

IN THE SUPREME COURT OF BELIZE, A.D. 2010

CLAIM NO. 380 of 2010

**SHERLINE ERNID HAMILTON
d.b.a. Skai's Bus Line**

APPLICANT

AND

**THE TRANSPORT BOARD
MINISTER OF TRANSPORT**

**1st RESPONDENT
2nd RESPONDENT**

Hearings

2010

10th August

24th September

29th October

Ms. Yogini Lochan for the Applicant
Mr. Samuel Shepherd for the Respondents.

LEGALL J.

JUDGMENT

1. There is a business named Skai's Bus Line which is registered as a business under the Business Names Act, Chapter 247 of the Laws of Belize. The business is owned by the applicant who has three buses which are a part of the public transport system used for transporting passengers for hire or reward. A permit was issued in the name of

Skai's Bus Service by the No. 1 respondent on 18th October, 2008 authorizing the operation of an omnibus service comprising the three buses along the route, Ladyville Village to Belize City and Belize City to Ladyville. The permit was for one year, from 19th October, 2008 to 18th October, 2009. There were two other bus operators on that same route, namely, Flores Bus Service and Ramos Bus Service. In September 2009, the claimant applied to the first respondent for a renewal of the Road Service Permit (R.S.P.). Regulation 205 of the Motor Vehicles and Road Traffic Regulations states, inter alia:

“Application for the renewal of a road service permit shall be made not less than one month before the date upon which such renewal falls due. All applications shall be signed by the applicant or, if there be more than one applicant by each of them: Provided that in the case of a company the application may be signed by the secretary or manager or other authorized officer.”

2. Applications for a renewal of a R.S.P. have to be considered by the Licensing and Transport Board. Regulation 207 states when applications for renewals of R.S.P. are to be heard; and the date of the meeting of the Board to consider the applications “shall be published in one issue of the Gazette.” The said Regulation 207 states that the Board in considering an application “shall have regard to the following:

“The date of the meeting of the Licensing and Transport Board to consider

applications together with particulars of the applications to be considered shall be published beforehand in three consecutive issues of the Gazette, provided that when only applications for renewals of the Board shall be published in one issue of the Gazette. In considering an application the Board shall have regard to the following –

- (a) the extent to which the proposed service is necessary or desirable in the public interests;
- (b) the needs of the area as a whole in which it is proposed to operate the service, including the provision of adequate, suitable and efficient transport services and the elimination of unnecessary or unremunerative services;
- (c) the suitability of the routes and the conditions of the roads upon which it is proposed to operate the service; that the time table is not so arranged that the provisions of the Tenth Schedule to the Act are likely to be infringed;
- (d) the number of vehicles to be used on the service;
- (e) that the fares to be charged are reasonable;
- (f) that the fares are so fixed as to prevent wasteful competition with alternative means of transport on the proposed routes or any part of them;
- (g) any representations which may be made by persons who are already providing transport facilities along or near to the proposed routes or any part of them;

(h) any representations which may be made by any interested local authority.”.

3. In response to the applicant’s application to renew the Road Service Permit, Major J.M.A. Flowers, Chairman of the Board, wrote a letter addressed to the applicant dated 30th December, 2009. The letter states as follows:

“Dear Mr. Hamilton,
Re: APPLICATION FOR RENEWAL -
ROAD SERVICE PERMIT FOR 2009/2010
Please be informed that the Board - based on numerous infractions and performance on the Ladyville/Belize City Shuttle route over the year 2008/2009, is considering not allowing Road Service Permits (RSP) to be granted to your bus service for the year 2009/2010.

You are requested to attend a meeting to be held by the Transport Board at 11:00 a.m. on January 2, 2010 at the Department of Transport (DOT) office, upper flat National Bus Terminal, West Canal, Belize City to show cause why your RSP should not be refused.

The Board will consider a refusal to attend as a confirmation that you are not interested and does not wish to be considered.”

4. The letter mistakenly referred to the applicant as “Mr. Hamilton.” The applicant said that she, accompanied by her daughter, attended the meeting on the 2nd January, 2010. She said at the meeting the Chairman, Vice Chairman, Commissioner of Transport and Secretary of the Board, represented the Department of Transport.
5. There is a dispute between the parties as to what was discussed at the meeting. The applicant insisted that, although the letter dated 30th December, 2009, made allegations of infractions and the performance of her bus service, at the meeting she was told that the purpose of the meeting was not to discuss the alleged infractions or to hear any representation on her part; and at no time was she given, at the meeting, information of the particulars of the alleged infractions by her bus service nor was she presented with any complaints lodged against her bus service. According to her, she was not informed at the meeting of any charges or allegations against her or her bus service.
6. The applicant said that her bus service did not commit any infractions, and that, if any alleged infractions were committed by her bus service, no such alleged infractions were communicated to her by any sub-committee of the Board or by the Board itself. She said that at no point in time before or during the said meetings was she ever informed of any infractions committed by her bus service and therefore was not given any opportunity to respond to any allegations of infractions against her or her bus service. Her evidence was supported by the evidence of her daughter, Jennine Hamilton. The applicant therefore contends that she was not given an opportunity to

be heard as to why her application for a renewal of the permit should not be refused.

7. On the other hand, the chairman of the Board, Major John Flowers, swore that at the meeting, the applicant “was able to give full representations in response to the allegations of infractions laid against her and her bus drivers.” This witness swore in his affidavit that numerous complaints were made in relation to the applicant’s bus service. He said that there were confrontations between bus drivers of rival companies; racing on the highway, blocking the roads, operating the buses not in accordance with the schedule, and complaints of the general conduct of the bus drivers employed by the applicant and other companies. According to the Chairman, because of the problems between the rival operators on the route, a transport sub-committee was appointed to investigate and deal with the problems of the route. The sub-committee which was comprised of Major Flowers, Supt. Williams, and Chief Transport Officer Candelaria Saldivar Morder met monthly, and had meetings with the operator of Skai Bus Line as well as with other operators to try to resolve the problems that existed. Major Flowers said that the problems and infractions on the route were continually raised with the applicant, giving her an opportunity to correct the problems.
8. Mrs. Candelaria Saldivar Morder presently Chief Executive Officer of the Ministry of Transport, but who held the position of Chief Transport Officer up to June 2010, swore to an affidavit in which she swore that there were problems with the bus operators of the

Ladyville/ Belize City route. The problems came about because of fierce competition between the three bus services operating on the route. The operators of the buses on the route, did not depart at the schedule times and therefore infringed on the timetable of the other bus service for purposes of getting more passengers. There were also disputes between drivers and racing on the highway. Mrs. Morter swore that the applicant and her daughter attended the meetings of the sub-committee as well as the other operators and were aware of the accusation of infractions made against the applicant and the other operators. This witness said that the applicant and her daughter Jennine Hamilton, attended these meetings so they were always well aware of the accusations of infractions levelled against themselves and the other bus lines. This witness swore that the applicant attended the meeting of 2nd January 2010 and was allowed to plead her case in response to the allegations of infractions and complaints mentioned above laid against her bus service. This witness concluded as follows:

“At this meeting the Board made it abundantly clear why the Road Service Permit (R.S.P.) was being refused and the applicant had opportunity to directly answer allegation of infractions leveled against Skai’s bus line.”.

9. On 27th February, 2010, the claimant received a letter from the first respondent informing her that her application for renewal of her Road Service Permit was refused under the authority of Regulation 206 by the Transport Board.

10. On 22nd March, 2010 the applicant was given permission by the Board to operate the Hattieville Village route and operated along that route up to around May 2010. Major Flowers states that the applicant was given the permission for the Hattieville route because the applicant would be the sole operator, and would not be competing with other companies. But the applicant said that she was not the sole operator of the Hattieville route because other buses pass through Hattieville and pickup passengers from that route.
11. The then Chief Transport Officer has sworn that since there are only two bus operators on the Ladyville/Belize City route, the problems of the previous years are gone, and that there is calm and a “well run” bus service which came about as a direct result of reducing the competition on that route.
12. On receipt of the letter disallowing the renewal of the Road Service Permit, the applicant and her daughter made several visits to the office of the second respondent, as well as leaving messages at his home regarding an appeal concerning the decision of the Board. On the 10th May, 2010 a written appeal was, for the first time, lodged with the Minister under the provisions of section 4(10) of the Motor Vehicle and Road Traffic Act Chapter 230 of the Laws of Belize, Revised Edition 2003, which states that a person aggrieved by a decision of the Board shall within twenty-one days of the decision “appeal to the Minister whose decision thereon shall be final.” The written appeal of the applicant was out of time and therefore was not considered by the Minister.

13. The applicant on 21st May, 2010 applied to the court for permission to apply for judicial review of the Board's decision not to renew her R.S.P.; and with the consent of the respondents, permission was granted on 7th July, 2010. On 19th July, 2010 the applicant applied for the following orders:

- “1. An Order of Certiorari quashing the decision of the first name defendant, issued on the 25th day of February, 2010, to disallow the claimant's application for a renewal of a Road Service Permit (RSP) to operate a Shuttle Schedule between the village of Ladyville and Belize City.
2. An Order that the claimant's Road Service Permit be renewed.
3. Damages.
4. Costs in the case.
5. Such further or other reliefs or remedies as the Honourable Court deems just.”

14. It is a question of fact whether the applicant at the meeting of 2nd January, 2010 was given an opportunity to be heard concerning the alleged infractions mentioned above with respect to her bus service, and whether she in fact was heard. Also, whether she knew about the alleged infractions prior to the meeting; and whether she was told of the infractions at the meetings of the sub-committee and whether she attended those meetings. The question also arises whether there is any evidence of the alleged infractions.

15. None of the deponents in this case gave evidence in the witness box and were not subject to cross-examination. All I have are the affidavits in support of the applicant and the respondents; and the question is: who is speaking the truth in these affidavits as to what took place at these meetings? It was submitted that the respondents were vague as to the infractions and were not truthful. I do not believe that the Board, having invited in writing the applicant to a meeting to discuss the infractions and complaints mentioned above, would, at that meeting, refuse to tell her of the infractions and refuse to allow her to respond. The Board having committed itself, in writing, to that process, I do not believe that it refused to discuss the matter with the applicant and get her response. I believe in relation to this aspect of the case, the evidence of Major Flowers and the Chief Transport Officer Morter, that the applicant was at the meetings, told of the infractions mentioned above and was heard at the meeting of the Board and at the sub-committee meetings of the Board.

16. Moreover, the burden is on the applicant to prove, on a balance of probabilities, that she was not heard by the Board on the alleged infractions. Neither she nor her daughter gave evidence; but relied on their affidavits. Apart from my finding that the applicant and her daughter were not truthful as to what took place at the meetings, I am not satisfied that the applicant has proven, on a balance of probabilities, her allegations in her application that she was not told of the infractions and was not heard.

17. There is no doubt in my mind that under Regulation 207 of the Regulations, the applicant has a right to be heard on an application for a renewal of her Road Service Permit; and a right to natural justice. The Regulations themselves state that the Board, on an application for a renewal of a permit shall have regard to, inter alia, representations by persons who are already providing transport facilities along or near the proposed routes: see Regulation 207(g) above. By this provision, there is no reason why an applicant should be excluded from a hearing.

18. But on the evidence of Major Flowers and the Chief Transport Officer Morter which I accept, I hold that the applicant's right to be heard was not breached by the respondents. I find, as a fact, that the applicant was heard and had the opportunity to address and did address the allegations leveled against the applicant and her bus service. There is no merit therefore in the submission that the applicant right to be heard and her legitimate expectation to be heard were violated by the respondents.

19. There were problems on the route between the competitors as pointed out by Flowers and Morter. The applicant seems to agree that there were problems. In a letter which she wrote to officials she complained that "our employees do not feel safe, and it would be unfair on the company's part to allow them to work in a threatening environment." In another letter she wrote that "another of our buses was set on fire and that there continues to create controversy among the shuttle companies." In yet another letter, she says that "we have

been in incidents that had involved deadly objects, and that although members of staff have been involved in misunderstandings, it has always been found that the culprits have been members of my competitive company.” In all the letters that she has written, the applicant maintained that the problems were caused, not by her bus drivers, but by the other competitors on the route.

20. It is urged by the applicant that the decision of the Board to refuse a renewal of the permit is manifestly unreasonable. It is unreasonable, says Miss Lochan, learned counsel for the applicant, because at no time did the respondents notify the applicant or her bus drivers that complaints had been levelled against them. There is no evidence of infractions committed by the applicant; and at no time was the applicant told that she had to improve the bus service. Further it was “quite unreasonable,” says Miss Lochan, for the applicant, for the Board to decide not to renew her permit for the Ladyville route because of “belligerent behaviour and racing” but then to grant her a permit for the Hattieville route. In deciding not to renew the permit the Board, according to the applicant, failed to take into account material considerations, such as the remedy by her of a faulty speedometer and the supply of a fire extinguisher for one of her buses; and therefore the Board by this omission, did not consider a material matter in deciding whether her bus service was fit to hold a permit.
21. The applicant also relies on Regulation 207 referred to above, and submits that, contrary to the said regulation, the Board failed to publish the date of the 2nd January meeting in the Gazette, as required

by the Regulation, and therefore erred and acted contrary to the Regulation. In addition, the applicant asserts that because the Board did not require her bus service to surrender the permit and cease to operate until her application for a renewal of the permit had been decided, the Board gave her a legitimate expectation that her application for a renewal would be granted. Moreover, the expectation was bolstered by the fact that after the meeting of 2nd January, 2010 the Board assured her that she would continue in the transportation business.

22. On the submission that there is no evidence of the alleged infractions, I think the evidence of Flowers and Morter in their affidavits above shows the alleged infractions; and as I said I believe the infractions were told to the applicant at the meetings which she attended and she had an opportunity to respond to them.

23. The basis for the submission of unreasonableness on the part of the Board is that the applicant was not heard on the infractions and there was no evidence to support the infractions. Since I have found that she was heard and there is such evidence, I am unable to accept this submission. On the granting of the permit for the Hattieville route while at the same time refusing the renewal permit for the Ladyville route, was reasonably explained by Major Flowers and Chief Transport Officer Morter to the effect that because fierce competition on the Ladyville route by the three buses companies generated the infractions mentioned above, and because the Hattieville route did not have that competition, the applicant was offered the Hattieville route

- which was accepted by her. The applicant was the only bus service permitted for that route, though there were other buses permitted for other routes using the sole highway which passes through Hattieville.
24. The court has a discretion whether to quash a decision due to the procedural error of not publishing the notice of the meeting in the Gazette. Since the applicant attended the meeting and was heard this is a suitable case for the exercise of the court's discretion against quashing the resulting decision of the Board on this ground.
 25. In the letter dated 25th February, 2010, the Board did not renew the Road Service Permit because the Board found, according to the letter, that Skai's Bus Line was "unfit to be a holder of a RSP (Road Service Permit) for the Ladyville/Belize City Route." It was further urged for the applicant that since there was no evidence of any infractions by the applicant bus service, the Board made an error of fact when it held that the applicant was unfit to hold a RSP. But there was evidence, as shown above of infractions in the affidavits of Flowers and Morter.
 26. It was also further submitted that the Board failed to take note of material considerations, that the applicant, having, at a time previous to the meeting, told to remedy an air conditioner and fire extinguisher of one of her buses, did comply and remedied the problem. But the Board did not take this material matter into consideration when it refused to renew the RSP. The Board's refusal to renew the permit was not because of any mechanical condition of any of the applicant's

buses, but was because of the conduct and behaviour of the personnel employed by the applicant to drive her buses.

27. It was said that the applicant was told that her permit would be renewed, and was also granted the Hattieville route, and that these matters created a legitimate expectation that her permit would be renewed. Firstly, on the facts above, I do not believe that the applicant was told by the Board that her permit would be renewed. Secondly, permitting the applicant to operate the Hattieville route, I do not think, on the evidence in this case, amounted to a promise by the Board that it would renew her permit for the Ladyville route or gave the applicant a reasonable expectation that the Board would renew that permit. The justification for legitimate expectation is that when a public authority has promised to follow a certain procedure, it is in the interest of good administration that it should act fairly and should implement its promise: see Lord Fraser in *Council of Civil Service Unions v. Minister of Home Affairs 1984 2 A.E.R. at page 943*; and *A.G. of Hong Kong v. Ng Yuan Shiu 1982 A.E.R. 346 at p 350*. The Board followed the procedure it promised in the letter of 3rd December, 2009.

28. For the above reasons, I make the following orders:

(1) The reliefs claimed by the applicant are refused.

(2) There is no order as to costs.

Before leaving this judgment, the court wishes to recognize the sterling efforts of Miss Lochan on behalf of her client; but the facts were not in her favour.

Oswell Legall
JUDGE OF THE SUPREME COURT
29th October, 2010