

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO. M9 OF 1982

THE FULL COURT

Before: Smith, C.J., Wright and Morgan JJ.

R v. The Road Traffic Appeal Tribunal
and Greymist Transport Ltd.

Ex parte Mail Bus Company

C. Leiba for the Applicant
Dr. A. Edwards for Greymist Transport Ltd.
R. Langrin and W. Wilkin for Road Traffic Appeal Tribunal.

26th October, 1982

Wright J

By a unanimous decision we refused the applicant's motion, awarded costs to Greymist Transport Ltd. and the Road Traffic Appeal Tribunal and promised to put our reasons in writing. This we now proceed to do.

The Road Traffic Act makes provision for Licensing Authorities and an Appeal Tribunal. Section 6 states:

Sec. 6 (1) "There shall be established a Licensing Authority for each licensing area of the Island.

6 (2) "Each Licensing Authority shall be a body corporate to which section 28 of the Interpretation Act shall apply."

Section 21 provides:

21 (1) There shall be constituted a Road Traffic Appeal Tribunal which shall consist of a chairman and two other members to be appointed by the Minister.

(2) The members of the Road Traffic Appeal Tribunal shall subject to the provisions of subsection (6) hold office for such period not exceeding two years, as the Minister may determine, but shall be eligible for re-appointment.

(3)

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(6) The Minister may make rules prescribing the procedure to be followed upon appeal to the Road Traffic Appeal Tribunal.

Section 28 of the Interpretation Act spells out the incidents of the corporate status attaching to the Licensing Authority but not to the Road Traffic Appeal Tribunal. These include, inter alia,

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- (a) The power to sue in its corporate name.
- (b) The power to enter into contracts.
- (c) The right to have a common seal.
- (d) The right to acquire and hold real or personal property.
- (e) The right to regulate its own procedure and business.
- (f) The right to employ necessary staff.

By way of contrast, the procedure of the Appeal Tribunal is governed by rules made by the minister. Rules under section 21 (6) of the Road Traffic Act known as the Road Traffic (Appeal Tribunal) Rules 1945 were made and published in the proclamation Rules and Regulations 1945 at page 122 (LN 30/45). Rule 3 (1) of these Rules provides:

3 (1)

- (a) Every appeal shall be commenced by notice of appeal addressed to the secretary of the Tribunal. Such notice shall be delivered to the secretary of the Tribunal within fourteen days from the decision appealed against.
- (b) Such notice may be in the form of an ordinary letter and shall set forth clearly the ground of appeal and the date or dates when the subject matter of such appeal arose. Copies of correspondence or other documents (if any) or statements verified by statutory declaration of facts relating to the dispute shall be attached to the notice of appeal.
- (c) A copy of the notice of appeal, together with a copy of the correspondence or other documents mentioned in subparagraph (b) shall be served on the Licensing Authority by the appellant.
- (d) The Tribunal may decline to hear any appeal which does not comply with the foregoing conditions or which may be considered frivolous.

(2)

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(5)

(6) Subject to the provisions of these Rules the Tribunal may regulate its own procedure".

The right to appeal to the Tribunal from decisions of the Licensing Authority is accorded several categories of aggrieved persons by sections 72, 73 and 86 of the Road Traffic Act.

The notice of motion states that on the 29th day of January, 1982 the Tribunal allowed the appeal of Greymist Transport Ltd. and revoked a license granted to the applicant Mail Bus Company Ltd. on the 4th day of July, 1979 by a specially constituted Licensing Authority for the Northern Area to operate a stage carriage bus service between Bensington and Kingston.

The contention is that the Tribunal had no jurisdiction to hear the appeal because at the time when the appeal was lodged none of the three members who heard the appeal had been so appointed. Accordingly, the appeal was "incompetent, ultra vires and invalid". Msintaining that there is a Tribunal only when there are appointed members Mr. Leiba submitted that the only Tribunal with jurisdiction to hear an appeal is the Tribunal in existence at the time that the notice of appeal is filled.

The members of the impugned Tribunal were appointed for a period of two years with effect from the 11th day of December, 1980 (vide Jamaica Gazette no. 2 dated January 8, 1980). The appeal had been lodged on the 17th day of July, 1979 at a time when there were no appointed members, the previous appointees' term of office having expired on the 30th June, 1979. The next appointments to the Tribunal were made for a period of one year with effect from 1st October, 1979 (vide Jamaica Gazette no. 60 dated October 4, 1979).

If Mr. Leiba's submission is correct it would mean that although a Licensing Authority, as an established body, may well have made decisions between June 30, 1979 and October 3, 1979 giving rise to appeals there could in fact be no appeal because there was no Tribunal to which the appeal could be made. The appeal must be made within fourteen days of the decision appealed from. Accordingly, it could not even be made within fourteen days of the appointment of the new members on October 4, 1979.

To appreciate the agony inherent in upholding Mr. Leiba's

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submission one only has to contemplate that an appeal lodged within the prescribed time on the final day of the term of life of a Tribunal would perish because it could never be heard. Also, the right to appeal from the decision of a Tribunal made on its last day in office would be illusory.

Mr. Leiba is not insensitive to this obvious and gross denial of justice which would follow if his contention be correct but he glosses it over with the submission that there is no absolute right of appeal, that such right is granted by and subject to the law of the land and that what he contends is what the law of the land ordains. I find it abhorrent, nay very repulsive to my sense of justice to think that an aggrieved person who has faithfully complied with the statutory requirements for appealing could, without any fault on his part, be further aggrieved by so capricious a denial of the right to have his appeal heard. It may also be observed that by the same token all arrears on hand when the members of a Tribunal demitted office would automatically cease to be of any validity.

The law from which he seeks support is the decision of the Full Court in R v. Licensing Authority for the Eastern Area and Barbara Chin, ex parte Jamaica Sun Tours Ltd. (1975) 13 J.L.R. 77 in which by a majority judgment the Court held, inter alia, that the only Licensing authority with power to hear an application was the Authority to which the application was made. It is to be noted that that decision, proceeded on the state of the law at the time, but that law has since been effectively changed.

The power vested in the minister to set up a Licensing Authority was provided by Section 5 of the Road Traffic Act which then read:

"The Minister may appoint any person or persons to be the Licensing Authority for any Licensing area of the Island".

Notices in the Jamaica Gazette evidencing the exercise of this power read:

"In accordance with the powers conferred on him the minister has appointed the undermentioned persons to constitute the Licensing Authorities (for the relevant areas) for the period

ending three members of each Authority to form a quorum".

What that court had to decide, among other things, was whether on a proper construction of Section 5 (supra) a Licensing Authority had an identity separate and apart from its members and it held that it had not. To cure the evil highlighted by the judgment Act 34 of 1976 was passed to amend Section 5 and replaced it by what is now section 6 (supra). The language of the amending Act makes it abundantly clear that a Licensing Authority is now imbued with an identity separate and apart from its members.

It might have been thought that the arguments that prevailed in the case cited were laid to rest. But not for Mr. Leiba. He transposed those arguments and presented them with much vigour on the construction of sub-section 1 of Section 21 of the Act. He submitted that the ratio of the majority judgment in the Sun Tours case is relevant to an understanding of this sub-section. He gives to this sub-section the same meaning as was accorded to the words "to be the Licensing Authority etc." in section 5 of the Road Traffic Act which had to be amended to give it the needed efficacy. Mr. Leiba must be understood to be saying that the life of a Tribunal is co-terminous with the length of the period for which the members were appointed to serve - its identity merging with that of its members. He points to the fact that in regularising the situation regarding the Licensing Authority by the use of the words "shall be established" the Legislature by the very enactment brings an entity into being but that by deliberately choosing the word "constituted" in relation to the Tribunal the legislature avoided the creation of such an entity without its members.

I agree with Mr. Leiba that the legislature did not intend to create a Tribunal as a duplicate of a Licensing Authority in all respects and the choice of "constituted" instead of "established" would tend to avoid confusion in construing the two sections bearing in mind, particularly the provisions of section 28 of the Interpretation Act. But that is not to say that "constituted" is the same as "to be".

This is the approach that finds favour with Dr. Edwards. He submitted that the Sun Tours case (supra) dealt with a different

terminology from the instant case and that there is a vast difference between the two. Further a distinction must be maintained between the administrative process of lodging an appeal and the quasi-judicial process of hearing an appeal. The appeal is properly lodged when a notice complying with the rules is delivered to the secretary within the prescribed time. It seems not arguable that the office of Secretary is a permanent one with functions - administrative functions which are essentially different from those of the members of the Tribunal. And this is an indicator that there is a body to which members are appointed. Dr. Edwards submitted further, that in order to deprive persons of rights that have accrued the language of the Road Traffic Act would have to be abundantly clear - clear, specific and certain and it is his contention that the Act has done no such thing.

Mr. Langrin at first gave diffident support to Dr. Edwards' submission which he subsequently upgraded to full adoption.

Neither "established" nor "constituted" is defined in the Road Traffic Act. It is appropriate therefore to have recourse to the dictionary meaning. The Concise Oxford Dictionary supplies the following meanings:

"establish": Set up (Government, business house etc.) on permanent basis.

"constitute": Appoint, establish, found, give legal form to etc.

To my mind it is clear beyond dispute that "constitute" connotes an element of permanence and that by using the word "constituted" the legislature intended to set up a legal entity to which members would thereafter be appointed.

Additional support, if it were necessary, may be found in Words and Phrases Legally Defined (2nd Ed.) Vol. 1 at page 323 where "constituted" is treated thus:

"The term constituted (as applied to a company) is not equivalent to incorporated, it is of a wider import. It seems to be equivalent to 'established'".

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Re East & West India Dock Co. (1888) 38 Ch. D
576, per Chitty J at p. 582."

The conclusion, therefore is that Mr. Leiba's contentions are
demonstrably unsound and were accordingly rejected.

Morgan J:
I agree

Smith C.J.
I agree