

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

M.99/84

838

BETWEEN

GODDARD

Appellant

AND

MINISTRY OF TRANSPORT

Respondent

Hearing 14 June 1984

Counsel Sandra Moran for the Appellant
K. G. Stone for the Respondent

Judgment 17/7/84

JUDGMENT OF ONGLEY J.

This is an appeal against conviction in the District Court at Wellington on 14 December 1983 upon an information charging that the defendant (the appellant in this Court) "parked a motor vehicle in a prohibited area marked by broken yellow line" that allegedly being an offence against Regulation 35(2)(d) of the Traffic Regulations 1976.

The prosecution evidence was that of^a Traffic Officer who said that on the day of the alleged offence he observed a motor-car parked in Ballance Street, Wellington, on a clearly marked broken yellow line. He said that the broken yellow lines were there to stop vehicles from parking within six metres of the nearest intersection. No obstruction was being caused. The entire vehicle was on the yellow line. No mention was made of there being an intersection in the near vicinity of the parked car. The offence was alleged to have been committed "on Ballance Street".

The charge was defended. There was no cross-examination of the prosecution witness and no evidence was called for the defence. At the close of the prosecution case the defendant submitted that the charge had not been proved but the submission was over-ruled and a conviction entered.

The essence of the ground of appeal is expressed in the outline of Counsel's argument as follows:

"The District Court Judge was wrong in holding that Reg. 128(7) dispensed with proof that stopping was prohibited on the portion of Ballance Street referred to in the Officer's evidence."

The power for local authorities to make by-laws prohibiting or restricting the stopping, standing or parking of vehicles on any road derives from S.72(1)(k) of the Transport Act 1962. That provisions reads as follows:

"72.
(1) Subject to section 13 of the National Roads Act 1953, and to the provisions of this Act or of any other enactment in respect of any of the matters referred to in this subsection, any minister of the Crown in respect of any roads under his control, or any local authority in respect of any roads under its control, may from time to time make by-laws for any of the following purposes:

(k) Prohibiting or restricting, subject to the creation of the prescribed signs, the stopping, standing or parking of vehicles on any road:

..... "

Turning to the Transport Regulations 1976 one finds that there is provision for Road Markings (Part X) and Traffic Signs (Part XII). Neither is defined except by reference to the description of types of markings or classes of signs contained in the regulation. In general terms markings are painted or other markings placed upon the road surface while signs are erected at a height above the road surface to facilitate observation of them by motorists. Because of their inclusion in different parts of the Regulations and the specificity of the description of the various types and classes it cannot be argued that the word "sign" is a generic term which includes "markings".

One specific type of marking called no-stopping lines is referred to in Regulation 108 which reads as follows:

"108. No-stopping lines - (1) At 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."

The Regulation is framed permissively so that it would appear that the controlling authority is under no

compulsion to advise motorists of the existence of a prohibition against kerbside stopping by a broken yellow line marking if it does not wish to do so. It goes without saying that it may only make such markings where it has/a lawful procedure imposed a prohibition against kerbside stopping. The only lawful procedure by which it may do that is by invoking the power to make an appropriate by-law given by Section 72(1)(k) of the Transport Act 1962. There do not appear to be any comparable powers under the Local Government Act 1974.

Section 128 of the Transport Act 1962 in subsections 1 to 6 (inclusive) gives various directions as to the erection and maintenance of traffic signs. There is no reference in those provisions to road markings and there is no other section having a comparable effect dealing with road markings. Subsection 7 does, however, include reference to markings. It reads as follows:

"(7) Proof that any traffic sign is erected on any road or that any marking provided for by these regulations appears on any roadway shall, until the contrary is proved, be sufficient evidence that the sign has been duly erected, or, as the case may be, that the marking has been duly made, in accordance with these regulations, or any other enactment or regulations relating to the erection of traffic signs."

The subsection is designed to mitigate the requirements of strict proof of the authenticity of road signs and road markings wherever they may be found. In relation to

no-stopping lines, in order to invoke the subsection it would be necessary in a prosecution to prove that the lines were a "marking provided for by these regulations". Whether in order to do so it is sufficient to prove that the marking fulfilled the bare description of a broken yellow line without reference to the size or spacing of the painted strips or their position in relation to the adjacent kerb or edge of the roadway is a question upon which I express no opinion as it has not been raised on this appeal. Assuming, however, that the marking conforms with the requirements of the regulations for stopping lines in those respects and so may unarguably be described as being a marking provided for by the regulations, the effect of subsection 7 is to regard that as sufficient evidence until the contrary is proved that the "marking has been duly made, in accordance with these regulations, or any other enactment or regulations relating to the erection of traffic signs". That would be sufficient, I believe, to establish that the marking had been made by the appropriate controlling authority or by some one authorised by it to do so. I say that because other than the Minister in some special circumstances the controlling authority, that is, the body having control of the road, is the only person authorised by the regulations to make such markings on it. To be duly made in accordance with the regulations therefore markings must have been made by the controlling authority.

Proof that the marking provided for by regulation 108 appears on the roadway is not sufficient, however, to establish that the controlling authority has prohibited the kerbside stopping of vehicles where that marking appears. It is a prerequisite to the existence of authority to make the marking that the controlling authority impose such a prohibition. In imposing such a prohibition it does not act under the Traffic Regulations 1976 but under powers conferred by the Transport Act 1962. What has to be proved is that a prohibition was imposed in accordance with those powers not that a marking was made in accordance with the regulations. Proof of a validly made by-law would no doubt be sufficient but there must be proof in some satisfactory form of the prohibition. The position is not saved by the concluding words of Reg. 128(7) which extend its effect to make proof that the marking appears on the roadway sufficient evidence that it has been duly made "in accordance with any other enactment or regulations relating to the erection of traffic signs". As I have already said the term "traffic sign" is not a generic term and it cannot be equated with or interpreted to include a road marking. That extended effect therefore has no application to road markings.

It was submitted by Counsel for the respondent that the charge could be regarded as alleging an offence against a different part of Reg. 35(2)(d), namely parking within 6 metres of an intersection. It is quite clear

in my view that the charge was not laid on that basis and was not dealt with by the District Court Judge on that basis. I regard this appeal as being against a conviction for parking on a part of a roadway where the controlling authority had marked a broken yellow line. The prosecution must show that the marking of the line by the controlling authority has been done lawfully and within its powers. In many prosecutions under the Traffic Regulations 1976 proof of formal matters will be assisted by Regulation 128(7) but for the reasons I have given that provision does not cover all matters which required to be proved in this case.

The appeal is allowed and the conviction quashed.

J. A. G. v. H. J.

Solicitors:

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