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R. v. Nekjeu

Between
Her Majesty the Queen, respondent, and
Mohammed W. Nekjeu, appellant

[2000] O.J. No. 4719
Court File No. 481699900

Ontario Court of Justice
Toronto, Region
Libman J.

December 11, 2000.
(20 paras.)

On appeal from the conviction imposed by His Worship Justice of the Peace J. Akkanen, dated 28 June 1999; argued on appeal 6 December 2000.

Counsel:

J. Kalloti, for the appellant.
C. McPhail, for the respondent.

¶ 1 **LIBMAN J.** (endorsement):— The appellant was convicted of failing to obey a lane sign, contrary to s. 154(1)(c) of the Highway Traffic Act, R.S.O. 1990, c. H.8, in circumstances where he continued through an intersection, rather than making a right turn, as the sign stating "right lane must exit" directed.

¶ 2 No evidence was called by the appellant at his trial, challenging the case on the merits.

¶ 3 Instead, his agent sought to rely upon the provisions of s. 155 of the Act, which states that a designation of a lane for "classes or types of vehicles" made under s. 154(1)(c) shall apply during the times stated on the official sign.

¶ 4 It was accordingly argued by the appellant that there being no time designated on the right turn lane sign in question, an acquittal ought to be entered.

¶ 5 Justice of the Peace Akkanen disagreed, noting that Regulation 615 of R.R.O. 1990 which provides for such official signs, sets out in s. 34 lane designation signs without any reference to an indication of time. Hence, in his opinion, "time is not mandatory" on such "right lane must exit" signs.

¶ 6 In my respectful opinion, the appellant's interpretation of the legislation is misconceived, and the justice of the peace correctly rejected it.

¶ 7 Section 154 falls under Part X of the Highway Traffic Act, respecting "Rules of the Road".

¶ 8 The provision in question governs divided lanes.

¶ 9 More particularly, s. 154(1)(c) applies to such lanes which have been designated for "slowly moving traffic, traffic moving in a particular direction or classes or types of vehicles" [emphasis added].

¶ 10 Exempted from the provisions of s. 154(1)(c) in certain enumerated cases are road service vehicles, road-building machines or apparatus while engaged in the construction of a highway: s. 154(2).

¶ 11 Section 155, however, is a provision of limited scope, as evidenced by the words that the designation of a lane for its purposes applies only in the case of "classes or types of vehicles made under clause 154(1)(c)". That is to say, it does not purport to apply to slowly moving traffic or traffic moving in a particular direction, which are the other two categories of vehicular traffic set out in s. 154(1)(c).

¶ 12 On the other hand, as the learned justice of the peace pointed out, Regulation 615, section 34, provides more generally for signs that apply to traffic on a 24 hour basis, as in the case of "international right turn signs".

¶ 13 I note that none of the ten figures depicting lane designation signs in section 34 of this regulation contains any indication of time.

¶ 14 Lane designation signs under this regulation are required to be used so as to "indicate by means of a single arrow or combination of arrows the only permitted movement or movements by vehicles on one or more lanes of a highway marked with the sign" [emphasis added].

¶ 15 Hence, the movements of vehicles in compliance with lane designation signs are the subject of this regulation, which clearly is the case of "slowly moving traffic, traffic moving in a particular direction" pursuant to s. 154(1)(c).

¶ 16 In summary, the effect of the appellant's argument would be to make the time limitation requirement in s. 155, which is directed only to certain classes or types of vehicles, apply to all manner of traffic movement under s. 154(1)(c). The wording of these two provisions clearly does not support such an interpretation.

¶ 17 Moreover, this interpretation would produce the absurdity that lane designations could only be made where times were provided, even in cases where the lanes were clearly indicated for turns or exits on a 24-hour or permanent basis. This would have the effect of defeating the obvious intention of the legislation, producing a wholly unreasonable result. It should not be countenanced by the court. See Maxwell on The Interpretation of Statutes, 12th ed., p. 199.

¶ 18 Like Justice of the Peace Akkanen, I cannot accept that s. 154(1)(c) is reasonably capable of such an interpretation.

¶ 19 It was therefore open to the justice of the peace to find that the appellant's conduct in proceeding through an intersection, contrary to a sign stating "right lane must exit", amounted to the offence under s. 154(1)(c) of failing to obey a lane sign.

¶ 20 The appeal must therefore be dismissed.

LIBMAN J.

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