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IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

M. 385/84

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<u>BETWEEN</u>	<u>B. CRONIN AND COMPANY LIMITED</u>
	Appellant
<u>A N D</u>	<u>MINISTRY OF TRANSPORT</u>
	Respondent

Offence: Exceeding the maximum gross weight specified
in the distance licence displayed
Dealt with: 29 August 1984 At: Hamilton By: Millar DCJ
Sentence: Fined \$3000

Appeal Hearing: 7 November 1984

Judgment: 7 November 1984

Counsel: D.M.O'Neill for appellant
P.J.Morgan for respondent

Decision: Appeal allowed by reduction of fine

ORAL JUDGMENT OF BISSON J.

This appellant was dealt with in the District Court at Hamilton on a number of offences under the Road User Charges Act 1977, and has appealed in respect of a fine of \$3000 imposed on a conviction relating to an offence of exceeding the gross weight allowed by his distance licence.

The learned District Court Judge said, in his Notes on Sentencing:

"The charges relate to a truck and trailer unit and I am told and I accept that while the truck was carrying an under-weight licence, the trailer licence was over-weight to the extent that had the loads been more evenly distributed there would have been no offence created in relation to the gross weight."

Mr O'Neill for the appellant relied heavily on this aspect of the matter because, had the load been

more evenly distributed than there would have been no offence and, in any event there has been no loss of revenue, which is important when considering the appropriate fine. However, this company has a number of previous convictions but has a considerable fleet. In the past twelve months it has paid \$696,000 in road user charges.

Mr O'Neill submitted that the court should not have taken into account the previous offences because notice of them had not been given in the manner described in s. 69A of the Summary Proceedings Act, 1957. But, as I read that section, it is a machinery one to enable the court to take into account previous convictions when the defendant does not appear and does not dispute the information supplied in that notice. In this case counsel represented the appellant and it is quite clear from reading the Notes of Sentencing that the list of previous convictions was accepted by counsel on behalf of the defendant. That being the case they were quite properly taken into account.

However, Mr O'Neill has drawn attention to the fact there has been a marked reduction in the number of offences committed by the appellant over the years. In 1980/81 offences of this nature were in the twenties and have reduced in 1984 to only five, so that it is clear that some effort has been made to improve its record. That is an aspect of the matter which may not have been directed to the attention of the learned District Court Judge when he imposed his fine of \$3000.

He did not accept the submission which had been made before to him that the company was mending its ways but, here again, he may not have had sufficient regard to the fact that the offence in question related back some three months.

Having regard to the level of fining in respect of this appellant in the past, with the greatest respect to the learned District Court Judge, I feel that he did not pay sufficient regard, perhaps because it was not pointed out to him, that there had been a marked improvement in the record of this company over the years. And, also, having regard to the fact that there was no loss of revenue in this particular case, I do take the view that the fine is clearly excessive but, nevertheless, a substantial fine is called for to act as further deterrent.

Having regard to the level of fining in other offences committed by this offender, I take the view that the situation would be met by an increase in that level of fining to \$1500. The appeal is allowed by the fine of \$3000 being reduced to one of \$1500.

Alfred Binion

Solicitors

O'Neill Allen & Co. of Hamilton for appellant
Crown solicitor for respondent