IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

M.272/84

BETWEEN R CARSTAIRS

Appellant

A N D MINISTRY OF TRANSPORT

Respondent

Hearing: 13 July 1984

Counsel: J.S. Fairclough for Appellant
B.M. Stanaway for Respondent

ORAL JUDGMENT OF HARDIE BOYS J.

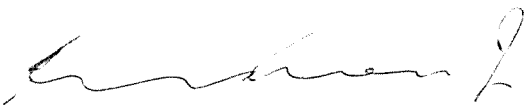
This appellant was before the District Court on two charges of driving with excess blood alcohol: on 8 November 1983 he had 117 mgms of alcohol per 100 mls of blood; and on 19 February 1984 he had 188. On one occasion there had been no driving fault at all: his car was merely "emitting quantities of smoke" to quote the summary of facts. On the other, he crossed a railway line at speed. He had been before the Court twice before on charges of this kind; once about ten years ago and once about 3 years ago. It was obvious from the probation report that he has an alcohol problem of some severity but had in fact himself taken the initiative, following his apprehension on one of these charges, of taking up former contacts with Alcoholics Anonymous and as well

arranging to attend the Mahu Clinic as a day patient. He has family responsibilities that I would think have been a factor in persuading the Judge not to impose a period of imprisonment. On the other hand the Judge did not accede to counsel's suggestion that all that should happen should be the imposition of a period of probation accompanied by a lengthy period of disqualification. He sentenced the appellant to six months' periodic detention with twelve months' probation, but then took counsel's submission further than was intended and disqualified the appellant from driving for seven years. That was on the basis that his fitness to drive ever again was dependent on whether he overcame his addiction. He was told that although the disqualification was a lengthy one, he could come back to the Court and obtain a restoration of his licence if he could satisfy the Court that he was a fit and proper person to be entrusted with one.

There may be cases where that approach is a proper one. And a term of disqualification as long as this may also be proper in certain circumstances. But I do not think that this is such a case. Generally speaking, the penalty must match the crime. It should not be used to enforce a form of treatment but to act as a punishment and to act as a deterrent. In this case, although the appellant had an alcohol problem, it has not manifested itself in his driving to the extent that is often found. For that reason, and because of the circumstances of the two particular offences in respect of which he was charged on this occasion, I think the term of disqualification was indeed manifestly excessive. It

nonetheless must be one of some length in order to impress on the appellant the need to overcome his alcohol problem, or at least not to drive if he succumbs to it. And of course even with a lesser term, he still has the right to apply for restoration if the circumstances warrant it.

The appeal will accordingly be allowed to the extent that the term of disqualification is reduced from 7 years to 3 years.



Solicitors:

Cavell, Leitch Pringle & Boyle, CHRISTCHURCH, for Appellant
Crown Solicitor, CHRISTCHURCH, for Respondent.