

DECISION

**2018 NSUARB 12
M07679 and M07680**

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MOTOR CARRIER ACT

- and -

IN THE MATTER OF THE MOTOR VEHICLE TRANSPORT ACT

- and -

IN THE MATTER OF Applications to amend Motor Carrier License No. P00595 and Extra-Provincial Operating License No. XP01078 of **STOCK TRANSPORTATION LTD.** to operate contract transportation services for Newbridge Academy School

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

APPLICANT: **STOCK TRANSPORTATION LTD.**
Michael P. Scott, LL.B

BOARD COUNSEL S. Bruce Outhouse, Q.C.

DECISION DATE: **January 17, 2018**

DECISION: **Applications dismissed.**

I SUMMARY

[1] Pursuant to ss. 12(3A) of the *Motor Carrier Act*, R.S.N.S. 1989, c. 292 as amended (*MC Act*), the Board denies the Amendment Applications of Stock Transportation Ltd. (Stock) to provide contract transportation services to Newbridge Academy School (Newbridge) as it is the Board's opinion that the granting of the Applications would not be in the public interest.

II LEGISLATION

[2] The most relevant provisions of the *MC Act* are subsections 12(1A), (3A) and (3B), which read:

12 (1A) Subject to subsection (3), the Board shall not grant an application referred to in subsection (1) without a public hearing.

(3A) The Board may refuse an application pursuant to subsection (1) without a hearing where, after consideration of the application in accordance with Section 13, the Board is of the opinion that granting the application would not be in the public interest.

(3B) The Board shall give written reasons for refusing an application pursuant to subsection (3A).

[3] Under s. 5 of the *Motor Vehicle Transport Act*, R.S.C. 1985, c. 29 (3rd Supp.) as amended (*MVT Act*), the licensing provisions of the *MC Act* equally apply to licenses for extra-provincial transportation from or to Nova Scotia.

III FACTS AND FINDINGS

[4] On September 26, 2016, Stock's Amendment Applications (also Applications), requesting authorization to provide contract transportation services to Newbridge under its Motor Carrier License No. P00595 (MC License 595), and Extra-Provincial Operating License No. XP01078 (XP License) (collectively Licenses), was

received by the Motor Carrier Division of the Department of Transportation and Infrastructure Renewal (MCD).

[5] The Applications were forwarded to the Clerk of the Board with a Memo from the MCD dated September 27, 2016 which included the following information:

- attaching Newbridge's Facebook page postings, it appeared Stock is, and has, provided services to Newbridge;
- based on inspection reports Stock's HMC has travelled 10,741 kilometers since its initial inspection in April;
- the MCD's request for Stock to provide details on HMC use remained outstanding; and
- Industry email inquiries include Stock's HMC is not in use for overflow cruise ship services.

[6] On October 19, 2016, the Clerk wrote a letter to Stock. It stated Board counsel would be reviewing information to assess whether Stock was not operating in accordance with these Licenses, the *MC Act* and/or *Regulations* which may lead to a Show Cause proceeding. Compliance with the above would be relevant to the Applications (s. 13(a) of the *MC Act*) and any Show Cause proceeding may render them moot. Consequently, the Board decided the Applications would not proceed until the Board received further advice from its counsel and/or any Show Cause proceeding concluded.

[7] The Show Cause proceeding (M07432) concluded with the Board finding (2017 NSUARB 175, SC Decision) that Stock failed to operate and furnish services in conformity with the *MC Act* and *MVT Act*, regulations, rules, Orders, schedules and its Licenses as it:

1. used its HMC to transport passengers from and/or to the Province of Nova Scotia contrary to section 4 of the *MVT Act*;
2. used its HMC to transport students from Newbridge upon a highway within the Province of Nova Scotia, contrary to s. 7(1) of the *MC Act*;

3. used its HMC and its school bus Vehicle Unit No. 25486 to transport students from Newbridge free of charge, contrary to s. 22 of the *MC Act*;
4. failed to make the HMC available or use the HMC for the purposes set out in the Licenses;
5. resisted and willfully obstructed inspectors in the execution of their duties and powers by not cooperating and providing all requested information to the Motor Carrier Division, contrary to s. 35(2) of the *MC Act*,
6. failed to charge rates for charter services in conformity with its Licenses contrary to s. 22 & 23(1) of the *MC Act*;
7. leased its HMC with Newbridge for the transport of students, contrary to s. 7(1) & s. 22 of the *MC Act*, and,
8. the following breaches which became known to the Board in the proceedings:
 - (a) misled the Board;
 - (b) joined two licenses together without authority to do so contrary to s. 8(g) of the *Board Public Passenger Motor Carrier Act Regulations*;
 - (c) transported school officials from the Halifax Regional School Board contrary to its Licenses;
 - (d) in addition to the above breaches, used various vehicles including its school and activity buses and HMC, and/or operated school bus services, contrary to s. 7(1) of the *MC Act*;
 - (e) demanded its drivers drive the HMC after they exceeded their permitted hours of being on duty contrary to s. 12(2) of the *Commercial Vehicle Drivers Hours of Service Regulations* under the *MVT Act*; and
 - (f) requested its drivers falsify their Daily Log contrary to s. 86(2) of the *Commercial Vehicle Drivers Hours of Service Regulations* under the *MVT Act*.

[8] After considering all facts, arguments, breaches, and s. 13 of the *MC Act*, the Board decided it would hear from Stock and Board counsel before deciding what, if any, terms, conditions and/or orders may be appropriate for Stock's current school bus services to address the breaches and, in particular, to ensure the safety of students. All

other services on the Licenses were cancelled, subject to the Board determining the dates for termination and any potential interim terms and conditions. Parts of the latter were addressed in a Decision rendered on January 15, 2018 (2018 NSUARB 9), while the former school bus services will be addressed at a hearing commencing February 12, 2018.

[9] In rendering its decision under s. 12(3A), the Board is to consider the factors enumerated in s. 13 of the *MC Act* which states:

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.

[10] In *Re Trius Inc.* Decision (dated September 22, 1993), these various factors may overlap and conflict, and the weight to be given to each will differ, depending upon the facts of each case.

[11] In the Show Cause proceedings, the Board also had to consider the provisions of s. 13 to determine the appropriate remedy for Stock's breaches outlined above. In the SC Decision, the Board found as follows:

[646] Both ss. 13(a) and 22 consider whether a licensee has not complied with a license issued to it. The above breaches constitute significant non-compliance.

[647] The Board finds Stock used its vehicles, including its school buses, as it wished, in disregard to the *Acts, Regulations*, orders, rules, schedules and its Licenses.

[648] The Board also finds Stock was dishonest and/or misleading to the inspectors, the Director of the MCD, and the Board. Furthermore, it went to great lengths to eliminate or shield evidence of the use of this HMC. This included:

- deliberately, provided false information to a customer, Mr. MacEachern, of Newbridge, to pass along to the MCD.
- asked for dates from the MCD, when Mr. Phinney knew the dates;
- failed to provide known information when requested by Inspector Parker and Ms. Aisthorpe;
- deliberately provided false and/or misleading information in some of its responses to Board IRs;
- failed to provide any information to some of the Board IRs including dates and drivers' logs;
- failed to produce and/or maintain any documents, emails, telephone calls, notes, or supporting documentation;
- failed to follow the Company's processes for tracking its vehicles movements including failing to input the information into Stock's computer system; and
- attended before the Board without information about the vehicles movements.

[649] These are significant for the Board in its administration of the *MC Act*, a relevant consideration under s. 13(d). Dishonesty, misleading, and resisting conduct also does not illustrate a fitness, willingness and ability to provide quality services under s. 13(c). It is not in the public interest either (s. 13(b)).

[650] A motor carrier that has been deceitful is difficult to regulate. This is exemplified by the Saint John trip Stock provided for Newbridge. But for a posting on Newbridge's Facebook page with a picture of Stock's HMC, the movement would not have been detected by the MCD or the Board.

[651] A motor carrier which has not followed its Licenses, the Acts, Rules and Regulations, including safety *Regulations* of drivers' hours on duty and has not honestly answered questions of inspectors of the MCD and the Board, would not receive a license in the first instance under s. 13 of the *MC Act*. If it would not receive a license, should it retain its current Licenses?

[652] The Board finds one of the most critical breaches is Stock's demand that the drivers operate the HMC after they exceeded their permitted hours of being on duty as set by the *Drivers Regulations* of the *MVT Act*. The Board also found the demand to work beyond their safety hours on duty was congruently also a demand for them to falsify their drivers' logs. Furthermore, by terminating the employment of the two unprotected non-unionized employees, the Board finds Stock gave a clear message to its 1,600 employees across Canada and, particularly to the 600 employees in the Province, that you either do

as you are told by Stock, even going beyond the safety regulations, or you will lose your job.

[653] Safety is essential. It is the Board's number one concern. Safety breaches affect all services operated by Stock under these Licenses.

[654] Public passenger vehicles, in particular HMCs, are very large and most do not have seatbelts. A tired driver may cause an accident resulting in serious injury or death to the passengers on board and others travelling on the highway. There is no contest between one of these vehicles crossing out of its lane and people travelling in a car.

[655] This affects public interests under s. 13(b). The public is interested in having motor carriers and their vehicles meet the objects of the *Motor Carrier Act* of providing safe, quality, transportation services. The public is interested in motor carriers ensuring all passengers travelling in these vehicles are safe, as well as the other people travelling on the highways in Nova Scotia and Canada. The public's interest also includes not only having access to these transportation services for themselves, but having these safe transportation services available for tourists coming to Nova Scotia. The latter is important to the Province's economy (*Discount Decision*, para. 16 quoting the Ivany Report).

[656] Demanding staff drive beyond the safety hours on duty also does not constitute "quality" service under s. 13(c).

[657] The Board finds Stock's representative drivers for the Northern Ontario trip did not know the *Drivers Regulations* which are essential to the safe operation of public passenger vehicles. The Board finds Stock's failure to ensure its representatives knew these safety provisions lessens its "fitness or willingness" to provide safe public passenger services, under s. 13(c).

[658] This lack of fitness and willingness is taken to a lower level, if one is to believe Mr. Phinney that he was also unaware of these *Drivers Regulations*. Stock is deemed to know the law. A casual familiarity with the Acts and Regulations is insufficient. It is completely unacceptable for Stock's Regional Manager to just breeze through the Acts and the safety regulations. Mr. Phinney has an obligation to be completely informed. If Stock wants to operate public passenger vehicles, which can potentially cause injury or death to the public, it needs to fully abide by the Acts and Regulations, which means knowing them, implementing them, and ensuring everyone within the organization abides by them.

[659] The Board, however, does not believe Mr. Phinney about his lack of knowledge. For almost every breach, Mr. Phinney pleaded ignorance of the Acts, Regulations and Orders, as an excuse. As stated above, the Board found he lacked credibility. However, if he were truly that ill-informed, it, alone, demonstrates a deficiency in Stock's fitness and willingness to provide quality services and to operate in accordance with the Acts, Rules, Regulations and its Licenses.

[660] The Board further finds the message, to do as you are told or you will lose your job, may impact any of Stock's employees such as mechanics, and dispatchers, as well as the drivers. If mechanics are to ignore mechanical problems with these large vehicles or lose their employment, the same s. 13 factors are in issue. As an example, when the MCD contacted Stock for a random inspection of its HMC on August 17, 2017, Mr. Phinney testified he needed the HMC and that Stock's mechanics found no imminent safety issues. The MCD inspection the following day, found 15 issues, three relating to the brakes, that had to be repaired before the HMC was allowed to operate again.

[661] Under s. 13(a) the Board also considers whether there is an excess of requirements, including an excess of vehicles. As noted in the *Stock Decision*, the Board

stated Stock's HMCs were not needed in the Province and, if licensed, would result in an excess of vehicles. Stock did not meet the test of s. 13, and without the very restrictive amendments requested by Stock to only use them for overflow cruise ship services, the HMCs would not be licensed for any service.

[662] Subsection 13(b) considers the general effect on the transportation services. Being a division of the largest bus company in the world and the largest bus company in Nova Scotia, Stock can hinder, if not destroy, achieving the objects of the MC Act in providing safe, quality public passenger transportation services for Nova Scotia. With over 500 public passenger vehicles in the Province, Stock could continue to operate outside its Licenses and/or charge little or nothing, undercutting all licensed motor carriers until none remain in business. This would, in turn, affect services in rural areas.

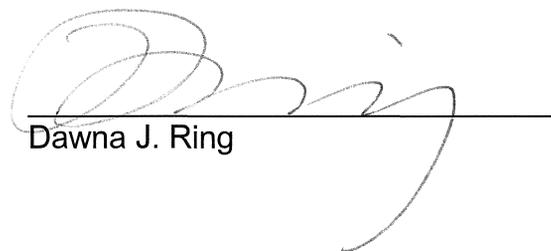
[12] This s. 13 analysis is equally applicable to these Applications.

[13] As a result of the above analysis, the Board is of the opinion the Amendment Applications are not in the public interest. The Board's opinion remains the same; that Stock should only provide school bus transportation services, after the Board hears from counsel and determines what, if any, terms, conditions and/or orders may be appropriate for those services. Stock is prohibited from operating any other transportation services, in particular, charter and contract services, including the requested services for Newbridge.

[14] The Amendment Applications are, therefore, denied.

[15] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 17th day of January, 2018.


Dawna J. Ring