IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY

M.43/84

BETWEEN: DIRECT TRANSPORT LIMITED of Rotorua, Transport Operators

Appellant

A N D: MINISTRY OF TRANSPORT

Respondent

Offence: Exceeding Gross Weight specified on Distance Licence
Sentenced: 14/12/83 At: Tokoroa By: Millar DCJ
Sentence: Fined $1,000.

Appeal Hearing: 15 March 1984

Oral Judgment: 15 March 1984

Counsel: R G Ronayne for appellant
L H Moore for respondent

Decision: APPEAL ALLOWED - in part.
Fine reduced to $500.

(ORAL) JUDGMENT OF GALLEN, J.

In this case the appellant company was convicted on a charge that it was the owner of a motor vehicle which was operated on a road when the gross weight of that motor vehicle was more than the maximum gross weight specified in the distance licence for that motor vehicle. The learned District Court Judge expressed a concern about the number of occasions on which the particular company had offended against the section concerned, and imposed a fine of $1,000.00, together with costs.

I think it is reasonable to bear in mind, as Mr Moore pointed out, that in 1979 Parliament saw fit to substantially increase the penalties which may be imposed in respect of this particular offence, the maximum penalty now being the very large sum of $15,000.00, and it is clearly appropriate that in sentencing the learned District Court Judge did take into account the seriousness with which Parliament regarded that particular offence. It is also a matter for concern that a large company which has a responsibility to observe the law in connection with its operations should have accumulated a list of offences of the nature of this one, and I believe it was proper, and indeed inevitable, that the Judge should take that into account.

There are, however, three factors which lead me to the conclusion that having regard to all the circumstances the fine may have been too high. First, it is clear from the circumstances that there was no intention to evade, which is sometimes one of the ingredients of this offence. Mr Ronayne points to the fact that the offence took place during the middle of the day and also draws attention to the fact that although in one area the company may have exceeded the specified maximum, in another it was under that which it was entitled to carry. Mr Moore has pointed out that neither the District Court nor this Court is in possession of sufficient information to come to any conclusion as to exactly how the distribution occurred or whether in fact the company might, by some redistribution

of its load, have been able to comply.

I think I am entitled to accept that the learned District Court Judge accepted that there was very little loss of revenue, and also his conclusion that the offence was a relatively minor one. If it was, in fact, a relatively minor one then there seems to me to be less justification for taking the particular offence as that which, in Mr Moore's words, justified increasing the level of penalties to the next notch.

The third factor, which seems to me to have some significance, is the level of the fines which had been imposed for offences of this nature within the relatively close period of the imposition of this fine. Mr Ronayne drew attention to average fines, and made certain statistical submissions relating to the number of units which the company carried. I am not prepared to regard those factors as being of great significance here. Nevertheless, it appears that the penalties which were imposed at about the time these offences occurred were substantially less. In May of 1983 a fine of $300 was imposed, and again in the same month a further fine of $300. It is true that in September a fine of $500 was imposed on the company but this imposition appears to have taken place after the offence with which the Court is now concerned. I note, on looking back through the list of convictions, that on three previous occasions at least fines of $500 were imposed for this offence on the company. But the last of those took place in June of 1982.

Bearing in mind the level of fines which were being imposed at about the time this particular offence occurred and bearing in mind the specific finding of the learned District Court Judge that this had to be regarded as a relatively minor offence, it seems to me that increasing the notch to the extent of $1,000.00 was excessive.

Having regard to all the circumstances, the appeal will be allowed and a fine of $500.00 substituted for that imposed in the District Court.

Solicitors:

East Brewster Urquhart & Partners, Rotorua, for appellant

Crown Solicitor, Rotorua, for respondent