

IN THE HIGH COURT OF NEW ZEALAND  
TIMARU REGISTRY

GR.127/84

BETWEEN

CRAWFORD

Appellant

A N D

MINISTRY OF TRANSPORT

Respondent

Hearing: 28 November 1984

Counsel: B.D. Young for Appellant  
N.J. Scott for Respondent

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ORAL JUDGMENT OF HARDIE BOYS J.

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This is an appeal against a fine of \$300 and a disqualification of twelve months imposed on a charge of excess breath alcohol. The reading in this case was 1,000 micrograms of alcohol per litre of breath which is twice the level at which the offence is committed. Mr Scott tells me, and I have no reason to doubt him, that this is a particularly high reading in this type of case.

Mr Young has quite correctly conceded that the amount of the fine can hardly be described as excessive and although the appellant may have some difficulty in paying it at once there are means by which she can arrange with the Registrar to do so by instalments. The appeal is particularly directed at the period of disqualification. In that regard Mr Young correctly points out that there are mitigating factors such as that this is the appellant's first conviction of any kind; that she has been driving for 13 years; that she was not guilty of any significant driving infringement, she was merely following too close to a vehicle in front. That of course can be dangerous, but there was no indication that it was in this case. And, as the police summary itself says, she was very co-operative with them.

The minimum penalty of disqualification of six months was obviously inappropriate in this case because of the extent to which the breath alcohol exceeded the permissible maximum. Once that factor is acknowledged it becomes very difficult to say that a disqualification of 12 months, as compared for example with nine months which Mr Young has suggested would be appropriate, is manifestly excessive, and that is the test by which I must be guided. Fixing the appropriate period of disqualification is very much a matter within the discretion of the District Court Judge, who handles these matters daily. His responsibility is to impose the appropriate penalty in all the circumstances of each case and it is only when he has clearly gone wrong in doing that and imposed a sentence that is right out of kilter with the appropriate range that this Court is entitled to interfere. Another Judge might perhaps have imposed a lesser period of disqualification but it is not possible to say that twelve months in this case was manifestly excessive.

In those circumstances the appeal will have to be dismissed.



Solicitors:

Petrie Mayman Timpany & More, TIMARU, for Appellant  
Crown Solicitor, TIMARU, for Respondent.