

Legal Torque

Road User Charges Inquiry

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One We have previously written about the District Court decision in the T D Haulage case (*The Director of Land Transport Safety v T D Haulage Limited and others*). That was a case where the Director of Land Transport Safety ("the LTSA") (as it was called then) commenced a road user charges inquiry through the District Court into the purchasing of road user licences by T D Haulage. It was alleged that T D Haulage had not purchased sufficient road user licences to cover the weights they had been carrying on their vehicles.

The LTSA assessment of what had been short paid in road user licences was based on a 15,000 km road user licence method, that is, the LTSA had calculated the shortfall in the weight of the road user distance licence on the basis that a 15,000 km licence should have been bought at the correct weight. This resulted in T D Haulage allegedly owing \$3,035,508. The District Court did not accept this method of calculation and instead used a minimum 1,000 km notional purchase of road user licences. In other words the Court did not accept that, where operators habitually purchase 15,000 km licences, the unpaid amount of road user licences should be calculated over the entire 15,000 km of the licence. Instead the District Court applied the information available to the shortest available distance licence. That lowered the amount of T D Haulage's liability for road user licences to \$1,350,099. The court then provided a further 10% allowance for possible error, reaching a final figure for T D Haulage's liability of \$1,215,000.

Both parties appealed to the High Court – T D Haulage appealing the assessment, and LTSA cross-appealing the appropriate methodology to be used by the District Court in such assessments. Although the parties settled the matter prior to hearing in the High Court, they sought a declaratory judgment on the issues of interpretation that arose in this case. The two issues were:

(a) Whether the Road User Charges Act 1977 ("RUC Act") requires an operator to have a distance licence for the relevant motor vehicle specifying a maximum gross weight

of each individual load carried *at all times during the currency of that licence*. An ancillary question was, whether the failure to have such a licence renders the operator liable to pay the difference between the cost of the licence held and the amount which the licence would have cost had it covered the higher gross weight; and



(b) Whether the 5% tolerance provided for in the infringement notice procedure should be applied to the gross weight ascertained for the purpose of a proceeding for a road user charges inquiry.

In its discussion, the Court noted that the RUC Act requires transport operators to ensure that on every journey the vehicle carries its own licence which at all times meets the twin requirements of:

- a distance which exceeds that disclosed by the distance recorder; and
- which specifies a weight not less than the gross weight of the vehicle.

The Court also stated that, for the purpose of both determination and payment of road user charges and the avoidance of risk of prosecution, the Act requires transport operators to ensure that the relevant distance licence exceeds the gross weight *at all times*. The onus falls squarely on the operator not to overload.

In reaching its conclusion the Court developed a two-stage process that Judges will now consider for the purpose of an inquiry under the RUC Act.

Continued overleaf...

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First, Judges will need to determine whether, in the relevant period, all the appropriate licences that should have been obtained for the motor vehicles were in fact obtained. The starting point is that there is to be strict compliance with the requirement of the RUC Act in relation to the determination and payment of road user charges.

Secondly, in assessing the amount of road user charges payable, the court can consider other factors such as an allowance being made by analogy with various categories covered in the RUC Act including an allowance for under-utilisation, a refund where supplementary licences are issued, a refund where a new distance licence is issued and refunds for off-road travel. In giving reasons for an assessment, a District Court Judge need not indicate how the assessment is calculated or what licences he or she considers ought to have been obtained.

The answer to both parts of the first issue (above at (a)) are yes.

In relation to the second issue (above at (b)), the Court held that the 5% tolerance provided for in the infringement notice procedure should not be applied to the gross weight ascertained for the purpose of determining whether all appropriate licences had been obtained.

The position of the Court has therefore not changed from the decision of the District Court. The summary of the Court's position is:

1. The Court has jurisdiction to undertake an inquiry if it is satisfied that a transport operator has been buying road user licences that are less than the actual weight carried on the operator's journeys (in other words, loading up to include the 5% tolerance).

2. There is no 5% tolerance to be applied to the operator's weights when calculating the amount of road user charges due;

3. Any 5% tolerance applied to the weight in excess of road user licences applies only to an infringement notice;

4. The law requires the operator to carry the same weight or less weight than permitted by the road user licence being carried at all times;

5. The carriage of excess weight on a road user licence can and will result in an assessment of the charges payable. Notwithstanding that, in some cases there may be a limited amount of records kept to enable this to be done. It is in the operator's interest to keep such records, even if this is not required as a matter of law.

If you have any questions regarding road user charges or any legal matter, please contact Cathy Bormans on (09) 915-2412 or Shafraz Khan on (09) 915-2422.

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