, 1984

Counsel: Ingram for Appellant
McDonald for Respondent

Judgment: 10 MAY 1984

JUDGMENT OF SINCLAIR, J.

The Appellant was charged with an offence against S.109A(1A)(B) of the Transport Act 1962 in that being the driver of a heavy motor vehicle he carried on that vehicle a waybill containing false information relating to goods carried on the vehicle. It was alleged that the false information related to the point of set down which was stated in the waybill to have been Daltons Sand & Nursery Mixes, Matamata.

It is necessary to relate some of the facts to enable the full circumstances to be appreciated.

On 14th July, 1983 a traffic officer, Mr Barron, south of Taupo on the road between Taupo and Napier observed Kenworth truck registered number JK.9392 towing a full trailer, registered number 28HMZ, which was proceeding north. The vehicle was followed until it eventually stopped in Hinuera Road, Matamata. At that time a check

of the vehicle was made. The driver gave his name as Barry Glynn and a waybill was produced dated 14th July, 1983 in the name of Reliance Transport (Tauranga) Ltd, which was the name which appeared on the side of the trailer unit. The pick up point was shown as de Pelichet McLeod, Cook Street, Waipukurau. The point of set down was shown as Daltons Sand & Nursery Mixes, Main Road, Matamata. The goods carried were stated to be barley. The traffic officer handed back the waybill to the driver and permitted him to carry on. The vehicle was followed to Daltons' premises in Matamata. Before handing the waybill back the traffic officer marked the corner of it and at Daltons' premises the traffic officer observed Mr Glynn lock the cab and the vehicle was left parked in front of the office at Daltons' premises.

The sand pit was kept under surveillance. At 6.15 p.m. the same truck and full trailer left Daltons' premises and proceeded along Hinuera Road to Te Poi and then on to State Highway 29. On the top of the Kaimai Hills the vehicle was stopped by Mr Barron and another check was completed, the driver then giving his name as Gary John Rorison. The details of the vehicle were precisely the same as those relating to the vehicle which had been stopped south of Taupo and a waybill was handed to the traffic officer who recorded the same details as had been recorded previously and he was able to identify the waybill as being the same as he had perused before by reason of the mark he had placed upon it. He checked the load as carried on the trailer and found it to be barley. There was no evidence that there was any other person in the vehicle which was then allowed

to proceed and outside the Tauranga County Council depot the trailer was detached and the truck then driven to Pooles Road and parked outside what was apparently Mr Glynn's address-

Surveillance was kept on the Kenworth vehicle by successive officers until nearly 9 p.m. on 14th July, 1983 when another traffic officer, Mr Hogan, became involved. Mr Barron pointed out to him the position of both the truck and trailer unit and at 9 p.m. on 14th July, 1983 the truck moved away from the address in Pooles Road and thereafter Mr Hogan was led somewhat of a merry dance around Tauranga, which journey was described as a "Tiki Tour", but might more appropriately have been called "around the Bay". Eventually the truck unit went into the rear entrance of the Bayview Park where it was to be observed by another traffic officer, Mr Thrupp, whereupon Mr Hogan returned to where the trailer had been left. However, by then it had departed and its whereabouts could not be located.

Mr Dalton was also called to give evidence but he was unable to throw any light on what occurred to the load of barley which had arrived in his premises on 14th July, 1983 and when traffic officer Thrupp went to Daltons' premises on Monday, 18th July, he could not find any barley on the premises at all.

It was the Prosecution's contention that the Appellant, being in control of the truck and handing over the waybill to the traffic officer, knew of the contents of the waybill and that he was party to a plan to mislead the Transport

Department and that, from the circumstances, Rorison knew full well that the load of barley was to be put down somewhere other than at Daltons' premises; thereby he was guilty of the offence with which he was charged, namely carrying a waybill in a vehicle which was under his control and which he knew to contain false information.

Three points were raised on the appeal. Firstly, it was contended that there was no admissible evidence as to the contents of the waybill in that there was no evidence that demand had been made for its production by any traffic officer. Secondly, it was alleged that the Appellant was not shown to have known that the waybill contained any false information, or even that he knew its contents at all. Thirdly it was contended that there was no evidence to show that the waybill was in fact false as there was no evidence as to the actual set down point of the barley in question.

Dealing with the first point raised: this relates to the provisions of S.109A(1) of the Transport Act 1962 which provides that no person shall use on a road any heavy motor vehicle carrying goods of any description unless there is carried on the vehicle a waybill which must be produced by the driver on demand by any traffic officer. It is further provided by s-s.1(B) that in any proceedings for an offence against s-s.(1A) evidence given by a traffic officer as to the contents of a waybill produced to him in respect of the offence before the Court is deemed to be conclusive until the contrary is proved by the production to the Court of the original waybill.

In essence Mr Ingram's submission was that there was no evidence that there had been any demand made for the waybill when Mr Barron stopped the Appellant on the top of the Kaimai ranges. The evidence disclosed, as I have already indicated, that the vehicle was stopped by Mr Barron and that the Appellant was driving. While there is no actual statement by the traffic officer that the demand was made, he states that the waybill was handed to him.

The Court must not approach this sort of situation in some sort of vaccuum and it is somewhat significant that what was produced on this particular occasion was precisely the same as that which had been produced when the vehicle had earlier been stopped before it had arrived at the Daltons' depot. In these circumstances it seems to me that the District Court was quite entitled to draw the inference that a request or demand had been made for the production of the waybill and that it was produced by the Appellant who was the driver. It is also significant that in relation to the second stopping Mr Barron checked the contents of the trailer and found it to be barley, which was what was stated in the waybill. To my mind that disposes of Mr Ingram's suggestion that there could have been some mis-apprehension as to the vehicle in respect of which the waybill was to be produced, particularly where, as here, the Kenworth was in fact a tractor unit and the trailer was that in which the goods were carried. There is cert-ainly nothing to suggest that a load of barley was being carried on a tractor unit which would have been impractical anyway.

That would be sufficient to dispose of the first limb of the appeal; I simply observe that it is stretching credulity a little too far to suggest that the Appellant somewhat happily and joyously, voluntarily and without any request produced the waybill. Having regard to the relationship between transport operators and the Transport Department, to so hold would be to fly in the face of reality.

On the second aspect as to the Appellant's knowledge of the contents of the waybill, there is no evidence to show that the Appellant was in any dilemma as to what document he should hand to the traffic officer. It is plain from the evidence that the waybill handed over was that in relation to the trailer in which the barley was being carried. The only possible inference to be drawn from the evidence is that the Appellant knew which document applied to the carriage of the goods in the trailer and that he handed that document to the traffic officer. The inference which the District Court Judge drew that in those circumstances the Appellant knew the contents of the waybill is one which was open to him to draw and he did draw it. In the absence of any other evidence to the contrary I do not see what other inference could be drawn and I am satisfied that there should be no disturbing of the District Court's finding on that head.

Finally, on the question of the falsity of the waybill, reference was made by the District Court Judge as to what occurred in Tauranga as supporting his view that the waybill was false. Mr Ingram argued that equally the

inference was open that in fact what had been breached was the rail/road restriction and that that was what the Appellant was endeavouring to conceal from the traffic officers.

There is no evidence that that was so and if the Appellant wishes this Court to draw such an inference then he must be able to point to evidence from which the inference can be drawn. There is none and I decline to draw inferences from what is in reality a vaccuum. When one has a look at the plain facts of this case, and having regard to the offence with which the Appellant was charged, the only inference that can properly be drawn is that the waybill contained a false statement in relation to the set down point and that the Appellant knew of it. The set down point was in Matamata. After the vehicle arrived at that set down point without being unloaded it was deliberately driven by the Appellant, there being no evidence of anybody else being in the vehicle, from Matamata towards Tauranga which is away from the set down point. The only evidence thereafter is of the vehicle stopping in Tauranga for a period and then for the traffic officers to be taken on a wild goose chase around Tauranga and the surrounding area. There is absolutely no evidence at all that the vehicle and/or trailer unit ever found its way back across the Kaimais towards Matamata and, indeed, the check made of Daltons' premises on the following Monday suggested to the contrary, in that there was no evidence of any barley being on those premises at that time. The only possible inference from the evidence is that the set down point was at some place other than Daltons and there is no other evidence to displace that conclusion. It is

idle for Appellants to take a case on appeal which is really built on a vaccuum.

In all the circumstances the appeal cannot succeed.

I observe that the actions of the Appellant and the others associated with him were carried out with considerable deliberation. It is all very well for transport operators to play a game of cat and mouse with the enforcement officers, but if in the course of playing cat and mouse the transport operator goes back to the cheese once too often he has only himself to blame if he gets pounced upon.

Accordingly the appeal is dismissed with costs to the Respondent of $200.

P. A. Ellis J.

SOLICITORS:

Holland Beckett & Co., Tauranga for Appellant
Crown Solicitor, Rotorua for Respondent