

IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

ACTION NO. 180 OF 1982

Between:

ADI GRACE MAHARAJ and MAHARAJ RAJIV
SHARDANAND VUETIVITI (minors) by
JOSEPH KHANAILAL MAJARAJ, their father
and next friend.

PLAINTIFFS

- and -

1. AJIT SINGHFIRST DEFENDANT2. JAI KUMARSECOND DEFENDANT

Plaintiffs by their next friend
Mr. J.K. Maharaj.

Mr. H. Lateef for defendants.

D E C I S I O N

The plaintiff was originally Mr. J.K. Maharaj the father of the two infant plaintiffs. He amended his summons and now appears for the plaintiffs as their next friend.

The plaintiffs seek a declaration that certain instructions given by the first defendant to the second defendant were unlawful and contrary to section 67 of the Traffic Act. They also seek an injunction forbidding the second defendant from demanding bus fares of 23 cents from each of them instead of 14 cents for the journeys they make in the bus driven by the second defendant.

At the hearing, after discussion with Counsel, it was suggested to them that what is required is consideration of and interpretation of the relevant road service licence conditions and a declaration thereon based on the facts before the Court.

Counsel agreed to this suggestion.

At the time these proceedings commenced, the two plaintiffs were 11 and 9 years of age respectively. They attend the Gospel Primary School in Dhanji Street, Samabula. They are taken to school in the mornings by one of their parents. In the afternoons after school, the two children walk from their school to a bus stop opposite the Calvary Temple near the Samabula Police Station and board the 3.45pm bus owned by the Tacirua Transport Co. Ltd. to travel to Tamavua. This company employs the two defendants. The driver of one of the company's buses, the second defendant, has despite complaints by Mr. Maharaj, been demanding and collecting 23 cents each from the two plaintiffs for the journey from where they board the bus to where they alight at Tamavua village Wailoku road bus stop.

The plaintiffs contend the proper and lawful fare is 14 cents for each of them. The defendants contend they should pay adult fares as the 3.45pm bus is not a school bus.

The Tacirua Transport Co. Ltd., which company is not a party in these proceedings, operates the buses which the plaintiffs use under Road Service Licence No. 12/6/24. The licence is subject to written conditions endorsed thereon.

The difficulty I have experienced in this action is to determine what conditions are applicable.

There appears to be two sets of conditions.

Mr. Maharaj in his original affidavit filed in support of the application annexed what purports to be a copy of the relevant road service licence which has conditions stated thereon. The conditions refer to two annexures to the licence. A timetable is an annexure marked "A" and a faretable is one marked "B". There is however a further annexure to Mr. Maharaj's affidavit which also contains conditions with an inked stamp reading "Annexure B" stamped over "Annexure A". This document purports to be "Bus Fare Conditions" and includes one more condition than the 7 conditions in the Annexure "B" referred to earlier.

Mr. Maharaj later, with the amended summons, filed a further affidavit which appears to be in identical terms as his original affidavit except for the addition of one more paragraph which is of no relevance. Annexed to this second affidavit is another copy of what purports to be Road Service Licence 12/6/24.

What purports to be Annexure "A" to this copy of the licence is a timetable intended solely for school buses on the Suva/Tamavua route covering Mondays to Fridays. Annexure "A" annexed to the licence in the first affidavit is a very detailed timetable covering three routes. School buses are not mentioned at all.

Annexure "B" in the second affidavit is a stage faretable for school bus fares only in respect of Road Service Licence 12/6/24 and two other licences and incorporates conditions which are the conditions I have referred to earlier as being the conditions over stamped Annexure "B".

The detailed Annexure "B" in the first affidavit does not appear in the second affidavit at all. It would appear that the over stamped Annexure "B" conditions are intended only for the school bus stage fare table.

The two sets of conditions are not identical although some conditions are the same. In fact they appear to conflict with each other and, if each set is considered in isolation there appear to be conflicting conditions within each set.

I set out hereunder the two set of conditions which I shall distinguish as No. 1 and No. 2.

"Condition No. 1:

1. Any passenger travelling a fraction of stage shall pay full stage fare.
2. No licensee shall charge any fare less than or over the fare specified in the faretable shown above and approved by Transport Control Board.
3. Children up to 5 years should be carried free if accompanied by an adult and not occupying a seat.
4. For the ages over 5 to 12 years all children $\frac{2}{3}$ fare to the higher cent.
5. Students in school uniform pay $\frac{1}{2}$ the adult fare to the higher cent on school days only.
6. School fares apply to students travelling in a school bus or where no school bus is provided, to students travelling to or from school by regular service bus.
7. Faretables must be exhibited in the bus where passengers can see and read it upon entering the vehicle.

Condition No. 2:

1. Any passenger travelling a fraction of stage shall pay full stage fare.
2. No licensee shall charge any fare less than or over the fare specified in the faretable shown above and approved by the Transport Control Board.
3. Children up to 5 years should be carried free if accompanied by an adult and not occupying a seat.
4. For the ages 5 to 12 all children pay $\frac{2}{3}$ adult fare to the higher cent.
5. Student in school uniform shall pay school bus fare.
6. School bus fares apply to students travelling in a school bus or where no school bus is provided, to students travelling to and from schools by regular service buses.
7. Where school children travel in other passenger buses and not school buses specifically provided, children will be required to pay adult bus fare.
8. Faretables must be exhibited in the bus where passengers can see and read it upon entering the vehicle."

The first three conditions in both sets of conditions are identical as is condition 7 in No. 1 and condition 8 in No.2. Condition 4 in the two sets conflict because of the slightly different wording. Five year old children are not covered in No. 1 condition and are in limbo. In No.1 condition "up to 5" they can be carried free. But if they are "over 5" they pay $\frac{2}{3}$ fare. 5 year olds are not covered. No. 2 condition does include 5 year olds. Condition 5 in the two sets also appear to conflict. In No. 1 condition students in uniform pay $\frac{1}{2}$ the adult fare. In No. 2 condition they pay the "school bus fare" which is the fare set opposite the stages in the list of School Bus Fares (Annexure "B" to the Licence.)

School bus fares may in fact be half adult fares in which case there is no conflict. Condition 6 in both sets is the same except for minor differences. They can be considered as having the same effect.

Condition 7 in No.2 has no counterpart in No.1.

I have spent some time referring to the two sets of conditions and pointing out apparent conflict and inconsistencies.

In the instant case I am only concerned with conditions relating to the carriage of the two children who are both over 5 years of age and are students who travel in school uniform. It is not in dispute that the bus the plaintiffs catch each afternoon after school is not a designated school bus. There is no school bus servicing the Gospel Primary School but the first defendant says he sees no reason why the plaintiffs cannot catch a school bus in Rewa Street.

Mr. Lateef for the defendant relies on condition 7 in No. 2 as justifying charging the full adult fares for the plaintiffs. They could, he says, catch a school bus and because they do not they have to pay adult fares.

Condition 7 in my view can have no application in the instant case, since the school the plaintiffs attend is not one served by a school bus. I accept Mr. Maharaj's statement that the school bus Mr. Lateef says they should catch leaves too early for the plaintiffs as it leaves Marist Brothers High School at 3.15pm. The plaintiffs come out of school at 3.30pm. Where a school bus is specifically provided, school children who could and should travel on such bus are required by condition 7 in No. 2 to pay the adult fare if they elect to travel

on a regular service bus provided condition 7 operates to exclude other conditions which could have application in the circumstances.

By virtue of condition 6 in Nos. 1 and 2, where no school bus is provided, students travelling to and from school, whether in uniform or not, pay school bus fares.

Condition 6 in No. 1 however does not state what the school fares actually are when children travel to schools not serviced by a school bus. In No.1 condition 5 students in uniform pay half fare.

In condition 6 in No.2 school fares are determined by the schedules of fares to which No. 2 is annexed.

So far as the plaintiffs are concerned, it does not matter which set of conditions is considered. They are entitled to travel to and from school, when in school uniform, for less than the adult fare. The only fare specified is half adult fare.

Condition 4 can be construed so as not to conflict with the other conditions. All children of or over 5 and under 12 years of age pay $\frac{2}{3}$ of adult fare for the journey. Students under 12 and those over 12 if in uniform on school days and travelling to and from school in a school bus pay school bus fares. Where no school bus fares are specified in a schedule the fare is half the adult fare.

I am satisfied plaintiffs are unable to catch a school bus operated by the Tacirua Transport Co. Ltd., which departs from Maris Brothers High School at 3.15pm on school days as they come out of school at 3.30pm daily.

Condition 7 in No. 2 appears to be in conflict with conditions 4 and 5 in both Nos. 1 and 2. If full effect was intended for condition 7 words such as "notwithstanding any other conditions herein contained" should have been used at the beginning of condition 7.

In my view condition 7 must be construed subject to any other condition which also has application so as to remove the conflict. It can only operate to cover - "students 12 years and over". If they should catch an available school bus and do not they have to pay full fare. Condition 4 will apply to all children 5 and over 5 up to 12 years of age except where condition 5 operates to cover such children on school days when in school uniform. They pay either two thirds or half adult fares depending on which condition operates.

I grant the plaintiffs amended request and declare that on the facts before me the plaintiffs, if in school uniform and on school days, while travelling to and from their school should not be asked to pay more than half the adult fare for their journey. If not in school uniform they should pay two thirds of the adult fare. I also declare that the second defendant's demand that they pay full adult fare and collection thereof is in breach of Road Service Licence No. 12/6/24.

Counsel agreed that there should be no order as to costs and accordingly I make no order as to costs.

R.G. Kermode
(R.G. KERMODE)

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