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SUPREME COURT OF VICTORIA

TOWER & ANOR v WALKER & ORS

King J

15 September 1980

MOTOR TRAFFIC – EXCESSIVE WEIGHT ON GROUP OF AXLES – SPECIAL PERMITS – DEFINITION OF "HIGHWAY" – DEFINITION OF "STATE HIGHWAY" – DRIVERS TOLD THAT THERE WAS A WRITTEN PERMIT TO ALLOW EXCESS WEIGHTS TO BE CARRIED WITHIN A DEFINED AREA – HONEST AND REASONABLE BELIEF THAT SPECIAL PERMIT EXISTED – NO CASE SUBMISSION MADE AND UPHELD BY MAGISTRATE – INFORMATIONS DISMISSED – WHETHER MAGISTRATE IN ERROR: COUNTRY ROADS ACT 1958; MOTOR CAR ACT 1958 SS33(1)(h), 35.

Each defendant was charged with driving a truck which was carrying a load exceeding the gross weight allowed to be carried by it under s33(1)(h) of the *Motor Car Act* 1958. On beginning work with a firm, they were told by the firm's transport manager that he had a letter from the Country Roads Board to the effect that provided they were driving in the dock area they were allowed to carry excess weight. Upon a submission of no case, it was contended that that each driver was of the belief that they were not committing any offence in view of what they had been told by the transport manager. The Magistrate agreed with the submission and dismissed all informations. Upon appeal—

HELD: Order nisi absolute. Dismissals set aside. Remitted for further consideration.

1. What the defendants had to establish was that they each had an honest and reasonable belief in a state of facts which, if such facts existed, would make the act with which he was charged innocent.

Proudman v Dayman [1941] HCA 28; (1941) 67 CLR 536 at p540, per Dixon J; and

Bergin v Stack [1953] HCA 53; (1953) 88 CLR 248 at p262; [1953] ALR 805, per Fullagar J, followed.

2. A truck driver who wishes to carry a load in excess of that laid down for his description of vehicle in the *Motor Car Act* must obtain a valid special permit in writing from the proper authority, containing the matters referred to in s35(2) of that Act and carry it in his vehicle. There was no evidence that the defendants believed that any such special permits had been obtained by them or for them. The evidence indicated no more than that the defendants believed that the Country Roads Board had given general permission to truck drivers to drive vehicles carrying excessive loads in the relevant area, and that this was enough to escape the requirements of s33. However the Country Roads Board had no power to give such general permission, so that even if this had been given it would have had no effect to exculpate the defendants under the provisions of s33.

3. The defendants' belief that the Country Roads Board had sent the transport manager a letter permitting them to carry excess weight in a particular area did not amount to a belief in facts which if true would have justified the dismissal of the informations. To satisfy this requirement the defendants would have had to be led to believe that the Country Roads Board had issued them with written permits to carry excess loads on Coode Road, containing the details required by s35(2) and capable of being carried in their vehicles. There was no evidence before the Magistrate to enable him to come to any such finding.

KING J: The three respondents, Gordon R. Connelly, Geoffrey Robert Stephenson, and Colin John Walker, are truck drivers who have each been charged with an offence under s33(1)(h) of the *Motor Car Act* 1958. This statutory provision is as follows:

"33(1) A motor car shall not, except under and in accordance with a special permit granted under this Division, be used on any highway in any of the following cases:

(h) If the gross weight carried on all the axles of the motor car or of the motor car and any trailer attached thereto or carried on any consecutive group of those axles exceeds the weight set out in the Third Schedule opposite to the distance which corresponds with the distance (measured in a horizontal plane) between the extreme axles of the motor car or of the motor car and trailer or of the said group of axles (as the case may be)."

"Motor car" is defined in s3(1) of the Act in such a way as to include a motor truck. The respondent Condie was charged on information with having on 1st June 1979, near Footscray,

been the driver of a "motor car" of a specified registered number which was used on the Coode Road, the gross weight on all the axles of the "motor car" exceeding the weight set out in the Third Schedule of the *Motor Car Act* 1958 opposite to the distance which corresponds with the distance (measured in a horizontal plane) between the extreme axles of the said motor car, contrary to the provisions of s33(1)(h) of the said Act. The other respondents were charged with having on the same day near Footscray on the same road been driving "motor cars" of specified registered numbers, the gross weight in each case being carried on a consecutive group of axles of the motor car exceeding the relevant weight set out in the said Third Schedule. I was told by Counsel that all three cases were in fact extreme axle cases, but that there was no objection to the form of any of the informations and summonses. There is no dispute that on 1st June 1979, and in the specified place, each respondent was driving a motor truck carrying a load exceeding the gross weight allowed to be carried by it under s33(1)(h) of the Act.

The respondents appeared with Counsel at the hearing of the charges and pleaded not guilty. They did not dispute before His Worship or me that they were carrying the excessive weights alleged, but told His Worship and have said in affidavits filed in court before me that they were sub-contractors working for Actrans and that on beginning work with that firm they attended a special meeting of sub-contractors employed by that firm. They said further that this meeting was attended by Actrans' transport manager, Peter Byrnes, who informed them that he, Byrnes, was in possession of a letter from the Country Roads Board allowing excess weight to be carted within the confines of the dock area south of Footscray Road. They said that they believed that provided they were south of Footscray Road and in the dock area they were not committing any offence and that they derived this belief from Byrnes' statement.

I was asked to take judicial notice of the fact that Coode Road is south of Footscray Road and in the dock area. None of the respondents has seen the letter said to have been referred to by Byrnes. After the evidence had closed, Counsel for the respondents submitted that they had no case to answer by reason of their being of the belief that they were allowed to carry on their trucks the weights which they had carried in the area in which they were doing so, in view of the letter mentioned by Byrnes. His Worship, after having heard the prosecutor, said that he was inclined to agree with the submission made by counsel for the defendants, that at the material time the defendants were of the belief that they were not committing any offence. He then dismissed all three informations.

The informants applied for and obtained the orders to review which are now before me. Their grounds are common, and, as amended before me by the applicants are as follows:

"1. That upon the evidence the learned magistrate should have found the defendant guilty of the offence.

3. That there was no evidence or alternatively no sufficient evidence on which the learned Stipendiary Magistrate could find that the defendant had a reasonable and honest belief that he was not committing an offence."

The applicants, argued before me that there was no evidence on which the learned Magistrate could reasonably have found that the respondents honestly held a reasonable belief of the description alleged by them, and that if they had such a belief it was not a belief as to facts which if true would have exculpated them. In this connection they drew to my attention a number of provisions of the *Motor Car Act* 1958 and the *Country Roads Act* 1958 additional to s33(1)(h) of the former Act which I have already cited. S35, which is part of the same Division of the *Motor Car Act* as s33, provides as follows:

"1. Every special permit provided for in this Division shall be granted—

(a) in the case of any proposed journey over any State highway, main road, tourists' road, forest road or freeway within the meaning of the *Country Roads Act* 1958 or any two or more of them, or in the case of any proposed journey extending to highways in the municipal districts of any two or more greater metropolitan municipalities—

by the Country Roads Board or by an officer of the said Board thereto authorized in writing by the said Board either generally or in any particular case; or

(b) in the case of any other proposed journey—

by the council of each municipality having the care and management of any highway or highways over which the journey is proposed to be made or by an officer of the said council thereto authorised in writing by the said council either generally or in any particular case."

"(2) Every such permit—

- (a) shall be in writing;
- (b) may be granted for a single trip or for a specified period;
- (c) shall designate the route to be traversed;
- (d) and may contain such other conditions and provisions as the Board or the council (as the case may be) thinks proper"

(3) Every such permit shall—

- (a) be carried in the vehicle to which it refers; and
- (b) on demand of any member of the police force or any officer of the said Board or of any council authorised as aforesaid be produced by the driver or the person in charge of the vehicle."

In the *Country Roads Act* 1958 "State Highway" is defined as meaning "any highway (including any main road or developmental road) or any part thereof declared and confirmed as a State highway or any part thereof". "Main Road" is defined as meaning any road declared to be a main road under the provisions of this Act or any corresponding previous enactment or any part of such road". "Tourists' road" is defined as meaning "a road proclaimed to be a tourists' road under Part V or any corresponding previous enactment". "Forest road" is defined as meaning "a road proclaimed to be a forest road under Part VI or any corresponding previous enactment". "Freeway" is defined as meaning "a freeway or by-pass road authorised to be constructed under Part VIII or any corresponding previous enactment."

There was no evidence in this case that the journeys on which the respondents were engaged when they were found with their excessive loads were believed by them to be over roads within any of these definitions in the *Country Roads Act*, or that such a journey extended to highways as defined in the *Motor Car Act* in the municipal districts of any two or more greater metropolitan municipalities. In the *Motor Car Act* "highway" is defined as meaning "any street, road, lane, bridge, thoroughfare, or place open to or used by the public for passage with vehicles." The only evidence was that the respondents accepted the general assurance said to have been given to them by Byrnes.

The applicants counsel argued that the defence which the respondents had to establish was that they each had an honest and reasonable belief in a state of facts which, if such facts existed, would make the act with which he was charged innocent. *Proudman v Dayman* [1941] HCA 28; (1941) 67 CLR 536 at p540; [1953] ALR 805, per Dixon J. *Bergin v Stack* [1953] HCA 53; (1953) 88 CLR 248 at p262, per Fullagar J. He submitted further that according to the provisions I have cited a truck driver who wishes to carry a load in excess of that laid down for his description of vehicle in the *Motor Car Act* must obtain a valid special permit in writing from the proper authority, containing the matters referred to in s35(2) of that Act and carry it in his vehicle. He submitted that there was no evidence before the learned Magistrate that the respondents believed that any such special permits had been obtained by them or for them.

I think that the evidence before His Worship indicated no more than that the respondents believed that the Country Roads Board had given general permission to truck drivers to drive vehicles carrying excessive loads in the relevant area, and that this was enough to escape the requirements of s33. However the Country Roads Board had no power to give such general permission, so that even if this had been given it would have had no effect to exculpate the respondents under the provisions of s33. I think that the applicants counsel is right in his argument that the respondents' belief that the Country Roads Board had sent Byrnes a letter permitting them to carry excess weight in a particular area did not amount to a belief in facts which if true would have justified the dismissal of the informations.

To satisfy this requirement the respondents would have had to be led to believe that the Country Roads Board had issued them with written permits to carry excess loads on Coode Road, containing the details required by s35(2) and capable of being carried in their vehicles. There was no evidence before his Worship to enable him to come to any such finding. The applicants argued that it would also be necessary for them to believe that the journey on which they were

engaged when intercepted was over a road falling within one of the cited definitions in the *Country Roads Act*, or extended to roads in the municipal districts of two or more greater metropolitan municipalities, and that there was no evidence before the learned Magistrate to either effect. The respondents argued that there was confusion between the provisions of the two Acts as to what was a highway for the purposes of s33, so that the Country Roads Board could be found to have powers over highways as defined in the *Motor Car Act*.

But I do not think that there is any lack of clarity about the matter. In my opinion there was nothing before his Worship to suggest that the respondents had a belief as to any of the matters to which the applicant's counsel has referred. It was also argued by the applicants that the belief that the respondents testified to was unreasonable. I do not think that it is relevant to consider the unreasonableness of a belief which if true would not have given the respondents a defence.
