

42/00; [2000] VSC 492

SUPREME COURT OF VICTORIA

PASSEY v BURNS & ANOR

Beach J

16, 23 November 2000 — (2000) 32 MVR 160

PARKING INFRINGEMENT – BREACH OF REGULATIONS – PARKING SIGNS ILLUSTRATED IN REGULATIONS BY DIAGRAMS – PROVISION THAT SUCH SIGNS SUBSTANTIALLY CONFORM TO AUSTRALIAN STANDARD – NO PROOF AT HEARING OF CHARGES THAT THE RELEVANT SIGNS COMPLIED WITH AUSTRALIAN STANDARD – CHARGES DISMISSED – WHETHER ERROR DISCLOSED: ROAD SAFETY (TRAFFIC) REGULATIONS 1988, RR105, 303, 1103.

Regulation 303(3) of the *Road Safety (Traffic) Regulations 1988* provides that certain traffic-control items described in Diagrams which substantially conform to the requirements of the Regulations and of Australian Standard AS1742.11: Parking Controls are to be taken to be traffic-control items. Where the informant failed to prove that the relevant signs complied with the Australian Standard, a judge was not in error in dismissing the charges.

BEACH J:

1. On 1 September 1999 the first defendant John Burns was charged with the following parking offences:

"1. That you on 9 December 1998: as the person in charge of registered motor vehicle BEF 172 left standing in a parking area in Latrobe Street, Melbourne within the municipal district of the Melbourne City Council in the State of Victoria in a space at which the associated meter indicated expired, contrary to *Road Safety (Traffic) Regulations 1988*, Regulation 1103(71).

2. That you on 15 December 1998: as the person in charge of registered motor vehicle BEF 172 left standing in a parking area in Queensberry Street, North Melbourne within the municipal district of the Melbourne City Council in the State of Victoria for a period longer than the fixed period for that parking area, contrary to *Road Safety (Traffic) Regulations 1988*, Regulation 1103(7H).

3. That you on 3 May 1999: as the person in charge of registered motor vehicle BEF 172 left standing in a standing control zone in Lancashire Lane, Melbourne within the municipal district of the Melbourne City Council in the State of Victoria, namely a loading zone, contrary to *Road Safety (Traffic) Regulations 1988*, Regulation 1103(6).

4. That you on 3 May 1999: as the person in charge of registered motor vehicle NXB 465 left standing in a standing control zone in Lancashire Lane, Melbourne within the municipal district of the Melbourne City Council in the State of Victoria, namely a loading zone, contrary to *Road Safety (Traffic) Regulations 1988*, Regulation 1103(6)."

2. The charges came before the Melbourne Magistrates' Court on 6 December 1999.

3. The first defendant was found guilty of each charge, however no conviction was recorded against him, he was simply fined the sum of \$210 and ordered to pay \$750 costs to the informant.

4. The first defendant appealed against the findings, the fine and the costs order, to the County Court.

5. The appeals came before his Honour Judge Duckett on 18 April 2000.

6. Following a hearing which extended over the whole of one day his Honour reserved his decision in the matter.

7. On 28 April 2000 his Honour set aside the orders of the Magistrates' Court then dismissed the four charges.

8. On 22 June 2000 the informant Robert Stewart Passey filed an originating motion in the Court naming as defendants John Burns and the County Court of Victoria and by which he seeks an order in the nature of *certiorari* quashing the decision of his Honour Judge Duckett.

9. The following is the ground of relief relied upon by the plaintiff:

"The decision of His Honour Judge Duckett contains an error of law on the face of the record in that he misinterpreted the *Road Safety (Traffic) Regulations* 1988 as requiring the plaintiff to prove that the relevant traffic control items upon which he relied as the basis of his prosecution against the first defendant complied with Australian Standard AS1742.11: Parking Controls."

10. It is convenient to deal first with charge No. 1 as the findings in respect of the other charges will be the same as the finding in respect of charge No. 1.

11. In his reasons for judgment Judge Duckett held that the parking area signs and parking signs in relation to charge No. 1 are erected for the purpose of controlling, directing, guiding, regulating or warning drivers or pedestrians and are therefore traffic control items as defined in the Regulations. He concluded therefore that they must comply with the provisions of Regulation 303(3).

12. His Honour held that as the informant had not called evidence to establish that the signs did, that he had not proved his case and that on that basis the charges should be dismissed.

13. Before turning to a consideration of the provisions of Regulation 303 it is necessary to look first at a number of other regulations.

14. The provisions of Regulation 1103(7I) relevant for present purposes read:

"(7I) A person must not, except as otherwise provided in regulation 1101(3) leave a vehicle standing in a parking area (whether unattended or not) on any day and during the hours fixed in relation to that parking area. ...

(b) in a space in respect of which the meter relating to the space indicates that the period for which the appropriate fee so fixed has been paid has expired or that no fee has been paid in respect of the period for which the vehicle has been left standing in the space."

15. "Parking area" is defined in Regulation 105 as meaning:

"**'parking area'** means - (a) a portion of a carriageway - (i) between a parking sign and - (A) a no-parking sign; or (B) a no-standing sign; or (BA) a zone sign; or (BB) a clearway control sign; or (C) a dead end; or (D) an intersection zone lying in the general direction indicated by any arrow on the parking sign; or (ii) between 2 consecutive parking signs with arrows pointing generally towards each other; or (b) a portion of a highway (other than a carriageway) - (i) if parking signs are erected on that portion; or (ii) which has been improved to provide standing or parking space for vehicles; or (c) a parking bay not being part of a parking area described in paragraph (a); or (d) a portion of carriageway within an area described on a sign similar to that illustrated in Diagram 19a; or (e) an area of highway or of more than one highway (including a portion of a highway or highways) indicated by a sign referred to in paragraph (b) of the definition of 'parking area sign' at each place where the area may be entered by highway and by an end parking area sign at each place where the area may be exited by highway."

16. It would seem from Judge Duckett's reasons for judgment that the parking area in relation to the first charge came within sub-paragraph (e) of the definition.

17. I say that for the reasons that at the foot of page 2 of his reasons for judgment his Honour said:

"It was submitted by counsel for the Prosecution that Regulation 303(3) does not apply to any of the present charges. It was said that Charge One relates to infringement of a 'parking area' regulation and the definition of that term in Regulation 105 refers in sub-paragraph (e) as amended as from 30/6/98, through paragraph (b) of the 'parking area sign' definition that is to Diagram 19b in Schedule 1."

18. However, towards the foot of page 3 of his Honour's reasons for judgment he makes reference to Diagram 20b.

19. In the final analysis nothing turns on the discrepancy because the ultimate finding will be the same irrespective of whether the diagram in question is Diagram 19b or 20b.
20. The relevant aspect of the definition of parking area sign reads:
- "**parking area sign**' means - (b) a sign similar to that illustrated in Diagram 19b - (i) inscribed in black - (A) if the sign has limited operation - with words or figures indicating when the sign is to operate; and (B) with or without other words or figures; and (ii) with or without a number, fraction or word referred to in regulation 1103(10), inscribed in green - erected so as to face a driver entering the parking area."
21. Diagram 19b depicts a rectangular sign with the words "PARKING AREA" on it and with the letter "P" below them on the sign. Alongside the rectangle in the Schedule are the words:
- "BLACK BORDER & WORDS GREEN 'P' WHITE BACKGROUND".
22. Judge Duckett specifically found that there was sufficient evidence (in relation to the signs referable to the various charges including charge 1) "to establish compliance with the Schedule 1 requirement".
23. His Honour's next finding in relation to all signs including the signs referable to charge 1 is that they were "minor traffic-control items" as defined in Regulation 105. That definition reads:
- "**minor traffic-control item**' means any sign, mark, structure or device (other than a major traffic-control item) displayed, placed or erected for the purpose of controlling, directing, guiding, regulating or warning drivers or pedestrians."
24. In my opinion there can be no challenge to his Honour's decision in that regard.
25. His Honour then went on to find that as the signs were "minor traffic-control items", the provisions of Regulation 303(3) applied to them.
26. The whole of Regulation 303 reads:
- "**303. All traffic-control items to be operative** (1) If a traffic-control item of a kind referred to in these Regulations is in existence on a highway, it has effect and operates as a traffic-control item duly established for the purposes of these Regulations. (2) A traffic-control item which substantially conforms to the requirements of these Regulations with respect to dimensions, shape, colour, position, direction, angle or any other feature of a traffic-control item of any kind is to be taken to be a traffic-control item of that kind. (3) A traffic-control item described in Diagram 3c, 3d, 3e, 15b, 15c, 16b, 17b, 17c, 18b, 19b, 19c, 20b or 38 which substantially conforms to the requirements of these Regulations and of Australian Standard AS1742.11: Parking Controls with respect to dimensions, shape, colour, position, direction, angle or any other feature is to be taken to be a traffic-control item of that kind."
27. Traffic-control item is defined in Regulation 105 to mean both a major traffic-control item or a minor traffic-control item.
28. Having found that Regulation 303(3) applied to the sign his Honour then dismissed the charges because the informant failed to prove that the signs complied with Australian Standard AS1742.11.
29. The question for me to determine is was that finding erroneous.
30. His Honour's reason for finding that Regulation 303(3) applied to the signs was "that Regulation 303(3) makes specific reference to each of the diagrams relevant to the signs in relation to the present charges, that is Diagram 20b for Charges One and Two and Diagram 38 for Charges Three and Four".
31. As I have already stated, as Regulation 303(3) also makes specific reference to Diagram 19b ultimately nothing turns on whether the relevant diagram was Diagram 19b or Diagram 20b.
32. The argument advanced on behalf of the plaintiff is that as the signs are of a kind referred

to in the Regulations and are in existence on a highway, they have effect and operate as traffic-control items duly established for the purpose of the Regulations pursuant to Regulation 303(1).

33. But is that correct?

34. When the *Road Safety (Traffic) Regulations* came into operation on 1 March 1988 the only parking area sign referred to in the Regulations was that illustrated in Diagram 19.

35. Diagram 19 depicted a rectangular sign with the letter "P" in a circle. Below the "P" were the words "Parking Area". Alongside the sign in the Schedule were the words:

"BLACK 'P' & WORDS Green CIRCLE WHITE BACKGROUND".

36. At that time Regulation 303 did not contain sub-paragraph (3).

37. By Regulation 6 of the *Road Safety (Traffic) (Parking Control) Regulations* 1991 sub-regulation (3) was added to Regulation 303 and the original number of Diagram 19 changed to 19a. That sign was then designated -

"Old Parking Area Sign".

38. Another parking area sign was introduced into the Regulations. It is identical to the parking area sign in the present Regulations as shown in Diagram 19b.

39. One assumes that simply by error the new parking area sign was also identified as Diagram 19a.

40. Thus, if my reading of the Regulations is correct, following the 1991 amendment one had the old parking area sign identified as Diagram 19a and the new parking area sign identified as Diagram 19a.

41. And although the new sub-regulation (3) of Regulation 303 made reference to Diagram 19b there was no diagram identified as Diagram 19b in the Regulation.

42. The error, if it was such, was corrected by Regulation 7(5)(b) of the *Road Safety (Traffic) (Parking Arrangements) Regulations* 1992 which substituted for the words "New Parking Area Sign Diagram 19a" the words "New Parking Area Sign Diagram 19b".

43. In my opinion it is strongly arguable that when the Legislature passed the 1991 amendment adding sub-regulation (3) to Regulation 303, its intention was to make specific provision for the signs depicted in the diagrams identified in the sub-regulation.

44. If that was not the case, then why introduce the sub-regulation into the Regulations.

45. In the final analysis, and despite the width of the words used in sub-regulations (1) and (2) of Regulation 303, I am not satisfied that those sub-regulations have an application to the traffic-control items described in the diagrams identified in sub-regulation (3).

46. It follows from that that I am not persuaded that his Honour Judge Duckett made any error in the matter.

47. The plaintiff's originating motion will be dismissed. I order that the plaintiff pay the first defendant's costs of the proceeding including any reserved costs.

APPEARANCES: For the plaintiff Passey: Mr GT Bigmore QC, counsel. Maddock Lonie & Chisholm, solicitors. For the first defendant Burns: Mr OP Holdenson QC and Mr DJ Connell, counsel. Clements Hutchins & Co, solicitors.