

THE HIGH COURT

BETWEEN

MICHAEL TWOMEY

.v.

THE MINISTER FOR TOURISM AND TRANSPORT

Judgment of Mr. Justice Barron delivered the 22nd day of June 1988.

Section 3 (1) (c) of the Road Transport Act 1986 is as follows:

"3 - (1) As soon as may be after the commencement of this section, the Minister shall grant, in accordance with this Act -

(c) to the holder, on the commencement of this section, of a current road freight certificate issued under regulations made under the European Communities Act, 1972, who is not the holder of an existing merchandise licence (or licences) or of a restricted road freight licence (or licences) under the Principal Act who is engaged in the business of road haulage operator in an area which is an exempted area within the meaning of section 8 (1) of the Principal Act (as amended before the commencement of

this section), in substitution for such current road freight certificate, a national road freight carrier's licence or an international road freight carrier's licence."

The date upon which the section came into force was the 30th of September 1986 and the regulations referred to therein are the European Communities (Merchandise Road Transport) Regulations 1977. As can be seen the holder of a road freight certificate issued under those regulations engaged in the business of road haulage operations in an exempted area becomes entitled automatically to a national road freight carrier's licence or an international road freight carrier's licence.

The Applicant has since the year 1973 carried on business as a road haulage operator in the exempted area of Cork. He did not at any time until the 25th May 1987 obtain a road freight certificate under the 1977 Regulations. He brings these proceedings to obtain an Order directing the Minister to amend the date of the issue of the certificate to the latest date which will entitle him to avail of the provisions of Section 3 (1) (c) of the 1986 Act.

The circumstances in which he makes this claim are as follows.

In addition to carrying on business in the scheduled area of Cork, the Applicant at all material times rented two merchandise licences under which he carried on his business outside the scheduled area. Following the passing of the 1977 Regulations, he applied for a road freight certificate upon the basis of the business carried on under the rented licences. Upon his application he did not refer to the fact that he carried on business within the scheduled area of Cork. His

application was rejected upon the ground that he was not engaged in lawful road haulage. Though his application was rejected, it was indicated to him that if he engaged in haulage for reward within an exempted area he might be eligible for the grant of a road freight certificate. The Applicant did not follow up this suggestion but in the following year made a further application for a road freight certificate under the 1977 Regulations in identical form to his 1978 application. This was again rejected on the same grounds. On this occasion he was sent literature explaining the circumstances in which such certificates were granted. Following the receipt of this information, the Applicant made no effort to amend his application which lay abandoned.

In 1986, presumably when the Applicant was aware of the benefits which would accrue to him if he became the holder of a road freight certificate further efforts were made by him to obtain such certificate. On the 2nd September 1986 he made a further application under the 1977 Regulations for a road freight certificate. On this occasion he indicated upon his application that he also carried on business in the exempted area of Cork. Following the making of this application the Department required further information from the Applicant. All relevant information was furnished to the Department by the 30th of September 1986.

The Department took no action on this application and on the 2nd February 1987 the Applicant obtained liberty to issue proceedings by way of Judicial Review to obtain an Order of Mandamus directing the Minister to deal with his application. This Order was subsequently made without opposition on the 23rd

of March 1987. On the 13th of April 1987 the Minister notified the Applicant that his application was refused. Further correspondence ensued and ultimately the Minister issued the certificate on the 25th of May 1987.

It is submitted that this certificate should have issued on the 30th of September 1986 by which date the Minister had all the information upon which he subsequently acted. The basis of this submission is that, as the issue of the certificate was mandatory once an applicant showed that he had brought himself within the regulations, he then obtained a vested right to the issue of the certificate. In such circumstances, it is unfair that its actual date should depend upon the speed with which the application is processed. The Applicant relies upon R. .v. Haringey London Borough Council, a decision of the Queen Bench's Division given on the 25th July 1984. This case related to the issue of educational grants by local authorities to students ordinarily resident within their area. The Applicant for the grant in that case had been eligible for a grant when he made his application. However, before any decision upon his application was made, the relevant regulations were amended as a result of which he was no longer eligible. It was held that as the student was entitled to a mandatory award once he satisfied the requirements of the regulations this right vested at that time and was not dependent upon the date of the decision to make the award. The force of the Applicant's submission is that if the right to the certificate had vested in him in the present case on the 30th of September 1986, then also any rights to which the holder of such certificate would have been entitled would equally have vested.

There may well be circumstances in which it would be unfair for the attainment of statutory rights to be dependent upon the speed with which an application for the same is processed. However, the present case is not such a case. The Applicant was not restricted in any way in making his application. He had abandoned it for some seven years and had only himself to blame for his failure to obtain the necessary certificate in time. In any event, the remedy for delay by an administrative officer is to seek mandamus, which is what the Applicant did. Even then his application was refused initially. It may well be that the right to the certificate vested on the 30th September 1986. That meant that it could not ultimately be denied to him, but not that it must be deemed to have been granted.

In my view, the resolution of the issue in this case does not depend upon when the right to the certificate vested, but upon the proper construction of the statutory provision. Section 2 (1) (c) of the 1986 Act required two things: (1) That the Applicant should be the holder of a current road freight certificate; and (2) that he should be the holder "on the commencement of this section." On the literal interpretation of the provision, the Applicant does not fulfil either condition. I can find nothing in the Applicant's submissions to support any other construction.

In these circumstances, the question whether or not the delay in seeking relief should debar the Applicant from the relief he seeks does not arise.

The relief sought will be refused.

Henry Burton
21/6/88