

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 17 of 1983

Between:

RAM DAYAL TRANSPORT LIMITED

Appellant

and

DOMINION TRANSPORT COMPANY

Respondent

A.B. Ali for the Appellant
G.P. Shankar for the Respondent

Date of Hearing: 19th July, 1983
Delivery of Judgment: July, 1983

JUDGMENT OF THE COURT

Speight J.A.

This is an appeal from a judgment of the Supreme Court in respect of a motion for an order of a Judicial Review directed to the Transport Control Board. The Board had had before it some informal application or notice in respect of transport services to be supplied by Ram Dayal Transport Limited (hereafter called the Appellant) under contract for the carriage of employees of the Regent Hotel to and from their homes in the Nadi area to the Regent Hotel. The Dominion Transport Company, (to be referred to as the Respondent) at the relevant time held a road service licence for conveying the public on the Nadi/Denarau Road. Appellant held road service licences for other routes, but not for Nadi/Denarau.

As a result of some misunderstanding in information supplied to Respondent's solicitors it was believed by that Company that the Transport Control Board had made a decision authorising Appellant to operate a contract carriage bus service from Nadi to Denarau Beach Resort and back. Consequently when the motion for judicial review was filed it purported to seek a declaration that what was believed to have been a decision of the Board was ultra vires and complaint was also made that at the supposed hearing leading up to such decision Respondent had not been given a right of hearing in accordance with the normal procedures in licensing cases before that Board.

The matter came on for hearing in the Supreme Court in February 1983 and it was then ascertained that the information given to the Respondent's solicitors by the Secretary of the Board was misleading. In fact it appears that the ruling such as it was by the Board was merely an expression of opinion by it that the transport contract arranged between Appellant and the Regent Hotel did not in the circumstances require a contract carriage licence. That being so and through no fault of the applicant company it appears that the declarations which had been sought were inappropriate.

The learned Judge on learning the true situation went on to consider the legal arguments relating to the legality of the Respondent Company Ram Dayal Transport's operation and made two declarations. Put briefly these were :

- (1) That Ram Dayal Transport Limited was acting illegally and in breach of its road service licence by operating on this route under its contract with Regent Hotel;
- (2) That the Transport Control Board in purporting to approve the contract had acted ultra vires through erroneous interpretation of section 74A(1)(a).

At the hearing before this Court Mr. Ali on behalf of the Appellant claimed that the decision of the Supreme Court was erroneous in that it made declarations which had not been sought in the motion for judicial review. On the view we take of the case as a whole we do not need to discuss this question though it may be mentioned here that quite clearly the legal issues involved on the true facts and the appropriate interpretation of the relevant sections of the Act were the subject of submissions to and consideration by the learned Judge.

Dealing first with the facts and the relevant provisions of the Act.

Respondent at all relevant times held a road service licence for operating a stage carriage on the route Nadi/Denarau/Regent Hotel. At an earlier time it had also operated a carriage contract with the Regent Hotel for the transport of hotel employees who in terms of their employment are apparently entitled to free bus transport to and from the Nadi area. This contract had been terminated by Regent Hotel, allegedly for unsatisfactory operation. The Hotel then advertised for bus companies to tender for a new contract. Appellant did tender and were successful. Briefly the agreement was for 18 months commencing on 1st July, 1981. The Company would operate a 72 seater bus to travel Votualevu/Nadi/Regent Hotel/Nadi/Votualevu making 12 trips per day starting early in the morning and running through to midnight. This was a contract arranged without payment by individual passengers but for a lump sum of \$2,550 per calendar month paid by Regent Hotel. It was clear that these trips were for transport of staff only. Having obtained the contract appellant wrote to the Board advising of the arrangement which had been made. Mr. Dean a director of the Company attended before a meeting of the Board and confirmed the letter and said in his view the Company did not require a separate licence as it was

covered under section 74A of the Traffic Act.

It is common ground that Appellant has other road service licences in the general Nadi area but it does not have a licence to cover this route. The Board minute says that the matter was considered and "it agreed to grant Ram Dayal Transport Limited contract trips as applied for". This was conveyed to Respondent in its letter to the solicitors which said that a contract licence had been granted to the Appellant. This however was misleading as no application had been made to the Board and no licence was in fact issued. Throughout these proceedings Appellant has acknowledged that it does not hold a contract carriage licence for this operation - its entire case is that it does not need one under the terms of the Act. The provisions of the Traffic Act must be examined. A public service vehicle is defined in section 2.

" 'public service vehicle' means a motor vehicle which -

- (a) is carrying passengers for hire or reward whether on an isolated occasion or otherwise; or
- (b) plies for the carrying of passengers for hire or reward whether on an isolated occasion or otherwise; or
- (c) is licensed under Part V of this Ordinance to carry passengers for hire or reward. "

Transport Control is covered by Part V of the Act and the appropriate provisions are in sections 59, 60, 63, 65, 66 and 74A, 74B, 74C. Section 59(1) as originally enacted and still in force is :

" PUBLIC SERVICE VEHICLES

59. (1) Public service vehicles shall, for the purposes of this Part of this Ordinance and the regulations made thereunder, be divided into the following classes :

- (a) stage carriages, that is to say, motor vehicles other than taxi carrying passengers for hire or reward at separate fares and not being express carriages as hereinafter defined;
- (b) express carriages, that is to say, motor vehicles other than taxi carrying passengers for hire or reward at separate fares none of which is less than such sum as may be fixed by the Board by notice in the Gazette:

Provided that for the purposes of this paragraph -

- (i) a composite fare for more than one journey shall not be regarded as representing the aggregate of fares of any less amount;
 - (ii) no account shall be taken of any fare which is charged in the case of children, or of workmen, or of students, if a fare of not less than that fixed by the Board as aforesaid, is charged in the case of all passengers not falling within any of these descriptions;
- (c) contract carriages, that is to say, motor vehicles other than taxi carrying passengers for hire or reward under a contract express or implied for the use of the vehicle as a whole at or for a fixed or agreed rate or sum: "

An understanding of the foregoing section is essential. The service in respect of which Respondent operates the Nadi/Denarau route is a stage carriage 59(1)(a). The general definition of a contract carriage is in 59(1)(c). When this Act was first passed and for many years there was a lengthy proviso to subsection (1) and a very lengthy subsection (2) which exempted vehicles from being considered stage carriage or express carriage by reason only that they were used for carrying separate fare paying passengers on separate occasions. Doubtless this was to enable sporting clubs, schools and other bodies to arrange special trips on which the individual club members or children would have to pay a fare but could journey over a route which

would otherwise be the subject of a road service licence. This proviso and subsection (2) were repealed in 1978 and replaced by new subsection (2) which reads as follows:

" (2) A public service vehicle carrying passengers at separate fares shall be treated as a contract carriage, and not as stage carriage or an express carriage, when used in circumstances in which either of the following conditions is fulfilled :

- (a) (i) the arrangements for the bringing together of all the passengers for the purpose of making the journey must have been made by some person, other than the driver of the vehicle or the holder of the vehicle licence in respect of the vehicle, or a person acting on behalf of such driver or licence holder; and
 - (ii) the journey must be made without previous advertisement to the public of the arrangements therefor; and
 - (iii) all the passengers must, in the case of a journey to a particular destination, be carried to, or to the vicinity of, that destination, or, in the case of a tour, be carried for the greater part of the journey; and
 - (iv) no differentiation of fares for the journey on the basis of distance or time must be made; and
 - (v) in the case of a journey to a particular destination the passengers must not include any person who frequently, or as a matter of routine, travels, at or about the time of day at which the journey is made, to or to the vicinity of that destination from a place from or through which the journey is made; or
- (b) each of the passengers making the journey must, at the time of concluding his arrangements for making the journey, have been outside Fiji or have been on board a vessel in Fiji on a voyage from outside Fiji. "

A study of the new subsection shows that a similar class of operation was being dealt with, namely trips on

special occasions for a separate fare but not as a substitute for regular travel nor by way of charges levied by the driver or operator of the vehicle. Although therefore it appears that this subsection was aimed at facilitating group journeys without requiring a licence to be obtained, the extra definition of contract carriage only related to a public service vehicle carrying passengers at separate fares. It does not appear to relate to a journey made when a public service vehicle is hired and paid for in one sum by an employer or club committee or a school or similar body. Such an event appears to come within the general definition of a contract carriage. Section 60 need not be set out here. It requires all public service vehicles including a stage carriage, express carriage and a contract carriage - as well as others such as rental cars - to hold certificates of fitness.

Section 63 requires road service licences to be obtained by certain vehicles, namely those being operated as a stage carriage or express carriage, but not it will be noted a contract carriage. Section 63 is as follows :

" 63 (1) Subject to the provisions of this section, no person shall use or cause or permit to be used any motor vehicle as a stage carriage or express carriage except under a licence granted by the Board (in this Ordinance referred to as a road service licence) and in accordance with the terms and conditions thereof.

(2) For the purposes of this section a vehicle used as a stage carriage or express carriage shall not be deemed to be so used under a road service licence unless it is so used by the holder of the licence and in accordance with the provisions thereof.

(3) If any person uses a vehicle or causes or permits it to be used in contravention of this section or being the holder of a road service licence wilfully or negligently fails to comply with any of the conditions attached to that licence, he shall be guilty of an offence: "

Sections 64 and 65 prescribe the procedure whereby the licence required under section 63 can be obtained. It

requires an application to be made to the Board and there is a procedure such as is common in most licensing applications; namely notice published of the application, the opportunity for other persons to object, rights of hearing before the Board and similar matters, except that hearings are not required where the Board is dealing with an amendment to a road service licence of trivial sort. Section 66 deals with the matters to be taken into consideration such as desirability of the services, the applicant's suitability, the interests of the public and of other transport operators. It is to be borne in mind that the hearing relates to stage carriage and express carriage applications.

Section 66 reads as follows :

" 66 (1) The Board shall not grant a road service licence or make an amendment to a road service licence in respect of any route if it appears to it from the particulars furnished in pursuance of section 64 of this Ordinance that any provision restricting the speed of any motor vehicle or class of motor vehicle or of all motor vehicles in any area made under this Ordinance or under the regulations is likely to be contravened.

(2) In exercising its discretion to grant or refuse a road service licence in respect of any route and its discretion to attach any conditions to any such licence the Board shall have regard to the following matters :

- (a) the extent to which the proposed service is necessary or desirable in the public interest;
- (b) the extent to which the needs of the area through which the proposed route will pass are already met;
- (c) the desirability of encouraging the provision of adequate and efficient services and eliminating unnecessary and unremunerative services;
- (d) the applicant's reliability, financial stability and the facilities at his disposal for carrying out the proposed services;

- (e) the number, type and design of vehicles which the applicant proposes to use under the licence;
- (f) any evidence and representation received by it at any public sitting held in accordance with the provisions of the last preceding section and any representations otherwise made by local authorities, public bodies or any persons carrying on transport services of any kind likely to be affected."

Finally, and of crucial importance are sections 74A, 74B and 74C :

" 74A (1) No person shall use or cause or permit to be used any motor vehicle as a contract carriage unless he is :

- (a) the holder of a road service licence issued in terms of section 65; or
- (b) the holder of a contract carriage licence issued in terms of section 74B.

(2) Any person who contravenes the provisions of this section or who, being the holder of a road service licence or contract carriage licence uses a motor vehicle as a contract carriage other than in accordance with section 59, shall be guilty of an offence.

(3) Any person who contravenes any conditions attached to any contract carriage licence shall be guilty of an offence.

(4) If a person commits an offence under this section, the Board may :

- (a) if he is the holder of a road service licence, direct that any motor vehicle which is the subject of that licence shall no longer be used as a contract carriage; or
- (b) if he is the holder of a contract carriage licence, revoke or suspend that licence.

74B (1) Any application for a contract carriage licence or for the renewal thereof shall be made in the prescribed form and shall be forwarded to the Board accompanied by the prescribed fee.

(2) The Board may require the applicant to submit such further particulars as may be reasonably necessary to enable it to discharge its duties in relation to the application.

(3) The Board may grant the applicant a contract carriage licence or a renewal thereof, with or without any conditions, on payment of the prescribed fee.

74C Before the Board grants or refuses a contract carriage licence or a renewal thereof or attaches any conditions thereto the Board shall have regard to :

- (a) the applicant's reliability, financial stability and the facilities at his disposal for carrying out the proposed services; and
- (b) the number, type and design of the vehicles which the applicant proposes to use under the licence. "

Although it has taken some time to set out the statutory provisions the question which arose and is now under appeal is simply stated: Appellant's submission is that the vehicles being used are in furtherance of a contract carriage as defined in section 59(1)(c) because this is a lump sum payment regardless of the number of passengers carried and it is not one of the special type of contract carriage which is exempted from being a stage carriage even though separate fares are being paid; and that the contract carriage is being operated by the holder of a road service licence issued in terms of section 65. Respondent's submission which was upheld by the learned Judge accepts that this is a contract carriage but claims that it may not be operated without a contract carriage licence (and none was held) unless the operator is the holder of a road service licence for that route. The simple question then is whether one gives a literal interpretation to the wording of clause 74A(1)(a) or whether one adds by implication the words "for that route" or similar.

The learned Judge discussed the question of judicial interpretation and it is not necessary to repeat in detail the consideration which he gave to this matter as set out in the judgment. The principle is widely understood that if the wording in a statute is clear then the ordinary meaning must be given to words and there is no justification for reading any additional words by implication to restrict ordinary meaning. However such a procedure may be required if without further restriction or amplification the meaning will do violence to the structure and purpose of the statute as a whole.

The learned Judge then considered the purpose of the Act. In particular Part V dealing with Transport Control.

We agree with the view which he was obviously adopting that one of the purposes of licensing control is to ensure that there is an economical service available to the public; and for this purpose operators and routes are licensed to provide an equitable distribution of demand and to regulate the economy of the industry so that demand can be properly catered for in an orderly manner. In the present context the learned Judge thought, and we recognise the validity of his views, that the operation by the Appellant of a 12 times a day service catering for the large number of employees travelling to and from Regent Hotel would seriously impair the efficiency and profitability of the Respondent's road service licence for that route. Similarly special but regular charters from outside could erode a local road service licence holder in many cases. There can be no quarrel with this conclusion of fact. The question is whether the right to operate a contract carriage by any holder of a road service licence is so contrary to the structure and purpose of the Act as to require the suggested restriction in interpretation.

With great respect to the learned Judge we do not think that it does. It may be that the scheme devised

by the Appellant goes further than was contemplated when contract carriage licensing was introduced. It will be noted that under section 63 only a stage carriage or an express carriage requires a road service licence. It would seem that section 59(2) applies only to special occasions where separate fares are paid. Section 59(1)(c) covers the situation of the lump sum journey.

The system of granting a contract carriage licence as distinct from a road service licence was introduced in sections 74B and 74C. If the submission on behalf of the Respondent is correct then 74A(1)(a) allowing a contract carriage to be operated only by a road service licence holder for that route then the purpose of licensing contract carriages must then be seen to be for the economic protection of such a licence holder. If that were the case then one would expect the procedure to be gone through by the applicant for a contract licence also to be based on economics and to be a procedure similar to that under section 65. However it is to be noted that under section 74B no advertising of the application is required; there is no provision for objection and under 74C the Board is only required to consider whether the applicant has the capacity to provide the facilities and whether his vehicles are suitable. That being so it appears that economic considerations of other operators are not taken into account. Indeed the effect on another road service licence holder is not a matter the Board shall have regard to. The significance of 74A(1)(a) is that the holder of a road service licence has already satisfied the Board under section 66 of its ability and suitability. In particular it is to be noted that those matters which are provided for in section 66(2) (d)(e) are the same as in section 74C(a)(b) but no consideration is given to the other matters set out in section 66(2) in particular to questions of efficiency and viability under subsection (c) and the effect on objecting parties under subsection (f).

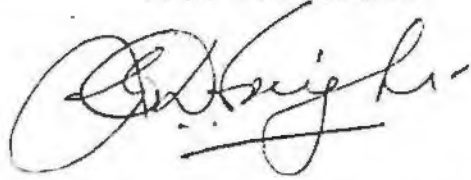
From one's general understanding of the Transport Licensing system it may well be that the principles and

procedures just discussed were primarily intended for the special occasion where a lump sum was being paid by an organisation, and did not contemplate a repeated service as devised in this instance. However, in our opinion, a consideration of the Act as a whole does not justify by implication the addition of restrictive words to section 74A(1)(a). If operations such as the present are to be restricted and the contract carriage system is to apply only to individual and not repeated trips it is a matter for the legislature. We would agree with the learned Judge that it is undesirable that the possession of a road service licence anywhere, should entitle the holder to operate a contract carriage in an area remote from the place in which that licence is held, though we doubt whether in practice there would be abuse to an extent leading to chaotic results. Should that ensue it is likewise a matter for the legislature.

In the result the appeal is allowed with costs. The declarations made are set aside and an order substituted that the application be refused with costs.



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Vice President



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Judge of Appeal



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Judge of Appeal