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IN THE HIGH COURT OF NEW ZEALAND M. 15/84

WHANGAREI REGISTRY

477

BETWEEN BLUEPORT A.C.T. (N.Z.) LIMITED

APPELLANT

A N D THE NORTHLAND HARBOUR BOARD

RESPONDENT

Judgment: 22 March 1984

Hearing: 22 March 1984

Counsel: J.M. Walters for Appellant
Te K. W.H.K. Puriri

ORAL JUDGMENT OF CASEY J.

On the 16th August 1983 the Appellant was convicted in the District Court and fined $3,000 plus costs and ordered to pay $403.20 for the cleaning of an oil spillage which occurred in the Opua Harbour on 24th July 1982 when its ship the "Manaar" at Opua Wharf was pumping salt water ballast. In some manner which the company attributes to a faulty valve, a small quantity of oil leaked out into the harbour. The report of the Harbour Board officer contained in the summary of facts described the slick he saw as being approximately 300 metres long by half to one and a half metres wide, extending from the starboard side of the ship out into the basin. It was sprayed by members of the Board's staff, who were successful in dispersing 90 to 95 percent of the oil. There were no signs of damage next day on the beach or ferry ramp area but six boats moored nearby were affected by having oil stains on their hulls at the water line. Investigations later showed the oil to have been forced through a faulty ship side valve by pressure in the ballast main. It is noted that the officers of the ship were co-operative, and the pumping had been done under the supervision of an engineer stationed on deck. It ceased immediately the seepage was seen from the ship's side.

Mr Walters sought permission to submit a statement made by the Captain of the vessel and his account corresponds generally with that given by the inspector, except that he estimates that about two gallons of oil was discharged into the harbour. Having regard to what was reported by the Harbour Board inspector, this appears to be a very optimistic estimate. The description of the oil slick suggests it was not an insignificant discharge and had it not been for the prompt action taken by the Board and the co-operation from the ship itself, there might have been a good deal more damage than the effects noted on the boats moored nearby.

Unfortunately, there is no transcript of the District Court Judge's remarks and Counsel were not able to assist me to any great extent. He submitted a memorandum in which he said he referred to the maximum penalty provided as a reflection by the legislation of the seriousness of the charge. He noted that there was no evidence of any system of work or supervision by the Defendant to ensure that the fault that caused the discharge did not occur. Before me, Mr Walters quite forcibly submitted that this should be treated as a very minor incident, and that the learned Judge may not have been altogether fair to the ship in his reported comment that there was no proper system or supervision. He felt he could have taken judicial notice that in a ship of this size there would have been proper systems laid down and carried out to check and inspect equipment vulnerable to deterioration or breakdown.

Be that as it may, I repeat what I said during the course of the argument that virtually every spillage that occurs within a harbour is the result of some accident on the ship. In these days it is virtually unheard of to encounter a case of deliberate discharge. Consequently, the Act must be applied in the light of the fact that it deals in the main with accidental and not deliberate discharges of oil, and the severe maximum penalty of $100,000 prescribed by Parliament is a reflection of its intention to impose a very high degree of responsibility on ships in New Zealand waters in an endeavour to eliminate even the chance of oil spillage. It is quite

clear from the 1974 legislation that the massive increase in the maximum from $15,000 to $100,000 demonstrated that Parliament had resolved to deal with this problem very firmly. The Courts have quite rightly taken notice of this change and have in the main imposed penalties which reflect this view by the legislature.

Seen in this light and having regard to the description of the oil spillage given by the inspector, I think that the learned Judge must have paid proper regard to the mitigating circumstances which Mr Walters has placed before me. Compared with the maximum penalty which could have been imposed, a fine of $3,000 for such a spillage can be reasonably regarded as at the lenient end of the scale. Mr Walters did suggest that there was some kind of unofficial tariff, with the fine being approximately three times the cost of cleaning up. I see no justification for the adoption of such a rule of thumb and Mr Puriri certainly disavowed any tendency towards that as a result of his acting for the Harbour Board in this field. Such an approach would be quite wrong. Each case must be considered on its own merits and here, while perhaps the fine may be larger than other Judges may have thought fit to impose, I am unable to say that it is outside the discretion of the District Court Judge in this case, even for lenient treatment of the matter. I see no basis for interfering with it. The appeal must be dismissed with costs of $100 to the Respondent.

McCarey J

Solicitors:

Chapman Tripp & Co. Whangarei, for Appellant
Connell Lamb Gerard & Co., Whangarei, for Respondent