

**NORTH TYNESIDE COUNCIL v (1) PAUL THOMAS SHANKS (2) IAN GORDON SHANKS (3) JANE BELL (T/A BLUE LINE TAXIS) (2001)
DC (Latham LJ, Forbes J) 29/6/2001**

S.46, S.46(1)(a), S.46(1)(b), S.46(1)(e), S.46(1)(e)(i), S.46(1)(e)(ii), S.48, S.51, S.55, S.62(1)(a), S.80, S.80(2) LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976: APPEAL BY WAY OF CASE STATED: OPERATORS' LICENCES: TAXIS: CROSS BORDER HIRING: CONTROLLED DISTRICT: LICENSED DRIVERS: LICENSED VEHICLES: SUB CONTRACTS

HELD: Under a proper construction of s.46 and s.80, Local Government (Miscellaneous Provisions) Act 1976, whenever any operator acted by making provision for accepting bookings for the hire of vehicles he had to use vehicles and drivers licensed by his local authority.

Appeal by way of case stated by the justices for the Commission Area of Tyne and Wear acting in and for the Petty Sessional Area of North Tyneside in respect of their adjudication as a Magistrates' Court. Until 22 June 1999 the three appellants jointly held an operators' licence issued by North Tyneside Council pursuant to s.55 of the Local Government (Miscellaneous Provisions) Act 1976 ("the Act") trading as Blue Line Taxis (North Tyneside) in Wallsend. On 22 June 1999 North Tyneside Council pursuant to S. 62(1)(a) of the Act refused to renew that licence. Two of the three appellants also jointly held an operators' licence issued by Newcastle City Council pursuant to s.55 of the Act trading as Blue Line Taxis (Newcastle) in Gosforth.

Blue Line Taxis (North Tyneside) and Blue Line (Newcastle) mutually agreed to accept any bookings requested by the other through the shared booking system based at the office in Wallsend in 1996. It was contended by the appellants that their "cross border" hiring arrangement did not contravene the licensing provisions of the Act and that, on a proper construction of s.46 and s.80 of the Act, they, as an operator licensed in a controlled district, in this case North Tyneside, were obliged to make use of licensed drivers and licensed vehicles and entitled to make use of drivers and vehicles licensed in another controlled district. The issue arose over the proper construction of s.46 and s.80 of the Act.

The appellants argued that they were operating a bona fide subcontracting arrangement and that when they dispatched Newcastle licensed vehicles and drivers in response to bookings made through their North Tyneside office they were, in effect, dispatching them on behalf of Blue Line (Newcastle), a separate firm operating in a Newcastle controlled district. The justices found against the appellants.

The questions for the High Court from the justices were therefore-

- (i) were they correct in their finding that s.46(1)(e) of the Act must be read subject to the provisions of s.80(2) and that accordingly the appellants as holders of an operators' licence issued in North Tyneside should only operate in that controlled district vehicles and drivers licensed in North Tyneside by the respondent council;
- (ii) were they correct in rejecting the appellants' submission that "the references to licences in s.46(1)(e) (i) and (ii) should be construed, by virtue of the references to "the said section 48" and "the said section 51" in ss.46(1)(e) (i) and (ii) respectively, as references to licences issued by the council for the "controlled district" as referred to in s.46(1)(a) and (b), so that where an operator operated a vehicle in a controlled district, the vehicle and driver in question were not required to be licensed by the authority for the same district but were merely to be licensed by an authority in accordance with s.6(1)(a) and (b);

- (iii) were they correct in finding that when the appellants "sub-contracted" a booking for a vehicle to Blue Line Newcastle that the appellant operated the vehicle which undertook the booking within the meaning of s80 (1) of the Act;
- (iv) were they entitled to conclude, on the facts, that the appellants' business was conducted in contravention of s.46(1)(e) of the Act.

HELD- The same issue had been considered in the case of *Dittah y Birmingham City Council* (1993) RTR 356. Although the court was not strictly bound to follow the decision in *Dittah.*, that case was not decided per incuriam but was correctly decided. The central principle of the legislation had been that authorities responsible for granting licences should have proper control of the operators of private hire vehicles within their area. Although there may well have been advantages to the public gained by a more flexible approach to the legislation, there were good policy reasons for that approach not being taken, namely consistency and control over provision of private hire vehicles and authorities. The development in modern communication systems had in part tended to make the Act look too restrictive, but this was a matter to be dealt with by Parliament, not the court. The answer to the problem on the construction on s.46 (1) (e) was clear- whenever any operator acted by making provision for accepting bookings for the hire of vehicles he must use vehicles and drivers licensed by his local Authority. Consequently he could not obtain the use of vehicles or drivers licensed by another authority. Under those circumstances, the justices had come to a correct conclusion in law and each of the justice's questions were to be answered in the affirmative.

Appeal dismissed.

Cherie Booth QC and Deok Joo Rhee instructed by Nicolson Morgan for the appellants.

John McGuinness QC instructed by North Tyneside Council Legal Department for the respondent.