

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

NO. M.131/84

608

BETWEEN R

TOYE

Appellant

A N D

MINISTRY OF TRANSPORT

Respondent

Hearing: 16 May 1984

Counsel: M.J. Glue for Appellant
 G.K. Panckhurst for Respondent

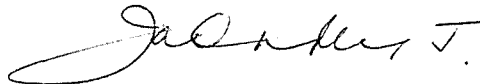
(ORAL) JUDGMENT OF ONGLEY J.

F I TOYE was convicted in the District Court at Christchurch on the 2nd of March 1984 on a charge of careless use of a motor vehicle. He was fined the sum of \$300 and ordered to pay costs after entering a plea of guilty.

The circumstances of the offence were that on the afternoon of the 10th of October, he was driving a Bedford truck in a southerly direction under a New Zealand Railway's bridge across the highway at that point in the roadway. That bridge had a maximum height restriction of 2.4 metres and in the course of endeavouring to pass under it, the top part of the appellant's vehicle collided with the underside of the bridge.

The appellant is an experienced driver, driving for the New Zealand Post Office, an occupation which he has carried on for many years in the past without having any road accident or any conviction for a driving charge. Mr Glue, appearing

for the appellant, says that the fine of \$300 is in excess of that usually imposed for such an offence in this district and is excessive in all the circumstances of the case. I have no record of what may have been said by the District Court Judge at the time of imposing the fine but that, as I understand it, is not unusual in cases of this sort. Looking at the matter more or less afresh then, it seems to me that the appellant should have received some significant credit for his long, blameless driving record and also for the fact that, although on this occasion he did use the vehicle carelessly, there is little culpability attaching to what happened. It was, as I see it, an error of judgment, a momentary lapse in the circumstances, as a result of which no other person was endangered or inconvenienced in any way. Taking those factors into account, I find that the fine of \$300 was beyond the range of penalties which would normally be imposed. In saying that, no period of disqualification was imposed and I do not think any was warranted. An adequate fine in the circumstances, in my view, would have been a fine of \$150 and so I allow the appeal and substitute a fine of that amount for the fine imposed in the District Court. The costs will required to be paid as well.



Solicitors:

M.J. Glue, Christchurch, for Appellant
Crown Solicitor's Office, Christchurch, for Respondent.