

3 X

IN THE HIGH COURT OF NEW ZEALANDM. 159/84PALMERSTON NORTH REGISTRY

379

BETWEEN: STANLEY REX FLEMING
(Ministry of Transport)AppellantA N D: JESS KAURIRespondentHearing: 10 May 1985Counsel: C.J. Walshaw for Appellant
K.C. Bailey for RespondentJudgment: 10 May 1985

ORAL JUDGMENT OF JEFFRIES J.

This appeal, by way of case stated, came before me on 26 March 1985. The purpose of the case stated was to test as a matter of law whether District Court Judge B.D. Inglis was entitled to have resort to s.42(1) of the Criminal Justice Act and, it seems, discharge without conviction a charge brought under s.58(1)(a) of the Transport Act 1962.

Appellant had been stopped at a checkpoint. He underwent a screening test which was positive. He accompanied the transport officer to a place where an evidential breath test was administered revealing 1100 microgrammes of alcohol per litre of breath. He was advised of his rights and chose not to take a blood analysis. He was charged, he attended in court and pleaded guilty.

In the course of submissions on penalty it emerged that he at that point alleged he had not consumed very much alcohol, and then very shortly before the evidential breath test was administered. This caused the District Court judge to suspect the validity of the reading which indeed was high. However, from other comments reported to me by counsel at the first hearing of what respondent said at the roadside, I doubt myself that he was making correct submissions to the judge at sentencing. The first move of the judge was to convict him, impose a fine and costs and find special circumstances enabling him not to impose the mandatory disqualification. Immediately he did this, and for reasons that are not clear to the court and cannot be clarified by counsel, the prosecutor then told the judge that he could not refuse to impose a disqualification. One possible explanation is that the prosecutor neither heard, or did not know the judge had found special reasons. On being informed of that, the judge then chose another route to achieve his ends by abandoning the special reasons and discharging him under s.42. I do not think he is able to use s.42 in these circumstances, for the reasons set out in Delfos.

A court on appeal is obliged, in so far as it is able, to administer the law with justice and fairness. I have

reached the view with the submissions made that the facts are now so confused that it is impracticable to make a useful ruling on the law in these circumstances. A case stated is designed for that purpose. I therefore have reached the view that the ends of justice will be served best by dismissing the appeal, and do so.

A handwritten signature in dark ink, appearing to be 'C. O. Bailey', written in a cursive style.

Solicitors for Appellant: McKegg Walshaw & Co., Palmerston
North

Solicitors for Respondent: K.C. Bailey, Levin