IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

No. M.505/84

BETWEEN MERVYN JAMES MITCHELL

Appellant

A N D MINISTRY OF TRANSPORT

Respondent

Hearing: 2 October 1984

Counsel: Appellant in Person
A. McIntosh for Respondent

Judgment: 2 October 1984

ORAL JUDGMENT OF HOLLAND, J.

The appellant pleaded guilty in the District Court to a charge that being the operator of a motor vehicle he used that motor vehicle when a distance recorder was not fitted to that vehicle. He was fined $500 and Court costs of $20. He has appealed on the basis that the fine is manifestly excessive in the light of the circumstances of the offence and he appears in person to conduct his own appeal.

The Courts are aware that the enforcement authorities have expressed considerable concern at the evasion of revenue that is taking place by motor vehicle operators who are operating vehicles without hub meters as required. In some areas of New Zealand very large fines have been imposed. Other areas seem either to be later in following this step or perhaps have decided

that the problem is not so prevalent in their area that large fines should be imposed. In this case the sentence was imposed by a North Island Judge visiting Christchurch. He has said in the course of his sentencing "I do not know what attitude is taken to this type of offence in this district". With respect to the District Court Judge, I think he should have made some enquiry. An enquiry from the prosecuting officer as to the level of sentences imposed would undoubtedly have been helpful for him. The District Court Judge was no doubt aware of the appropriate penalties for this offence in the North Island or in certain parts of the North Island. There is a great deal to be said in favour of the view that there should be some uniformity of sentence but in a matter of this kind where a Judge is visiting only for a week or so one would have expected the Judge to have fallen into line with the practice adopted by his brethren in that area.

I propose to allow the appeal, but I do not wish it to be thought that by doing so I am saying that in future cases a fine of this kind is inappropriate. I am allowing the appeal because there is some element of injustice to this appellant in that in the luck of the draw he drew the visiting Judge who took a harsher view of the offence than others might.

The offender submits that although he is a contractor he is not really in the business of running a regular transport business and he used the truck in question for moving equipment essentially from site to site. There is no evidence that he is a major road operator but having said that, this is not his first offence. It is his second. It is clear, however, that his first offence was not regarded as a serious matter but he is not in

the same position as a first offender. In the case of a second offence there must be some substantial grounds for believing that the appellant is offending from time to time. I do not think it is justified to take that view at this stage but any further offence should certainly be looked at very seriously indeed. I am obliged to counsel for the Crown who in reply to my request has indicated that for a first offender a fine in the vicinity of $150 could have been expected. It would seem that although this man is not a first offender the offence was at the lower order of the scale of things because he is not a major operator. Taking all those factors into account and allowing for the fact that it is his second offence, I am nevertheless of the view that the fine of $500 was excessive.

The appeal is allowed. The sentence of the fine of $500 is quashed and in lieu thereof he is fined the sum of $150 and ordered to pay Court costs of $20.

A D Holland J

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