

IN THE COURT OF APPEAL OF BELIZE AD 2016

CIVIL APPEAL NO 25 OF 2013

**FROYLAN GILHARRY SR dba
GILHARRY'S BUS LINE**

Appellant

v

**TRANSPORT BOARD
CHIEF TRANSPORT OFFICER
MINISTER OF TRANSPORT
THE ATTORNEY GENERAL**

Respondents

BEFORE

The Hon Mr Justice Sir Manuel Sosa
The Hon Madam Justice Minnet Hafiz-Bertram
The Hon Mr Justice Murrio Ducille

President
Justice of Appeal
Justice of Appeal

F Lumor SC for the appellant.
N Hawke, Deputy Solicitor General, for the respondents.

17 March 2016.

SIR MANUEL SOSA P

[1] I have read the judgment of Hafiz-Bertram JA, in draft, and wish only to say that I concur in the reasons for judgment given, and the orders proposed, in it.

SIR MANUEL SOSA P

HAFIZ-BERTRAM JA

Introduction

[2] The appellant Froyland Gilharry Sr. doing business as Gilharry's Bus Line ("the appellant") brought a claim for Judicial Review pursuant to Rule 56.7 of the Supreme Court (Civil Procedure) Rules, 2005, against the Transport Board, the Chief Transport Officer, the Minister of Transport and the Attorney General ("the respondents"). The claim was heard by the learned Arana J on 10 December 2012 and on 18 April 2013, she dismissed the claim for judicial review. The reliefs sought by the appellant were refused with cost awarded to the respondents to be assessed or agreed.

[3] The appellant appealed the decision of the trial judge by notice of appeal dated 5 July 2013. At a case management conference held by this Court on 19 March 2015, it was directed that the matter be disposed of by written submissions.

The Parties

[4] The appellant was the operator of a number of public passenger omnibuses, under permits issued by the first named respondent, pursuant to the **Motor Vehicles and Road Traffic Regulations, Chapter 230** of the Subsidiary Laws of Belize, 2003.

[5] The first named respondent is the Transport Board ("the Board") an autonomous body, established under the provisions of the **Motor Vehicles and Road Traffic Act, Cap. 230**, as amended by Act No. 41 of 2002, with statutory responsibility for the general administration of the transport sector in Belize. The Board sanctions the issue of road service permits and bus schedules to operators of buses on the highways of Belize.

[6] The second named respondent, the Chief Transport Officer, is the secretary of the Board and has specific responsibility for the administration and management of motor vehicles and road traffic regulations within Belize.

[7] The third named respondent is the Minister of Government statutorily authorised to set up the Board, with responsibility to formulate the policies to be implemented by the

Board and for the development of regulations relating to public road transport. The Board is the advisor of the Minister on the issues of regulations and policies.

[8] The fourth named respondent is the representative of the Government of Belize, pursuant to the provisions of section 42(5) of the Constitution of Belize.

Reliefs sought by the appellant in the trial court

[9] The appellant in the claim for judicial review sought the following reliefs by way of a fixed date claim form:

1. A declaration that the defendants acted ultra vires when they made the decision on 15 May 2011 to revoke the road service permits issued to the claimant instead of reviewing the claimant's existing permits. The decision is therefore void and a nullity;
2. A declaration that the defendant abused their powers when they purported to make the decision not to renew the existing road service permits of the claimant and instead sought to impose arbitrarily and illegally new road service permits on the claimant. The decision is therefore void and a nullity;
3. A declaration that the defendants breached or frustrated the legitimate expectation of the claimant unlawfully by reneging on the representations made to the claimant by the Transport Board to continue to operate on the existing road permits until the Transport Board was in a position to renew the permits. The decision is therefore void and a nullity;
4. An order that the decision made on 15 June 2011, is unfair and contrary to the basic rules of natural justice and therefore void and a nullity;
5. An order of certiorari to remove into the Supreme Court for purposes of being quashed the decision made by the defendants on 15 June 2011 whereby the defendants sought to revoke and not renew the Motor Vehicles and Road Traffic Road Service Permits issued to the claimant/appellant in 2006.

6. Damages, cost and any other just orders.

Evidence in support of the claim for judicial review

[10] The appellant relied on three affidavits in support of his claim. In his third affidavit sworn on 30 June 2011, he deposed from paragraphs 6 to 13 of the permits he was given for the Main Route (“Northern Route”) and from paragraphs 14 to 18 of the permits he was given for the Village runs. The evidence is that on 5 May 2006, he was given 11 permits to operate on the Northern Route which is from Santa Elena to Belize City and back. He deposed that the *“road service permits or licences issued to the Claimant took effect on 5 May 2006, for two years and would have expired on 4 May 2008.”* The appellant exhibited the permits which show the conditions under which they were granted and also a summary of the routes which the buses ran under the permits.

[11] In 1997, as a result of public demand in the village communities of the Corozal District, the appellant was asked to operate mini vans to and from the villages. He was given a road service permit which was renewed in 2007 and was to expire in February 2009.

Events which occurred in 2011

[12] The appellant’s evidence is that sometime in the months of March and April, the Minister of Transport invited all bus operators in the country to two meetings in Orange Walk Town. At that meeting the gathering was addressed by the Chief Executive Officer who informed them that *“the Supreme Court had discharged the injunction granted to the Novelo’s Northern Transport to restrain the issuance of licences for routes they used to operate. The CEO said that they will publish the licences in the Gazette and after three weeks operators who were interested could apply for those additional routes or schedules.”* The bus operators were also informed that no new bus operators would be allowed on the routes.

[13] At paragraph 22 of his affidavit, he stated that he applied for the *“additional routes formally ran by the Novelo’s Northern Transport and also applied for the renewal of the road service permits for the Main Route and the Village Runs. Up till now I have not heard anything from the Transport Board.”*

[14] The appellant's evidence is that all operators were invited to a meeting in May 2011 with the officials from Ministry of Transport. At that meeting, the bus operators were given new schedules or routes and they were informed that the implementation date was 22 May 2011. He stated that the Minister of transport took the above decision because he issued 15 new road service permits to a new bus company, West Line Bus Company Limited, owned by Mr. Chuc, a top official of the ruling United Democratic Party. As a result, the Minister sought to compensate the victims of this new arrangement which involved the arbitrary revocation of certain road service permits issued to bus operators operating on the Northern Route.

[15] The appellant stated that due to protest and public outcry against the proposed changes two further meetings were held. The first was on 20 May 2011 and Minister Melvin Hulse, the CEO, Mrs. Saldivar and the Chief Transport Officer, Mr. Murillo, were present. Minister Hulse agreed to delay the implementation of the new schedules or routes at the meeting but, on the following day the Minister implemented the new schedules on the Western route. Additionally, further changes were made to the schedules or routes handed down in the NEMO offices.

[16] On 27 May 2011, as a result of the decision, there was a nationwide disruption of public transportation when the major highways were blocked by bus operators. On the said day, the Prime Minister intervened and a meeting was scheduled for the 29 May 2011 to discuss the matter further. Minister Hulse, Deputy Prime Minister Vega, Minister of Works, the CEO of the Prime Minister's office and other Government personnel were present at that meeting. The appellant's evidence was that when he tried to speak at that meeting he was prevented from doing so by Minister of Works. However, the Deputy Prime Minister informed him that they will fix the problem.

[17] The appellant stated that Minister Hulse asked the Northern Bus Operators to meet and work out among themselves new routes or schedules for the Northern Route. Thereafter, a committee proposed to the Minister the new routes. He deposed that he disagreed with the proposals and walked out of the meeting.

[18] The appellant's evidence is that sometime in June of 2011, he received a telephone call from the Transport Board and he was told to take down "new schedules

or routes that have been given to Gilharry Bus Line,” which was to be implemented on 19 June 2011. On 17 June 2011, the Corozal Bus terminal Supervisor, posted at the bus terminal the new spreadsheets showing the new routes or schedules for the bus operators. At paragraph 31 of the appellants affidavit, he listed the runs which he operated by virtue of his road service permits and the new runs which were assigned to him. He complained that:

- (a) The new runs for Corozal Town are off-peak and not profitable or are “non-remunerative;
- (b) Another bus operator was allowed to do the 5:30, 5:45 and 6:00 pm runs from Belize City at the same time as the appellant but the journey of that operator terminated in Orange Walk Town; and
- (c) The return routes assigned to the appellant were also off-peak and were not profitable.

[19] On 19 June 2011, the appellant and his employees went as usual to move his buses to begin runs in accordance with his road service permits. He deposed that he “decided to ignore the spreadsheets posted at the bus terminal since they were illegal actions of a certain official.” As a result, police officers stopped him and his employees from moving the vehicles.

[20] On 20 June 2011, the appellant was allowed to do the Village runs but he was informed that the Transport Board will not renew the licence for those runs and that he would be stopped from operating on the said runs. Further, the respondents had allowed other bus operators to operate on the same route at the same time that he operated.

[21] At paragraph 34 of the appellant’s affidavit, he deposed that the actions of the respondents effectively:

- (a) Revoked or took away the road service permits issued to the appellant to operate the ten minivans on the Village runs; and
- (b) Completely revoked or took away the road service permits issued to him to operate the Northern Route.

Respondent's evidence

[22] The affidavit evidence relied upon by the respondents is from Mr. Gareth Murillo, the Chief Transport Officer and Secretary of the Transport Board. In his affidavit sworn to on 5 July 2012, he deposed that he was responsible for the administration and management of motor vehicle and road traffic regulations within Belize. Applications for road service permits are made to the Transport Board via the Department of Transport and the applicant is required to apply for the period within which he requires the licence and the runs he would like to do. When the permits are granted a schedule is attached to each permit identifying the runs the operator has to make and the conditions under which he must operate.

Zoning as a result of safety of public transport

[23] Mr. Murillo's evidence is that upon receiving complaints about the road worthiness of some buses and a number of accidents on the highways, the Transport Board decided to address the matter. In 2008, a policy was developed to address safety on the highways and regulation of the public transportation system by placing bus operators within Belize into different zones namely, a Northern, Southern and Western Zones.

Supreme Court action against Transport Board and injunction

[24] Before the introduction of the zoning, a few bus operations brought action against the Transport Board by Supreme Court Claim No. 728 of 2008. On 2 December 2008, the Court granted an injunction restraining the Transport Board and the Chief Transport Officer from implementing the zoning or doing anything in relation to bus operators until the matter was determined. As a result of the injunction, the Board could not issue permits and by effluxion of time all the operators in the Northern route were operating illegally since all their documents had expired and this include the appellant. In addition to those operators whose permits had expired, there were new operators who began to work illegally within the northern route. This caused chaos for approximately two years because of the injunction.

Discharge of injunction and regularization of the transport system

[25] On 27 January 2011, the court dismissed the claim that was filed by the operators and the injunction was discharged. The Transport Board then sought to regularize the system. Consultations were held with the Minister of Transport, the CEO of the said Ministry, the Chief Transport Officer and all bus operators including the appellant.

[26] On 10 May 2011, the Board met with all the Northern operators to discuss the final schedule for the Northern route. However, all the operators were unhappy with the proposed schedules. The operators then appealed to the Minister of Transport, who granted them a 21 day extension to work out the new proposed schedule with the Board. The new schedule was worked out with all the operators and the Board met and sanctioned the schedules which would have taken effect on 19 June 2011. Applications were then made for road service permits by all operators in the north including the appellant.

Status of appellant's application

[27] Mr. Gareth's evidence as shown at paragraph 26 of his affidavit that all *"operators applied for and paid the required fees for the permits to operate with the exception of the Claimant in this matter. The Claimant's application is still with the Transport Department awaiting the required fees by law."* Further, the appellant continues not to pay his application which is languishing in the Department and his status continues to be illegal.

Temporary road service permits

[28] All applicants for licences were to operate for a period of two years. However, the Board took the decision it would have a trial period for three months to observe how the system would function. The operators were therefore issued temporary road service permits to operate their buses for the three months.

Permits were not revoked

[29] Mr. Gareth, at paragraph 29 of his affidavit deposed that the Board had never revoked any permits that the appellant held since the permit had expired over the period of time that the injunction was in place. At paragraph 36, he said that the Board had taken a decision to issue permits but had not revoked any permits since they had already expired.

Order made by the trial judge

[30] The learned trial judge dismissed the claim for judicial review and the relief sought was refused since she was unable to uphold any of the grounds pleaded for the appellant. Costs was awarded to the respondents, to be assessed or agreed.

The appeal

[31] The appellant raised 8 grounds of appeal. The issues raised on those grounds will be determined below.

Issue 1: Whether the Transport Board abdicated its statutory duties to the Minister of Transport

[32] Learned counsel, Mr. Lumor in formulating the first ground of appeal stated that the judge “erroneously found that the Transport Board did not act *ultra vires* the Act and Regulations by abdicating its statutory duties to the Minister of Transport since the Appellant chose to walk out of one of those meetings held with bus operators just because he did not agree with certain proposals being discussed.”

[33] The ground as formulated by the appellant is misleading and does not reflect the reasons given by the trial judge before arriving at the conclusion that “*I find that the Transport Board acted properly and not arbitrarily, and did not abdicate their duties to the Minister or to anyone else.*” The trial judge did not make a finding based on the fact that the appellant walked out of the meeting. The fact that the appellant walked out of the meeting was *obiter* and not a reason for her finding.

[34] The learned trial judge before coming to the conclusion that the Transport Board acted properly and did not abdicate its duties to the Minister or anyone else, considered

the factual circumstances of the case and accepted the evidence of the Chairman of the Transport Board who deposed as to the implementation of the new bus schedules and the Supreme Court injunction, the regularization of the system and consultations held with operators. She thereafter referred to the fact that the appellant chose to walk out of one of the numerous meetings held with the Transport Board and officials from the Ministry of Transport because he did not agree with the proposals. The trial judge addressed the national crisis of the bus industry and the consultations held to regularize the system at paragraph 25 of the judgment. She said:

“ 25) I have considered the **factual circumstances of this case** and I agree with the submissions made on behalf of Learned Counsel for the Defence. This was clearly not an ordinary run of the mill situation. The entire bus industry was in a national crisis for years and the Transport Board was unable to do anything to address this crisis because the **Board had to obey the injunction issued by the Supreme Court in 2008**. I also accept as true the affidavit evidence dated July 20th, 2011 of the Chief Transport Officer Mr. Gareth Murillo who states that after the injunction of Awich J (as he then was) was lifted in January 2011, “the Transport Board **sought to regularize the bus system** and as a result several consultations were held with the old operators and the new operators to forge a way forward and to better the Transportation system in Belize and in particular the Northern Route.” I also accept as true the evidence of the Chairman of the Transport Board in his affidavit dated 27th June, 2011 as follows: -

“14. All operators within the Northern Bus Route including the Claimant at all material times were aware of the proposed new bus schedules which were to be implemented. 15. The Northern bus operators then formed themselves into a group and approximately 23 (twenty three) operators signed on to the new schedule with the exception of the Claimant and two other operators. 21. The new proposed schedule was worked out with all the operators and it was further proposed that it would run for a 90 day period effective 12th June, 2011.”

This evidence of continuous dialogue between the bus owners and the Transport Board demonstrates serious effort on the part of the Board to act in good faith in relation to all bus owners, and this is borne out by the evidence of the Claimant himself in his affidavit evidence where he refers in detail to these numerous meetings with the Transport Board and officials from the Ministry of Transport. It is his testimony that he chose to walk out of one of those meetings because he did not agree with certain proposals being discussed. That was his choice. I therefore with respect must state that I find no merit in this first ground of judicial review that I find that the Transport Board acted properly and not arbitrarily, and did not abdicate their duties to the Minister or to anyone else. I also find that if the Claimant was unhappy with the routes issued to him by the Board then he should have appealed as he is entitled to do under section 4(10) of the Motor Vehicles and Road Traffic (Amended) Act No.41 of 2002.”

[35] The argument on appeal by learned counsel Mr. Lumor (para 80) in relation to abdication of duties is that the Board has not given the appellant a hearing to consider and determine the application made for renewal of his road service permits. Instead, *“the Board rather allowed or abdicated its duty to the Minister of Transport and the Department of Transport to hold “public consultations” for the “distribution” of permits.”* In my opinion, the public consultations by the Minister of Transport and the Department of Transport cannot be considered as abdication of duties by the Board. The Department which is established under the Ministry of Transport is vested with the administration of the **Motor Vehicles and Road Traffic Act**. Section 3 (1) of the Act provides:

“3(1) There shall be established under the Ministry for the time being responsible for Transport, a Department of Transport for the registration, licensing and control of all vehicles in Belize, and in it shall be vested the administration of this Act.”

[36] The Department of Transport and the Minister of Transport cannot therefore, sit idle when there is a crisis in the country with public road transport as shown by the evidence of Mr. Murillo. It would have been an abdication of their duties if they left all

matters to the Board, especially in a time of crisis. The Minister under the Act has a responsibility to formulate policies and the development of regulations pertaining to public transport, which includes the operation of omnibuses and taxis. The Board has a duty to assist the Minister in his responsibilities in relation to public transport as provided by section 4 of the Act as amended by Act No. 41 of 2002. Section 4 provides:

“4.(1) There is hereby established a body to be known as the Transport Board consisting of seven members appointed by the Minister as follows: -

- (a) the Chief Transport Officer or an officer from within his Department designated by him who shall be Secretary to the Board;
- (b) the Commissioner of Police or an officer from within his Department designated by him;
- (c) a representative of the public transport providers; and
- (d) the Chief Engineer or an officer of his Department designated by him;
- (e) three members from the private sector, of whom two shall be persons with knowledge and experience of the transportation business, and one shall be a representative of the users of public transport, appointed by the Minister in his discretion.

.....

(6) The Board shall assist the Minister in the formulation of policies and the development of regulations pertaining to public road transport, and in particular the following:

- (a) rates, fares , tolls, dues or other charges pertaining to public road transportation and in particular on the operation of omnibuses and taxis;**

(7) The Board shall consider and decide all applications for road service permits and other consents required to operate omnibuses, and for that purpose, a reference to the Department of Transport in Part XII of the Motor Vehicles and Road Traffic Regulations shall be read and construed as a reference to the Board.

.....

10) Where any person is aggrieved by a decision of the Board, he shall, within twenty-one days of such decision, appeal to the Minister whose decision thereon shall be final.”

(emphasis added).

[37] The trial judge at paragraph 24 of her judgment set out in full the statutory duty of the Board. She was aware of the functions of the Minister and the Board. The word “assist” is significant as it shows that the Board is not left with all the responsibilities. It is commendable that the Minister and the Department took part in public consultations and had not left the consultations solely on the shoulders of the Board.

[38] The purpose of the consultations by the Minister and the Department was addressed by the trial judge at paragraph 25. She referred to the affidavit evidence of Mr. Murillo who deposed that the Transport Board sought to regularize the bus system and this was done by several consultations with old and new operators so as to better the transportation system in Belize and in particular the Northern Route. The Board, however, is ultimately left to consider and decide all applications for road service permits and other consents required to operate omnibuses.

[39] In my opinion, the trial judge properly reviewed the evidence before her and found that the Transport Board acted properly and not arbitrarily and further, the Board did not abdicate its duties to the Minister or anyone else.

Issue 2: Whether the learned trial judge erred in finding that the appellant has a right of appeal under section 4(10) of the Act

[40] The trial judge as shown at paragraph 25 of the judgment (quoted above) at the last sentence said that, *“I find that if the Claimant was unhappy with the routes issued to him by the Board then he should have appealed as he is entitled to do under section 4(10) of the Motor Vehicles and Road Traffic (Amended) Act No.41 of 2002.”*

[41] Learned senior counsel for the appellant did not fully address the finding made by the trial judge in formulating the ground of appeal. He stated that, *“The learned trial judge erred when she decided that the appellant being unhappy with the routes issued to him by the Board should have appealed the decision and not seek relief by way of judicial review.”*

[42] The trial judge before making the statement that “I find that if the Claimant was unhappy..”, referred to the fact that the appellant walked out of one of the meetings

because he did not agree with certain proposals. The trial judge used the word “if” so it cannot be said that the trial judge made a finding that he was indeed unhappy. She thereafter gave an advisory opinion based on the availability of the appeal procedure which is laid out under **section 4(10) of the Motor Vehicle and Road Traffic (amended) Act No. 41 of 2002.** Further, the issue of alternative remedy was not decided by the trial judge and she did not make a finding that the appellant should not have sought relief by way of judicial review. Accordingly, the learned trial made no error when she mentioned the availability of the appeal procedure.

Issue 3: Whether the learned trial judge erred when she decided that the Transport Board satisfied the requirements of section 4(7)

[43] Grounds 3 and 4 of the appeal are similar to ground one of the appeal. The appellant stated that the judge erred or misdirected herself when she found that the “*Transport Board*” did “*the right thing*” and did not act *ultra vires* the Act and Regulations by meeting with all bus operators including the appellant to discuss proposed schedules of routes and then thereafter met as a “*Board*” to sanction what “*had already been discussed and agreed with the operators.*” Further, the appellant said that the trial judge erred when she decided that the Board “satisfied” the requirements of section 4(7) of the Act especially the words “consider and decide” when they sanctioned what was discussed with the bus operators.

[44] It is necessary that I quote the entire paragraph 26 of the judgment which shows how the trial judge approached the issues. The Judge stated the ground at paragraph 26 of her judgment which reads, “*The Transport Board acted illegally and ultra vires when it refused to “consider and decide” the renewal application of the Claimant and allowed the Minister of Transport and/or bus operators to decide the schedules to be run on the Northern Route.*” The learned trial judge determined the ground as follows:

“This ground is similar to Ground 5 which I have already decided above. I accept as true the evidence of Mr. Murillo Chief Transport Officer of the Transport Board in paragraph 24 of his affidavit that “**the new proposed schedule was worked out with all the operators and the Board met and sanctioned the schedules which would have taken effect on the 19th June, 2011.**” In my

view the Board did the right thing. They met with all bus operators including the Claimant to discuss the proposed schedules then they met as a Board and sanctioned what had already been discussed and agreed to with the operators. To my mind that satisfies the requirement of “consider and decide” as required by the statute after consultations with all bus drivers. The Transport Board based on the evidence (including that of the Claimant) acted within the statute and acted in good faith. They did not just meet among themselves and impose the new schedules from on high with complete disregard and or disrespect for the bus owners. I therefore find that there was nothing arbitrary about this process. This ground also fails.”

(Emphasis added)

[45] The appellant under grounds 3 and 4 of the appeal is aggrieved with the highlighted portion of paragraph 26 of the judgment. Section 4 of the Act as amended by Act No. 41 of 2002 provides that, “**The Board shall consider and decide all applications for road service permits and other consents required to operate omnibuses...**”. When the trial judge made her finding under paragraph 26 of her judgment, the issue determined by her was whether the Board acted illegally and *ultra vires* in relation to the renewal of the appellant’s licence and allowed the Minister and or bus operators to decide the schedules for the Northern route. The trial judge alluded to the fact that the ground is similar to the previous ground, namely 5, in which she determined that the Board did not abdicate its statutory duty to the Minister of Transport. I am in agreement with the trial judge that the said issue is indeed similar as under ground 6 of the claim, the appellant complained that the Board allowed the Minister and the bus operators to decide the schedule for the Northern route. I have already discussed under the first issue that the trial judge properly reviewed the evidence and found that the Transport Board did not abdicate their duties to the Minister or anyone else.

[46] In my opinion, the learned trial judge had not erred or misdirected herself in relation to her findings in paragraph 26 of the judgment. Arana J accepted the evidence of Mr. Murillo that the Board met with the bus operators which included the

appellant and discussed the proposed schedules. In my view, it is the Board which has to ultimately decide the schedules and grant permits and other consents. The context in which the word '**sanctioned**' was used by the trial judge means "to approve". This implies that the Board has a power to disapprove any discussion between itself and the bus operators. The discussion with bus operators is part of the process of consideration. Further, there was no evidence before Arana J that there was a refusal to consider and decide the application by the appellant for a new permit. The appellant's application is still at the Transport Department awaiting the payment of the required fees. Accordingly, it is my opinion, that the learned trial judge made no error in finding that section 4(7) of the Regulations had been satisfied.

Issue 4: The legitimate expectation issue - Ground 5 of the appeal (paras 27 and 28 of the judgment)

[47] The appellant argued that the trial judge erred and misapplied the doctrine of legitimate expectation when she decided that the respondents did not frustrate the legitimate expectations of the Appellant.

[48] Learned Counsel, Mr. Lumor at paragraph 93 of his written submissions stated the legitimate expectation of the appellant. In relation to the law he relied on the learned authors in **Wade & Forsyth on Administrative Law, 9th Edition** at page 537, where it is said that, "*what has already happened that his application will be granted.*" Learned Counsel listed six points as to what had already happened to the appellant, as follows:

- (i) The Board in the past authorized the appellant to operate on licences that expired until the applications for renewal were considered and issued;
- (ii) The Board since 2008, the date of the injunction, treated the appellant as holding valid permits to operate his buses. (Counsel referred to the letter of Chief Transport Officer date 19 February 2010).
- (iii) The Transport Board asked the appellant to continue to operate on his permits until the Board was in a position to renew them. At that

time, the appellant would be asked to pay for the fees due on the renewed permits;

- (iv) The Board after 2008 allowed the appellant to do extra or additional runs on the Northern route at peak hours if public demands necessitate putting additional buses on the road;
- (v) The Board received from the appellant the applications for renewal of the road service permits and made a publication in the gazette that they would be reviewed at a meeting to be held in Belize City on 30 March 2011, at 9:00 a.m. at the Belize Cancer Society Conference Room;
- (vi) The Board will continue to follow and observe the statutory procedure mandated in its statutes for the consideration and determination of applications for the renewal of road service permits.

[49] Learned Counsel, Mr. Lumor submitted that the Board reneged on its promise and failed to follow its past practices in respect of the appellant and as such did not consider and determine the applications.

[50] The issue of legitimate expectation before the trial judge was that the Board frustrated and contravened the legitimate expectations of the Claimant based upon the **representations made to him by the Transport Board in May 2008**. Learned Counsel relied on the same points as shown in his written submissions on the appeal.

[51] In my opinion, the representations, if any, made by the Transport Board in May of 2008, to the appellant were no longer relevant because of the change of policy, namely the zoning. The implementation of the zoning was delayed because of an injunction and licences of operators had expired, as shown in the affidavits of Mr. Murillo. I see no reason to interfere with the finding of facts made by the learned trial judge. The following factors show why legitimate expectation cannot be a factor for licences issued under the new policy of zoning:

(1) **New Policy of Zoning**

In 2008, a new policy was developed to address safety on the highways and regulation of the public transportation system by placing bus operators within Belize into different zones namely, a Northern, Southern and Western Zones. This was done as a result of complaints about road worthiness of some buses and numerous accidents on the highways;

(2) **Injunction delayed implementation of Zoning**

The Board found itself in a conundrum before the implementation of the zoning because of the court order made on **December 2, 2008**, restraining the Chief Executive Officer from implementing the zoning or doing anything in relation to the bus operators until the matter was determined. This injunctive order was sought by a few operators;

(3) **Injunction discharged on January 27, 2011**

The court order dated 2 December 2008 granting the injunction was discharged on **January 27, 2011**. This occurred when the claim brought by some of the operators were dismissed.

(4) **Administration of transportation held in abeyance**

The Transport Board during the period when the injunction was in place from **December 2, 2008 to January 27, 2011, over two years**, had to respect the court order and could not implement the zoning. During this period there was chaos with the administration of transportation. The Board issued no permits and as a consequence, old operators and new operators were operating without licences. There could not be compliance with the Regulations in place. There were different scenarios, namely:

- (a) New operators started to work illegally within the Northern Route;
- (b) All licences of the old operators, including the appellant, had expired and were operating illegally;

(5) Implementation of zoning after injunction discharged

At the time of the implementation of the zoning all licences had expired. There could not have been renewal of licences based on the same conditions since there was the new policy of zoning. Further, there could not have been any revocation of licences because at the time no licences were in existence. The Board therefore, invited all operators to make applications for licences and not renewal of licences on the same conditions.

[52] In my opinion, Arana J was correct in her findings when she found at paragraphs 27 – 28 of her judgment that (a) Licenses held by bus owners including the appellant came to an end due to effluxion of time. Therefore in 2011 when the injunction was lifted there was no license to be renewed; (b) Legitimate expectation must be based on a legal foundation which in this case would have been a valid license which is coming to an end and needed to be renewed. In this case the Claimant's license expired in 2008 so in 2011 there was no basis for a claim of "legitimate expectation."

[53] The learned trial judge did not emphasize on the new policy of zoning when she made her finding but certainly took into account the evidence as a whole. Learned Counsel, Mr. Lumor in his submissions contended that the Board had no statutory authority to undertake the new policy of zoning. The affidavit evidence of Mr. Murillo at paragraphs 10 and 11 show that a policy was developed to address safety on the highways and regulation of the public transportation system by "placing bus operators within Belize into different zones namely: a Northern, Southern and Western Zones." There is no evidence that the Board undertook the new policy of zoning by itself. In fact, the evidence is that the Minister of Transport was clearly involved with the issue of the zoning. Further, section 4(6) of the Act provides for the Board to assist the Minister in the formulation of policies pertaining to the operation of omnibuses.

[54] Learned senior counsel, Mr. Lumor contended that the Transport Board since 2008, the date of the injunction, treated the appellant as holding valid permits to operate his buses. He relied on a letter dated February 19, 2010 from the Chief Transport Officer. In that letter, the CEO acknowledged receipt of a letter dated February 12,

2010 from the appellant and said, “*The Department is looking into this situation and will ensure any irregularities being effected are corrected with immediate effect...*” The Department was not acknowledging that the appellant had valid permits to operate his buses. All permits had expired and all bus operators during the period of the injunction were operating without permits and there was no enforcement of the laws. The trial judge correctly viewed the situation as, “*The entire bus industry was in a national crisis for years and the Transport Board was unable to do anything to address the crisis because the Board had to obey the injunction issued by the Supreme Court in 2008.*”

[55] Learned counsel Mr. Lumor submitted that the Board received the appellant’s application for renewal and made a publication that they would be reviewed. The appellant as shown by the evidence was certainly aware of the new policy and the new schedules. He and other operators made applications for road service permits for the Northern route. Thereafter, the Board invited bus operators by a gazette notice dated March 12, 2011 **to review their applications as shown by Exhibit GM “2”**. As shown at paragraph 37 of the affidavit of Murillo, all other meetings flowed from that gazette notice which was required by law.

[56] Based on the evidence that was before the court below, it is my opinion, that there is no basis for interfering with Arana J’s findings on legitimate expectation.

Issue 5: The natural justice issue – grounds 6 and 7 of the appeal

[57] The appellant’s ground 6 is that the judge erred in deciding that he is not entitled to natural justice in light of the fact that they were operating illegally and their licences had expired. Further, that the respondents acted properly since this was a crisis situation. Under ground 7, the appellant says that the judge misdirected herself by finding that the appellant is not entitled to natural justice and that since the Board did not refuse to grant him any routes, his livelihood had not been destroyed.

[58] The trial judge dealt with the issue of natural justice at paragraphs 29 and 30 of the judgment where she determined the ground which states: “*The **decision of 15th June, 2011** was made contrary to the fundamental principles of natural justice and unfairly and in violation of Regulation 207 when the Defendants made the decision*

which in effect sought to destroy the investments of the Claimant, his livelihood, and those of his 54 employees without a hearing.” The learned trial judge at paragraph 29 said:

“Regulation 207 of the Motor Vehicles and Road Traffic Act Cap 192 of the Laws of Belize require that the date of the meeting of the Transport Board to consider applications together with particulars of the applications to be considered shall be published beforehand in three consecutive issues of the Gazette. Where applications for renewals of road service permits are to be heard then date of meeting shall be published in one issue of the Gazette. The Regulation also sets out the matters which the Board shall have regard to in considering an application e.g. (a) the extent to which the proposed service is necessary or desirable in the public interest; (f) that the fares are so fixed as to prevent wasteful competition with alternative means of transport on the proposed routes or any part of them; and (g) any representations which may be made by persons who are already providing transport facilities along or near the proposed routes or any part of them.”

[59] The learned trial judge then considered the submissions from both parties and said at para 30 that:

“..... I reiterate the fact that this was no ordinary situation. This was a crisis and the Transport Board was obligated to deal with a situation that was verging on anarchy and threatening to undermine the entire system of transportation in the country. It was an urgent situation which concerned public safety and once the injunction was lifted it required that the Board act as promptly and as effectively as possible to restore order. I agree that the Board is legally entitled to act in a manner as it sees fit for the proper administration of the transport system. In those circumstances I find that the Claimant was not entitled to natural justice especially in light of the fact that he like many others were operating illegally, their licenses having expired. **I also find that it is not accurate to say that the decision to grant the Claimant these routes was a decision which destroyed his livelihood.** That may have been true if the Board

had refused to grant him any routes at all. I understand that the Claimant is not pleased with his present routes because they are not as financially remunerative as the routes he had previously, and also because those lucrative routes that he does have, now have to be shared with another bus owner. But in fairness one must bear in mind that the Claimant enjoyed the benefits of these runs for almost forty years. The Board is under a duty to act fairly and to ensure beneficial and non-beneficial runs are distributed among all bus owners, not just the Claimant. I find it telling that the Claimant informed other bus owners of his suit for judicial review and invited them by a letter June 30th, 2011 to join him, but to date none have done so. For these reasons this ground also does not succeed.”

(emphasis added)

[60] The ground determined by the trial judge concerns a decision dated 15 June 2011. It can be seen by the nature of the reliefs sought in accordance with Rule 56.7(4) (b) before the trial court that the decision complained about was on 15 May 2011. However, orders that were sought concerned a decision made on 15 June 2011. I find it necessary, (for convenience, to repeat the first declaration sought and the orders sought, namely:

“1. A declaration that the defendants acted ultra vires when they made the **decision on 15 May 2011 to revoke the road service permits** issued to the claimant instead of reviewing the claimant’s existing permits. The decision is therefore void and a nullity.

“4. An order that the decision made on **15 June 2011**, is unfair and contrary to the basic rules of natural justice and therefore void and a nullity.

5. An order of certiorari to remove into the Supreme Court for purposes of being quashed the **decision made by the Defendant on 15 June 2011, whereby the Defendants sought to revoke and not to renew** the Motor Vehicles and Road Traffic Road Service Permits issued to the Claimants in 2006.”

(emphasis added).

[61] It is clear from the above, that the complaint was in relation to a revocation of licences. The grounds under which the relief was sought at ground 8 before the trial judge was that:

“The **decision of 15th June, 2011** was made contrary to the fundamental principles of natural justice and unfairly and in violation of Regulation 207 when the Defendants made the decision which in effect sought to destroy the investments of the Claimant, his livelihood, and those of his 54 employees without a hearing.”

[62] It can also be gleaned from the evidence that the appellant was complaining about a decision to revoke his road service permits. The evidence before the trial judge which she accepted, was that all bus operators licences had expired. As such, it is my view, that there could not have been a revocation of the licences, whether it be on 15 May 2011 or 15 June 2011. Further, the evidence as shown under the ground of legitimate expectation was that there could not have been a renewal of licences because of the new policy of zoning. Accordingly, I see no reason to interfere with the finding of Arana J that the principles of natural justice cannot apply to the expired licences. The Declaration sought before the trial court was therefore, rightly refused by the trial judge.

[63] In relation to the **new road service permits**, the appellant has not been denied natural justice. He was invited to a meeting as shown by the gazette notice. Applications were made by him and other operators for new permits on the implementation of the new policy of zoning. See Exhibit GM “2”.

[64] The evidence of the appellant is that he made an application for a renewal of the road service permits for the Northern route and the village run but, he had not heard anything from the Transport Board. Mr. Murillo, the Chief Transport Officer deposed that all “operators applied for and paid the required fees for the permits to operate with the exception of the Claimant in this matter. **The Claimant’s application is still with the Transport Department awaiting the required fees by law.**” Further, the appellant continues not to pay his application which is languishing in the Department

and his status continues to be illegal. As such, it cannot be said that natural justice has been denied in relation to the application which falls under the new policy of zoning.

Issue 6: Whether the decision of 15 June 2011 was contrary to the Act and Regulations

[65] The appellant at ground 8 of the appeal contended that the trial judge erred in finding that there is no merit in the ground that the decision of 15 June 2011, was illegal and contrary to the functions and duties conferred on the Transport Board by the Motor Vehicles and Road Traffic Act and the Regulations made thereunder.

[66] The learned trial judge at paragraph 31 of the judgment said that, "This ground seems to me to be similar to ground 5 which I have already addressed above. With respect to the arguments of learned counsel for the claimant, I find no merit in this ground for reasons stated in relation to ground 5."

[67] It is my opinion that ground 5 (Issue 1 in the appeal as shown above) is indeed similar to the present ground. Further, the issue of revocation of the licences was discussed under previous grounds discussed in this appeal. In my opinion, for reasons already discussed, the learned trial judge made no error in her findings.

Conclusion

[68] I would dismiss the appeal. I would affirm the decision of the learned trial judge and this includes the cost order against the appellant to be assessed or agreed.

[69] In relation to the appeal, I would make no order as to costs taking into consideration that there was no oral arguments before the Court.

HAFIZ-BERTRAM JA

DUCILLE JA

[70] I have read the judgment, in draft, of Hafiz-Bertram JA, and I concur in the reasons for judgment given, and the orders proposed therein.

DUCILLE JA