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"When is a "Restraint" a "Restraint"?

R v Northline

Introduction
I was recently involved in a case where a heavy vehicle operator was charged with a breach of the Heavy Vehicle National Law (HVNL) with respect to a load restraint issue

On 20 October 2016, a curtain sided, B-Double combination was intercepted by New South Wales police on the Newell Highway near Tichborne in New South Wales.

Of particular interest to the police was the method of load restraint used by the transport operator. After inspecting the load the police formed the view that the transport operator had breached section 183 (2) (G) of the HVNL. In other words, the operator was fined for an alleged load restraint breach. It should also be noted that the category of breach was a "substantial breach" and consequently carried with it significant fines.

The Alleged Breach
In essence the allegation made by the police was that the load (which was a combination of wrapped and palletised items) had not been restrained in accordance with the "Tenacitex Curtain System" (TCS) which system was affixed to the curtain.

It is also important to note that the transport operator had placed "strapped gates" on the inside of the rated curtain but the gates had been fixed in reverse.

There is no doubt that the method of restraining the load did not comply with the TCS, however it did not follow that the transport operator was in breach of the law.

The reason for this is that the police, in laying the charges, simply relied on the non-compliance with the TCS and failed to consider the "mathematical" impact the gates would have on the restraining of the load (notwithstanding the gates were fitted incorrectly presumably to gain greater width on the trailer).

To properly understand whether a load restraint breach has occurred the police should have taken into account the impact the gates had on the method of restraint and had regard to *Section F - Performance Standards* (**"Section F"**) of the *Load Restraint Guide* (2004) (**"the Guide"**).

As the transport operator had used the "curtain" and "gates" to restrain the load, reliance on the TCS was irrelevant. Even with the gates being fitted incorrectly, the gates still had a "mathematical" rating.

Given the above I had argued that the charges were misconceived for the following reasons:

Firstly, the charges contemplated an offence that did not exist at law. Failure to comply with the TCS did not constitute a breach of HVNL nor does the alleged incorrect fitting of the "gates".

There is nothing in the HVNL that would require such compliance.

Compliance rather is to be determined on a case by case basis having regard to Section F of the Guide by virtue of s115 of the NHVL (**"the Standard"**).

Reliance of the TCS would only be relevant when a vehicle is loaded using nothing more than the TCS. When a vehicle is loaded using a "combination" of load restraint methods the TCS is simply misconceived.

Secondly and for similar reasons as expressed above, reliance on the "correct" use of "gates" in circumstances where a "combination" of load restraint methods are used is equally misconceived.

Thirdly, the movement of the load of itself, again, does not give rise to an offence recognised at law.

Fourthly, the evidence produced by the Prosecution (including expert evidence) fell far short of the required standard being beyond reasonable doubt. The Prosecution must show, to the required standard of proof, that the transport operator had failed to comply, by virtue of s115, of the Standard.

Ultimately, the transport operator was successful and the charges were dismissed.

Further Information
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