

IN THE DISTRICT COURT  
HELD AT CHRISTCHURCH



MA 491/94

IN THE MATTER OF

an appeal pursuant to Section 42 Transport Services Licensing Act 1989

BETWEEN

Sean Alan Maurice O'Connor, of  
29 Jebson Street, Shirley,  
Christchurch, Taxi Driver

Appellant

AND

The Land Transport Safety Authority of New Zealand,  
Transport House, 151-153  
Kilmore Street, Box 13-364,  
Christchurch

Respondent

Before: Judge J E Macdonald  
Date of Hearing: 2 June 1995  
Date of Decision: 2 June 1995  
Counsel: Mr O'Connell for Appellant  
Mr Garrett for Respondent

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DECISION

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This is an appeal pursuant to s42 of the Transport Services Licensing Act 1989. The sequence of events is that the appellant was granted a Taxi Driver's licence in July 1993. He was granted a passenger service licence in August 1993. His application to renew his driver's identification card in June

1994 was refused and proceedings were then commenced to revoke his passenger service licence. This is an appeal against that.

In terms of the approach to be taken I have heard submissions from counsel. It is clear that this is a hearing de novo. I have enquired of counsel as to precisely what that might mean - am I for example obliged to deal with the appeal and assess the decision made by the authority on the basis of the information available at the time of the decision to revoke the licence or do I judge the issue of whether the appellant is a fit and proper person to hold a licence as at today's date. Mr O'Connell does not argue against the proposition I deal with the matter as at today. Mr Garrett submits that is the correct approach in any event having regard in particular to s43 (2) of the Act where it refers to the Court having power to hear "all evidence ... relevant to the appeal". It is a common sense approach in any event in my view. If I was restricted to matters known to the party at the time of the decision then we could reach the absurd situation where the appeal might be granted, the authority could then rely on subsequent events to revoke the licence and we have then a further application and we start again. I therefore take the approach that as it is a hearing de novo I am to assess whether the appellant is a fit and proper person as at today's date.

The reasons for the decision taken by the respondent, the Land Transport Safety Authority, is set out in an affidavit from Mr Hawkins who is the Regional Compliance Officer. That affidavit is dated 22 May 1995. Broadly speaking, and full details are set out in the affidavit, the basis for revocation is firstly in reliance of two drug convictions in March last year for possession and cultivation of cannabis and then on three further instances where the appellant was seen to be driving when he had no right to do so. One of those occasions involved an instance concerning Miss Edwards and that involved allegations of

sexually impropriety. The respondent really asks the Court to look at the drug convictions and those three other occasions where he has driven, and in particular the instance involving Miss Edwards, against the background of the appellant's previous convictions and the warnings that were given to him at the time the licence was granted to him.

Before turning to that I think it appropriate to deal with the issue involving Miss Edwards. It is necessary to make various factual findings regarding that even though of course it is not a situation where the appellant faces some charge of indecent assault or the like. Nonetheless it is necessary for me to resolve the conflict that exists between his account and Miss Edwards' and to state the position plainly; so different were their accounts that either the appellant is lying or Miss Edwards is lying. There really is no middle ground at all.

In relation to this aspect, and Miss Edwards has given evidence today, she gave a statement to the respondent, an officer of the respondent, on 4 March 1995 which sets out her allegation. In evidence today she confirmed the contents of that statement were true and essentially her account is that the appellant did pick her up to drive her to what was called the Atami Bathhouse where Miss Edwards worked. Her account suggests the appellant immediately assumed she was a prostitute - it was on reliance of the fact of where she wanted to go. There was the suggestion too, and her evidence was not challenged on this, that one of the first questions put to her by the appellant was and it is on page 2 :

"In a hurry to get out of there, quick job was it?"

Then later there is an enquiry about what she would do for \$20. The complainant goes on to say and I am reading now from her written statement:

"At the corner of Lichfield Street and Durham Street the driver placed his left hand on my right thigh. He rubbed my thigh and then moved his hand up my thigh towards my private parts. (I had been pulling up my stocking, the one with the hole in it, to hide the hole under my skirt.) I told the driver not to bother and he removed his hand rather quickly. He asked me what I would do for \$20"

That then is the basis of the allegation she makes. In evidence she remained emphatic it was not consensual. The appellant did not have consent to touch her in the way I described. The adjustment to her stocking was not some intentional exposure of her body to the appellant. She said she was offended by what he did and perhaps consistent with being offended - when she arrived at her destination she rang the taxi company to complain. Events progressed and ultimately she was contacted by the Land Transport Authority and she has given evidence here today.

The appellant's account in stark contrast is that this was a situation where there were explicit sexual advances made by Miss Edwards - the touching that occurred was innocent and entirely consensual and for the purposes of helping her to adjust clothing - that is her suspender. That is his evidence. It was an account which had previously been set out in a statement he had made to the Land Transport Authority. It was an unsigned statement I am referring to now but largely followed that narrative. It was a statement he had made on 11 May 1995 and although unsigned he accepted in evidence its contents were correct. It follows then if I accept the appellant's version of the event or if I think it might be true then I take the view that the proper approach is that the appellant should be given the benefit of the doubt and that matter should be completely put to one side.

I do mention I did allow Miss Edwards to be recalled. I did so really because the appellant's version was so opposed to what Miss Edwards said and his version was not put to her in cross-examination. Often when matters are not put to a witness it is because a witness goes beyond what counsel expected the witness to say. This was not the situation here. Mr O'Connell accepts responsibility - he at all times had been armed with a copy of the appellant's unsigned statement to the Land Transport Authority and he therefore had a duty to put the contents of that statement to Miss Edwards. As it was his fault as it were rather than the appellant's I allowed Miss Edwards to be recalled.

In terms of my assessment of the matter and there has been quite extensive cross-examination of both the parties involved - my clear impression is the appellant misread the situation right from the start. He did that in the way I have already outlined and for reasons I have outlined as well and matters progressed from there. Having listened to both accounts it is of course a question of credibility. I think one way of looking at the matter, and I appreciate it is a broad approach, is to ask the question or look at the issue of their respective positions in terms of what each would have to gain by lying. In following that approach at perhaps some superficial level it is quite clear there is real incentive for the appellant to convince this Court that Miss Edwards' account is untrue and a fabrication of the events as his livelihood is at stake. So in my view he has a powerful incentive. Miss Edwards on the other hand had nothing to gain as far as I can understand it. The other matter that weighs with me really is that if it happened as the appellant claims and that Miss Edwards was the one who "came on" to him (that is the expression I use) then I find it difficult to understand why Miss Edwards would complain. If she was a prostitute as the appellant believed and had done what the appellant said and he turned down her advances then again it seems strange she would then complain to the Taxi Company and in turn to the Land Transport Safety

Authority and ultimately come to Court to give evidence about the matter. I take the view in the broad sense if she really wanted to get the appellant into trouble she would surely have gone to the police. The fact she went to the Taxi Company made it consistent with her appreciation that perhaps the Police might not believe her because of where she worked but equally that would apply with ringing the Taxi Company. Thus in my view it is entirely consistent with someone who has been involved in an incident which she found offensive. As I understand it that is where Miss Edwards placed the incident in terms of its seriousness. It was put to Miss Edwards in cross-examination that she was not offended by anything done or said by the appellant. If this is the case it is difficult to understand why she rang the Taxi Company. Can I just say in all other respects I found Miss Edwards to be a convincing witness. She remain unperturbed and unflustered in cross-examination.

As far as the appellant was concerned the claim is that he was helping her with her suspender belt. Really I have some difficulty in accepting that rings true at all. If his account is to be believed Miss Edwards had no difficulty in taking off her clothes without his assistance. I doubt she would have needed assistance with the suspender belt. Of course I am not sure what assistance he was going to give her in any event. In a general sense I find his account quite unconvincing. I take the view that the account to be believed and the one I do believe is the one given by Miss Edwards. The appellant's advances were quite uninvited and unwelcome. I then have to consider the balance of the matters.

I should perhaps record here the appellant has just left the Court, obviously unhappy with the decision that is emerging. It may well be that his reaction at this time says something about his suitability in any event but dealing further - there are other drug convictions. Mr O'Connell suggests that they should be

kept in perspective. He did have a legitimate reason in terms of the skin condition he suffers in order to be involved with cannabis. I am prepared to accept that may provide some explanation if not excuse and I take that view even if Mr Garrett is totally sceptical about that.

In terms of the appellant driving when not allowed to drive - I am referring to three occasions 17 September 1994, 1 March 1995 and 4 March 1995 - obviously he drove out of financial necessity. On their own they may not be of any huge significance but I do note he obviously had a driver available. In terms of his expectations in terms of letters written to him by Mr Hawkins dated 15 July 1993 and 22 November 1993 he said he thought it only related to how he operated his taxis. I simply observe that the letters do not say that and I would have to say that he must have known he would have to be on his best behaviour. I am not sure his expectations are entirely relevant anyway. The position is still a question of looking at whether he is a fit and proper person.

Mr O'Connell in his submissions has directed me to look at s24 of the Act in particular and the appellant's changes to his lifestyle in recent time. He submits drug matters do not impinge on matters of public safety and he submits there were no complaints of a persistently serious nature. As far as the incident with Miss Edwards is concerned it was his submission it would be dangerous to rely on her account but of course I have already determined that matter. He does however take the view it is quite wrong for the authority to use cannabis convictions in the way it has and that is to bring up or revive earlier convictions.

In dealing with this matter overall the fact remains the authority did grant the appellant a licence in August 1993 with the knowledge of these previous

convictions. As a general proposition I would not normally think the authority can then go back to rely on those convictions for assessing whether at some subsequent point a person is a fit and proper person to hold a licence. I think however in this case that they have reserved their position so to speak by virtue of the two letters to which I have already referred and by referring to the appellant as being boarder line category. I think having regard to those subsequent drug convictions, whilst they must be viewed at least on their own, they can still be viewed against the background of the earlier convictions. I also take the view that it must be a concern in any event that he has offended in a criminal way within six months of the granting of his licence. I do not know precisely when the offences were committed but I am told the convictions were in March and I say that is a concern even with the medical condition he had. He must surely have known his licence would be in jeopardy if he offended.

I therefore take the view that the drug convictions on their own are at least a concern. As far as ignoring the prohibition to drive is concerned I think at the very least the respondent can point to an unwillingness to obey the rules. There is an element of dishonesty inherent in that in any event although perhaps dealing with that matter on its own it may not be quite sufficient in my view to justify revocation. We then have the incident involving Miss Edwards and whether the appellant likes it or not I have reached the conclusion, and I am obliged to resolve the matter if I can, by finding that incident occurred as I have, that really in my view goes directly to the issue of the protection of the public. It is also a recent complaint - 1 March 1995. The fact I found it did occur makes it difficult to reconcile with the submission by Mr O'Connell that there have been major changes in the appellant's lifestyle. Looking at that matter in another way of course if the appellant had at the very least believed she was a prostitute (this is in effect what he is saying) it may well indicate prostitutes are fair game and that is a concern as well.



I can understand the reaction of the appellant. I appreciate that it is a time of high unemployment and I appreciate if his appeal fails then that will be very detrimental to him and unfortunate in terms of his livelihood. Nonetheless I am obliged to take into account what is set out in the Act.

This is an appeal albeit an appeal de novo. As I understand it the onus is still on the appellant. I take the view that the incident with Miss Edwards on its own may have been justification to revoke his licence. Drug convictions may also have fallen into that category but taking all matters together I have no doubt the correct approach and decision has been made by the respondent. I am not satisfied that any of the grounds set out in the notice of appeal are made out. The appeal is dismissed.



J E MacDonald  
District Court Judge

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