IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

M. 5/84

BETWEEN BUNTING

APPELLANT

AND MINISTRY OF TRANSPORT

RESPONDENT

Hearing: 26th March, 1984

Counsel: Winger for Appellant
Mrs. Shaw for Respondent

Judgment: 6.4.84

JUDGMENT OF GALLEN, J.

On the 10th November, 1983, the appellant was convicted on a charge of parking a motor vehicle in a prohibited area marked by a broken yellow line, the charge arising under the provisions of Reg. 35 (2) (d).

The appellant was convicted by Justices of the Peace after a defended hearing. In their decision the Justices, after setting out the contentions of both sides, found as follows:

> "There is no question in the minds of the Court that broken yellow lines were placed on that roadway. You have stated that you parked on the left of the yellow lines and you have indicated by a photograph that you presented to the Court an indication of the area and the car parked on that left side of the roadway. The evidence presented to the Court has indicated that there is no kerbing and there is no footpath.

> It is indicated also to the Court under cross-examination by yourself that there were other vehicles parked there but there was no visible sign that there was a no parking sign there, there was no physical barrier to anyone driving and staying on that side of the broken yellow line.
>
> It is quite c lear under the section that parking a motor vehicle in a prohibited area marked by a broken yellow line is against the Regulation 35 (2) (d) and in the Court's view that is what has been established, that the regulation was broken to the extent that it is quite clear even from the photograph that there is a broken yellow line established there and that a person should not be parked on the broken yellow line on the left or right of the broken yellow line unless it could be clearly shown that there was an area available which a parked car could be properly parked. In other words as this area clearly indicates that it was road-way as far as the evidence of the Court is con-cerned, the Court finds that the charge as stated here has been proven and it finds accordingly. "

Following a further comment by the defendant, the Justices made the following statement:-

> " Look, the Court has already determined that and finds that the evidence given indicates that you were parked within a few inches of the broken yellow line although on the left of the broken yellow line and the Court has considered the fact of whether this is defined as a roadway or not. It does not find that it is a footpath it finds that the area is a roadway and has determined that matter accordingly. "

The appellant produced a photograph. This was not according to the decision rejected by the Justices but the position of his vehicle as shown in the photograph does not accord with the final finding that he was parked within a few inches of the broken yellow line. The traffic officer in evidence referred to the position of the vehicle on a number of occasions. He first said:-

"The section of road where the Vanguard and trailer were parked was clearly marked with a broken yellow line which forbids parking at any time."

In cross-examination the following passage occurred:

"Didn't I point out to you that I was not parked on the roadway? Yes, you pointed out to me that you were actually on the left hand side of the yellow lines, the shoulder.

Didn't I point out to you then that I was parked on the left, on the verge of the road? Yes.

And didn't you say to me that you can't park on either side of a broken yellow line? Yes I did. "

And in re-examination:

"You said in evidence that the defendant's vehicle was parked on the grass I think it was you said adjacent to the yellow lines .... Parked on the shoulder. The yellow lines were on the right hand side of the vehicle and the trailer.

Were the yellow lines on a solid portion of the road? Yes they were.

This grass, is that a normal grass verge in the sense that it has kerb? It is not grass, it is gravel I think, there is no grass there at all.

Could you be specific on that. Is it grass or is it gravel? It is gravel

THE COURT -
The evidence you have given is that the vehicle was parked on the left side of the double yellow lines. That is on the gravel? Yes

Towards what? a footpath? No, it is hard to explain. People park there because there is shade, there are trees. There is gravel, there is a bank I seem to recall, a grassy bank, trees. gravel, then there is the sealed road but the yellow lines themselves from what I can recall don't come out from the edge of the seal a metre, the yellow lines are fairly close to the edge of the seal towards the gravel. The vehicle and the trailer were parked on the gravel with the yellow lines running almost exactly within inches of the right side wheels. I can't recall but the wheels may have actually been slightly on the seal but I can't recall for certain.

> You say the car was parked within inches of the right side of the yellow line? Yes, no, the yellow lines were to the right of the right hand wheels of the car and trailer and I seem to recall that they were quite close. The car was on the left of the yellow line.
>
> The wheels of the car were close? Yes I recall they were quite close because the actual gravel shoulder is not particularly wide, it is a fairly tight sort of a squeeze.
>
> And the evidenc e you have given is that there is no footpath there? No not on that side of the road.
>
> Is that all roadway? I imagine it is. There is no footpath there. It could be used to drive on, it is not grass, there is no footpath. The other side of the road has got a footpath with kerbing on it. "

In spite of the indication of the vehicle on the photograph produced by the appellant it would seem clear that the Justices held the appellant's vehicle was rather closer to the yellow line than the photograph indicates, and this must be regarded as a finding of fact. However, there is no finding that any part of the vehicle was actually on the sealed surface of the roadway. There is only one passage in the evidence which suggests that any part of the vehicle might have been on the sealed surface. That is where the traffic officer indicated that the wheels may actually have been slightly on the seal but he goes on to say that he cannot recall for certain. In the absence of a specific finding, and bearing in mind the totality of the evidence, it seems to me much more likely that the appellant's car was parked as the traffic officer said more than once on the gravel to the left of the sealed surface, and I proceed on that basis.

The Traffic Regulations 1976 deal in Reg.35 with restrictions on stopping or parking vehicles. Insofar as it is relevant this regulation is in the following terms:-

> "35. Restrictions on stopping or parking vehicles-- .....
>
> (2) No person, being the driver or in charge of any vehicle, shall stop, stand, or park that vehicle on a road, whether attended or unattended .....
>
> (d) In any part of a roadway so close to any corner, bend, rise, dip, traffic island, or intersection as to obstruct or be likely to obstruct other traffic or any view of the roadway to the driver of a vehicle proceeding towards that corner, bend, rise, dip, traffic island, or intersection, or within 6 m of an intersection, or on any part of a roadway where the controlling authority has marked a broken yellow line parallel to and at a distance of not more than 1 m from the edge of the roadway....."

The terms "road" and "roadway" are defined for the purposes of the regulation in the following terms:-

> "'Road" includes a street; and also includes any place to which the public have access, whether as of right or not; and also includes all bridges, culverts, ferries, and fords forming part of any road, street, or other place as aforesaid: but does not include a motorway within the meaning of the Public Works Amendment Act 1947."
>
> "'Roadway' means that portion of the road used or reasonably usable for the time being for vehicular traffic in general; and for the purposes of Part VIII of these regulations includes a public cycle track constituted under section 176 of the Municipal Corporations Act 1954 or under section 197 of the Counties Act 1956."

It is clear from this that the term "road" is a general term and the term "roadway" is more restricted

applying to the used or usable area of a road as distinct from the full legal extent of it. The traffic officer does not seem to have directed his attention specifically to the question of what was the usable area of the road but he did say that the area where the car was parked could have been used to drive on.

In Candy v. Maxwell (1934) N.Z.L.R. 766 Herdman, J. was concerned with a collision between motor vehicles and it was important to be able to determine the centre of the road and for that purpose it was necessary to know what area constituted road. In the particular case the road surface had a bitumen strip sufficiently wide to allow ample room for vehicles to pass with safety, in fact, some 28 feet wide. The surveyed road was 54 feet in width and there was metal and sand at the side of the bitumen. The regulation with which the case was concerned defined the centre line in terms of that portion of the road which was "used or reasonably usable" for the time being for vehicular traffic in general. The terms "used or reasonably usable" still appears in the regulation with which I am concerned. Herdman, J. considered that the metal, sand and gravel should be considered to be reasonably usable. He nevertheless interpreted the regulation as fixing the centre line for traffic purposes as being the centre of the bitumen without taking into account the other areas. In doing so he followed a Canadian decision of Parr v. Hurt (1920) 1 W.W.R. 89 of which he had only a note

and which has not been available to me. The learned Judge considered that it was important that a driver should be able to tell with certainty whether or not he was on his correct side of the road and that there would always be a doubt about that if he had to take into account indeterminate areas at the side of the bitumen. He concluded that in those circumstances the regulation would be interpreted as confining the area concerned to the bitumen.

It is not unimportant to notice that the learned Judge placed an emphasis on the term "used" appearing in the regulation with which he was concerned. He considered that as distinct from usable surface the "used" surface was confined to the bitumen.

The roadway on the basis of this interpretation is therefore in such circumstances the bitumen surface. This interpretation obtains additional support from the wording of Reg. 36 (2) itself which refers to the broken yellow line being not more than 1 m from the edge of the roadway. By placing a yellow line on the roadway the local authority defines the edge of the roadway which must be a maximum distance of 1 m from the broken yellow line. It could be argued that this could be so interpreted as to include any area of metal or other surface up to a maximum distance of 1 m from the broken yellow line. I think this is unlikely. The broken yellow line is to be put at a maximum distance from the edge of the roadway which obviously involves a conclusion

that it could be placed at a less distance than that. For the purposes of the regulation I think it more likely than not that the regulation would take into account the practical interpretation appearing in Candy v. Maxwell (supra) which was decided long before the passing of the current regulations and which has remained unchallenged for many years. In my view, therefore, the term "roadway" for the purposes of this case is the sealed surface and, since I have already concluded that the appellant was not stopped or parked on the sealed surface, he is entitled to an acquittal and the appeal must be allowed. Obviously this decision is to some extent dependent upon its own facts and it may be that different considerations will arise in other cases.

Mr. Winger also relied upon the provisions of s.108 which is in the following terms:

> "108. No-stopping lines--(1) Any place where a controlling authority has prohibited the kerbside stopping of vehicles at all times, drivers may be advised of this prohibition by the marking and maintaining of a broken yellow line not less than 100 mm wide and not more than 1 m from the adjacent kerb or edge of the roadway.
> (2) Any such broken line shall consist of painted strips not longer than 1 m separated by gaps not longer than 2 m in length.
> (3) Where no kerb exists, the controlling authority may mark a similar line to indicate that the stopping of vehicles is prohibited if any part of a vehicle stopped on that side of the road is closer to the centre of the road than the broken yellow line. "

He submitted that the two regulations were to be read together and that the provisions of Reg. 108 (3) resulted in Reg. 35 requiring to be interpreted in such a manner that in every case where no kerb existed no offence was committed if no

part of the vehicle in question extended across the broken yellow line to the centre of the roadway.

Mrs. Shaw for the Ministry contended that the two regulations were quite separate and each constituted its own independent code. I should be more inclined to accept the submission that the two regulations required to be read together for the reason that, if the two regulations were to be read entirely independently, a person might comply with the provisions of Reg. 108 but still commit an offence under the wider ambit of the provisions of Reg. 35 and that in such cases no prohibition would have been necessary in Reg. 108. However, there are difficult questions raised in connection with this submission and, in view of my earlier finding, it is not necessary for me, and probably undesirable, to come to any conclusion in respect of it.

The appeal will therefore be allowed. The appellant is entitled to costs which I fix at $100.

R. L. Gallen

Solicitors: Holmden & Horrocks, Auckland, for Appellant
Crown Solicitor, Auckland, for Respondent