

JERSEY / JUDGMENT

Dodds -v- TTS [2012] JRC 158 (30 August 2012)

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judgment

the bailiff: 1. This is an appeal against a decision of the respondent ("The Minister") to suspend the Public Service Vehicle licence granted to the appellant under Article 9 of the Motor Traffic (Jersey) Law 1935 ("the Law") and the Public Services Vehicle badge granted to the appellant under Article 29 of that Law. Shortly after the conclusion of the hearing, the Court announced that the appeal was dismissed. We now give our reasons. The legal framework 2. So far as the Court is aware, this is the first appeal brought in respect of such matters and accordingly it may be helpful to describe briefly the relevant legal framework. 3. Article 6 of the Law requires as follows:- "(1) A person must not cause or permit a motor vehicle to be used on a road as ... a cab unless:- (a) the person is the holder of a public service vehicle licence for the vehicle that authorises the vehicle to be used for that purpose; and (b) the vehicle is being used and operated in accordance with the conditions set out in the licence." 4. Article 9 deals with the grant of public service vehicle licences ("licences"). Paragraphs (2) and (3) deal with the ability of the Minister to impose conditions as follows:- "(2) The Minister may grant a public service vehicle licence unconditionally or subject to conditions, which shall be set out in the licence.

(3) The conditions shall be such, as in the Minister's opinion, are necessary or desirable to ensure the proper operation of the vehicle and the public service to be provided by the vehicle." 5. There is a right of appeal against the imposition of a condition as well as against a refusal to grant a licence. 6. Article 10 confers a power to suspend or revoke a licence in the following terms:- "(1) The Minister may revoke a public service 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 ...; 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." 7. Article 10(3) confers a right of appeal to this Court against a decision by the Minister to suspend a licence and the relevant provisions provide as follows:- "(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." 8. The licence referred to above is related to a particular vehicle. The Law also deals with the conferring of authority to drive public service vehicles. Article 28 provides as follows:- "(1) A person must not
 - (a) drive a public service vehicle on a road unless the person is the holder of a badge that authorises the person to drive public service vehicles of the type being driven...
 - (b) ..." 9. Article 29 deals with the issue of a badge to drive public service vehicles and Article 30 deals with revocation or suspension of authority given by a badge in the following terms:- "30(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 a 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." 10. There is a right of appeal against a decision by the Minister to suspend a badge and the Court's powers are set out in Article 36 as follows:- "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." There is a power to make ancillary orders and deal with costs in the same terms as quoted at Article 10(6) above. The policy background 11. The issues surrounding the provision of taxi and cab services are longstanding and have generated much debate over the years. It is not for this Court to become involved in that debate but a short explanation of the Minister's current policy is appropriate. 12. The affidavits of Mr Alan Muir, head of Driver and Vehicle Standards and Inspector of Motor Traffic of the Transport and Technical Services Department ("the Department"), set out some of the background including the history of various reports and propositions which have been prepared over the years. He states that there seems to have been general support for the policy that restricted cabs (i.e. those cabs that are not permitted to stand on and operate from a rank) should operate from an approved depot (taxi-cab company). The reasons for that are summarised in paragraphs 20 and 21 of his third affidavit. 13. The current legislation was introduced into the Law by the Motor Traffic (No. 9) (Jersey) Regulations 2002 ("the 2002 Regulations"). The 2002 Regulations were promoted on the basis of a brief to the Law Draftsman prepared following lengthy discussions and consultation with the taxi-cab industry and were intended, among other things, to give power to the relevant Committee (subsequently the Minister) to impose enforceable conditions on any taxi-cab licence that was granted. The brief also suggested that an Advisory Panel should be formed consisting of representatives of the industry and users under the chairmanship of the administering Committee's nominated officer and further recommended that restricted cabs should be required to nominate a company from which

they would operate. 14. Following adoption of the 2002 Regulations, the Home Affairs Committee duly established a taxi-cab industry Advisory Panel. Membership of the Panel comprised the president and a nominated member of the Jersey Taxi Drivers Association, the president and a nominated member of the Jersey Cab Drivers Association and various other officials. At its first meeting on 23rd January, 2003, the Advisory Panel discussed and approved conditions to be attached to the issuing of licenses. These included two that are relevant for our purposes, namely that an approved roof sign should be fitted and secondly, that, in relation to restricted cabs, the vehicle should operate from an approved company. Subject to minor amendment in respect of a condition which is not relevant for present purposes, the Home Affairs Committee subsequently endorsed all these standard conditions at its meeting on 7th February, 2003, including the two conditions just referred to. 15. At a subsequent meeting on 20th March, 2004, the Advisory Panel agreed that approved depots (i.e. companies) for restricted cabs must have a minimum of 20 and maximum of 40 cabs operating from the company and must provide 24 hour service 7 days a week and 52 weeks a year, together with other requirements which are not relevant for present purposes. 16. Since then, the Department has invariably attached the two conditions referred to above to restricted cab licences and has also (subject to recent modification as described in paragraph 33 below) applied the agreed criteria for approving cab companies. 17. Responsibility for cabs was transferred to the Minister in 2006. At that time the Minister had circulated generally the standard conditions for licences which, as already stated, included that the licence holder must operate from an approved company and notify the inspector of Motor Traffic of the identity of that company and of any change of company. 18. Furthermore, since 2006 the Minister (acting through the Department) has asked persons wishing to establish a cab company to provide a business plan for the company so as to demonstrate to the Minister that the company would provide such services as will assist restricted cabs licence holders in ensuring the proper operation of their vehicles and the public service to be provided by these vehicles. When a person indicates to the Department an interest in establishing a cab company, the Department provides guidance on what information the Minister requires in order to satisfy himself that the company will provide a comprehensive service to the public and the restricted cab licence holders whose livelihood would depend upon the service provided by the proposed company. The Court was provided with a copy of that guidance, which reiterates that in respect of restricted cab licence holders, one of the conditions is that the licence holder must operate from a recognised cab company, that a cab company should be able to provide a 24 hour, 365 days of the year service and satisfy certain other stated requirements in the guidance; and that any person wishing to start a cab company would have to submit a business plan to show how the prospective company would meet the criteria. The guidance sets out the sort of matters which the business plan would need to cover. The facts of the case 19. On 28th January, 2011, the appellant was granted a licence in respect of his Mercedes Benz vehicle which authorised him to use it as a restricted cab. The licence contained the standard conditions referred to above, including that an approved roof sign was to be fitted and that the appellant was to operate from Grab-A-Cab, which was the recognised cab company he had

indicated on the application form that he was going to operate from. The appellant did not exercise his right to appeal against any of the conditions attached to the licence. A badge was granted to the appellant on 4th January, 2011. 20. By letter dated 18th September, 2011, the appellant notified the Department that he had moved companies from Grab-A-Cab to ABC Cabs, which was another recognised cab company. 21. On 28th September, Mr Muir was contacted by telephone by the principal of ABC Cabs to advise him that the appellant had not contacted her to join the company and she understood that the appellant was displaying an ABC Cabs roof sign. Accordingly on 5th October the Department wrote to the appellant referring to his letter of 18th September and stating that the Department had been advised by ABC Cabs that he was not working for them. The Department sought information as to which company the appellant was working for and reminded him that it was a condition of his licence that he operate from a recognised cab company. 22. On 7th October the appellant wrote saying that he was no longer working for ABC Cabs. He had decided to start a small cab company and had formed DiDo Cabs. He would be the manager of the new company and would shortly be advertising for further drivers up to a maximum of 9. 23. On 10th October the Department wrote to the appellant reminding him that, as part of the Minister's task of ensuring that there was an adequate cab service, he attached a condition that a licence holder must operate from a recognised cab company. The letter then reiterated the standard guidance as to the type of service which such a company must provide and the requirement for a business plan. The letter then set out the 19 matters which would need to be included in a business plan as taken from the standard guidance. 24. By letter mistakenly dated 12th September, 2011, but which was clearly in reality dated 12th October, the appellant purported to cover the 19 matters, which he did with a series of one line comments. By no stretch of the imagination could what he wrote be described as a business plan. 25. This was pointed out to the appellant by the Department by letter dated 17th October. The letter requested him to submit a complete business plan so that consideration could be given as to whether DiDo Cabs could be accepted as a recognised cab company. 26. On 18th October the appellant replied to the Department pointing out a number of reasons why he could not work for the other recognised cab companies, asserting that what he had previously provided was indeed a structured business plan and stating that he would be operating DiDo Cabs without any employees. 27. These matters rested until on 4th November when Mr Muir observed the appellant driving west along the Esplanade, displaying a roof sign with the name DiDo Cabs and carrying a passenger in the rear of the vehicle. In the light of the previous correspondence it appeared to Mr Muir that the appellant's vehicle was being used in contravention of the conditions of the licence, namely that it was displaying a roof sign with the name DiDo Cabs and being operated when not attached to a recognised cab company. Accordingly, on Monday 7th November the Department wrote to the appellant suspending his licence under Article 10(1) of the Law on the ground that the vehicle was being used and operated in contravention of the conditions set out in the licence, namely without the approved roof sign fitted and not working from the stated approved cab company. By the same letter the Department suspended the appellant's badge. The decision to suspend was taken by Mr Muir on behalf of the Minister under duly

delegated authority and was expressed to be for an indefinite period. 28. On 21st November, the appellant wrote to the Minister protesting against his suspension and against the refusal to approve DiDo Cabs as a cab company. On 25th November, the Minister replied confirming that the appellant was in breach of the conditions of his licence (as he no longer operated from a recognised company capable of delivering the public service that the Minister required, namely an adequate efficient and reasonably priced cab service available throughout Jersey at all times) and he had operated his vehicle with a DiDo Cabs sign. The letter also stated that the recent application for a licence in respect of DiDo Cabs clearly did not offer the comprehensive level of service that the Minister was legally required to provide to the public. He therefore upheld the suspension which had been effected by Mr Muir. 29. On 29th November, the appellant replied to the Minister raising a number of matters but asking the Minister to tell him why DiDo Cabs was not being recognised and exactly what was now required other than what he had already submitted. The Minister replied on 23rd December in which he said as follows:- "You have previously been advised what to provide in order that your prospective company can be recognised as an approved restricted taxi-cab company that will provide the normal services expected from such a company. I attach an outline of the criteria that should normally be considered and addressed in formulating a business plan for a taxi-cab company. An indication of cash flow, information on the fare structure, the build up of resources and potential risks are useful in ensuring that the prospective operator has considered such matters. It is expected that the submission is made in a single document which will normally have covered around 8 - 12 A4 pages. Having seen what you have submitted to date, I do not accept that you have provided a structured business plan that permits me to ascertain how DiDo Cabs will provide the normal services expected of a company. Your licence, although suspended and Certificate of Fitness expires on 21 January, 2012. If you intend to pursue establishing a restricted taxi-cab company, I would suggest you provide the relevant business plan for the company, in a timely fashion so that it can be considered." The Minister attached the standard criteria which had previously been supplied to the appellant. 30. There the matter rested until the appellant lodged his appeal. By the time of the hearing, the appellant was working for a recognised cab company and his suspension had been lifted. However, the appellant wished to pursue his appeal on the ground that the Minister had been wrong to suspend him in the first place. The appellant's contentions 31. The appellant's written submissions covered a number of matters but those which he maintained before the Court can be more shortly stated. He submitted that it was wrong of the Minister to require cab companies to be of a certain size. He referred to the documents which had been provided for this appeal and which showed that a minimum size of 20 cabs had been fixed. He said that this was particularly unreasonable because this minimum size had never been made publicly available and he was therefore unaware of it. He might not have left Grab-A-Cab if he had been aware of it. 32. In any event, he submitted that there was no public interest in imposing a minimum size requirement. There could be no harm in a one man company operating a cab service provided that this was done effectively. The effect of the Minister's policy was that a person such as himself, who did not have an easy relationship with other cab companies, would be unable to find

employment and would be unable to pursue his trade. He had supplied all that was reasonable in respect of DiDo Cabs and it was unreasonable of the Minister to have rejected it as a suitable cab company. In any event, he submitted, the Minister was being inconsistent. Grab-A-Cab had nothing like the minimum number of 20 cabs and yet that had been recognised by the Minister. He knew of a number of others which were also below the minimum size. In oral submission he referred to Delta Cabs and Wheeler Cabs as examples. The Minister's decision was therefore discriminatory against the appellant. The suspension was unfair and unlawfully prevented him from following his trade as a cab driver. The Minister's submissions 33. The Minister maintained that the policy of requiring cab drivers to operate through a company of suitable size was entirely reasonable and was supported by the fact that this had consistently been approved by all concerned. He accepted that he could not point to any publication of the minimum size of 20 cabs although, given the makeup of the Advisory Panel, he found it hard to believe that this was not well known amongst drivers. In any event, in the light of difficulties being experienced by some cab licence holders in finding a suitable recognised company, the Minister in 2010 had decided as an experiment to be more flexible in recognising new companies. As such he had recognised Grab-A-Cab and ABC Cabs where the numbers of cab licence holders expected to be affiliated to those companies at the outset were much lower than the figure of 20 set out by the Advisory Panel. Nevertheless, both of those companies had submitted proper business plans indicating a fully comprehensive service and that six licence holders would operate from the company at the outset building to 20 licence holders within 12 months. Shortly before the conclusion of the oral hearing the Solicitor General made a telephone enquiry of the Department about Delta Cabs and Wheeler Cabs but we received no formal evidence about them, only the Solicitor General's understanding of what he had been told. 34. The difficulty in the present case was that the appellant had failed to supply a business plan with the result that the Minister had simply been unable to consider the application of DiDo Cabs. It was not a case where the Minister had rejected DiDo Cabs as being unsuitable for recognition. The Minister had never got to that point. He had asked for a business plan (which had been provided by all previous applicants) but the appellant had failed to comply with this requirement. Decision 35. In our judgment the Minister's decision must be upheld. The appellant's licence contained conditions relating to the approved sign and to his operating from Grab-A-Cab. There is no doubt that he has acted in contravention of both of these conditions. He is no longer operating from Grab-A-Cab and the sign on his vehicle refers to DiDo Cabs, which is not a recognised company and which sign has not been approved. It follows that the requirements of Article 10(1)(b) for suspending the licence are met, in that the licence has been used or operated in contravention of a condition set out in the licence. It was open to the appellant to appeal against the imposition of either of those conditions but he did not do so. Accordingly the conditions are valid and must be complied with. 36. The appellant argues that it was wrong for the Minister to reject DiDo Cabs as a recognised cab company and that the Minister's whole policy of looking for a certain minimum size for such companies is unreasonable. The difficulty with this submission is that the Minister never got to the point of rejecting DiDo Cabs. The Minister requires any

company which seeks to be recognised as a cab company to provide a business plan showing how it will provide the service the Minister requires from such companies. He has issued guidance in relation to such business plans. We accept that the appellant never put in such a business plan. His letter of 12th October (wrongly dated 12th September) came nowhere near being a business plan. In the absence of a business plan, the Minister was unable to consider whether DiDo Cabs was a suitable company to be recognised as a cab company. 37. In the circumstances, we conclude that it was entirely proper for the Minister to suspend the licence and the badge, given that the appellant was acting in breach of a condition of the licence and was failing to provide the necessary information for the Minister to decide whether to vary his licence so as to substitute DiDo Cabs for Grab-A-Cab; indeed the Minister was left with little alternative. In the circumstances, we do not need to consider the details of the Minister's policy in relation to recognised cab companies, whether such policy is reasonable and whether it has been applied consistently. 38. Having suspended the licence, it was proper for the Minister also to suspend the badge, on the basis that acting in breach of a condition of the licence rendered the appellant not a fit person for the purposes of Article 30(1) of the Law. 39. It was for these reasons that we dismissed the appeal, although as mentioned already, the suspension had been lifted prior to the hearing. Authorities Motor Traffic (Jersey) Law 1935. Motor Traffic (No. 9) (Jersey) Regulations 2002. Page Last Updated: 10 Jun 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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