

Citation: *R. v. 16142 Yukon Limited* and *R. v. KPI Northern Ltd.*, 2009 YKTC 117

Date: 20091007
Registry: Watson Lake

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Judge Faulkner

Docket: 08-10510

REGINA

v.

16142 YUKON LIMITED

AND:

Docket: 08-10511

REGINA

v.

KPI NORTHERN LTD.

Appearances:
Mark Pindera
Kerry Peters

Counsel for Territorial Crown
Appearing on his own behalf for the Defendants

REASONS FOR JUDGMENT

[1] FAULKNER T.C.J. (Oral): This matter involves two violation tickets that were issued in respect of two vehicles allegedly owned by two separate and distinct corporate defendants, one being KPI Northern Ltd. and the other being 16142 Yukon Limited.

[2] The first matter, involving a red Kenworth tractor and trailer, alleges that the

vehicle was operated without the proper dangerous goods placards affixed when it was hauling dangerous goods, in this case a load of dynamite to the Cantung Mine. The corporate defendant, in this case KPI Northern Ltd., defends the charge on the basis that the management of the company was unaware that the truck did not have the required placards. Mr. Peters basically said in argument he cannot watch his drivers 24/7 and, in essence, relies on the drivers.

[3] Since this is a regulatory offence, the accused is guilty unless he can show due diligence. This is not a case where normal standards of criminal law apply, like, for example, negligence and things of that manner, lack of criminal intent and so on. It is a regulatory offence and if it is shown that the placards were not on the vehicle, the accused is guilty unless he can demonstrate due diligence.

[4] In my view, due diligence has not been demonstrated in this case. It is not sufficient to simply say that the company relied on the drivers. There has to be some system of oversight maintained; otherwise, in effect, no duty of care can be placed on the company as distinct from the drivers. So I do not see where due diligence has been shown in this particular case. Now, that means that the defendant is liable if it is shown that the placards were not displayed.

[5] The interesting thing here is that the driver claims that, in fact, three placards were in place, although he admits that the rear placard was not displayed at the time of the accident which led to the inspection by YTG authorities. In respect of that issue, I do not accept that the placards were displayed, or at least the three of them. Both Mr. Close and Mr. Warkentin gave clear evidence that they had a look at the van and could not see any placards on it, and there is no evidence, other than speculation, which

would suggest that they somehow came off during the course of the accident. As I say, it is admitted that the fourth placard, which is required to be there, was not there.

[6] So with respect to that charge I find that it has been proven.

[7] The second charge, which is laid against 16142 Yukon Limited, alleges that the vehicle was operated without a currently valid inspection certificate or decal, and in this case it is admitted that that inspection or decal was not in place at the time. However, the evidence in this case, in my view, falls short of establishing that the vehicle in question was operated by the corporate defendant.

[8] The witness, Mr. Warkentin, testified that he ran the licence number and it proved to be registered to "The numbered company." Crown counsel then said, "You mean 16142?" The answer was yes. That is as far as the evidence goes.

[9] Leaving aside the propriety of asking that leading question, the bottom line is that those questions and answers taken together do not, in my view, amount to sufficient proof that the vehicle in question was registered to the corporate defendant 16142 Yukon Limited. Accordingly, that charge must be dismissed.

[10] What is the Crown seeking with respect to penalty on the dangerous goods matter?

[11] MR. PINDEREA: Crown seeks the stated fine of \$500 plus a \$75 surcharge.

[12] THE COURT: Well, the stated fine, on the ticket it says \$300.

[13] MR. PINDEREA: Oh, I'm sorry, I read the wrong ticket. I'm sorry, Your Honour; \$300 plus the \$45 surcharge.

[14] THE COURT: Mr. Peters, is there anything you want to say?

[15] KERRY PETERS: No.

[16] THE COURT: There will be a fine of \$300 and surcharge of \$45.

How long does KPI Northern Ltd. need to pay it?

[17] KERRY PETERS: Today.

[18] THE COURT: It can be paid today?

[19] KERRY PETERS: Yeah.

[20] THE COURT: Payable forthwith.

[21] KERRY PETERS: Thank you.

[22] MR. PINDEREA: Thank you, Your Honour.

FAULKNER T.C.J.