

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

SUIT NO. M.57 OF 1989

IN THE MATTER of the Road Traffic
(Amendment) Regulations 1988

AND

IN THE MATTER of Road Traffic Act
and Regulations

BETWEEN CONFIDENCE BUS SERVICE PLAINTIFF
 LIMITED

AND THE ATTORNEY GENERAL DEFENDANT

Dr. A. Edwards for Plaintiff

Mr. L. Robinson instructed by Director of State Proceedings
for Attorney General.

March 6 & 14, 1990

LANGRIN, J.

The plaintiff in this summons seeks a declaration that Regulation 123A of the Road Traffic Regulations has been made without legal authority and is invalid. The points are short, but are raised against a legislative background from which I am forced to quote emphasizing those provisions which are most directly relevant.

I will begin with the enabling statute which is the Road Traffic Act. Section 76 as amended states as follows:

"76. The Minister may make regulations for any purpose for which regulations may be made under this Part and for prescribing anything which may be prescribed under this Part, and generally for the purpose of carrying this Part into effect, and in particular, but without prejudice to the generality of the foregoing provisions, may make regulations with respect to any of the following matters - "

Paragraphs (a) to (c) are concerned largely with the forms to be used for application and issue of licences, documents, badges and custody of licences, number of passengers to be

carried, disposal of property, inspection of vehicles and fees to be paid. None of these dealt with Drivers and Conductors uniform.

For the purpose of the judgment it is necessary to refer in outline to Part III of the Road Traffic Act.

"Part III Regulation of Public Passenger Vehicle and Road Licences."

Section 60 deals with Classification of public passenger vehicles, while Sections 61 to 69 deal with Road Licences for Public Passenger Vehicles. Section 69 to 70 deal with Conductors Licences, while Sections 71 to 73 deal with General provisions as to Licences. Section 74 to 75 deal with Conduct of Passengers, Conductors and Drivers. Again none of these sections deal with Driver's and Conductor's Uniform.

Next, attention may now be drawn to The Road Traffic (Amendment) Regulations 1988 which states as follows:

- "1. These Regulations may be cited as the Road Traffic (Amendment) Regulation 1988, and shall be read and construed as one with the Road Traffic Regulations 1938 (hereinafter referred to as the principal Regulations) and all amendments thereto."

The relevant provision relating to this dispute is stated at:-

- "17. The principal Regulations are amended by inserting next after regulation 123 the following heading and regulation 123A -

DRIVER'S AND CONDUCTOR'S UNIFORM

- 123A - (1) A driver or conductor shall wear a uniform which shall consist of -
- (a) a badge;
 - (b) a bush jacket with short sleeves; and
 - (c) trousers or, in the case of a female if she so elects, a skirt with the trousers or skirt having piping on the left side thereof.
- (2) A bush jacket referred to in paragraph (1) shall be as follows -

- (a) the front shall be buttoned in the centre with fine tucks on the left and right sides and there shall be a pocket with a button on the lower section of each side;
 - (b) the back shall have a yolk between the shoulder seams and there shall be a slit in the middle of the lower section; and
 - (c) in the case of a driver shall be light blue in colour and in the case of a conductor shall be light grey in colour.
- (3) A trousers or skirt referred to in paragraph (1) shall -
- (a) in the case of a driver be dark blue in colour with the piping thereon the same light grey as prescribed for the bush jacket.
 - (b) in the case of a conductor be dark grey in colour with the piping thereon the same light grey as prescribed for the bush jacket.
- (4) This regulation shall come into operation on the 1st March 1989."

Learned Counsel for the plaintiff, Dr. Edwards submitted that Regulation 123A was ultra vires and invalid for the reason that there was nothing in Section 76 and Part III of the Act which would give the Minister power to make regulation in respect of uniforms for drivers and conductors.

Learned Counsel for the Attorney General, Mr. L. Robinson submitted that the Regulation was intra vires and valid and the real issue is the way in which Section 76 is construed. He cited as a guide to interpretation, Mc Eldowney v. Forde 1969, 2 AER 1039 which is authority for the proposition that for a regulation to be valid it must be capable of being related to the prescribed purposes of the empowering Act.

If one can ascertain the purposes of the law then the uncertainty as to the meaning of the language of Section 76 is removed. This being so I am driven back to the words of Section 76 and Part III of the Act. In my view the section must be interpreted according to its plain meaning.

To my mind Section 76 of the Road Traffic Act construed in the sense for which Mr. Robinson contended

would render Regulation 123A invalid because it does not fill in details or machinery, for the purpose of implementing what is in Part III of the Act.

A power to require drivers and conductors to wear uniform while on duty may be expedient for the proper delivery of transport facilities to the public but it cannot be regarded as a general purpose of carrying Part III of the Act into effect. Regulation 123A creates a new and radically more extensive set of powers additional to those detailed in the enabling statute. It was a wholly unwarranted arrogation of power.

The legislature took the trouble from time to time to amend the enabling statute so as to add new powers since 1957 to enable the Minister to regulate Public Passenger Vehicles. If the Legislature really meant that drivers and conductors were to wear uniforms, why not say so. To suggest that the phrase in Sec. 76 - "generally for the purpose of carrying this Part into effect", should be inferentially enlarged to give the Minister power to make Regulation for the wearing of uniforms by drivers and conductors is in my judgment quite implausible.

It was strongly submitted by Counsel for the Attorney General that the plaintiff had no locus standi, because it had not shown by the affidavit that it had sufficient interest i.e. some legal right which had been affected.

There is now a much wider concept of locus standi when complaint is made against a public authority. It extends to anyone who is not a mere busy-body. In the case of R.V. Paddington Valuation Officer exparte Peachey Property Corporation Limited 1966 1 Q.B. 380 at p.401 Lord Denning MR, had this to say:

"The Court will not listen, of course, to a mere busy-body who was interfering in things which did not concern him; But it will listen to

anyone whose interests
are affected by what has
been done. So here
it will listen to any rate-
payer who complains that the
list is invalid".

It would be unreasonable to conclude that an owner
or operator of an Omnibus Service is not affected by a
restraint placed upon a driver or conductor. Indeed in a
proper case the owner may be charged with aiding and abetting
the failure of the driver or conductor to wear uniform.

Accordingly I conclude that the plaintiff had locus
standi and that Regulation 123A is invalid and ultra vires
since there was no power under which the Regulation could
have been made.

I make the declaration sought. There will be an
order for the costs of the plaintiff to be paid when taxed
or agreed by the Attorney General.