IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

M 276/84

1194

BETWEEN WAHAROA TRANSPORT CO LTD

Appellant

AND MINISTRY OF TRANSPORT

Respondent

Hearing: 1 October 1984

Counsel: Appellant by its manager
Mr Morgan for respondent

Judgment: 1 October 1984

ORAL JUDGMENT OF HILLYER J

This is an appeal against conviction and a fine imposed in the District Court at Hamilton on 13 June 1984 by District Court Judge Latham. The appellant, Waharua Transport Company Ltd was charged under S.5 and 23(2) of the Road User Charges Act 1977 with being the owner of a motor vehicle registered number JC2040 when the motor vehicle was operated on a road, namely Te Rapa Road when a distance licence was not displayed on the motor vehicle.

The facts are in short compass. The motor vehicle was observed carrying stock. It is clear that it was owned by the appellant. The gross weight of the truck was found to be 21,321 kg and therefore a 22 tonne distance licence was required. The vehicle had in it a 20 tonne distance licence but this distance licence was not stuck to the windscreen. It was, the appellant says, lying on the dashboard. The traffic officer indicated it was produced from between the seats. That does not matter on the argument that has been addressed to me. The learned District Court Judge convicted the appellant and fined it the sum of $750 with $20 costs.

This matter has come before me, the first of a number of appeals with which I must deal today, and on behalf of the appellant, Mr Clothier "the owner" of the appellant, by which I take it he means the Managing Director and shareholder with his wife, and generally the person responsible for the company, appeared in support of the appeal.

Mr Morgan for the Ministry of Transport addressed a legal argument to me on a question which is apparently the subject of differing decisions of Bisson J and Gallen J. I am told the decision of His Honour Bisson J is to go before the Court of Appeal. It does not appear the particular point was argued before Gallen J. I have not had the advantage of legal submissions on behalf of the appellant. Although Mr Clothier has put forward his points with force and clarity, he has not really dealt with the point raised by Mr Morgan.

S.5 of the Road User Charges Act provides :

> "... no person shall operate a motor vehicle (other than an off-road motor vehicle, as defined in S.2 of this Act) on a road unless -
>
> (a) There is displayed on the motor vehicle in accordance with this Act a distance licence specifying :
> (i) The number or distinguishing mark shown on the registration plate or plates of the motor vehicle; and
> (ii) The serial number (if any) of the distance recorder fitted to the motor vehicle; and
> (iii) The vehicle type number of the motor vehicle; and
> (iv) Such other information as is required to be specified therein by this Act; and
>
> (b) The gross weight of the motor vehicle is not more than the maximum gross weight specified in that licence; and
> (c) ...
> (d) ... "

S.19 provides :

> "Every licence shall be displayed, in an upright and conspicuous position, as follows :
>
> (a) In the case of a motor vehicle fitted with a windscreen, the licence shall be affixed to the inside of the windscreen on the passenger side so

that the side of the licence displaying the number or distinguishing mark shown on the registration plate or plates of the motor vehicle faces towards the foremost part of the motor vehicle and is easily visible from outside it:

(b) .... "

Section 23 provides that it is an offence to :

".. operate a motor vehicle on a road in contravention of s.5 or s.6 of this Act: "

and provides for substantial fines up to a maximum now of $15,000.

Mr Clothier says it was just an accident; the licence had fallen off the windscreen, there was no attempt to cheat the Revenue, and that although the licence was only for 20 tonne and not 22, that was caused by the difficulty of estimating the weight of stock.

Mr Morgan's argument is that the charge is more than a mere technical one of failing to display a proper licence, that the learned District Court Judge was entitled, as he did apparently, to take into consideration the excess weight carried over the specified weight in the licence. That obviously is a serious matter, and not one in which Mr Clothier's plea that it was an accident would have much appeal. It is the responsibility of drivers of heavy motor vehicles to ensure that the vehicle is within the limitations specified, and any failure to do so justifies a substantial penalty.

The problem arises because the offence specified in S.5 is either failing to display the licence, or having the gross weight of the motor vehicle more than the gross weight specified in the licence. If therefore, Mr Morgan submits, the licence is not displayed, the Ministry of Transport is not able to charge the operator with having the gross weight of the motor vehicle more than the maximum gross weight specified "in that licence" because that licence is a licence which had to be displayed.

In the decision of Bisson J, South Waikato Transport Ltd v Ministry of Transport, Hamilton Registry M.478/83 Judgment 10 February 1984, His Honour said :

> "The position as I see it, on reading s.5 as a whole, is that the operation of a motor vehicle on a road in breach of any one of the provisions of paragraphs (a) (b) (c) or (d) of that section, is a separate offence. But before an offence can be proved under either paragraphs (b) or (d), a distance licence must be displayed on the motor vehicle in accordance with the Act."

If therefore the licence is not displayed in accordance with the Act there can be no offence under sub-section 5(b). That does not matter, in Mr Morgan's submission, because the penalty for failing to display the licence is the same as the penalty for having the gross weight more than the weight specified in the licence.

When a charge is laid, the first task of the Tribunal is to determine whether the charge is proved. If the charge is proved, the Tribunal then goes on to determine how serious the offence is. In this particular case, the charge was of failing to display the licence. There can be no doubt but that the appellant was properly convicted of the offence charged. The licence was not displayed in accordance with the Act. That could be serious, or it could be a minor matter. In this particular case, however, the offence was not a minor matter because the licence that was not displayed was not a licence that would have permitted the carrying of the weight that was in this truck.

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 all the circumstances I am of the view that the penalty imposed is a proper one and the appeal is dismissed both as to conviction and sentence.

P.G. Hillyer J

Solicitors
Crown Law Office for respondent.