

IN THE HIGH COURT OF NEW ZEALAND
TIMARU REGISTRY

No. GR.20/84

BETWEEN

DORGAN

Appellant

A N D

MINISTRY OF TRANSPORT

Respondent

Hearing: 5 March 1984

Counsel: B.D. Young for Appellant
J.D.L. Wallace for Respondent

ORAL JUDGMENT OF WHITE J.

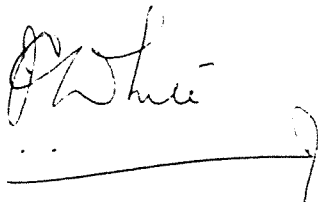
This is an appeal against a fine of \$200 and a 12 months disqualification imposed in the District Court at Timaru on 24 January 1984 on a charge of driving with excess alcohol in the Appellant's blood and permitting persons to ride in a dangerous position. As has been pointed out, it is the latter part of this incident which has led to this appeal, the ground of appeal being that the 12 months disqualification and the \$200 fine imposed in respect of the permitting to ride charge were manifestly excessive.

I have listened to counsel and have had an opportunity of reading the Statement of Evidence and the notes on the sentencing before I heard the matter this morning. The circumstances have been more fully described during the submissions and all that could be said on behalf of the Appellant has been said. In a case like this I have to be satisfied that the penalty imposed has been shown to be inappropriate or manifestly excessive in all the circumstances. I have considered the Regulation which provides:

2.

"That no person shall ride and the driver shall not permit any person to ride in or on a vehicle in a manner or position that may be liable to cause injury to that person."

In my view what happened in this case was clearly within this Regulation and that is not disputed. It must be borne in mind that it was only good fortune that as a result of the breach neither of the passengers in the vehicle appears to have been seriously injured. It was correctly said by counsel that the possibilities were otherwise. The duty under this Regulation is a duty of care which was plainly not exercised in this case. In the circumstances, in my view, the learned District Court Judge was fully entitled to view the circumstances seriously and, looking at the offence as a whole and the sentences imposed, I am unable to agree that either the fine imposed or the disqualification should be regarded as manifestly excessive. In the circumstances, the appeal must be dismissed.


A handwritten signature in cursive script, appearing to read 'P. White', is written above a horizontal line. The signature is written in dark ink on a white background.