

**IN THE SENIOR COURTS OF BELIZE**

**IN THE HIGH COURT OF BELIZE**

**CLAIM No. CV 134 of 2022**

**BETWEEN:**

**[1] BRYANT WILLIAMS dba GRIGA LINE  
[2] JAMES WILLIAMS JR dba JAMES BUS LINE  
[3] BELIZEAN BUS ASSOCIATION**

Claimants

and

**[1] MINISTER OF YOUTH, SPORTS & TRANSPORT  
[2] TRANSPORT BOARD  
[3] THE ATTORNEY GENERAL  
[4] CHIEF TRANSPORT OFFICER  
[5] CHAIRPERSON OF TRANSPORT BOARD  
[6] CHIEF EXECUTIVE OFFICER OF THE MINISTRY OF  
YOUTH, SPORTS & TRANSPORT**

Defendants

and

**[1] FLORALIA LTD.**

Interested Party

**Appearances:**

Rt. Hon. Dean O. Barrow, S.C. and Darinka Muñoz for the Claimants  
Samantha Matute and Alea Gomez for the Defendants  
Wayne A. Piper for the Interested Party

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2023: May 16, 24

June 26

November 9  
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## JUDGMENT

- [1] **CHABOT, J.:** The claimants challenge the defendants' decisions to award road service permits to Floralia Ltd. ("Floralia") to operate bus runs along the Punta Gorda – Belize City route and the Independence – Belize City route. They also challenge the defendants' decision to deny Bryant Williams road service permits for runs he previously operated along the Dangriga – Belize City route. The claimants allege that the defendants failed to consider Floralia's and Bryant Williams' applications in accordance with the statutory regime in place. They also allege that they were denied their natural justice rights, that irrelevant factors were taken into consideration, and that the Transport Board abdicated its duty to consider and decide Floralia's and Bryant Williams' applications. The defendants maintain they acted fairly and in compliance with the statutory regime.
- [2] For the reasons set out in this judgment, the claim is granted. I find that, in coming to their decisions, the defendants failed to comply with the statutory requirements and breached the claimants' right to be heard. I also find that the Transport Board abdicated its duty to consider and decide Floralia's and Bryant Williams' applications. The decisions at issue are quashed and the applications are remitted to the Transport Board for their proper consideration. The claimants are awarded damages. In order to limit any hardship to the public, the orders in this judgment will take effect on 10<sup>th</sup> December 2023 at 12:01am.

### Background

- [3] The first claimant, Bryant Williams d.b.a. Griga Line ("Bryant Williams"), and the second claimant, James Williams Jr. d.b.a. as James Bus Line ("James Williams") are bus operators. The third claimant, the Belizean Bus Association (the "Association") is an autonomous corporate body that advocates for the rights of its member bus owners.
- [4] Bryant Williams operated his business along the Dangriga – Belize City route under a road service permit granted on 19<sup>th</sup> October 2013. The road service permit was issued in the name of Bryant Williams' family member, Calbert Williams Sr., now deceased.

Bryant Williams alleges that he was able to renew his road service permit, and acquire additional road service permits, up to 18<sup>th</sup> October 2021. He was then granted an extension from the Transport Board up to December 2021. The renewal applications for his road service permits were denied on or around 11<sup>th</sup> March 2022.

- [5] James Williams operated his business along the Punta Gorda – Belize City route under 14 road service permits issued in his name. According to the record, his road service permits were set to expire in June of 2023.
- [6] According to the claimants, in or around November 2021, Floralia started operating along the Punta Gorda – Belize City route. Floralia’s runs were within 15 to 30 minutes of Bryant Williams and James Williams’ runs. Around February 2022, Floralia began operating along the Independence – Belize City route. As a result of Floralia’s operations, Bryant Williams and James Williams allege they lost substantial revenues.
- [7] On or around 9<sup>th</sup> February 2022, Bryant Williams was informed that his road service permits for runs along the Dangriga – Belize City route would not be renewed. Bryant Williams contends that he had a legitimate expectation that the Transport Board would consider his renewal applications in accordance with the Motor Vehicles and Road Traffic Act<sup>1</sup> and the Regulations.<sup>2</sup>
- [8] The claimants allege that Floralia did not formally apply to the Transport Board for road service permits. Even if it did, these applications were not considered by the Transport Board in accordance with the Act and the Regulations. The dates of the Transport Board meetings at which these applications were considered were not published in the *Gazette* as required by the Regulations. Floralia’s road service permits have not been submitted to the Transport Board for consideration and approval. The claimants were thus deprived of an opportunity to raise any objections to Floralia’s applications.
- [9] The claimants further allege that the Minister of Youth, Sports & Transport (the “Minister”) made the unilateral decision to approve Floralia’s applications for road

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<sup>1</sup> Chapter 230 of the Laws of Belize, Rev. Ed., 2020 (the “Act”).

<sup>2</sup> Chapter 192 of the Subsidiary Laws of Belize, Rev. Ed. 2020 (the “Regulations”).

service permits. The Minister does not have the discretion to decide the grant of a road service permit under the Act or the Regulations, and as such the Minister acted outside of his lawful powers.

[10] The claimants challenge three decisions (together, the “Decisions”):

- a. The decision made on or around 24<sup>th</sup> November 2021 to award Floralia road service permits for runs along the Punta Gorda – Belize City route (the “First Decision”).
- b. The decision made on or around 9<sup>th</sup> February 2022 to award Floralia road service permits for runs along the Independence – Belize City route (the “Second Decision”).
- c. The decision made on or around 9<sup>th</sup> February 2022 to reject Bryant Williams’ applications for road service permits for runs along the Dangriga – Belize City route (the “Third Decision”).

[11] The Claimants seek the following reliefs:

- a. A declaration that the first, second and fifth defendants and the Ministry of Youth, Sports & Transport acted unlawfully and *ultra vires* by, inter alia, awarding road service permits, on or about 24<sup>th</sup> November 2021, for Punta Gorda to Belize City runs to Floralia in excess of their statutory powers, in breach of the Act, and in breach of the Regulations; by, albeit informally, in or around February, 2022 awarding Floralia a second road service permit for the Dangriga to Belize City Runs; and, via the Transport Board on 9<sup>th</sup> February 2022, by rejecting the first claimant’s renewal applications. These decisions, the claimants urge, are null and void.
- b. A declaration that the first, second, fourth, fifth and sixth defendants and their Ministry have not acted fairly towards the claimants, and have breached the rules of natural justice in making the Decisions to give Floralia routes and runs that are similar to, and merely half an hour or 15-minutes apart from, some of the first and second claimants’ routes and runs; that they have likewise acted unfairly and breached the rules of natural justice in not renewing the first claimant’s road service permits for runs between Dangriga and Belize City, but making instead the second and third decisions rejecting the first claimant’s renewal applications and giving those runs to Floralia and D-line. The claimants say that these decisions are null and void.
- c. A declaration that the first and fifth defendants have not acted fairly towards the third claimant and have breached basic rules of natural justice, the Act and the Regulations in making their decisions granting Floralia’s application for the Punta Gorda to Belize City Runs in a way that deprived the third claimant of the opportunity of reviewing Floralia’s supposed application for those runs; that

those defendants also breached fair play and the rules of natural justice by denying the third claimant the opportunity to participate in their second decision rejecting the first claimant's renewal application.

- d. A declaration that the second defendant wrongfully abdicated its duty to consider and decide Floralia's applications for road service permits, including the supposed application for the Punta Gorda to Belize City Runs and the application conflicting with the first claimant's renewal application for his Dangriga/Belize City road service permits, by allowing the Chairman of the second defendant and/or the Chief Transport Officer and/or the Minister to make the said decision.
- e. A declaration that the first and fifth defendants' decisions were not based on a consideration of relevant factors, did not afford the claimants an opportunity to be properly heard, and were not done by way of a statutorily required meeting of the second defendant Transport Board.
- f. A declaration that the first, second and fifth defendants acted unlawfully by failing to provide the first claimant an opportunity to be heard on his renewal application for road service permits for the Dangriga to Belize City and return runs, which permits he had held since 2013; and by failing to provide the second claimant an opportunity to make representations on Floralia's purported application for the Punta Gorda to Belize City and return runs.
- g. A declaration that the first, second, fifth and sixth defendants breached the first claimant's legitimate expectation that his renewal application for road service permits would be properly considered by the second defendant in accordance with the Act and Regulations.
- h. An order of certiorari to quash the decision made on 6<sup>th</sup> December 2021, by the first and second defendants and their Ministry, to award road service permits to Floralia for Punta Gorda/Belize City runs; and to quash Floralia's road service permits issued consequent upon, and pursuant to, that decision.
- i. An order of certiorari to quash the second decision to award road service permits to Floralia and D-line for the Dangriga to Belize City and return runs.
- j. An order of certiorari to quash the third decision to reject the first claimant's renewal applications.
- k. An order mandating that the second defendant consider, in accordance with the Act and Regulations, the first claimant's renewal application for the road service permits he previously held.
- l. An order that damages be assessed and paid for all the Claimants' losses suffered as a result of the first, second, fourth, fifth and sixth defendants' actions.

- m. Such further or other relief as this Honourable Court may deem just.
- n. Costs.

### **Issues for determination**

[12] The following issues must be determined:

- a. Whether the Decisions were unlawful because in making the Decisions:
  - i. The defendants acted in excess of their legal powers and in breach of the Act and the Regulations;
  - ii. The defendants acted in breach of the principles of natural justice;
  - iii. The second defendant abdicated its powers to the first, fourth and fifth defendants;
  - iv. The defendants considered irrelevant matters; and
  - v. The defendants breached the claimants' legitimate expectations.
- b. What reliefs are available to the claimants?

### **Analysis**

*Whether the Decisions were unlawful*

Whether the defendants acted in excess of their legal powers and in breach of the Act and the Regulations

[13] I find that the defendants acted *ultra vires* and in excess of their legal powers as the Decisions were made in breach of the provisions of the Act and Regulations.

[14] The Transport Board is a statutory body established under section 4 of the Act to, among other things, "consider and decide all applications for road service permits and other consents required to operate omnibuses". Under Regulation 206, "all applications shall be considered by the Department of Transport which shall have power to allow or disallow any application". Pursuant to subsection 4(7) of the Act, a reference to the Department of Transport in the Regulations is to be read and

construed as a reference to the Transport Board. The Transport Board is therefore the statutory body that is empowered to consider applications for road service permits made by bus operators.

- [15] Regulation 207 provides that the date of the meeting of the Transport Board at which an application is to be considered shall be published in the *Gazette* beforehand. Regulation 207, in relevant parts, reads as follows:

207. The date of the meeting of the Licensing and Transport Board to consider applications together with particulars of the applications to be considered shall be published beforehand in three consecutive issue of the *Gazette*, provided that when only applications for renewals of road service permits are to be heard the date of the meeting of the Board shall be published in one issue of the *Gazette*. In considering an application the Board shall have regard to the following –

[...]

(g) that the fares are so fixed as to prevent wasteful competition with alternative means of transport on the proposed routes or any part of them;

(h) any representations which may be made by persons who are already providing transport facilities along or near to the proposed routes or any part of them;

[...]

- [16] The defendants breached the applicable regulatory scheme in two respects: they failed to publish in the *Gazette* the dates of the Transport Board meetings at which Floralia's and Bryant Williams' applications were to be considered, and the Transport Board failed to consider and decide those applications.

- [17] In their fixed date claim form, the claimants allege that the First Decision to grant Floralia's road service permits for runs along the Punta Gorda – Belize City route was made on or around 24<sup>th</sup> November 2021. As this matter progressed and evidence came to light, the date of the meeting at which the First Decision was made became an issue in itself. The actual date of the meeting is relevant to determine whether or not the defendants complied with their duties under Regulation 207.

[18] In her first affidavit, Dian Vasquez, the Chief Transport Officer in the Department of Transport, Ministry of Youth, Sports & Transport stated that the meeting at which the Transport Board considered Floralia's applications for road service permits for runs along the Punta Gorda – Belize City route took place on 23<sup>rd</sup> November 2021. However, the minutes of the meeting exhibited in support of Ms. Vasquez's assertion are dated 12<sup>th</sup> November 2021. In her third affidavit, Ms. Vasquez stated that the meeting took place on 12<sup>th</sup> November 2021. Ms. Vasquez was cross-examined on this inconsistency at trial. In cross-examination, Ms. Vasquez maintained, contrary to what she stated in her most recent affidavit, that the meeting actually took place on 23<sup>rd</sup> November 2021 as stated in her first affidavit, and that the 12<sup>th</sup> November 2021 date as stated in her third affidavit and in the minutes of the meeting was an error – a mere "oversight". Ms. Vasquez was adamant that the Transport Board did not meet at all on 12<sup>th</sup> November 2021. She explained that 12<sup>th</sup> November 2021 was the original date planned for the meeting, but it had been rescheduled.

[19] I found Ms. Vasquez's explanation unconvincing. There is nothing to corroborate Ms. Vasquez's allegation that the meeting took place on 23<sup>rd</sup> November 2021. The minutes of the meeting, which were taken by a note-taker contemporaneously to the meeting, are dated 12<sup>th</sup> November 2021. Ms. Vasquez admitted that the minutes of Transport Board meetings are reviewed and approved at the next meeting. The minutes of the November meeting were reviewed at the December meeting. The date was not corrected in the minutes because, according to Ms. Vasquez, the Transport Board was more focused on the content of the minutes. I note that, under subsection 4(9) of the Act, "the Secretary to the Board shall maintain proper records of the proceedings of the Board". The minutes are evidence of what has transpired at the meeting.

[20] Ms. Vasquez's allegation that the meeting took place on 23<sup>rd</sup> November 2021 is also contradicted by two witnesses in this matter, Thomas Shaw ("Mr. Shaw") and Byron Sanchez ("Mr. Sanchez"). Mr. Shaw is the president of the Belizean Bus Association (the "BBA"), and in that capacity he sits as a member of the Transport Board. In his second affidavit, Mr. Shaw stated that the Transport Board did not meet on 23<sup>rd</sup> November 2021 as alleged by Ms. Vasquez, but on 12<sup>th</sup> November 2021. Mr. Sanchez

is the Chairman of the Transport Board. In his first affidavit, Mr. Sanchez stated that the meeting took place on 12<sup>th</sup> November 2021. In cross-examination, he confirmed that he was “positively sure” that the meeting took place on that day. On the evidence, I find that the meeting took place on the 12<sup>th</sup>, and not on the 23<sup>rd</sup> of November 2021 as asserted by Ms. Vasquez. The internal contradictions in Ms. Vasquez’s own evidence undermine her credibility.

[21] In her first affidavit, Ms. Vasquez deposed that after receiving, on 20<sup>th</sup> October 2021, two applications from Floralia for road service permits for runs along the Punta Gorda – Belize City route, “the Transport Board caused to be published in the Government Gazette in three consecutive issues, dated the 30<sup>th</sup> day of October, 2021, and 6<sup>th</sup> day of November, 2021, and the 13<sup>th</sup> day of November, 2021, the date of the meeting of the Transport Board to consider the applications submitted by Floralia Limited”. The documents exhibited by Ms. Vasquez do not support this assertion. None of the three publications in the *Gazette* indicate the date of the Transport Board meeting at which Floralia’s applications would be considered. In addition, having found that the meeting of the Transport Board at which Floralia’s applications were allegedly considered took place on 12<sup>th</sup> November 2021, the third publication was made the day after the meeting. The date of the meeting was therefore not published in three consecutive issues of the *Gazette* “beforehand”, as required by Regulation 207 and as alleged by the defendants.

[22] The two road service permits awarded to Floralia for runs along the Punta Gorda – Belize City route were amended in February 2022 to address scheduling conflicts. These road service permits were also extended until 31<sup>st</sup> May 2022, as the original permits awarded in November 2021 were only temporary until 28<sup>th</sup> February 2022. There is no evidence of these amendments and extensions coming to the Transport Board for consideration and approval, and therefore no evidence of any publication in the *Gazette* in relation to these amendments and extensions.

[23] Similarly, the date of the Transport Board meeting at which it allegedly considered Floralia’s application for a road service permit for a run along the Independence –

Belize City route was not published in three consecutive issues of the *Gazette* as required by Regulation 207. The court noted with skepticism discrepancies in the evidence of both witnesses called on behalf of the defendants. In her first affidavit, Ms. Vasquez states that the Transport Board approved this application on 12<sup>th</sup> March 2022. The Transport Board did not meet on 12<sup>th</sup> March 2022; it met on 10<sup>th</sup> March 2022. The publications in the *Gazette* exhibited in Ms. Vasquez's first affidavit are dated 12<sup>th</sup> February 2022, 19<sup>th</sup> February 2022, 26<sup>th</sup> February 2022, and 5<sup>th</sup> March 2022. None of these four publications mention Floralia, let alone indicate the date of a Transport Board meeting at which Floralia's application would be considered.

[24] On the other hand, Mr. Sanchez states in his first affidavit that the Transport Board met and approved Floralia's application on 10<sup>th</sup> March 2022. He further states that the date of the Transport Board meeting at which Floralia's application was to be considered was published in three consecutive issues of the *Gazette* dated 5<sup>th</sup> March 2022, 12<sup>th</sup> March 2022, and 19<sup>th</sup> March 2022. They are not the same dates as those provided by Ms. Vasquez, and if the court is to believe Mr. Sanchez, then two of the three publications were made *after* the 10<sup>th</sup> March 2022 meeting took place. These three *Gazette* publications were exhibited in Mr. Sanchez's first affidavit. The three publications relate to Floralia's applications for runs from Punta Gorda to Belize City and back, not from Independence to Belize City and back as asserted by Mr. Sanchez. In addition, none of the publications mention the date at which the Transport Board meeting was to take place, in breach of Regulation 207.

[25] The discrepancies between Ms. Vasquez and Mr. Sanchez's evidence, and the fact that the documents exhibited in support of their evidence clearly contradict their testimonies, is troubling. In presenting their evidence in this matter, the defendants either made clear mistakes or attempted to mislead the court. Either way, these discrepancies and contradictions did not go unnoticed, and seriously damaged the defendants' credibility in the eyes of the court.

[26] Also troubling is Ms. Vasquez's admission in her third affidavit that the *Gazette* publications which she asserted in her first affidavit indicated the dates of the Transport Board meetings, did not in fact do so. Ms. Vasquez states:

20. The date of the meeting of the Transport Board is not put in any of the *Gazette* notices because it is difficult to indicate which date the Transport Board will be meeting. Indeed, the Transport Board has met at least monthly, but the dates are not consistent for example the meetings have been November 12, 2021, December 9, 2021, January 21, 2022, February 9, 2022, and March 10, 2022. There are several reasons why a meeting may not take place on a particular date, and it would need to be changed, thus, a date is not specified in the *Gazette*.

[27] This admission is troubling because, in addition to contradicting her own evidence, Ms. Vasquez admits to the Transport Board breaching Regulation 207. The publication requirement in Regulation 207 is mandatory: "the date of the meeting of the Department of Transport to consider applications together with particulars of the applications to be considered shall be published beforehand in three consecutive issues of the *Gazette*". The defendants lack the discretion not to publish the date of the Transport Board meeting in the *Gazette*, whatever the reason for doing so may be. The court will note that Ms. Vasquez's statement that it is "difficult to indicate which date the Transport Board will be meeting" because the dates of the meetings are "not consistent" confirms why the publication requirement is so important. If the Transport Board itself does not know in advance when it will meet, how are persons wishing to make representations at a meeting supposed to know when they can do so?

[28] In addition to breaching the publication requirement, the defendants breached subsection 4(7) of the Act, and Regulations 206 and 207, by failing to consider and decide Floralia's applications for runs. The statutory scheme requires the Transport Board to "consider and decide all applications for road service permits and other consents required to operate omnibuses". For a road service permit to be lawfully issued, therefore, there needs to be first, an application, second, some consideration by the Transport Board, and third, a decision by the Transport Board.

[29] The evidence does not establish, on a balance of probabilities, that the Transport Board considered and decided Floralia's applications for road service permits for runs

along the Punta Gorda – Belize City route (i.e. the First Decision). As noted above, on 20<sup>th</sup> October 2021, Floralia filed two applications for those runs, one for a 5:30 am departure and return journey from Mondays to Saturdays, and one for a 7:30 am departure and return journey from Mondays to Sundays. The evidence does not establish that these applications were considered and decided by the Transport Board at its 12<sup>th</sup> November 2021 meeting, or at all. The minutes of the 12<sup>th</sup> November 2021 meeting were provided to the court. The minutes do not list those applications as having been discussed by the Transport Board at the meeting. The only mention of Floralia in the minutes can be found under “New Business”, where it is noted that “Mr. Shaw also enquired about 2 new runs for Floralia Ltd. from Punta Gorda to Belize City”. In evidence, Mr. Shaw noted that his inquiry was as a result of seeing Facebook posts advertising Floralia’s services when these services had not been approved by the Transport Board. In the “Decision/Action” column of the minutes, it is noted that the “Chair mentioned that Floradia (*sic*) runs are not affecting any of James time slot. They will need to adjust the time on their application”. The Chairman’s indication that Floralia would have to adjust the time on their application suggests that the applications had not yet been approved.

[30] According to all of the witnesses, including Mr. Shaw who was cross-examined at the trial, approvals for runs are not always noted directly in the minutes of Transport Board meetings, but in “matrices” which accompany the agendas for the meetings. Item 4.0 of the minutes of the 12<sup>th</sup> November 2021 meeting titled “Vetting of Applications” does refer to “annexes” which show “Renewal Applications for Approval” and “New Applications for be gazette (*sic*)”. Matrices were exhibited in Ms. Vasquez’s first affidavit. The document is titled “Department of Transport, New Road Service Permit Application for Final Approval”. There are columns showing the date each application recorded in the matrices was received, as well as the name on the application and the proposed schedule for the runs applied for. The matrices show a “comments” column which is used to record the Transport Board’s decisions. When looking at that column, one can see various applications being approved, not approved, deferred, or amendments being requested. Floralia’s applications dated 20<sup>th</sup> October 2021 for runs along the Punta Gorda – Belize City route appear on the matrix for vetting on 11<sup>th</sup>

November 2021. The “comments” column next to both of these applications is empty. No Transport Board decision is recorded for these applications. There is no evidence that these applications were actually tabled at the meeting, let alone approved by the Transport Board. This is consistent with Mr. Shaw’s evidence that they were not. Yet, Floralia was issued road service permits for those runs.

[31] Similarly, with respect to the Second Decision, there is no evidence that the Transport Board approved Floralia’s application for a road service permit for a run along the Independence – Belize City route on or around 9<sup>th</sup> February 2022. The court was provided with Floralia’s application for this run departing from Mango Creek (later amended to Independence) at 4:30 am and back. The application was referred to at the 21<sup>st</sup> January 2022 meeting of the Transport Board, where the Chairman noted that Floralia was applying for the run. The minutes of the 9<sup>th</sup> February 2022 Transport Board meeting make no mention of Floralia. The matrix provided to the court for applications to be vetted on 9<sup>th</sup> February 2022 shows that Floralia applied for those runs on 3<sup>rd</sup> January 2022, but again the “comments” column next to this application is empty. The defendants’ own evidence contradicts their contention that the application was considered and approved by the Transport Board.

[32] That Floralia’s applications were never tabled at a Transport Board meeting is implicitly confirmed in the minutes of the 10<sup>th</sup> March 2022 meeting of the Transport Board, which record the following exchange:

Mr. Shaw, Member and president of the BBA stated that the Floralia permits never came to the board for vetting.

Chairman, Mr. Sanchez made mention to Mr. Shaw’s Coastal Road run, stating that, that run also never came to the board for vetting [emphasis added].

[33] The use of the word “also” suggests that Floralia’s applications never came to the Transport Board for vetting, and implies that it is not uncommon for runs to be awarded without having been vetted by the Transport Board, in breach of the applicable legislation.

[34] I therefore find that the defendants breached the Act and the Regulations in respect of Floralia's applications for runs along the Punta Gorda – Belize City route, and for a run along the Independence – Belize City route. The dates of the Transport Board meetings at which these applications were to be considered were not published in three consecutive issues of the *Gazette*, and the applications were not considered and decided by the Transport Board. The First and the Second Decisions are unlawful.

[35] As for the Third Decision, the evidence shows that Bryant Williams' applications for road service permits for runs along the Dangriga – Belize City route were discussed, but not formally considered and decided by the Transport Board. The record shows that Bryant Williams made two applications: one for a 5:30 am run from Dangriga to Belize City and back dated 13<sup>th</sup> January 2022, and another for a 5:00 am run from Dangriga to Belize City and back dated 24<sup>th</sup> February 2022. Bryant Williams' applications are referred to at the 10<sup>th</sup> March 2022 Transport Board meeting as having been "brought up" at the previous meeting. The minutes state as follows (under Item 3.0 New Business):

The issue of Mr. Bryant Williams bus runs that were being ran for the deceased, Mr. Calbert Williams were brought up by the chairman.

Mr. Shaw stated that, yes, the said runs were brought up in the last board meeting. He also stated that he did not object. But, he says, that does not mean the decision was made by all members.

Mr. Shaw states that the board should consider Mr. Bryant Williams position, as he has been doing the run for an extended period of time.

Ms. Lily stated that that is considered an illegal run.

Chairman, Mr. Sanchez stated that no matter how long a bus operator has a run, he/she is not entitled to it.

All other members were and still are in agreement with the changes.

At this present board meeting Mr. Shaw states that he is not in agreement.

Mr. Peters, Member also confirmed that the board agreed unanimously on the said issue.

Mr. Peters, Member stated that when Mr. Calbert Williams had died the board had no idea that Mr. Bryant Williams was doing the run for him.

After Mr. Calbert's death, Bryant continued the run. The run was continued even after the permit had expired.

- [36] While the minutes of the 10<sup>th</sup> March 2022 Transport Board meeting show that Bryant Williams' applications were discussed by the Transport Board, these applications do not appear on the matrices of applications to be considered at either the 9<sup>th</sup> February or the 10<sup>th</sup> March 2022 meeting. The minutes of the 9<sup>th</sup> February 2022 meeting do not record a decision being made on Bryant Williams' 13<sup>th</sup> January 2022 applications. The minutes of the 10<sup>th</sup> March 2022 meeting do not record a decision being made on Bryant Williams' 24<sup>th</sup> February 2022 application. In addition, there is no evidence of any *Gazette* publications prior to these applications being considered. The *Gazette* publications exhibited in Ms. Vasquez's first affidavit date back to January and February 2021, one year before the applications at issue in this matter were made. As such, the defendants breached the publication requirement in Regulation 207, and failed to prove, on a balance of probabilities, that the applications were considered and decided by the Transport Board. The Third Decision is unlawful.

Whether the defendants acted in breach of the principles of natural justice

- [37] I find that the defendants' failure to meet the publication requirement in Regulation 207, and the claimants' corresponding inability to make representations before the Transport Board before each Decision was made, breached the claimants' rights to natural justice.

- [38] Regulation 207(g) provides that in considering an application for a road service permit, the Transport Board "shall have regard to [...] (g) any representations which may be made by persons who are already providing transport facilities along or near to the proposed routes or any part of them". The use of the word "shall" in Regulation 207(g) signals that the Transport Board has a *duty* to hear from those who already provide services along or near proposed routes and wish to be heard. The right of these service providers to be heard is given effect by the publication requirement in Regulation 207, which exists to ensure that they are notified of their opportunity to do so.

[39] As noted by the Caribbean Court of Justice (“CCJ”) in **Froylan Gilharry Sr. d.b.a. Gilharry’s Bus Line v Transport Board et al.**,<sup>3</sup> Regulation 207(g) ensures that in performing its work, the Transport Board meets the minimum standard of procedural fairness and due process owed to those who may be affected by its actions:

[34] The common law imposes minimum standards of procedural fairness and due process which are now accepted as an additional limb to principles of natural justice. There are no rigid or universal rules as to what is needed to be procedurally fair. What is fair in relation to a case, depends on the circumstances of that case. There is a presumption that procedural fairness is required whenever the exercise of a power adversely affects an individual’s rights protected by common law or statute. This presumption is even stronger where licences are to be revoked, varied, suspended or refused, especially if these licences embody some form of property which is a fundamental right protected by the Constitution.

[35] The primary consideration in deciding whether there is a right to be heard in a particular instance, is fairness. Moreover, the question whether there is a right to be heard in an administrative process may be subsumed in the broader question of whether the course of action adopted by the decision-maker was fair. But what is fair? It is a very broad concept that might require some mapping exercise in the field of administrative law, for example by focusing on principles of proper and fair administration, such as the duty to apply due care when preparing a decision or the principle of proportionality.

[36] In this case, we need not explore these principles too much as the duty to allow an “old” bus operator an opportunity to make a representation, surely one that goes beyond a simple group consultation, is laid down in regulation 207(g) which requires the Board to have specific regard to “any representations which may be made by persons who are already providing transport facilities along or near to the proposed routes or any part of them. [emphasis added]<sup>4</sup>

[40] It is not disputed that Bryant Williams and James Williams provided services along or near Floralia’s proposed routes. By failing to publish the date of the Transport Board meetings at which Floralia’s applications would be considered, the Transport Board breached Regulations 207(g) because it deprived Bryant Williams and James Williams of their opportunity to make representations.

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<sup>3</sup> [2017] CCJ 11 (AJ) (“Gilharry”).

<sup>4</sup> Gilharry at paras. 34-36.

[41] I disagree with the defendants' contention that the claimants had an opportunity to be heard through Mr. Shaw who, as president of the BBA, sits on the Transport Board and could raise their concerns. Having found that Floralia's applications were not considered by the Transport Board, it follows that Mr. Shaw did not have a formal opportunity to raise concerns on behalf of the BBA. In any event, Regulation 207(g) is clear; the opportunity is given to "persons who are already providing transport facilities along or near to the proposed routes" to make representations. The right to be heard is individually given to each service provider. As I noted in the decision granting leave to apply for judicial review, Mr. Shaw sits on the Transport Board as a representative of the industry. As in any industry, the interests of the whole may differ from those of individual transport service providers:

61. The Court rejects the notion that the Third Applicant's membership on the Transport Board is sufficient to meet the requirements in Regulation 207(h) (*sic*). Regulation 207(h) (*sic*) states that the Transport Board will consider "any representations which may be made by persons who are already providing transport facilities along or near to the proposed routes or any part of them". Regulation 207 does not limit the right to make representations to the lone representative of the public transport providers who sits on the Transport Board. That is so because the interests of individual transport providers may differ from those of the whole. The First and Second Applicants had a right to make individual representations before the Transport Board, a right which they claim they were unable to exercise given the lack of notice of the dates of the relevant Transport Board meetings [emphasis added].<sup>5</sup>

[42] Bryant Williams was also denied his right to be heard on his applications for runs along the Dangriga – Belize City route. As noted above, while there is some evidence that the Transport Board discussed those applications at its 9<sup>th</sup> February and/or 10<sup>th</sup> March 2022 meetings, the date of the meeting at which the applications were to be considered by the Transport Board was never published in the *Gazette*, and the applications did not appear on the matrices of applications to be vetted at either of these meetings. The Transport Board's consideration of Bryant Williams' applications appears to have been quite informal. While the parties dispute whether Bryant Williams had or did not have a legitimate expectation that the applications would be granted because Bryant

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<sup>5</sup> Decision on application for permission to apply for judicial review dated 20<sup>th</sup> September 2022 at para. 61.

Williams previously had carriage of these runs on behalf of his family member Calbert Williams, Regulation 206 provides that “all applications shall be considered” by the Transport Board. The merits of Bryant Williams’ applications were therefore irrelevant to the issue of publication and the opportunity to make representations. Bryant Williams already provided services on the proposed route. He therefore had a right to be heard by virtue of Regulation 207(g). There is no evidence that Bryant Williams was notified of the date of the meeting at which he could make representations.

[43] I do not find it necessary or appropriate to consider whether the defendants breached the claimants’ right of natural justice by awarding Floralia routes and runs that are similar to, and close in time to Bryant Williams’ and James Williams’ runs, and in rejecting Bryan Williams’ renewal applications for road service permits for runs along the Dangriga – Belize City route. It is trite law that judicial review is a challenge to the way in which a decision has been made, not of the rights and wrongs of the conclusion reached. In my view, the relief sought by the claimants on this issue relates to the outcome of the defendants’ decisions, and cannot therefore be granted as prayed by the court.

Whether the second defendant abdicated its powers to the first, fourth and fifth defendants

[44] Having found that the Transport Board did not consider and decide Floralia’s and Bryant Williams’ applications, it follows that some other entity or person usurped the Transport Board’s function in awarding Floralia the road service permits it sought and in denying Bryant Williams his applications for road service permits. As noted by the CCJ in **Gilharry**:

It is trite law that where a decision maker is granted the power under legislation to make a decision, it must make that decision itself and cannot allow itself to be dictated to on what to decide nor should it abdicate its responsibility to another person or body. The decision maker can solicit the opinions of others as well as other information on the subject so long as it does not allow a decision to be dictated to it.<sup>6</sup>

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<sup>6</sup> Gilharry at para. 24.

[45] While the claimants suggest that the Transport Board abdicated its powers in favour of the Minister, the Chief Transport Officer, and the Chairperson of the Transport Board, the evidence does not sufficiently establish who ultimately made the Decisions. Floralia's road service permits are signed by Mr. Sanchez as Chairman of the Transport Board, and Ms. Vasquez as Chief Transport Officer, but it is unclear who directed them to sign those permits, if the decision was not made by them. Insufficient evidence has been led to establish that the Minister had a hand in the matter. The Minister's declaration in the media that "Floralia is here to stay", while telling, is by itself insufficient to conclude on a balance of probabilities that the Minister personally directed the road service permits to be awarded to Floralia. As a result, the court will issue a declaration that the Transport Board abdicated its powers, but will refrain from declaring in favour of whom those powers were abdicated.

#### Whether the defendants considered irrelevant matters

[46] The court will also refrain from issuing a declaration that the defendants considered irrelevant matters in coming to the Decisions. Given the lack of a record of Floralia's and Bryant Williams' applications being considered and decided upon by the Transport Board in accordance with the Act and the Regulations, there is little evidence to support what matters may have been considered by those who ultimately made the decisions to award or deny those road service permits. Based on the evidence presented, I am only able to find that the Transport Board failed to consider relevant matters.

#### Whether the defendants breached the claimants' legitimate expectations

[47] I find that the defendants breached the claimants' legitimate procedural expectations that the Transport Board would comply with the applicable regulatory scheme. As noted above, section 4 of the Act, and Regulations 206 and 207, require that all applications be considered and decided upon by the Transport Board. Regulation 207(g) also requires the Transport Board to consider any representations made by persons who are already providing transport facilities along or near to the proposed

routes. These mandatory provisions were not complied with, in breach of the claimants' legitimate expectations.

[48] A lot has been said and written by the parties in respect of Bryant Williams operating Calbert Williams' runs before the latter's passing, and whether Bryant Williams was entitled to the renewal of Calbert Williams' road service permits in his own name. I do not find it necessary to delve very deeply into the issue. The evidence does not establish that the defendants made any clear and unambiguous promise or representation to Bryant Williams that the road service permits he operated on behalf of Calbert Williams would be renewed. Bryant Williams therefore cannot claim he had a substantive legitimate expectation that his applications would be granted and the road service permits renewed. However, like any applicant for road service permits, Bryant Williams had a legitimate procedural expectation that his applications would be fairly considered by the Transport Board in accordance with the Act and the Regulations. Regulation 213(3) provides that road service permits are renewable on application. Thus, whether Bryant Williams legally operated Calbert Williams' runs or not, and whether his applications are for new road service permits or for the renewal of existing road service permits, Bryant Williams was entitled to present his applications to the Transport Board and to have those applications considered and decided by the Transport Board fairly and in accordance with the regulatory scheme. Bryant Williams' legitimate procedural expectation that they would be considered has been breached.

*What reliefs are available to the claimants?*

[49] The Decisions were made in breach of the Act and the Regulations. The Transport Board abdicated its duty to consider and decide Floralia's and Bryant Williams' applications, and deprived the claimants of their right to be heard. The Decisions cannot stand. The proper remedy is to issue an order of *certiorari* quashing the Decisions and remitting them to the Transport Board for reconsideration in accordance with the regulatory regime in place.

[50] Floralia argues that granting the relief sought “at this late stage” would lead to administrative chaos because there would be either no operators on the licensed routes, or multiple operators operating without a licence. I decline to revisit the issue of delay as Floralia invites the court to do. In my decision granting the claimants permission to apply for judicial review, I specifically addressed the issue of delay, finding that “although the Application was not brought within three months from the date when the grounds for application first arose, the delay was not unreasonable in the circumstances and there are good reasons for extending the period within which the Application can be made”.<sup>7</sup> The delay in bringing the application for permission to apply for judicial review was only 12 days after the three-month time limit provided for in the Supreme Court (Civil Procedure) Rules, 2005 (the “CPR”). I found there were good reasons for extending the time to bring the application because the claimants had not been informed of the decision to award Floralia road service permits until Floralia began its operations in December of 2021. The delay between the filing of the claimants’ application for permission to apply for judicial review and the present judgment on the merits of the claimants’ claim in judicial review does not change its ultimate result. Whether the present judgment had been rendered a month, a year, or 5 years after Floralia was awarded road service permits, quashing the Decisions means that Floralia’s road service permits are invalid. The delay is therefore not, in itself, a sufficient justification to deny the claimants this relief.

[51] The court, however, acknowledges that issuing the order of *certiorari* and quashing the First and Second Decisions is likely to create hardship for Belizeans relying on Floralia to attend work or school, or meet their other transportation needs. In order to minimize any hardship to the public and allow the Transport Board to make any adjustments necessary to ensure continuity of service along the affected routes pending the proper consideration of Floralia’s and Bryant Williams’ applications, the court will order that the orders in this judgment are to take effect on the 31<sup>st</sup> day after

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<sup>7</sup> Decision on application for permission to apply for judicial review dated 20<sup>th</sup> September 2022 at para. 36.

its release. The orders in this judgment will therefore take effect on 10<sup>th</sup> December 2023 at 12:01am.<sup>8</sup>

[52] In their fixed date claim form, the claimants seek an order “that damages be assessed and paid for all the Claimants’ losses suffered as a result of the First, Second, Fourth, Fifth and Sixth Defendants’ actions”. The damages sought by Bryant Williams and James Williams are particularized in their respective affidavits. I find that Bryant Williams and James Williams are entitled to damages. I decline, for now, to order damages in the sums stated in their affidavits, and order that damages be assessed pursuant to Part 16 of the CPR. The court will therefore remain seized of this matter until determination of the issue of damages.

#### **IT IS HEREBY DECLARED AND ORDERED THAT**

- (1) The Claim is granted;
- (2) The defendants acted unlawfully and *ultra vires* the Act and the Regulations in awarding Floralia Ltd. road service permits dated 24<sup>th</sup> November 2021 for Punta Gorda to Belize City runs and 9<sup>th</sup> February 2022 for Independence to Belize City runs, and in rejecting Bryant Williams’ applications for road service permits for Dangriga to Belize City runs;
- (3) The defendants breached the claimants’ statutory and natural justice right to be heard when making the Decisions;
- (4) The Transport Board abdicated its duty to consider and decide Floralia’s and Bryant Williams’ applications for road service permits;
- (5) The defendants breached the claimants’ legitimate expectation that Floralia’s and Bryant Williams’ applications be considered in accordance with the Act and the Regulations;
- (6) An order of *certiorari* is issued quashing the Decisions and remitting Floralia’s and Bryant Williams’ applications to the Transport Board for consideration and decision in accordance with the Act and the Regulations;
- (7) Bryant Williams and James Williams are awarded damages, the quantum of which shall be assessed pursuant to Part 16 of the CPR;

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<sup>8</sup> For an example of a court declaring that an order for *certiorari* quashing a decision is to take effect at a later date, see *R v Licensing Justices of Biggleswade ex parte Sloan* [1984] Lexis Citation 578.

- (8) The orders in this judgment shall take effect on 10<sup>th</sup> December 2023 at 12:01am;
- (9) The court remains seized of this matter until determination of the issue of damages;
- (10) Costs are awarded to the claimants.

**Geneviève Chabot**  
High Court Judge