IN THE HIGH COURT OF NEW ZEALAND HAMILTON REGISTRY

M. 344/84

1421

BETWEEN TAYLOR AND JOURDAIN LIMITED

Appellant

A N D

MINISTRY OF TRANSPORT

Respondent

Offence:

Operating a motor vehicle when a Distance

Licence was not displayed

Dealt with:

At: Te Awamutu

By: F.F.Latham DCJ

Sentence:

\$500

20 August 1984

Appeal Hearing:

7 November 1984

Oral Judgment:

7 November 1984

Counsel:

M.H.McIvor for appellant P.J.Morgan for respondent

Decision:

APPEAL DISMISSED

(ORAL) JUDGMENT OF BISSON, J.

The appellant was convicted in respect of an offence under the Road User Charges Act 1977 for operating a motor vehicle when a distance licence was not displayed. The appellant has appealed against a sentence by way of a fine of \$500.

In mitigation, Mr McIvor for the appellant has stated that, although the licence was not displayed in the manner required by the act, it was on a removable clip system on the dashboard of the vehicle visible through the windscreen, this system being adopted because of vandalism at the yard resulting in papers being lost. At the time the appellant was operating a logging truck with a 14 tonne licence which needed a 16 tonne licence as its load was 15.7 tonnes.

Reference was made to a judgment of Gallen J. in Scott Transport v Ministry of Transport (M 176/84) when a substantial fine was reduced to one of \$100. On the facts of that particular case the overloading question was not relevant and the offence was treated as a technical one.

In another case which came before Hillyer J.

Waharoa Transport Co. Ltd., on 1 October 1984, again where
the distance licence was not affixed to the windscreen but
lying on the dashboard, regard was had to the fact that the
gross weight of the truck was found to be 21.321 kilograms,
so that a 22 tonne licence was required but the licence
carried was 20 tonnes. In dismissing the appeal against a
find of \$750, Hillyer J. said:

"In my view therefore, the learned District Court Judge was entitled to take into consideration the fact that the weight was excessive in imposing the penalty. The consequences of his being unable to do so would be that a motor vehicle owner suspecting that his vehicle was overladen, would simply have to remove the licence from the windscreen. It would be impossible to prove that it had been done on purpose, and the fact that the vehicle was grossly overladen could not be taken into consideration."

In considering the appropriate sentence all the surrounding circumstances have to be taken into account and the excuse for not having the licence affixed to the wirdscreen as provided by the Act, in my view, is not an adequate excuse. Taking into account that there was an overloading situation I am unable to say that the fine imposed on this occasion was clearly excessive and accordingly the appeal is dismissed.

abrio.

Solicitors:

Edmonds Dodd & Co. of Te Awamutu for appellant Crown Solicitor for respondent