

JERSEY / JUDGMENT

Bisson v The Minister for Infrastructure

[2020] JRC 040 (03 March 2020)

[2020] JRC 040

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

judgment

the deputy bailiff: 1. The Appellant is, by occupation, a taxi driver. The Respondent is responsible for the regulation of public service vehicles (including taxis) operating in Jersey. At the time of the decision appealed, the Appellant was running a small taxi business, trading as Yestaxis . 2. By notice of appeal served on 30 th October 2019, the Appellant appeals the decision of the Respondent communicated to him by letter dated 11 th October, 2019, ("the Decision Letter") which suspended his Public Service Vehicle Licence and Public Service Vehicle Badge pursuant to the relevant provisions of the Motor Traffic (Jersey) Law 1935 ("the Law") for two weeks. During that period of two weeks the Appellant was not permitted to operate a particular vehicle, namely his Toyota Prius, registration number J4799, nor was he permitted to work for another regulated company as an employed driver; he was permitted to carry out management or administrative tasks relating to Yestaxis during this period. Legislative framework 3. Article 1 of the Law provides that a "public service vehicle" means a motor vehicle used to carry passengers for hire or reward" . 4. The power of suspension or revocation by the Respondent is contained in Article 10 of the Law. Article 10 provides: "10 Suspension or revocation of public service vehicle licences

- (1) The Minister may revoke a public service vehicle licence or suspend its validity, either for a specified period or for an indefinite period, if it appears to the Minister - (a) that its holder is no longer a fit and proper person to operate the public service provided by the vehicle having regard to the holder's conduct, whether in respect of the provision of that public service or otherwise, the manner in which the vehicle has been used or operated or the manner in which the public service has been provided (or has failed to be provided); or (b) that the vehicle to which the licence relates has been used or operated in contravention of a condition set out in the licence. (2) The validity of a public service vehicle licence granted in respect of a vehicle is suspended during any period a certificate of fitness is not in force in respect of the vehicle. (3) The holder of a public service vehicle licence may appeal to the Royal Court against a decision by the Minister to revoke the licence or suspend its validity. (4) Notice of the appeal must be lodged with the Royal Court within 29 days of notice of the revocation or suspension being given to the holder of the licence or within such further period as the Court may allow if it considers it desirable to do so in the interests of justice.

(5) When it determines an appeal the Royal Court may - (a) annul or confirm the decision of the Minister; or (b) substitute for that decision any decision the Minister could have made.

(6) The Royal Court may make such orders as it thinks appropriate, including ancillary orders and orders as to costs." 5. As to the Appellant's badge, which was issued to him under Article 29 of the Law and which he was required to wear under Article 31, the provisions in relation to revocation or suspension are contained in Article 30 as follows: "30 Revocation or suspension of authority given by a badge (1) The Minister may, by written notice served on the holder of a badge, revoke or suspend, either for a specified period or for an indefinite period, the authority the badge gives the person to drive a public service vehicle if the Minister is satisfied that, by reason of the person's conduct, or a physical or mental disability, the person is, either permanently or for the time being, not a fit person to drive a public service vehicle of the type specified on the badge. (2) If the Minister revokes or suspends the authority given by a badge the holder of the badge must return the badge to the Minister as soon as practicable. (3) A person who fails to comply with paragraph (2) shall be guilty of an offence and is liable to a fine not exceeding level 3 on the standard scale. (4) The holder of a badge may appeal to the Royal Court against a decision by the Minister to revoke or suspend the authority given by the badge. (5) Notice of the appeal must be lodged with the Royal Court within 29 days of notice of the revocation or suspension being given to the holder of the badge or within such further period as the Court may allow if it considers it desirable to do so in the interests of justice. (6) When it determines an appeal the Royal Court may - (a) annul or confirm the decision of the Minister; or (b) substitute for that decision any decision the Minister could have made. (7) The Royal Court may make such orders as it thinks appropriate, including ancillary orders and orders as to costs." 6. As can be seen, the relevant appeal provisions in respect of suspension of the licence and badge are contained in Article 10(3) - (6) and Article 30(4) -

- (7) respectively. 7. Further, under Article 37 of the Law the Minister has a power by order to make provisions as to the conduct of owners and drivers of public service vehicles. Article 37(4) and (5) provide: "(4) The Minister may publish for the guidance of owners and drivers of public service vehicles codes of conduct relating to the operation of public service vehicles. (5) It shall not be an offence for a person to fail to comply with a provision of a code of conduct but any non-compliance shall be taken into account by the Minister when considering the possible revocation, suspension or renewal of a public service vehicle licence or a badge." 8. The Code of Conduct issued by the Minister was made known to the Appellant and is referred to on the rear of his Public Service Vehicle Licence issued in respect of his Toyota Prius. The issue of the Licence is expressed to be subject to the "following conditions" including that "the Licence Holder and any employee must adhere to the Code of Conduct at all times". 9. Relevant provisions of the Code of Conduct include: "(2) You should be courteous. (5) When your taxi-cab is available for hire you should not normally refuse a hire. This is particularly the case if yours is the first (rank) taxi-cab on a taxi rank, or if you are hailed when driving your taxi-cab. However, you may do so if you reasonably believe that - · your fare will not be paid; · the hire will last for more than an

hour; · the hirer's clothing will dirty or unreasonably wet the interior of your taxi-cab; · the hirer will act in a disorderly manner during the journey. (11) You should normally take a hirer to the destination requested but may end a hire at any time or place if the hirer - · acts in a disorderly manner; · smokes in your taxi-cab; · continues to eat or drink in your taxi-cab after you have asked them to stop doing so; · continues to play a radio, tape or disc after you have asked them to stop doing so; · continues to distract your attention while driving after you have asked them to stop doing so. (19) You should not involve yourself in conflict with other road users, other psv drivers or members of the public but you should refer any complaint to the Driver and Vehicle Standards Department." 10. A note on the front page of the Code of Conduct provides: "A failure to comply with any requirement of this code will be taken into account by the Minister when considering if you are a fit and proper person to continue to hold a taxi-cab licence and/or a badge and whether your vehicle is fit to continue to be used as a taxi-cab." Role of the Court 11. The role of the Court on appeal has been considered in a number of authorities, most recently by the Royal Court in *Erin Bisson -v- Minister for Infrastructure*

[2019] JRC 133 . 12. In summary, the Royal Court will allow an appeal if it is satisfied that the decision of the Respondent was wrong. It does not have to go further and conclude the decision was plainly wrong, or so wrong as to be unreasonable, or what is known as "Wednesbury" unreasonable. 13. When considering whether the decision was wrong the Court will (following *Erin Bisson -v- Minister for Infrastructure*

[2016] JRC 227 and *Erin Bisson -v- Minister for Infrastructure*

[2019] JRC 133) consider three aspects on the appeal (1) whether the decision was one which the Respondent was empowered in law to make (i.e. was the decision intra or ultra vires); (2) was the procedure adopted by the Respondent a fair one; and (3) how was the decision reached on its merits? Did the Respondent take into account new relevant factors or fail to have regard to relevant factors? Was the final decision on its merits wrong or not? In this regard the Court will give weight to the decision of the Respondent, bearing in mind their expertise and experience. 14. The weight to be given to the expertise and experience of the decision-maker will depend upon the nature of the decision made (as per the dicta by Bailiff W J Bailhache in *Bisson -v- Connétable of the Parish of St Helier*

[2019] JRC 202A regarding an analogous appeal provision in the Firearms (Jersey) Law 2000). Counsel for the Respondent conceded that this was not a decision calling for a great deal of expertise and accordingly the Court does not give significant weight to the decision made by the Respondent in this case. 15. The Court has found it helpful to consider by way of background recent decisions made by this Court in other cases involving taxi drivers. The Court notes the observation made by the Royal Court, Commissioner Birt presiding, on 6 th December, 2016, (*Bisson v Minister for Infrastructure*

- [2016] JRC 227 , at paragraph 46) that: "the suspension of a PSV licence and badge have serious consequences for the cab driver in question and prevents that driver from earning a living as a cab driver during the period of suspension. It is therefore a serious step to take and must be justified by a public interest which requires such a step." The Court also noted the observation made by the Royal Court in March 2019, Commissioner Birt presiding, in the case of Erin Bisson -v- Minister for Infrastructure
- [2019] JRC 037 at paragraph 40 where the Court observed: " ... We endorse the Minister's view that it is not acceptable for a cab driver to demand that a passenger leaves a cab mid-journey simply because the passenger has innocently misgendered the Appellant. The provision of a satisfactory cab service in the Island is an important public service and the Minister is entitled to expect those who are licensed to act as cab drivers to act in a proper manner." The Decision Appealed 16. As referred to above, the decision appealed was communicated to the Appellant and contained in the Decision Letter. That letter begins by indicating that the Respondent, through the Inspector of Motor Traffic, Mr Forrest, was writing to the Appellant further to "two complaints made against you by members of the public dated 30th July and 20th August 2019 ("the Complaints"). I have previously brought the Complaints to your attention; you have responded to the Complaints and provided DVS with footage of the incidents in question" . 17. The Decision Letter went on to say that prior to receiving the Complaints (as he had defined them) the author had sent a letter to the Appellant on 21 st May, 2019, ("the May letter") in which he afforded the Appellant a "final opportunity to improve your behaviour and the way you interact with customers." 18. The May letter was written specifically in the context of an incident in February 2019 to which we will return below. 19. In summary, no action was taken in relation to the February 2019 incident because of a meeting that took place attended by Mr Forrest and Mr Le Marquand on behalf of the Respondent, and the Appellant and Mr Gallery, who he described as his honorary customer services manager, on 3 rd April 2019. During this meeting the Appellant said that he would manage potential conflict with customers better in the future and would be assisted by Mr Gallery's advice and training in that regard. The May letter contained the following warning given by Mr Forrest, "I shall afford you a final opportunity to dramatically improve the way in which you interact with your customers and not suspend you on this occasion. This incident will, however, be taken into account should any further instances of bad behaviour occur." 20. The Decision Letter set out the detail of the incidents on 29 th July, 2019, ("the July incident") and th August, 2019, ("the August incident"
- both of which were defined, as we have said, in the Decision Letter as "the Complaints"). 21. We will return to these incidents below, as the Court has had the advantage of seeing the video footage captured by a camera located in the front of the Appellant's taxi, showing the February, July and August 2019 incidents. 22. Having described the July and August incidents Mr Forrest said in the Decision Letter, "your behaviour on both occasions was unacceptable as a public service vehicle badge holder." He went on to say, "during the course of the past three years you have been warned as to your conduct on a number of occasions and have

been suspended twice. In respect of the Complaints and taking into consideration your response, I have decided to suspend your PSV licence and badge under Articles 10 and 30 of the Motor Traffic (Jersey) Law 1935 for a period of two weeks. I should add that given a number of suspensions of your badge and PSV licence over the past few years, coupled with the numerous final warnings is such that any further misconduct on your part will likely result in me recommending to the Minister that your PSV licence and badge be revoked, without any further warning." 23. Accordingly it is plain from the terms of this letter that it was the two Complaints that were the reason for the suspension. 24. However, the affidavit sworn on behalf of the Respondent by Mr Forrest for the purpose of this appeal said that the suspension was imposed principally because of the July 2019 incident and that the August 2019 incident was "not taken into consideration for the purposes of the suspension." 25. This was wrong, and inconsistent with what the Appellant was told in the Decision Letter. The Court was concerned by the Respondent's attempt to change stance between the taking of the decision and the filing of evidence for the purpose of the appeal. The Court was also concerned about the Respondent's failure to exhibit relevant evidence - this was remedied by the Appellant providing further evidence in the course of the hearing. We examine these matters in more detail when we summarise the Appellant's and Respondent's submissions. The Appellant's submissions 26. The Appellant's submissions were as follows. 27. He rejected the assertion that he was not a fit and proper person to operate a public service vehicle, which the Minister needed to be satisfied of in order to suspend his licence. He stated that his conduct both professionally and in his private life showed that to be an incorrect conclusion to draw. 28. He said that Mr Forrest had failed to apply common sense in reaching the decision that he did and that the process was littered with mistakes, as illustrated by his transcript of the footage provided by the Appellant in relation to the July 2019 incident in which Mr Forrest mistakenly said that "775" was a monetary value and not (as it was) a reference to the Appellant's badge number. 29. The Appellant said that insufficient weight had been given to the financial consequences to him arising from his suspension. He had made significant investments in his business; first in his purchase in 2013 of Grab A Cab; and his Jersey taxi "app" which was subsequently rendered defunct by the permission being granted to a rival "app" with a similar name in October 2018. He had been provided with misleading and incorrect documents by the Respondent and felt that he was being disciplined in circumstances where other taxi drivers were not. 30. The Appellant was also concerned that the suspension affected his Toyota Prius bearing a "purple plate" which was permitted, as such, to collect passengers from the taxi-rank but did not affect his red plated vehicle which only had restricted access to the taxi-rank. He said that it would be a much more proportionate response to the allegations made against him for any suspension to affect the red plated vehicle and not the purple plated vehicle, as that would have had a lesser impact on his business. 31. He also said that he could have avoided the court process by requesting an internal review. Such a process was referred to in the Decision Letter, but the Appellant said that the internal review process was not clearly explained to him (the Respondent's advocate accepted this was an extra-statutory process). He said that the review process might have obviated the need for the Appellant to pursue an

appeal to the Royal Court, with the accompanying risks as to costs. 32. As to the July incident, the Appellant said that he should have the right to end a journey and that his conduct was blameless. He relied upon paragraph 11 of the Code of Conduct which gives the driver a right at any time or any place to end the hire if the passenger "acts in a disorderly manner" or distracts the driver's attention. He played the videos to the Court showing the February, July and August incidents. The Court is very grateful to the Appellant as the Court found the footage very helpful. The Court's findings in relation to these three recordings we consider below under "Decision". In relation to the July incident, the Appellant said he did not ask the passenger, a young woman, to get out of the car and that he was happy for her to stay in the car and call for another taxi. 33. The Appellant said that the (a man and a woman) August incident occurred at about 2:00am. He said that he had refused to let the two individuals in his vehicle because they were drunk, the man had been sitting on the roadside on the pavement carrying a can of beer and he did not want him making the cloth seats of his taxi dirty. 34. As to the first incident on 2 nd February, 2019, ("the February incident"), he said that he had picked the two women up at 1:30am in St Helier and that he was entitled to terminate the hire because of their conduct, and alight from the vehicle in order to smoke a cigarette as he did. On both occasions, in February and July 2019, he said that the conduct of the passengers in question were distressing to him and that he was entitled to terminate the hire. The Appellant thought that his passengers in the February and July incidents acted in a disorderly manner and were distracting his attention. 35. After the hearing, the Respondent provided the Court with emails which the Appellant sent to the Respondent on 3 rd August, 5 th September and 26 th September 2019. In these emails the Appellant responded in detail to the complaints arising from the July and August incidents. All this material should have been exhibited to the affidavit filed on behalf of the Respondent. It is important that the Respondent produces all relevant evidence to the Court in order that the Court can scrutinise decisions such as this with care, particularly when an appellant, as in this case, is unrepresented. 36. Mr Gallery was also present in Court. The Appellant said that he was a good friend of the Appellant and still occupies the role of honorary customer service and complaints manager for Yestaxis. He said that he had shown Mr Gallery the video recordings that he showed to the Court and that he obtained training and advice from Mr Gallery. The Respondent's submissions 37. The Respondent accepted that this was not a complex regulatory matter and accordingly the Court need not give any "special weight" to the view of the original decision maker when deciding whether or not the Respondent's decision was wrong. 38. It was said on behalf of the Respondent that the incident in August 2019 "did not inform Mr Forrest's decision to suspend." That was incorrect and not what the Decision Letter said. Counsel for the Respondent accepted that there was a "tension" between Mr Forrest's affidavit and the Decision Letter on this point. The Respondent referred to the fact that Mr Bisson was suspended previously, on both occasions for periods of two weeks, in June 2017 and October 2018, both in the context of misconduct. The latter suspension arose in part from rudeness to a female member of the public. Further, from 2014 onwards there had been occasions when the Appellant's conduct had led the Respondent to write to the Appellant, but those incidents had not lead to

suspension. 39. The Respondent's advocate said that the footage of the February incident was an example of the Appellant getting into a completely unnecessary argument; this was followed by the 3rd April, 2019, meeting with Mr Forrest deciding to give the Appellant a "reprieve", as was made clear by the May letter. The Respondent did not provide a copy of the complaint made by one of the two young women arising from the February incident and ought to have done so. 40. This was followed by the July 2019 complaint by the female passenger. The Respondent's advocate accepted that Mr Forrest's summary of what was said in the taxi was not as accurate as the transcript prepared by the Appellant. He said that other taxi drivers had been sanctioned for misconduct. 41. As to the August incident, counsel for the Respondent accepted that this did not constitute misconduct - contrary to what was said by Mr Forrest in the Decision Letter. The Decision of the Court 42. The Court was greatly assisted by viewing the three video recordings of the incidents that took place in 2019. The February incident 43. The Jurats decided that the journey, which began with the Appellant picking up two young women, who were both reasonable and polite, became difficult solely as a consequence of the Appellant's conduct. One of the women asked a question about card payments to which the Appellant overreacted for no good reason. The Appellant has a long-standing concern that other taxi drivers are not complying with the obligation to permit passengers to pay by card, something which he has always ensured was possible. At one stage during the journey he said that if his passengers mentioned card payments again then he would refuse to accept card payments from them. The Appellant stopped his taxi in the middle of Minden Place leaving the two passenger in the vehicle while he stood on the pavement smoking. The women were required to get out of the taxi at the traffic lights at Minden Place, St Helier. This the Jurats considered was unsafe. Both Jurats thought that the Appellant's behaviour was unreasonable and that the February incident on its own would have warranted suspension of his licence. 44. The Court bears in mind that the Appellant's licence was suspended principally because of the incidents in July and August 2019, so it is upon those which the Court is principally focussed. The July incident 45. We were assisted by the video recording and the full transcript prepared by the Appellant. Again, the complaint involved a young woman who was picked up by the Appellant late at night at approximately 11:30pm. 46. The passenger began to ask the Appellant about various signs on his taxi dashboard designed to discourage passengers from misbehaviour. During the journey she expressed the opinion that the Appellant was "quite angry". This prompted the Appellant, in the view of the Jurats, to overreact and, in his words, "terminate the journey". The passenger apologised for any offence she may have caused and said, "I'm a girl by myself trying to get home". She implored the Appellant to take her home and he said that he would not take her any further. When the passenger said, having realised that she needed to alight from the Appellant's vehicle, "If anything happens to me tonight on your own head be it", the Appellant replied, "You're a big girl". The members of the Court did not think this was appropriate. Both Jurats thought that the Appellant was oversensitive to criticism, even when such criticism, either in relation to the February incident or the July incident, was not intended by any of the passengers concerned. Both the Jurats considered that the July incident alone warranted or could reasonably warrant a period of suspension. The August

incident 47. The third incident is in an entirely different category. 48. Although there was a complaint by a member of public, the Jurats regarded the complaint as ill-founded. At 2:00am, the male who wished to hire a taxi was, as shown by the video recording, sitting on the roadside carrying a can of beer. The reason that the Appellant gave for not accepting the individuals in his vehicle, namely that they might make his cloth seats dirty, fell squarely within paragraph 5 of the Code of Conduct. The Appellant was entitled to reasonably believe that the passenger's clothing would dirty the interior of his vehicle. At all stages, the Appellant was courteous to the members of public concerned. They were not courteous to him, and told him to "fuck off" and asked if he was being "fucking serious". There was nothing inappropriate about the Appellant's conduct and the Jurats were surprised that Mr Forrest wrote on behalf of the Minister in the terms that he did in relation to that second incident. 49. As regards the procedure adopted by the Respondent, all three complaints were drawn to the Appellant's attention prior to any decision being made in relation to them and on all three occasions the Appellant was given an opportunity to respond, which he did. 50. Accordingly, there was no procedural impropriety in this case. 51. However, the Respondent suspended the licence because of the July and August complaints and we have not been invited by or on behalf of the Respondent to affirm the Minister's decision on different grounds. Although the Court's powers on appeal are wide, it appears to us that it would not be fair, particularly in the context of an unrepresented appellant, to proceed on the basis that the Court is entitled to consider the correctness or otherwise of the Minister's decision on a factual basis that it was not communicated by the Minister to the Appellant at the time. The Court is faced with a decision made to suspend a licence on the basis of two complaints from members of the public. As to those complaints, the Jurats regard the July incident as well-founded but the August complaint as being without foundation. 52. Accordingly the Court's focus has been on the July 2019 incident. The Court has concluded that that incident on its own was sufficient to justify a suspension on the part of the Minister, particularly as the Minister was entitled, in accordance with the May letter, to give some weight to the previous February incident. In the circumstances, the Court does not regard the decision made on behalf of the Minister by Mr Forrest as being wrong and the appeal does not succeed. Concluding remarks 53. Notwithstanding our decision to dismiss the appeal, we discourage the Respondent from making any application for costs, as such an application will most likely be refused. The Respondent in this case failed to place sufficient evidence before the Court as exhibits to Mr Forrest's affidavit to evidence that the process adopted was procedurally fair. This was partly remedied by the Appellant himself. Further the Respondent provided affidavit evidence, as described, which was quite inconsistent with the Decision Letter. Finally, the Court agrees with the Appellant's complaint that the process of seeking an internal review by the Minister was not properly explained to him in the Decision Letter. In future, the process of review needs to be explained to the recipient of such a letter. They need to be told of any time limit; who to write to and the explanation as to the process needs to be communicated in terms which are fair. In this instance the Appellant was told that the Minister might increase or decrease the suspension or indeed revoke his PSV licence and/or badge. There was no warning given to him in similar terms regarding the

powers of the Court which are at least as extensive as those of the Minister, thus in effect encouraging the Appellant to appeal to the Royal Court as opposed to seeking a review from the Minister. Closer attention needs to be paid to what licence holders are told about the review and court processes respectively. Authorities Motor Traffic (Jersey) Law 1935. Erin Bisson -v- Minister for Infrastructure

[2019] JRC 133 Erin Bisson -v- Minister for Infrastructure

[2016] JRC 20 Bisson -v- Connétable of the Parish of St Helier

[2019] JRC 202A Firearms (Jersey) Law 2000 Erin Bisson -v- Minister for Infrastructure

[2019] JRC 037 Page Last Updated: 24 Mar 2020 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bailii.org/je/cases/UR/2020/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/bisson-v-the-minister-for-infrastructure-2020-jrc-040-03-march-2020>

Prepared on 28 October 2026 · Esheria