

HIGH COURT. Apia. 1955. 10, 16, June. MARSACK C.J.

Prosecution - bus operated contrary to conditions of passenger service licence as to time-table - whether driver or owner the person to "carry on a passenger service" - Road Traffic Amendment Ordinance 1934, sections 3 and 4.

To "carry on a passenger service" pursuant to sections 3 and 4 of the Road Traffic Amendment Ordinance 1934 means to perform all the acts which make up the operation of such a service (i.e., to obtain a passenger service licence; to maintain the vehicle in certain structural condition; to advertise a time-table; and to have a motor vehicle licence), and not only some of those acts; and therefore the person who commits the offence of carrying on a passenger service otherwise than in conformity with the terms of his licence is the licensee, and not an employee, the driver.

Information dismissed.

Drummond, for Police.

Cur. adv. vult.

MARSACK C.J.: This is a prosecution under sections 3 and 4 of the Road Traffic Amendment Ordinance 1934 against the driver of motor-omnibus No. 32 for carrying on a passenger service otherwise than in conformity with the conditions of the passenger service licence issued in respect of that omnibus, in that he failed to maintain the prescribed time-table.

The question for determination is whether the driver may be said to carry on the passenger service, or whether that phrase can be attributed only to the licensee, who in this case is one Fred Koil.

It is to be noted that when a licence is granted, it is granted to a specific person or company who is described as the licensee. It would normally be understood that the person to whom the Licensing Authority would look for proper compliance with the terms of the licence would be the person to whom the licence was granted, that is to say, the licensee.

Mr Drummond has addressed an argument to the Court based largely on the meaning of the words "carry on". I think, however that these words must be read strictly in conjunction with what follows. The phrase to be defined is "carry on any passenger service".

In my opinion there is much more to the carrying on of a passenger service than merely the driving of a vehicle from one place to another and picking up and letting down passengers en route. A person desiring to carry on a passenger service must, to comply with the law, first apply for and obtain a passenger service licence. Then it is required of the licensee that he shall maintain his vehicle in certain structural condition; that he shall advertise his time-table; that he shall obtain a motor vehicle licence. In case of a break-down of a vehicle he has certain duties to perform in order to discharge his obligations to the public. He has many other duties which can be performed only by the owner of the service, in matters of general organisation of his business. A driver performs an important part of the work of operating a passenger service, but only a part. In my opinion to "carry on a passenger service" means to perform all the acts which make up the operation of such a service, and not only some of those acts; and therefore it is only the licensee who can properly be described as carrying on a licensed passenger service.

It is correct that section 4 refers to "every person". The section, however, cannot refer only to the licensee because one of the offences committed under sections 3 and 4 is carrying on a service without a licence. When an unlicensed service is operating, then the person responsible for the consequent breach of section 3 of the Road Traffic Amendment Ordinance 1934 would be the owner, the proprietor of the passenger service undertaking and the person who would normally apply for a licence in respect of such service.

In my view the person who commits the offence of carrying on a

passenger service otherwise than in conformity with the terms of his licence is the licensee, and not an employee of the licensee, namely his driver.

The information against the defendant will be dismissed.