

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY RONALD WADSWORTH
FOR JUDICIAL REVIEW

WEATHERUP J

The Application

[1] This is an application for judicial review of the decision of Northern Ireland Railways Company Limited dated 20 June 2003 by which the applicant, who is a licensed public hire taxi driver, was excluded from a designated taxi rank at Central Station, Belfast.

The Background

[2] Northern Ireland Transport Holding Company is the owner of the lands at Central Station Belfast. NITHC lease the lands at Central Station to NIR which operates railway services from the premises. NITHC and NIR are respondents to this application. By a contract between NIR and Belfast Public Hire Taxi Association NIR designated an area of the premises as a taxi rank for members of BPHTA to collect passengers. This contract operated from 1 November 1999 to 31 October 2000 with BPHTA paying NIR £1,550 for exclusive use of the designated rank. On the expiry of the contract on 31 October 2000 the designated rank continued to be used by public hire taxis without further payment by BPHTA.

[3] By an agreement in writing dated 3 July 2002 made between NIR and Value Cabs Limited, a company operating private hire taxi services, Value Cabs were granted the exclusive right to a designated taxi rank at Central Station from 30 June 2002 to 30 June 2005 for the payment of £10,000 to NIR by Value Cabs.

[4] While the applicant operates a public hire taxi he has not been a member of BPHTA and does not operate a private hire taxi with Value Cabs. However the applicant used the designated taxi rank at Central Station during the period of use by public hire taxis. On 25 September 2002 the applicant drove his public hire taxi to Central Station where NIR refused him access to the designated taxi rank. The applicant sought leave to apply for judicial review of that decision and on 24 February 2003 the proceedings were dismissed. There was a dispute between the parties as to the circumstances in which those judicial review proceedings were dismissed. Junior counsel for the applicant informed the court that between the decision on 25 September 2002 and the hearing on 24 February 2003 NIR had undertaken substantial renovations at Central Station with the result that the designated taxi stand had been removed for building. It was decided on behalf of the applicant that as access could not be given to the designated taxi stand the applicant had used previously, the judicial review should not proceed. There was no hearing on the merits. The order of 24 February 2003 records that the application for leave to apply for judicial review be dismissed.

[5] It appears that on the completion of the renovation works at Central Station a new designated taxi rank came into operation on 1 February 2003 to which the agreement between NIR and Value Cabs applied. The present arrangement provides an access road from the public road over NIR premises to the designated taxi rank with notices prohibiting the use of the access road by other than authorised vehicles, which includes those operated by Value Cabs. On 15 April 2003 the applicant drove his public hire taxi to Central Station and was refused access to the designated taxi rank by NIR. This denial of access was the subject of a letter from the applicant's solicitor to NIR solicitors and by letter dated 20 June 2003 NIR solicitors rejected the applicant's claim to access to the designated taxi stand at Central Station. The applicant relies on that letter as the decision that is the subject matter of this judicial review. The applicant's sought leave to apply for judicial review on 17 September 2003 and leave was granted.

Res Judicata

[6] The respondents contend that the papers in the earlier application raised similar issues to those arising in the present application and the matter is res judicata. Wade & Forsyth, Administrative Law (8th Ed.) at page 255 states that it is probable that the doctrine of res judicata is inherently inapplicable to proceedings for certiorari. However it is recognised that the Court may refuse to entertain questions that were or could have been litigated in earlier proceedings if that would be an abuse of legal process. By reason of the applicant's account of the circumstances in which the earlier application came to be dismissed and the absence of any adjudication on the merits of the earlier application I do not accept that the applicant should be precluded from

proceeding with the present application for judicial review. For the same reasons I do not accept that any decision of NIR affecting the applicant in 2002 should be the operative decision for the purposes of the present application.

Delay

[7] For the purposes of this application the exclusion of the applicant from the designated taxi rank occurred on 15 April 2003. The applicant's claim to entitlement to access to the designated taxi rank was rejected by NIR's solicitor's letter of 20 June 2003. I accept that it was reasonable for the applicant to require a formal decision in relation to his claim for access to the designated taxi rank and that the relevant decision is that of 20 June 2003. The applicant's solicitor has set out on affidavit the steps taken in relation to this application which included making an application for legal aid on 3 July 2003, legal aid was approved on 19 August 2003, counsel's hospitalisation delaying receipt of the draft proceedings until 10 September 2003, and the application for leave being filed on 17 September 2003. The obligation under Order 53 Rule 4 is to make the application promptly or in any event within 3 months. I consider that the application was not made promptly. The Court may extend time for the making of the application if there is good reason. I refer to the judgment of Kerr J in McCabe's Application [1994] NIJB 27 on the importance of applying promptly and the presence of a burden on the applicant to provide sufficient evidence to establish good reason for any delay.

[8] In the circumstances of the present case such evidence has been adduced. I am satisfied that the processing of legal aid, the injury to Counsel, the long vacation, the absence of an adverse impact on public administration or prejudice to the respondent or third parties all combine to represent "good reason".

Legislation affecting Taxi Cabs

[9] On 4 June 1951 the County Borough of Belfast made the By-laws relating to Motor Hackney Carriages (taxi cabs) under Section 18 of the Motor Vehicles (Traffic Regulation) Act (Northern Ireland) 1926. The statutory power to make by-laws regulating public service vehicles within any area presently rests with the Department of the Social Development under Article 65 of the Road Traffic (Northern Ireland) Order 1981. In exercise of those powers the Department (by its statutory predecessor) made the Motor Hackney Carriages (Belfast) (Amendment) By-Laws (Northern Ireland) 1997 by which it amended by-law 9 of the 1951 by-laws.

[10] The 1951 by-laws as amended provide, at by-law 2, that a driver of a taxi cab, having been required to drive to any place situate within the prescribed limits, "shall not refuse, delay, neglect or omit so to do nor to go

with any person when called whether such driver is on a stand or passing or in any street or public place within the City of Belfast and not being already actually hired”.

By-law 1(e) provides that the expression “public place” shall include the premises of a railway or omnibus station.

By-law 14 provides that a taxi driver “shall not stand or loiter with the same in any part of any street not appropriated as a prescribed public street stand otherwise than in pursuance of a direction from any hirer....”

By-law 9 substituted in 1997 sets out the prescribed public street stands in Belfast. The NIR premises at Central Station are not a prescribed public street stand.

Accordingly a public taxi may pick up a fare in Belfast at a prescribed public street stand or while passing in any public street or public place.

Legislation affecting Railway Undertakings

[11] NITHC is established under the Transport Act (Northern Ireland) 1967. Section 55 of the 1967 Act provides that it shall be the duty of NIR as an authorised railway undertaking to provide or secure the provision of railway services in Northern Ireland and that includes “such other services and facilities as appear to the railway undertaking requisite or expedient to provide a connection therewith”.

Further Section 56 of the 1967 Act provides that NIR shall have power “to carry on any business usually carried on by a railway company and to do all such other things as are incidental thereto and, without prejudice to the generality of the foregoing, shall have power -

(a) to enter into and carry out agreements with any person for the performance by that person, whether as agent for the undertaking or otherwise, of any functions conferred on the undertaking by this Act”.

[12] The applicant contends that the decision is ultra vires the powers of NIR. The respondent relies on Sections 55 and 56 of the 1967 Act. I consider that the provision of facilities for taxi services from NIR premises are properly regarded by NIR as requisite or expedient to provide in connection with railway services. Further I would consider the provision of facilities for taxi services to be incidental to the business of a railway company and that NIR has power to enter into and carry out agreements with Value Cabs for their performance of such incidental functions. The power has been exercised not only to make provision for taxi services but also to make the provision by means of a commercial arrangement with a specific taxi company involving the grant of exclusive use. I am satisfied that sections 55 and 56 give to NIR statutory power to designate the taxi rank for the exclusive use of Value Cabs at Central Station and to enter into the agreement with Value Cabs.

[13] Section 57 of the 1967 Act provides that NIR has the power to make by-laws regulating the conduct of all persons on NIR premises and in particular,

at section 57(1)(f), for regulating the parking of vehicles on railway premises. In exercise of the powers under Section 57 of the 1967 Act NIR made by -laws on 15 December 1986.

By-law 29(1) provides "Except in cases of emergency a person shall not park or leave any road vehicle in or upon the railway

(a) otherwise that in a car park or part of a car park or other place designated by means of a notice exhibited in a conspicuous position in the car park or place for the parking of vehicles of that kind, and in the manner, for the periods and at the hours specified in any such notice."

I do not consider that by-law 29 applies in the present case. The by-law is concerned with designated places for parking vehicles and is not concerned with taxi ranks. In any event if the stopping of a taxi on the designated taxi rank constitutes the leaving of a vehicle in a designated place other than a car park I consider that NIR has complied with by-law 29. However I consider that NIR has power to designate an area as a taxi rank under the provisions of Section 55 and 56 of the 1967 Act.

[14] The applicant relies on the 1951 by-laws which requires a taxi cab driver to take a fare in any public place in Belfast and that includes the premises of a railway station. However a public place at the premises of a railway station must necessarily be limited to those areas to which the public have access and the by-laws cannot be interpreted to require NIR to grant access to those parts of the premises of the railway station that are not accessible to the public. Accordingly the public hire taxi driver is entitled to take a fare while passing on the public roads around Central Station but is not entitled to stand in the public streets around Central Station as there is no prescribed public street stand at that location.

Public Law

[15] The Respondents contend that the issues arising in these proceedings are not public law issues and can not be subject to judicial review. In McBride's Application (No. 2) [2003] NICA 23 Carswell LCJ adopted the approach of Kerr J at first instance [1999] NI299 at 310 -

"It appears to me that an issue is one of public law where it involves a matter of public interest in the sense that it has an impact on the public generally not merely on an individual or group. That it is not to say that an issue becomes one of public law simply because it generates interest or concern in the minds of the public. It must affect the public rather than merely engage its interest to qualify as a public law issue. It seems to me to be equally clear that a matter may be one of public law while having a specific impact on an individual in his personal capacity."

[16] In the present case the decision as to the provision of taxi services at Central Station affects the public interest where those members of the public using public transport provided by the statutory railway authority have a legitimate interest in the continuity of those services with incidental transport arrangements. The respondents contend that while the regulation of taxi services may be a matter affecting the public the actual provision of such a service is not a public matter but is a private commercial matter. Comparison is made with the provision of catering services in the station where it is said that no public law element would arise. In R v Lord Chancellor ex parte Hibbit and Saunders [1993] COD 326 it was held that an application by an unsuccessful tenderer for Judicial Review of the Lord Chancellor's decision to award a contract for court reporting services was a decision lacking a sufficient public law element. When a contract is entered into the obligations arise under the contract unless there also exists some other element that gives rise to a public law obligation. The present decision was made by a statutory authority concerning the interpretation of statutory powers and contains a sufficient public law element.

Public Authority

[17] NITHC and NIR are each a "public authority" for the purposes of Section 6 of the Human Rights Act 1998. A core public authority is a body whose nature is governmental in a broad sense of that expression. A hybrid public authority exercises both public functions and non-public functions. Lord Nicholls in Aston Cantlow v Wallbank (2003) 3 All ER 1213 at para. 12 stated that the factors to be taken into account in deciding whether a function is public for this purpose include "the extent to which in carrying out the relevant function the body is publicly funded, or is exercising statutory powers, or is taking the place of central government or local authorities, or is providing a public service." NIR is publicly funded, exercising statutory powers and providing a public service. In exercising the powers in relation to designated taxi ranks NIR is carrying out a public function.

Procedural Fairness

[18] The applicant contends that there was procedural unfairness in the decision-making process and that the applicant ought to have had notice of the impending decision so as to be afforded the opportunity to make representations on his own behalf. It is not in issue that NIR must act in accordance with procedural fairness. The respondent submits that such fairness has been achieved in this case by the operation of the tendering process. The present arrangements for the use of the designated taxi rank at Central Station involved a public advertisement in a local newspaper in November 2001 by which NIR invited suitably qualified organisations who wished to be included on a select list of tenderers for the provision of the taxi

cab service at Central Station. There then followed a public tendering exercise that resulted in the award of the contract to Value Cabs in July 2002. While the applicant was not “organisation” who could have applied to be included on the list of tenderers he could have joined BPHTA or any other suitable organisation that could have submitted a competitive tender. I do not accept that fairness required individual notices to all taxi drivers who had previously used the designated taxi rank at Central Station.

Legitimate Expectation

[19] Further the applicant claims substantive legitimate expectation on the basis that his previous use of a designated taxi rank at Central Station accorded to him the right to continue that use. In R v Northern East Devon Health Authority ex parte Coughlan (2000) 3 All ER 850 Lord Woolf stated at paragraph 57 -

“Where the court considers that a lawful promise or practice has induced legitimate expectation of a benefit which is substantive, not merely procedural, authority now establishes that the court will in a proper case decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. Here, once the legitimacy of the expectation is established, the court will have the task of weighing the requirements of fairness against any overriding interest relied upon for the change of policy.”

[20] I do not accept that the applicant’s use of the designated taxi rank at Central Station amounted to a practice that created the suggested legitimate expectation. NIR practice had been to enter an exclusive use agreement with a taxi association and then to allow the arrangements to continue after the formal conclusion of the agreement before proceeding by way of a public advertisement and competitive tender for a new exclusive use agreement. There was no practice that warranted the legitimate expectation that the applicants would enjoy continued use of a designated taxi rank.

Equality of Treatment

[21] The applicant’s contends that the NIR decision represents a breach of the applicant’s entitlement to equality of treatment. The principle of consistency or equality of treatment has been stated by Bingham LJ in R v Board of Inland Revenue ex parte MFK [1990] 1 All ER 91 at 107 as follows -

“If a public authority has a policy which it makes known or announces it may not act inconsistently

with that policy without sufficient notice, and then not retrospectively. This rule applies even where, in private law, there might be no estoppel. It is a principle of public law that decisions of public bodies may not be internally inconsistent. A public body must recognise and give effect to the legitimate expectations of those who deal with it, in matters both of procedure and decision.”

[22] The applicant compares his treatment to that accorded to those who have secured access to the designated taxi rank. NIR has not adopted a policy with which the decision to exclude the applicant is inconsistent. The policy was to award exclusive access to the designated taxi rank, to the members of that organisation which succeeds by competitive tender. The applicant is not a member of the successful organisation and accordingly is not in a similar position to those who are accorded access to the designated taxi rank.

Article 1 of Protocol 1

[23] The applicant claims that the decision is in breach of Article 1 of the First Protocol of the European Convention. Article 1 of the First Protocol provides that -

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

[24] The applicant contends that his licence to operate a public hire taxi is a “possession” for the purposes of Article 1 of the First Protocol and that the exclusion of the applicant from NIR’s designated taxi tank is an interference with the applicant’s licence that requires justification. Any interference must be lawful and not arbitrary and further there must be an objective and reasonable relationship of proportionality between the means employed and the aim sought to be realised.

[25] On the assumption that the actions of NIR amount to interference with possessions for the purposes of Article 1 of the First Protocol I am satisfied

that such interference was lawful and not arbitrary and pursued the legitimate aim of regulating the provision of taxi services at the railway station and achieved the same by proportionate means by public tendering.

Conclusion

[26] Accordingly I do not accept any of the applicant's grounds for judicial review. The application is dismissed.