

DECISION

2019 NSUARB 99
M09289

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MOTOR CARRIER ACT

- and -



IN THE MATTER OF THE APPLICATION of A WORLD CLASS LIMOUSINE COMPANY LIMITED to amend their Motor Carrier License P02677

BEFORE: David J. Almon, LL.B., Member

APPLICANT: A WORLD CLASS LIMOUSINE COMPANY LIMITED
Joshua Chabinka

INTERVENORS: PRESTIGE LIMOUSINE
Thariq Ali

HALIFAX TITANIC HISTORICAL TOURS
Paul McNeil

HEARING DATE: July 16, 2019

DECISION DATE: July 26, 2019

DECISION: Application to add 14-passenger van is denied.

I INTRODUCTION

[1] Joshua Chabinka, operating as A World Class Limousine Company Limited (World Class/Applicant) filed an application with the Nova Scotia Utility and Review Board (Board) on June 21, 2019, to amend its Motor Carrier License P02677 to add one (1) 14-passenger van (Ford Transit XLT High Roof or similar) to provide service between Halifax Stanfield International Airport (Airport) and any point within Halifax Regional Municipality (HRM), one way and return (Application).

[2] The Notice of Application was advertised in The Royal Gazette on June 26, 2019, posted on the Board's website, and forwarded to licensed carriers by email, fax or mail. The Clerk of the Board received objections to the granting of the Application from five carriers, three of which, withdrew their opposition; however, two carriers, Prestige Limousine Ltd. (Prestige) and Halifax Titanic Historical Tours (Titanic), maintained their opposition to the Application.

[3] Mr. Chabinka explained that the primary purpose of his Application is to "look forward to the future", in adding one 14-passenger van to his fleet.

[4] Both Prestige and Titanic opposed the Application, reasoning that the Applicant's evidence was speculative, testifying there is an excess of equipment capacity in the market and more vehicles are not needed.

[5] After reviewing all of the evidence and the provisions of the *Motor Carrier Act*, R.S.N.S. 1989, c. 292, as amended (*MC Act*), the Board finds that the Applicant has not met the burden of proof to show, on a balance of probabilities, that the Board should grant the license. The Board denies the request to amend the Motor Carrier License to add one 14-passenger van to provide service between the Airport and any point within

HRM, one way and return, because it is satisfied there is an excess of equipment capacity in the charter market.

II PROPOSED LICENSE AUTHORITIES

[6] The Applicant has applied to amend its Motor Carrier License No. P02677 as follows:

1. To amend Schedule E by adding:
Schedule E(2) - One (1) 14 passenger van (Ford Transit XLT High Roof or similar) for service outlined in F(2) below; and
2. To amend Schedule F by adding:
Schedule F(2) to provide service between Halifax Stanfield International Airport and any point within Halifax Regional Municipality (HRM), one way and return.

III EVIDENCE

[7] A Notice of Public Hearing was issued to the parties on July 10, 2019. The public hearing was held on July 16, 2019, in the Board Hearing Room. Joshua Chabinka appeared on his own behalf. Prestige was represented by Thariq Ali and Titanic was represented by Paul McNeil, both respective owners/operators.

1. Applicant

[8] Mr. Chabinka testified on behalf of the Applicant. He stated that he purchased World Class about three years ago and he has been working on growing a business. He has three 14-passenger vans and one 15-passenger van which he says are “basically at capacity many days of the week”, and he is attempting to carve out a niche in the corporate market. He testified that his company does a lot of airport service

with flight crews. He has contracts with WestJet and United Airlines for the transportation of flight crews to and from the Halifax Airport. He testified that this is a really busy time of the year and flights have been added for the summertime due to the growing tourism business in Halifax. For the most part, he testified that he is able to handle all of the business that he has.

[9] Mr. Chabinka provided the Board with the manifest sheets from United Airlines and WestJet for the month of July highlighting the van runs. He testified that if the flight crew has more than five passengers, the airlines do not want an SUV; they want a 14-passenger van.

[10] When asked whether he had ever requested assistance from Prestige or Titanic, Mr. Chabinka testified that he had once, when his van broke down.

2. Objectors

[11] As noted earlier in this Decision, the Application was opposed by Prestige and Titanic. Thariq Ali testified on behalf of Prestige, while Paul McNeil testified on behalf of Halifax Titanic Historical Tours.

[12] Mr. Ali testified that the Applicant has never approached him for assistance with an extra van. He does not see the demand for an extra vehicle which the Applicant is seeking. While acknowledging that Mr. Chabinka called on Mr. McNeil, on one occasion, he argued that does not justify adding another 14-passenger vehicle.

[13] While Mr. Chabinka is “looking into the future”, Mr. Ali argued that this was speculative, and he has vehicles that can accommodate up to 14 people.

[14] Mr. Ali commented that there is not a demand for this vehicle at this moment and Mr. McNeil testified that “there’s a lot of vehicles out there”, adding that there are too many vehicles already in the market. He testified that he has a van sitting idle “lots of days and it is doing nothing”.

IV LAW

[15] In Nova Scotia, motor carrier transportation services are regulated under the *MC Act*. In general, the *MC Act* regulates motor carrier operators in Nova Scotia to ensure there is a quality, safe, sustainable industry in the Province. To accomplish this, the Board has been given the jurisdiction to regulate virtually all aspects of the Industry.

[16] The *MC Act* provides the following guidance to the Board on matters it may consider:

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.

[17] The *MC Act* requires the Board to balance, in each case, the various relevant issues and interests which may overlap and, at times, conflict. In the *Trius Inc.*

Decision, dated September 22, 1993, the Board described the s. 13 considerations as follows:

The Board has noted in previous decisions that the various considerations are not mutually exclusive. They tend to overlap and it is difficult at times to isolate one from another. The considerations will not be of equal importance in every application. The weight to be put on various considerations will depend on the facts of each application.

[18] In assessing an application, the Board considers the public interest; the quality and permanence of service to be offered; the general effect on other transportation services; and the sustainability of the industry, including whether there is a need for additional equipment in the area. Specifically, "need" is referenced in s. 13(a) by asking whether there would be an excess of equipment if the license or service was issued. The section considers whether there are vehicles currently licensed which could provide the services applied for. Is there a need for the services sought by the Applicant?

[19] The Applicant has the burden of proving that, after taking all relevant factors into consideration, the Application should be granted.

V ANALYSIS AND FINDINGS

[20] The Board has broad powers under the *MC Act* to regulate the public passenger carrier industry in the Province. Its powers extend to all aspects of the industry including regular commercial and irregular charter service.

[21] Pursuant to s. 13 of the *MC Act*, the Board must consider, among other factors, whether there will be an excess of equipment if the license is granted and whether there will be a detrimental effect on existing licensed carriers.

[22] The object of A World Class Limousine Company Limited, with this Application, is to transport persons in a 14-passenger capacity van, from the Airport to any point within HRM, one way and return.

[23] The Board is directed to consider, under the *MC Act*, how the proposed Application will affect those already licensed to provide transportation services in the Province. The sustainability of the motor carrier industry is one of the legislation's overriding directives.

[24] In *Stock Transportation Ltd.*, 2016 NSUARB 16 (CanLII), the Board commented on sustainability. While the decision dealt with motor coaches, it applies equally to vans. The Board observed:

[75] Nova Scotia has a relatively small population scattered throughout the Province, with the exception of Halifax and Sydney. The costs of investing in the Industry are high, *Trius Tours Ltd.*, 2003 NSUARB 71 (CanLII), at para. 62. The charter season is short, being less than six months, from approximately mid-May to the end of October, with a peak in September/October. The capital expenditures must be paid throughout the year, whether the vehicle operates the full 12 months. In addition, a carrier has other fixed costs such as rent, insurance, fixed labour and administration costs. Unlike some other provinces, motor carriers providing charter services in Nova Scotia receive no subsidization or tax relief ...

...

[78] Key components to achieving the objectives of the *MC Act*, including sustainability, are the Board's regulation of the number and types/sizes of vehicles operating in the Province, the location of the carriers, the areas in which the services are provided and the rates they charge. The interrelationship of these issues is briefly summarized below.

[79] Regulating the number of vehicles permitted to operate in the Province ensures the supply is not greater than the demand so that there is sufficient work available for licensed carriers to recover the costs of providing the transportation services, including their capital investment, and to make a profit. This is the first issue the Board is to consider under s.13(a) of the *MC Act*; that is, whether there would be an excess of equipment if the license is granted. [Emphasis added]

[25] Section 13(a) of the *MC Act* speaks to whether there would be an "excess of requirements" or **whether there is a need for the services sought.** [Emphasis added]

[26] Mr. Chabinka was asked by the Board whether he agreed with the comment that there is no demand (for his services) at the moment. He replied:

At the moment, I have not been, except for that one time that we called Mr. McNeil, I haven't been completely stuck. But, it could if, for example, WestJet sends me a new manifest for next month and there's another flight at the same time, I'd become very stuck suddenly. And obviously, with flight changes and delays and cancellations, it becomes even more of a logistical issue, right?

[Sound File 6:50-7:00]

[27] The Board agrees with Mr. Ali's comments that Mr. Chabinka's evidence, if anything, was "speculative". The Applicant provided no evidence of demand for his services that could not be met by existing carriers. He did not call potential clients as witnesses, nor did he provide lists of clients who were not served by other carriers. As there were no witnesses at the hearing, other than Mr. Chabinka, to speak on the Applicant's behalf, the Board has little evidence before it of the need for such equipment and, respectfully, attributes little weight to his argument.

[28] After considering the evidence in accordance with the provisions of s. 13 of the *MC Act*, the Board finds that the Applicant has not met the burden of proof to show, on a balance of probabilities, that the Board should approve the new authority. The Board accepts the evidence of those who object to the issuance of the amendment to the Motor Carrier License, and finds that there would be an excess of equipment if the proposed authority was granted to the Applicant, which would impair the sustainability of existing licensed carriers.

[29] Mr. Chabinka has failed to provide any evidence that A World Class Limousine Company Limited's 14-passenger vehicle is required in Nova Scotia to operate the service it seeks.

[30] Accordingly, the Board is not satisfied, having regard to the factors outlined in s. 13 of the *MC Act*, that it is in the public interest to approve this Application.

[31] As a result, the Application is denied.

[32] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 26th day of July, 2019.



David J. Almon