

KIRBY v BRETT

THE HIGH COURT
STATE SIDE
1982 No. 37 S.S.



BETWEEN:

SERGEANT B. KIRBY

Complainant

and

THOMAS BRETT LTD

Defendant

Case Stated by District Justice Bernard J. Carroll

Judgment of Gannon J. delivered the 19th March, 1982.

The defendant company appeared at Fermoy District Court before District Justice Bernard J. Carroll on the 28th September, 1981 charged with the offence of allowing to be used on a public road a goods motor vehicle having three axles the weight laden of which exceeded the permitted maximum weight laden of 22 tons. By Section 12 (3) (b) of the Road Traffic Act 1961 the user on a public road of a laden vehicle of which the weight as then laden exceeds the maximum weight laden specified by regulation under that section is prohibited. The contravention of sub-section (3) of Section 12 is, by sub-section (4) of that section, made an offence for which there is a general penalty on summary conviction prescribed by Section 102 of the Road Traffic Act 1961, namely, a fine not exceeding £20 for a first offence. If the defendant be convicted of the offence charged under Section 12 of the 1961 Act, and if the excess weight is proved to be not less than one ton, by virtue of Section 15 of the Road Traffic Act 1968

an additional penalty shall be imposed in accordance with a table of fines increasing in proportion to the amount of excess weight because the defendant's vehicle exceeds in weight laden 17 tons. Upon the finding by the District Justice that the weight laden of the defendant's vehicle exceeded by 5 tons 63 kilos the permitted 22 tons the District Justice convicted the defendant and imposed fines of £5 under Section 102 of the 1961 Act and £150 under Section 15 of the 1968 Act. By way of appeal against this decision as being wrong in point of law the defendant requested the District Justice to state this Case to the High Court pursuant to Section 2 of the Summary Jurisdiction Act 1857 and Section 51 of the Courts (Supplemental Provisions) Act 1961.

The submissions of Mr. O'Sullivan on behalf of the defendant on the appeal are:-

- (a) that the weight laden of the vehicle was wrongfully determined when the vehicle was in motion and not stationary as prescribed by regulation 3 (4) of the Road Traffic (Construction Equipment and Use of Vehicles) Regulations 1963 Statutory Instrument No. 190 of 1963 and
- (b) because of the method of calculating the penalty prescribed by the Statute both the Statute and the regulations thereunder require precision in the determination of the alleged excess weight which is not

afforded by the evidence on which the conviction order was made.

For the complainant Mr. Geraghty submitted that the excess weight disclosed by the evidence was such as to leave no reasonable doubt that the offence created by Section 12 (4) of the 1961 Act was committed and the penalty under Section 102 of that Act incurred. But Mr. Geraghty conceded that in relation to vehicles of over 17 tons Section 15 of the 1968 Act requires a degree of precision in the determination of the prohibited excess weight which could not be established by the evidence heard by the District Justice.

Mr. Geraghty also submitted that with the use of a mobile weigh-bridge known as a dynamic axle weigher it is possible to determine what would be the weight laden of a vehicle when it is stationary even though the vehicle was not in fact stationary while being weighed provided its motion did not exceed 2.2 miles per hour.

The offence with which the defendant was charged is set out in the Case Stated as follows:-

"That you the said defendant on the 1st day of May, 1981 at Coolcarron, Fermoy, County Cork, did being the owner allow to be used by one Hugh Madden a goods vehicle with three axles to wit motor lorry 154 BHI on a public road the weight laden of the said vehicle exceeding the maximum weight laden of 22 tons applicable to such vehicle as prescribed

"by Article 7 (3) (a) (ii) of the Road Traffic (Construction Equipment and Use of Vehicles) Regulations 1963 and contrary to Section 12 (3) (b) Road Traffic Acts 1961/1968."

Regulation 7 (3) (a) (ii) reads as follows:-

"The weight laden of a vehicle or of a trailer attached to a vehicle shall not exceed where the vehicle or trailer has three axles 22 tons;"

It should be noted that sub-paragraph (1) of Regulation 7 relates to the weight transmitted to the surface of a road by any wheel of a vehicle and sub-paragraph (2) of Regulation 7 relates to the weight transmitted to the surface of a road by a single axle of a vehicle. The offence with which the defendant is charged is a breach of the regulation relating to the weight laden of a vehicle and not to an offence related to the weight transmitted to the surface of the road by any part of the vehicle. This distinction is recognised in the definition Regulation No. 3 at sub-paragraph (A) and in Regulation 5 (2). Regulation 3 (4) is as follows:-

"In these regulations save where the context otherwise requires a reference to the weight laden of a vehicle or combination of vehicles, or to the weight transmitted to the surface of a road by a vehicle or combination of vehicles, shall be construed as a reference to the weight of such vehicle or combination together with its load, if any,

"when it is stationary, and any reference to the weight transmitted to the surface of a road by any part of a vehicle or combination of vehicles shall be construed accordingly".

Sub-paragraph (2) of Regulation 5 is as follows:-

"For the purposes of this part of these regulations the weight transmitted to the surface of a road by a single axle of a vehicle or trailer shall be taken as the total weight transmitted to any transverse strip of the road surface on which the vehicle or trailer rests by all the wheels the centres of which can be included between two parallel transverse vertical planes forty inches apart extending across the full width of the vehicle or trailer at right angles to its longitudinal axis".

For the purpose of determining whether the laden vehicle must be stationary (as contended for by the defendant) when being weighed in order to determine its "weight laden" as defined in Regulation 3 (4) or need not be stationary at the time of weighing (as contended for by the complainant) some guidance may be obtained from other ancillary provisions of the Road Traffic Act 1961. The regulations set out in Statutory Instrument 190 of 1963 are made in exercise of the power in that behalf conferred on the Minister for Local Government (as he then was) by Section 12 of the 1961 Act

for the distinguished purposes as set out in sub-paragraph (1) of Section 12 namely:-

- (a) Maximum unladen weight,
- (b) Maximum weight laden of mechanically propelled vehicle, and
- (c) Maximum weight to be transmitted to the ground or any specified area of the ground by any part of a mechanically propelled vehicle.

Section 15 of the 1961 Act imposes upon a Road Authority the obligation to provide weigh-bridges and to provide for their maintenance and use and includes in sub-section (7) a weigh-bridge which is transportable and referred to in the Act as a mobile weigh-bridge. Section 16 of the Act empowers an authorised officer to have a suspect vehicle weighed. His suspicion may relate either to the weight laden of the vehicle or to the weight transmitted to the ground by any part of the vehicle. Section 16 (1) provides at sub-paragraph (a) as follows:-

"In case the officer has with him a mobile weigh-bridge, the officer may require the person in charge of the vehicle or combination

- (1) to permit the officer to ascertain by means of the mobile weigh-bridge the weight transmitted to the ground by any part of the vehicle or combination with the load or loads (if any) thereon; and

- (2) To do all such things as may be indicated by the officer and are reasonably necessary to facilitate him in effecting such ascertainment;"

Sub-paragraph (b) of sub-section 1 of Section 16 provides as follows:-

"In any other case, the officer may require the person in charge of the vehicle or combination to do all or any of the following things:

- (I) Forthwith to bring the vehicle or combination with the load or loads (if any) thereon to any appointed weigh-bridge named by the officer and not more than five miles distant by the shortest available route from the place at which the requisition is made;
- (II) To carry the officer to the weigh-bridge in the vehicle or combination;
- (III) To cause the vehicle or any part thereof or combination or any part thereof with the load or loads if any thereon to be weighed on the weigh-bridge in the presence of the officer."

From these provisions it would appear that the only user of a mobile weigh-bridge contemplated by the Legislature is the ascertainment of the weight transmitted to the surface of the road. It seems clear also that

"in any other case" namely the ascertainment of the weight laden of a vehicle, the vehicle should be weighed on a "road traffic weigh-bridge" as defined in Section 15 (4) of the 1961 Act. Although Sections 15 and 16 were amended by the Road Traffic Act 1968 the opportunity was not taken to authorise the use of a transportable or mobile weigh-bridge for any purpose other than that permitted in Section 16 (1) (a). In my opinion the weight laden of a vehicle is the weight of such vehicle with its load as found upon being weighed while stationary at a road traffic weigh-bridge and not while in motion under its own power.

It is noticeable from the statement of evidence set out by the case stated that the Garda Inspector of Weights and Measures in testing the accuracy of the dynamic axle weigher used as his standard the weight of a stationary vehicle determined by a road traffic weigh-bridge. In doing so he found that he took seven different readings from the dynamic axle weigher in respect of each one vehicle and its load and from these he chose an average. But it should be noted that an average may not in fact correspond with any one of the readings recorded, and is ascertained by including upper and lower extremes either of which might present if only one weighing and reading were taken. If evidence of that nature were presented to me sitting at first instance I could not be satisfied beyond

reasonable doubt that a weight thus ascertained would support a determination of excess weight with any degree of precision and consequent conviction of an offence. In my opinion the penalty imposed in pursuance of section 15 of the 1968 Act could not be ascertained or calculated from the evidence as stated in the case stated.

For the reasons I have given my conclusion is that the District Justice erred in law in his interpretation and application of the statutory regulations and requirements and the conviction should be set aside and the charge dismissed.

CL.
19/3/82