

**DECISION**

**NSUARB-PTA-10-26  
2010 NSUARB 169**

**NOVA SCOTIA UTILITY AND REVIEW BOARD**

**IN THE MATTER OF THE MOTOR VEHICLE ACT**

**- and -**

**IN THE MATTER OF AN APPLICATION of PARTY BUS ATLANTIC INC.** for the issuance of a Temporary Authority under the provisions of the said *Act*

**BEFORE:** Dawna J. Ring, Q.C., Member

**APPLICANT:** PARTY BUS ATLANTIC INC.

**DECISION DATE:** August 18, 2010

**DECISION:** Temporary authority is denied.

## I INTRODUCTION

[1] After being denied permanent licenses, Party Bus Atlantic Inc. ("Party Bus") applied for a Temporary Authority to operate for 75 days to service weddings and birthday parties because it had taken deposits, even though it did not have a license to operate in the province and without advising the public that it did not have a license.

[2] The Board asked whether Party Bus had informed the public that they did not have a license when they took the deposits and held themselves out as being able to provide the service. Party Bus said "No". Specifically, question and answers were as follows:

- Q. In relation to your Temporary Authority application, the Board member assigned is inquiring as to whether each client, who booked and provided you with a deposit, had been informed that you may not receive a permanent authority? Such notification would thereby enable each client to take this information into consideration prior to making their booking.
- A. If I had told the people that booked "that we may not receive a permanent operating authority", I can assure you we would not have any bookings to discuss.

...

## II APPLICATION

[3] Party Bus requested to operate from August 18, 2010, to October 31, 2010, to provide the following:

The transportation of organized groups including children's birthday parties, weddings, graduations, anniversaries, nights on the town, school parties, golf trips, concerts, Christmas parties and corporate events from any point within Nova Scotia, one way or return.

## III BACKGROUND

[4] The *Motor Carrier Act*, R.S.N.S. 1989, c. 292 as amended (the "Act") regulates operators in Nova Scotia to ensure there is a motor carrier industry in the

province. The following overview of the legislation is provided in the *MacTour* decision, 2008 NSUARB 100:

[69] On reading the MC Act as a whole, the object of the legislation is to ensure there is quality, safe motor coach transportation services available in the Province. To accomplish this, the MC Act requires the Board to regulate every aspect of the industry from routes and vehicle inspection to rates. The sustainability of this service for the public is the legislation's overriding directive. In balancing competing interest, the Board must do what is in the best interest of the public, giving specific consideration to the line run services, s.13(ca).

[70] The Interpretation Act requires the Board to consider amongst other issues, the necessity for the legislation (s. 9(5)(a)) and the consequences of a particular interpretation s. 9(5)(f). Factors affecting the necessity for the legislation include that Nova Scotia is not southern Ontario or Quebec. The Province has a very small population. Its demand for motor coach services is far less than the demand experienced in the Toronto/Montreal corridor.

[71] Another factor is that the costs of investing in this industry are large. In the *Trius 2003* decision, the Board states as follows in para.62:

[62] Buying, operating, and properly maintaining motor coaches, especially larger ones, is an expensive business for all the operators which are parties to this hearing. New coaches with video, washroom, and air conditioning, regarded as the most desirable of all, have purchase prices in excess of half a million dollars. To ensure a ready supply of relatively new, large coaches, SMT/Nova has bought several such vehicles per year over the last four years. Moreover, other companies currently operating in the low season such as Nova, or Cabana, as well as DRL, have significant investments not just in coaches (especially newer ones), but in other ancillary assets. These exist to service and support the actual buses, such as storage garages, maintenance facilities, and administrative offices, with *Trius* itself leasing new premises in Halifax in the spring of 2002. Such assets exist year round, and are expensive to lease, purchase, or maintain.

Considering this large capital investment, it is not financially prudent for people to make an investment if they cease operating within six months. In a small demand area, if companies are out of business in six months, people and corporations eventually stop investing in buses and coaches. Transportation services may then be lost to the public unless supported by government subsidization, community groups, etc.

[72] Another important factor is the various services provided to the public. Regular route public passenger services, commonly known as "line run", provide essential transportation services to students, the elderly, the infirm, and those on fixed incomes who do not have access to independent transportation. This service transports people for many reasons including medical appointments, school, work, adult challenged employment facilities, and visiting family and friends, *King's Transit Authority*, 2005 NSUARB 129, para. 15; and *Need-A-Lift Transportation Services*, 2006 NSUARB 27, para. 26-41.

[73] The industry also provides transportation services to the tourism industry in Nova Scotia which is very important for the Province's economy.

[5] Licenses are issued in Nova Scotia only after an applicant proves it has met the various factors outlined in s. 13 of the *Act*, which reads as follows:

**Factors Considered**

13 Upon an application for a license for the operation of a public passenger vehicle or for approval of the sale, assignment, lease or transfer of such a license, the Board may take into consideration

(a) any objection to the application made by any person already providing transport facilities whether by highway, water, air or rail, on the routes or between the places which the applicant intends to serve, on the ground that suitable facilities are, or, if the license were issued, would be in excess of requirements, or on the ground that any of the conditions of any other license held by the applicant have not been complied with;

(b) the general effect on other transport service, and any public interest that may be affected by the issue of the license or the granting of the approval;

(c) the quality and permanence of the service to be offered by the applicant and the fitness, willingness and ability of the applicant to provide proper service;

(ca) the impact the issue of the license or the granting of the approval would have on regular route public passenger service;

(d) any other matter that, in the opinion of the Board, is relevant or material to the application.

[6] The Board, after considering all of the evidence before it, denied Party Bus's applications for permanent licenses in its decision, 2010 NSUARB 167, stating in its concluding paragraph the following:

[70] As stated previously, the burden of proof in this proceeding, is on the Applicant. While the Applicant submits they have a unique product and provide unique services with a huge demand, the Board finds there is very little concrete evidence of demand for such in Nova Scotia, especially when this evidence is weighed against the already largely unused capacity of the Opposition. Accordingly, there is insufficient reason for the Board to exercise its discretion to grant the Applications. The Board finds there is no evidence to show a necessity for the issuance of a license to the Applicant.

[7] The investment of companies currently licensed in Nova Scotia was noted by the Board in paragraph 68 which reads as follows:

[68] The evidence of the Opposition is that they have invested greatly in equipment, some of which has to be replaced, and that they all have diminished ridership.

[8] The Board specifically commented on the importance of the actions of companies not "thwarting" the objectives of the *Act*, that is, virtually by-passing it and

making it useless, by purchasing vehicles without a license to operate in the province.

At paragraph 69, the Board states as follows:

[69] The Board is aware, from the evidence of the Applicant, that they set up business in Nova Scotia without having the authority in place. As well, Mr. Sheppard and Mr. Culleton brought over personnel from Newfoundland to assist them with their business. It is unfortunate that the Applicant did not conduct due diligence prior to purchasing their vehicles, relocating personnel and making the move, to set up operation in Nova Scotia. The Board, in determining whether an application shall be approved, should not take into consideration the fact that the Applicant has purchased vehicles in the hope of obtaining a permanent license. Otherwise, everyone would do the same, thwarting the objectives of s. 13 of the Act.

#### **IV TEMPORARY AUTHORITIES**

[9] Temporary authorities are issued without public notice or hearings or other processes under the *Act* and are, therefore, restricted to being granted only if there is an immediate or special need. An example of an immediate or special need is the influx of buses required to assist immediately after the Swiss Air disaster.

[10] Subsections 9(1) and (2) of the *Act* reads as follows:

##### **Temporary authority**

9 (1) Notwithstanding any other provision of this Act or the regulations, when it is made to appear to the Board that there is an immediate or special need for the provision of a service in the transporting of passengers the Board, in the discretion of the Board, and without advertisement, public hearing or other proceedings, may grant a temporary authority or trip permit to a person to provide the service on such terms and conditions as the Board prescribes.

##### **Effect of temporary authority**

(2) A temporary authority granted under this Section authorizes the person to whom it is granted to provide the service specified in the authority for or within the time specified in the authority, not exceeding ninety days, but shall create no presumption that a corresponding permanent authority or license will be granted thereafter.

[11] At paragraph 53 of the Party Bus decision, the Board gave the following overview of temporary authorities:

...Temporary Authorities are granted, when it appears to the Board, that there is an immediate or special need for the provision of a service in the transportation passages. It is an ex parte application, with no advertisements or public hearing or opportunity for potential opponents to be heard in this case. The Temporary Authorities authorize the

Applicant to provide the service specified in the authority for no more than 90 days. It is important for carriers who receive a Temporary Authority to understand that there is no presumption that a corresponding permanent authority or license will be granted.

[12] In this case, the reason for the request was because Party Bus has, once again, acted contrary to the *Act* by taking deposits without having a license, failing to tell the public it did not and may not have a license to operate on the dates of their events, and therefore, held itself out to the public as being able to offer the services.

[13] The Board finds that any other company could do the same and avoid the *Act*. Anyone wanting a license in the province could mislead the public, take deposits, hold themselves out as being able to offer the services, and then come to the Board and say 'You have to give me a temporary authority to do these functions because it would not be fair to the public'.

[14] The Board finds the above is contrary to the purposes of the *Act* and would render it useless. The Board is required to regulate the industry in accordance with the *Act* and cannot permit companies to thwart the legislation.

[15] Party Bus did not have a license to operate in this province. Party Bus, by its conduct, has done a terrible disservice to the public. It is fully responsible for the disappointment of people it took deposits from. To provide a temporary authority in this case would be to reward a company for misleading the public and operating contrary to the *Act*.

[16] Party Bus has not met the requirements of the *Act* and its temporary authority application is denied.

[17] People affected by the conduct of Party Bus may contact the Motor Carrier Division for a list of those licensed in the province to provide luxury transportation services using vehicles of various seating capacities and styles.

[18] An Order will issue accordingly.

**DATED** at Halifax, Nova Scotia, this 18<sup>th</sup> day of August, 2010.

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Dawna J. Ring