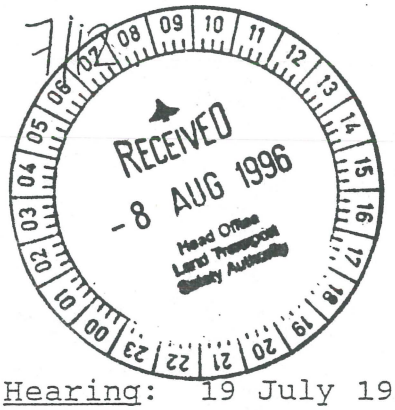
IN THE HIGH COURT OF NEW ZEALAND
BLENHEIM REGISTRY

COPY

AP 3/94

BF 1696H



BETWEEN OWENS SERVICES BOP LIMITED

Appellant

Logloading vehicle

A N D NEW ZEALAND POLICE

Respondent

Hearing: 19 July 1994

Counsel: M. Hardy-Jones for appellant
R.L.B. Spear for respondent

Judgment: 19 July 1994

JUDGMENT OF DOOGUE J

INTRODUCTION

The appellant was convicted and discharged in respect of two road traffic offences and ordered to pay court costs in each instance. The appeal relates to the correctness of the convictions. It is simpler to deal with each of the two convictions separately as, whilst there is some overlap in the submissions heard by me, they are distinct and separate offences.

THE VEHICLE

The appellant is the owner of a wheeled motor vehicle. The vehicle was designed for use as a log loader, although the same vehicle is designed for use for other purposes. As a log loader it has on the front of the vehicle two solid steel lift arms to which are

attached a system of logging forks, the lower forks being run under the load to be carried, with the top forks or clamp being brought into place as need be to hold the load in place. The vehicle had been licensed with an "E" licence label, which is an exemption label which will be referred to hereafter. At the time of the alleged offences on 14 March 1993 the vehicle was the subject of a consent from the Marlborough District Council pursuant to the Heavy Motor Vehicle Regulations 1974 to travel from Lagoon Road, Picton to the Waikawa Marae via Dublin Street and Waikawa Road, with a maximum weight specified in the permit. The vehicle at the time that it was stopped had held within the tines or forks used for the carriage of logs a bucket, but there is no suggestion the bucket was part of the vehicle.

FIRST CONVICTION

The appellant was charged with being "the owner of an off road motor vehicle registered number OY6416 which was operated on a road namely Waikawa Road when a current time licence for that motor vehicle was not carried on the motor vehicle" contrary to sections 6(a) and 23 Road User Charges Act 1977.

Unless a vehicle is exempted from its provisions, s. 6(a) provides:

> "No person shall operate an off-road motor vehicle (as defined in section 2 of this Act) on a road unless -
>
> (a) there is carried on the motor vehicle in accordance with this Act a current time licence ..."

"Off-road motor vehicle" is defined as meaning "a motor vehicle or a class specified in the Second Schedule to this Act".

"Motor Vehicle" is defined as meaning "a vehicle drawn or propelled by mechanical power, and includes a trailer".

"Vehicle" is defined as having the same meaning as in s. 2(1) of the Transport Act 1962. That definition is extremely wide and there is no suggestion that it did not cover the vehicle in question in these proceedings.

The issues which arose in respect of the particular charge were whether the vehicle in question was a "front end loader" within the Second Schedule to the Road User Charges Act 1977 and, if so, whether any exemption was held in respect of it which took it outside the provisions of s. 6 of the same Act. In the Second Schedule of the Road User Charges Act various categories of off-road motor vehicles are specified. Some of the categories are specific: for example, "asphalt mixing and paving plant". Others, such as "front end loaders" and "tractors other than those owned and operated by farmers on their own farms", are less specific. I do not intend to refer to all 22 categories of vehicles specified in the Schedule.

The District Court judge found that the vehicle in question was a front end loader and was accordingly within s. 6 of the Road User Charges Act. The appellant submits that that is not correct. The appellant submits

that the vehicle in question is not a front end loader but a fork lift. The appellant accepts that there is no definition of "front end loader" in the Road User Charges Act. The appellant accepts that there is no reference to "fork lift" within the same Act. What the appellant submits is that, as a fork lift vehicle is a distinct kind of vehicle which is not a front end loader, it cannot be a front end loader.

The appellant's submission works upon the premise that what is important is the construction of the vehicle and not its intended use. In that respect reference is made to the definition of "design" in s. 2 of the Transport Act 1962. Reference is made to a definition of "fork lift vehicle" in the Transport (Drivers Licensing) Regulations 1987. Those regulations are made under an Act relevant to the second charge but not directly to the present charge. The definition of "fork lift vehicle" means "a motor vehicle (not being fitted with self-laying tracks) designed principally for lifting and stacking goods by means of one or more forks, tines, platens or clamps". It is accepted for the respondent that on its face the vehicle in question in the present case could be said to come within that language. What is said for the respondent, however, is that, regardless of whether or not the vehicle in question is within that language, it is still a front end loader for the purposes of the Road User Charges Act.

The appellant says that that is not the case and that it was accepted by various of the witnesses at the

lower court hearing that the vehicle could be a fork lift vehicle or a front end loader. However, the question is first one of law as to what is a front end loader. There have been no submissions to me as to precisely what a front end loader is in reliance upon any dictionary or other definition. Given a fair, large and liberal interpretation, a front end loader would include any vehicle which has apparatus on its front end used for loading. The vehicle in the present case, designed for log carrying and consisting of forks or tines or clamps for that purpose, could be described as a fork lift for the purpose of the particular regulations to which reference has already been made, but it equally comes within the ordinary meaning of the term "front end loader". There are no words within the Road User Charges Act which exclude particular types of front end loaders such as fork lifts. There are no words to suggest that the term "front end loader" is used as a term of art relating solely to a vehicle to which is attached a bucket for the loading of spoil or other loose materials. The term "loader" is not of itself a term of art. It is a common term. It would include a vehicle such as the present, which in the manufacturer's material is described as a log loader, notwithstanding that the lifting mechanisms are in the same manufacturer's material described as logging forks. There is no conflict between those terms. There is no conflict between the proposition that a vehicle where the forks are on the front end of the vehicle is a fork lift

vehicle and the proposition that such a vehicle is also a front end loader.

I have little difficulty in coming to the conclusion that on the law as it stands in the Road User Charges Act 1977 any vehicle that has on its front end a loading device and that otherwise comes within the definition of a vehicle would fall within the description of a front end loader for the purposes of the Second Schedule to that Act, regardless of whether it may also come within some other description, such as a fork lift vehicle, for some other purpose.

The District Court judge arrived at his conclusion on different reasoning which it is unnecessary to traverse in detail but which related more to the extent to which a particular kind of vehicle may be used on roads. That does not appear to me to be the issue. What is the issue is whether the particular vehicle comes within the description of the class of motor vehicle specified in the Second Schedule to the Road User Charges Act or not. The present vehicle, given the language in the Act and its design, clearly does so.

The appellant has suggested that there could be said to be an ambiguity in the legislation and that the appellant should get the benefit of the doubt. However, the language of the Schedule is clear. The appellant's vehicle comes within it. There is no question of ambiguity to be addressed.

The secondary issue relied upon by the appellant is that the particular vehicle was exempted from the

relevant provisions of the Road User Charges Act because it was said that it was an exempted vehicle under the provisions of reg 3(a) of the Road User Charges Regulations 1978. It is unnecessary to go through the tortuous cross-references brought into play by the provisions of reg 3(a) of the Road User Charges Regulations. It refers to s. 99 of the Transit New Zealand Act 1989, which in turn refers to certain specified classes of exempt vehicles under other statutory provisions, which thus requires a consideration of other statutory provisions. In essence, however, the issue in this case was whether or not the appellant had consent from the National Roads Board to be driving the particular vehicle on the particular road at the time. If there was such a consent, then I think it would have been accepted on behalf of the respondent that the vehicle would have been exempt from the provisions of the Road User Charges Act. Unfortunately this issue was not addressed by the District Court judge at all, although I am told that the point was taken before him.

The appellant relies upon the permit given by the local authority under the Heavy Motor Vehicle Regulations 1974. That permit appears to be addressed to a regulation dealing with maximum weight of the particular vehicle upon the road. The appellant called no evidence to establish that the local authority was issuing that permit for the purposes of the Transport (Vehicle and Driver Registration and Licensing) Act 1986, which would have been the statute relevant for the purposes of the

Transit New Zealand Act 1989 and reg 3 of the Road User Charges Regulations. The appellant says that there was sufficient reference in the evidence to establish that such a consent had been given. However, the reference to the evidence is hardly particularly helpful to the appellant. The particular witness seemed to have the thought and belief that the local authority was the body responsible for granting the requisite consent and that once that consent was obtained there was a satisfactory exemption for the purposes of the legislation. However, it is accepted that the consent required is that of the National Roads Board. It is said for the appellant that the National Roads Board generally authorised local authorities to act on its behalf. There is, however, no evidence before the Court whatever that that is the case. There has been no reference to any statutory provision which gives rise to that result. There was no reference to any specific document which gave rise to that result. The Court on appeal certainly has no basis upon which to reach such a finding of fact when the evidence is slender in the extreme upon the particular point. There is no evidence from which such a conclusion can be inferred. At the most such a conclusion would be a speculative surmise based on rather vague evidence of a particular witness giving evidence for the appellant.

In the result, therefore, I would find that the District Court judge was fully entitled to convict and discharge the appellant in respect of the charge under the Road User Charges Act. Certainly nothing has been

put before me to show that the District Court judge was wrong in that conclusion.

SECOND CONVICTION

The appellant was also charged with a breach of s. 10(6) of the Transport (Vehicle and Driver Registration and Licensing) Act 1986 in that it "did use a motor vehicle registered number OY6416 on a road namely Waikawa road as a motor vehicle for which a licence fee has been paid which was lower than the licence fee payable for motor vehicles of that class".

If some of the statutory provisions in respect of the first charge gave rise to tortuous excursions through legislation which I have avoided, this charge gives rise to even more surprising consequences. The charge is brought under s. 10(6) of the specified Act. That section provided:

> "Every person commits an offence and is liable on summary conviction to a fine not exceeding $500 who uses any motor vehicle for which a licence fee has been paid which is lower than the licence fee payable for motor vehicles of that class."

The first point taken on behalf of the appellant, and one not addressed by the District Court judge and one which has not been addressed by the respondent in this Court for reasons which I will come to later, is that there is no evidence that the appellant had paid any licence fee in respect of the vehicle in question which was lower than the licence fee payable for motor vehicles

of that class and that accordingly the offence is not made out.

As already recorded, the vehicle had been licensed as being in an exempt category and no licence fee had been paid in respect of it. On its face, therefore, an essential ingredient of the alleged offence has not been made out in that no licence fee has been paid which is lower than the licence fee payable for vehicles of that class. It may well be that the Legislature intended that where no fee was paid an offence could also be committed. That is not what the Legislature has seen fit to say. It may be that the appellant is guilty of some other offence for licensing its vehicle in an exempt fashion when it should have been licensed in some other way. That, however, does not appear to be an offence under s. 10(6) of the Transport (Vehicle and Driver Registration and Licensing) Act 1986.

When the respondent can point to nothing bringing the particular circumstances within the offence section, it is difficult to see upon what possible basis the conviction can be upheld.

The second point taken on behalf of the appellant is that the vehicle is an exempt vehicle either under the provisions of s. 6 and the First Schedule to the last mentioned Act or clause 6(d) of the Transport (Vehicle Registration and Licensing) Notice 1986. The first part of that submission can be shortly dealt with as it again requires there to be evidence that the vehicle had the prior approval of the National Roads Board to be on the

particular stretch of road in question. There is no evidence that consent had been obtained and, for the reasons already traversed in respect of the first charge, that point fails.

The second point turns upon the meaning of clause 6 of the 1986 Notice already referred to. That clause, insofar as is relevant, reads:

> "Licences to use motor vehicles of the following classes shall be in the following forms:
>
> ....
>
> (d) for every motor vehicle that is an exempted vehicle within the meaning of section 187 of the Transport Act 1962 (other than a vehicle exempted from registration under section 6 of the Act) the licence shall be in the form of Diagram No 4 in that Schedule"

It is accepted that s. 187 of the Transport Act 1962 is no longer in force. It is submitted, however, that by virtue of the provisions of s. 20(b) of the Acts Interpretation Act 1924 it remains in force for the purposes of defining the terms used in these statutory provisions. It is submitted that the particular vehicle had an exempt licence and yet in terms of the clause of the particular Notice there is an inherent contradiction in that exempted vehicles within the meaning of s. 187 of the Transport Act 1962 overlap with vehicles which are exempt from registration under s. 6 of the Act and that that could not be the intention of the Notice. It is submitted that, when there is an inherent ambiguity to the meaning of the provision, one favourable to the appellant must be adopted and that where, as here, the

appellant had been issued with an exempt licence it does not follow, as the District Court judge found, that the absence of the exemption under s. 187 of the Transport Act 1962 inevitably led to the appellant requiring the vehicle to be licensed under the provisions of clause 6(e) of the Notice which provides for a general form of licence.

I do not find it necessary to address this argument in any detail, as, regardless of how the matter is approached, the appellant can point to no exemption in respect of the particular vehicle which is supported by the evidence.

Having regard to the first conclusion reached by me, in any event it is unnecessary and unhelpful to deal further with this argument. I have drawn attention to it merely to highlight the apparent deficiency in the form of clause 6(d) of the Notice in question where there is an apparent contradiction between the different parts of the clause.

For the reasons already stated, however, this part of the appeal will be upheld.

MISCELLANEOUS

In fairness to Mr Spear, I would note that he had received no instructions prior to today in respect of this particular appeal. In the ordinary course it may have been preferable that the matter be adjourned to some later date. However, when the alleged offences were committed on 14 March 1993 and there was no hearing or

disposal of the charges until 9 March 1994, further delay was highly undesirable. That is particularly so when the course adopted in the District Court saw the charges dealt with in a way which indicated clearly that the District Court did not regard the offences as anything other than of the most minor character. The appellant's primary objective in bringing the appeal appeared to be to obtain a determination as to whether the log loading vehicle in question could come within the meaning of a front end loader to enable it to protect itself, if need be, in respect of similar circumstances. It was therefore preferable that an early answer be given.

CONCLUSIONS

The appeal on the first conviction is dismissed. The appeal on the second conviction is upheld, with that conviction and the order for costs imposed being quashed.

Solicitors for appellant:
Radich Dwyer Hardy-Jones Clark, Blenheim

Solicitors for respondent:
Crown Law Office, Wellington