

Neutral Citation no. [2004] NICA 47

Ref: CAMF4132

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

Delivered: 31/03/04

**IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND**

**BETWEEN:**

**CHIEF CONSTABLE  
POLICE SERVICE OF NORTHERN IRELAND**

**Complainant and Appellant;**

**-and-**

**KEVIN KEENAN**

**Defendant and Respondent.**

**Before Kerr LCJ, McCollum LJ and Campbell LJ**

**CAMPBELL LJ**

[1] On 21 August 2002 the respondent, then 19 years of age, drove a tractor unit pulling a refrigerator trailer on the M1 motorway near Portadown. By reason of his age he was disqualified under domestic legislation from holding a licence to drive a vehicle of this description.

[2] He was the holder of licence issued in the Republic of Ireland, where he resides, which permitted him to drive such a vehicle.

[3] Charges were brought against the respondent for driving without being the holder of a driving licence authorising him to drive a vehicle of this class contrary to Article 3(1) of the Road Traffic (Northern Ireland) Order 1981 ("the Order") and of driving a vehicle while disqualified from holding a licence to drive such a motor vehicle contrary to Article 167 of the Order. The

Resident Magistrate dismissed the charges and in this appeal, by way of case stated, the issue is whether she was correct in law in doing so.

*The facts*

[4] The facts as stated by the Resident Magistrate are these:

“The defendant, born on 22 December 1982, was at the time of detection, 21 August 2002, 19 years old. He was detected travelling westward (towards Dungannon) on the M1 motorway in the townland of Derrymacfall, Portadown, in a large goods vehicle, 2-axle tractor unit pulling a 3 axle refrigerated trailer. The gross vehicle weight of the vehicle was 44,000 kilograms. The defendant resides in Piedmont, Riverstown, Dundalk in the Republic of Ireland. The vehicle, bearing registration number OI LH 4164, is registered in the Republic of Ireland and owned by Keenan Transport, a firm resident in the Republic of Ireland and the defendant’s employer. By virtue solely of his age, the defendant was charged with the foregoing offences. The defendant, having undertaken the required courses in the Republic of Ireland, holds a valid goods vehicle licence for ‘heavy goods vehicles’, or to use the EU nomenclature, categories ‘C+E’. That licence was valid at the time of the detection, giving rise to the offences charged and also covered the class of vehicle which he was driving at the time.”

*The domestic legislation*

[5] Article 15A of the Road Traffic (Northern Ireland) Order 1981 provides that the holder of a community licence to drive may drive in Northern Ireland a motor vehicle of any class which (a) he is authorised by his Community licence to drive, and (b) he is not disqualified for holding or obtaining a licence under Part 11 of the Order to drive.

[6] The respondent complied with the first of these requirements as he held a community licence (as defined in Article 19D of the Order), authorising him to drive a vehicle of this description. Under Part 11 of the Order he was disqualified for holding or obtaining a licence to drive a vehicle of that class as he was under the age of 21.

[7] Therefore under domestic law the respondent was prima facie guilty of the offences charged.

[8] Council Regulation (EEC) No. 3820/85 on the harmonisation of certain social legislation relating to road transport lays down provisions concerning the minimum ages for drivers engaged in the carriage of goods. Article 5 of the Regulation states that the minimum age for drivers engaged in the carriage of goods for vehicles with a maximum weight such as that driven by the respondent is 21 years or “18 years provided that the person concerned holds a certificate of professional competence recognised by one of the Member States confirming that he has completed a training course for drivers of vehicles intended for the carriage of goods by road, in conformity with Community rules on the minimum level of training for road transport drivers” (Article 5(1)(b)).

[9] A Regulation is binding in its entirety and directly applicable in all Member States by reason of Article 249 of the Treaty of Rome 1957. In so far as it may be in conflict with a Regulation, domestic legislation of a Member State is superseded by the European legislation. The primacy of the Regulation must be recognised and given effect to by Member States.

[10] Article 1 of Council Directive 91(439) EEC provides for the mutual recognition of driving licences issued by Member States. Provision is made for licences to authorize the driving of vehicles in various categories and the relevant category for the vehicle driven by the respondent is category C+E.

[11] Article 6 of the Directive states that the minimum age conditions for the issue of driving licences for category C+E is 18 years “without prejudice to the provisions for the driving of such vehicles in Council Regulation (EEC) No. 3820/85 of 20 December 1985 on the harmonization of certain social legislation relating to road transport.”

[12] The respondent, who is over 18 years of age, has been issued with a licence for category C+E by the Republic of Ireland. Before the licence could be issued he had to hold a certificate of professional competence recognized by the Member State confirming that he had completed a training course for drivers of vehicles intended for the carriage of goods by road, in conformity with Community rules on the minimum level of training for road transport drivers. For the appellant Mr McCloskey QC argued that there was no evidence to support the conclusion that the respondent had undertaken the necessary training course but it appears to us that the fact that the licence for category C+E was issued by the authorities in the Republic of Ireland must be accepted as sufficient proof of this. To hold otherwise would presume that the authorities there had failed to comply with article 5 of the 1985 Regulation in issuing a licence to a person of less than 21 years who had not undertaken the training course required by article 5 and there is no warrant for so

concluding. In the absence of evidence to the contrary the respondent's C+E licence must be recognised as complying with the conditions in the article.

*Conclusion*

[13] The respondent, although he did not hold and was disqualified from holding a licence to drive a vehicle of class C+E under domestic law, was the holder of a licence authorising him to drive a vehicle of that class 'which was recognised by one of the Member States' *viz* the Republic of Ireland. By virtue of article 5 of the Regulation he was therefore authorised to drive a vehicle of that class in Northern Ireland. It follows that, in doing so, he did not commit any offence in this jurisdiction.

[14] Accordingly we answer the questions in the case stated as follows:

(1) Question A as amended by adding after the words " Council Directive 91/439 EEC " the words "in conjunction with Article 5.1(b) of Council Regulation (EEC) No. 3820/85" in the affirmative.

(2) Question B in the affirmative.