

749

BETWEEN

BROWN

Appellant

NZLR

A N D

MINISTRY OF TRANSPORT

Respondent

Hearing: 4 July 1984

Counsel: U D M Sparks for Appellant
P J Morgan for Respondent

Judgment: 4 July 1984

ORAL JUDGMENT OF WHITE J

This is an appeal against a fine of \$750 and eighteen months' disqualification imposed in the District Court at Huntly on 9 May 1984.

It was a case in which the papers show that the level of alcohol was 179 milligrammes per 100 millilitres of blood on the charge of excess blood alcohol.

The grounds of appeal are that the sentences - both the fine and the disqualification - should be regarded as manifestly excessive having regard to the circumstances and, as the appellant himself says in his Notice of Appeal, his own circumstances. He said there, and his counsel has carefully explained the position again, that although he had been previously convicted for a similar offence in 1974, he had not been before the Court since that time on such an offence as this, and presumably on any offence.

Mr Sparks has made careful submissions on the matter. He agrees that the case must be considered having regard to the earlier conviction and having regard to the level of alcohol in

the appellant's blood. Mr Morgan submitted that there were three aggravating features in the matter which the District Court Judge was entitled to take into account - namely, the previous conviction, the level of blood alcohol, and also the appellant's driving and the circumstances of his driving on this particular occasion.

Having considered the matter and the facts as they now appear before me, I think the learned District Court Judge had a duty to consider the various factors which Mr Morgan has mentioned. There is no real dispute that he would need to do that and also take into account the age of this appellant. I note that he is a member of a car club and is a person who would be expected to have a sense of responsibility having regard to his background. Mr Morgan goes so far as to submit that he was perhaps fortunate in not being dealt with more severely in this case.

For the reasons that I have mentioned, the conclusion I have reached is that in all the circumstances, neither the fine nor the length of the disqualification has been shown to be manifestly excessive. This is the kind of case where it is necessary to underline the serious view taken of such an offence.

The appeal is dismissed.


.....