

BETWEEN

FERNLAND SPA LTD

Appellant

AND

MINISTRY OF TRANSPORT

Respondent

Hearing: 3 October 1984

Counsel Appellant in person
Mr Morgan for respondent

Judgment: 3 October 1984

ORAL JUDGMENT OF HILLYER J

This is an appeal against a decision given in the District Court at Hamilton on 18 July 1984. District Court Judge Green imposed a penalty of \$750 and court costs \$20 on the appellant for breaches of s.5 and s.23 (2) of the Road User Charges Act 1977, in that it was the owner of a motor vehicle registered number 9561A, when the motor vehicle was operated on a road when the reading of the distance recorder was more than the maximum distance reading specified in the distance licence displayed on the motor vehicle.

The vehicle in question is a tanker which carries mineral water from Tauranga to Hamilton for bottling with pure fruit juice. The tanker is used only every three trips to Hamilton and mileage is therefore purchased for the tanker which is towed behind a tractor and trailer unit, as is necessary. On the particular day concerned, when the unit was stopped, the two towing units, the tractor and trailer unit were well in credit from the point of view of the mileage on the licence, but the tanker was 1100 kms in excess.

Before me Mr Davies, a representative of the company, has explained that no advantage could be obtained from the over-run

because when the licence is purchased it has to be purchased to cover the mileage that is to be shown in total on the distance recorder. In some cases the over-run would enable an offender to purchase the licence at a lesser weight so that although the operator would still have to purchase his licence and the mileage, he would possibly benefit from buying the mileage at the lower rate. The learned District Court Judge clearly had this in mind when he imposed the penalty that he did. He said :

"Bearing in mind that such an over-run as this would enable the operator to purchase a licence at a lesser weight, I must bear that possibility in mind."

The tanker, however, carried water and the weight for which the licence had to be purchased would be a constant one. It would not be like a trailer on which the weight could vary. It appears therefore, that the District Court Judge was not advised of a matter which is of some importance in this prosecution, and imposed the penalty that he did when he was under a misapprehension. I am of the view therefore, that the appeal should be allowed, and I do allow the appeal. The penalty imposed is reduced to \$250 with court costs \$20. I allow no costs on this hearing.


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P.G. Hillyer J.

Solicitors:

Crown Law Office for respondent