

IN THE FIJI COURT OF APPEAL

At Suva

Civil Jurisdiction

CIVIL APPEAL NO. 45 OF 1989
(Civil Action No. 478 of 1985)BETWEEN:PACIFIC TRANSPORT LIMITEDAPPELLANT

-and-

LAUTOKA CITY COUNCILRESPONDENTMr. H. Lateef for the Appellant
Mr. A. Patel for the RespondentDate of Hearing : 23rd June, 1992
Date of Delivery of Judgment : 1st July, 1992J U D G M E N T

This appeal involves a very short point.

The plaintiff is a public bus operator, and operates its buses from Lautoka. Some journeys have routes that take them to Suva and elsewhere, some are what have been called circular routes that move around the local district and arrive at and leave Lautoka at frequent intervals. There are timetables for each different type of operation.

The defendant Council is entitled to license the operation of buses and it has made by-laws governing various aspects of those operations. It has also provided a central bus stand or station at Namoli Park, Lautoka, at which the plaintiff's buses

arrive with their passengers destined for Lautoka and unload them; from this station the buses pick up passengers and their luggage and the new journeys start. In the case of the circular journeys the timetables provide that on some occasions the buses that arrive are scheduled to depart 5 minutes later.

It seems that whether or not buses are scheduled to depart 5 minutes after arrival they are permitted to park at the bus station. "Permitted" may or may not be applicable in all cases because clause 16 of the Lautoka Traffic Order (Cap. 176 S-183 s.88) provides:

"16. No person shall park any bus on a bus stand except for the purpose of loading or unloading passengers and their luggage and, in any such case, for not longer than-

- (a) 15 minutes immediately prior to the scheduled time of departure from the said stand of a bus on a journey terminating within a radius of 30 miles therefrom; or*
- (b) 30 minutes immediately prior to the scheduled time of departure from the said stand of a bus on a journey terminating beyond a radius of 30 miles therefrom; or*
- (c) as is reasonably necessary for the purpose of setting down passengers and their luggage."*

However, the position seems to be that buses do remain in the station for varying periods of time having discharged their passengers and before proceeding to embark passengers for the next journey.

The City Council by-laws provide that any bus operator desiring to use the bus station must have a license. Although the by-laws do not expressly authorise the Council to charge fees for use of the station pursuant to a license, they also provide:

"6. - (1) The licence fees for the use of the bus station, taxi stand or lorry stand by motor omnibuses, taxis or lorries shall be as set out in the Third Schedule and shall be collected and charged in accordance with the provisions of the succeeding paragraphs of this by-law.

.....

(3) In respect of motor omnibuses, the licence fees to be charged for any such monthly period shall be computed on the total number of visits of the motor omnibus to the bus station during the month and shall be calculated from the time-table....."

(Lautoka (Bus Station, Taxi and Lorry Stand) By-Laws Cap 125 S 125). The Third Schedule provides:

"1. For each visit of a motor omnibus to the bus station 12c"

So far as we can ascertain the timetables for the circular routes are drawn up on the basis of showing, for each journey, firstly the scheduled departure time from the bus station, followed by the time at various stops, and finishing with the scheduled arrival time back at the station. The next entry then starts with the departure time of the next journey and so on. In respect of these circular routes the records clearly show

that the .12c fees is calculated on the basis of the scheduled departure times. However, a sum of .24c is charged in respect of each scheduled departure. This is subject to an exception each time a bus, according to the timetable, remains on the station for 5 minutes only. In such cases a .12c fee is charged. So that even if the bus has been standing in the station, a .24c fee is charged in respect of the scheduled departure, except in the last mentioned case. There is no reason to suppose that fees for other routes are not calculated in the same way.

During the period March 1984 to December 1984 the Council charged the bus operator a total of \$20,054.16 on this basis, calculated monthly. The operator refused to pay, claiming that it was being charged a fee of .24c for each visit to the bus station, or more accurately for each departure. So the Council sued for the amount, seeking also a declaration it is:

"entitled to charge and collect licence fees (a) when a motor omnibus terminates its journey at the Lautoka Bus Station in terms of the road service licence issued in respect thereof"

(record p 8). The Council claimed alternatively the sum of \$22,281.72. We will deal with the amounts later. The writ was dated 24th July 1985.

The defendant operator contested the claim on the basis that the charges of the Council amounted to fees charged for visits to the station and departures from the station. It also counter claimed for an amount of \$29,357.73 alleging that this was the amount of the excess fees it had been charged in this fashion from 1977 to 1984.

The matter came on for hearing in the High Court in May 1989, and judgment was given on 24th November 1989. An amendment permitting the operator to raise a claim that the regulation under which the fees were charged was ultra vires was allowed; the learned Judge found that the regulation was valid and that fees could be charged. There is no appeal from this part of his decision. On the other aspect His Lordship held:

"The word 'visit' cannot inject any vagueness for it connotes both coming in and going out. The Council has taken the word 'visit' in the sense and it is entitled to do so. A Council is entitled to charge the fee as it wishes. The fee may refer to either the entry or departure or for both entry and departure as in this case."

(record p 214). On this basis he entered judgment for the Council and dismissed the counter-claim. From this decision the operator has appealed.

Counsel for the respondent Council explained to us that according to the by-law it was entitled to charge fees payable on the basis of the approved bus timetables, and that if the

Council were not able to calculate the fees payable on the basis of scheduled departures according to each timetable, it would be necessary for it to have a Council officer permanently stationed at the bus station recording each actual arrival. He was, however, under some difficulties in trying to explain how a fee charged on the basis of a departure could be classified as a fee for a visit when no distinction was drawn between an actual entry to the station that had in fact occurred, and an exit after the bus has remained on the station. He attempted to explain that, in the context, the word "visit" as used in the by-law must be construed as meaning an actual visit as well as a departure "as if" there had been in the latter case, another actual visit. He seized with some alacrity on the suggestion made by the Court that perhaps the word "visit" included the concept of a "notional visit" to cover those cases where a bus had remained on the station for a period longer than 5 minutes, and then left without having gone away and come back in the meantime.

We are unable to agree with this contention. For one thing, under the relevant provision of the Lautoka Traffic Order, set out above, a bus may be entitled to stand at the station for a period longer than 5 minutes after its arrival and before proceeding on the next scheduled journey. Providing that after arrival and discharge of the previous load passengers are permitted to board the vehicle, or luggage is permitted to be taken on board, while it is waiting at the station, it may be

very difficult to assert that it is not within the terms of the Traffic Order. Yet, as with the case of the 5 minute stop, there cannot possibly be said to be any further visit in respect of the next scheduled journey; nevertheless, on that departure, a fee would have been charged for the actual arrival (previous journey) and another one for an intervening notional arrival. We note that some of the circular trips have a 10 minute turn around period at the station; unlike the 5 minutes ones, a fee for a notional visit is charged in such case.

It seems to us quite clear that in order to avoid the necessity of ascertaining how many visits have actually been made during any month, the Council took the course of calculating a fee based on how many visits might have occurred during the time.

We note that the fees are to be calculated in accordance with the sub-clause of the by-law we have referred to earlier. However, sub-clause (4) provides:

"(4) If the Town Clerk considers that the number of visits to the bus station of any motor omnibus cannot be satisfactorily calculated from any time-table, he may, by written notice, require the bus operator concerned to supply him with particulars of the numbers of visits to the bus station and the times thereof of each motor omnibus operating under the operator's road service licence during the month the subject of the computation; and any bus operator so required to supply such particulars shall, within seven days after the receipt by him of such notice, deliver to the Town Clerk a written statement, signed by such operator or under his authority, containing a true and correct statement of the total number of

visits to the bus station and the times thereof of each such motor omnibus during the said month."

If our view as to the meaning of the word "visit" is correct, it means that the number of visits cannot be satisfactorily calculated from the timetables in cases where buses remain at the station having discharged one load until they depart from there on the next journey.

It is relevant to note the provisions of clause 11(1) of the Bus Station By-Laws. It provides:

11. - (1) No person shall park any motor omnibus in the bus station except for the purpose of loading or unloading passengers and their luggage and in no case for longer than-

- (a) five minutes immediately prior to the scheduled time of departure from the said bus station of such motor omnibus; or*
- (b) is reasonably necessary for the purpose of setting down passengers and their luggage."*

It makes it quite clear that the word "visit" is used in the same by-law in contradistinction to the word "departure". How this provision can operate in conjunction with clause 16 of the Lautoka Traffic Order, which we have quoted earlier, is not a matter that we have to decide.

We have reached the conclusion that the word "visit" can be given its ordinary meaning of "come to" or "come into", that the By-law is perfectly workable with the word having such a meaning and that there is no warrant for trying to give it a tortuous

meaning of "coming to or deeming to have come to" so as to enable the Council to collect a fee for a visit when there was not one. Convenience of use of the timetables to collect the fees is no warrant for trying to give the word "visit" a tortuous and unnatural meaning.

The appeal will be allowed and the decision of the High Court set aside. We will remit the matter to the High Court where it will be necessary to decide what is actually owing by the operator to the Council, because there is a certain proportion of the fees charged that were correctly charged, namely the .12c per visit when the turn-around time did not exceed 5 minutes. There may be other matters that have to be adjusted. Hopefully the parties will be able to agree on the amount. The matters raised in the counter-claim and the defence to counter-claim will also have to be considered.

We will make the necessary orders to give effect to our decision.

~~Appeal allowed and orders of the trial Judge set aside.~~

~~Matter is remitted to the High Court for determination of
the claim, counter-claim and defence to counter-claim.~~

~~Respondent to pay the appellant's costs of the appeal.~~

Michael M Helsham

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Justice Michael M Helsham
President, Fiji Court of Appeal

Moti Tikaram

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Sir Moti Tikaram
Resident Judge of Appeal

Mari Kapi

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Sir Mari Kapi
Judge of Appeal