



**DECISION**

**IN THE MATTER of a Review of Licence  
Number 4182 granted to DRL Coachlines Limited  
and IN THE MATTER of the  
*Motor Carrier Act, R.S.N.B. 1973, c. M-16***

**March 30, 2006**

**NEW BRUNSWICK  
BOARD OF COMMISSIONERS OF PUBLIC UTILITIES**

IN THE MATTER of subsection 7(2) of the *Motor Carrier Act*, R.S.N.B. 1973, c. M-16 and the amendments thereto;

AND IN THE MATTER of the review of motor carrier license number 4182 granted to DRL Coachlines Limited;

New Brunswick Board of Commissioners of Public Utilities:

Chair: Mr. David C. Nicholson, esq.

Vice Chair: Mr. David Nelson

Commissioners: Mr. Jacques Dumont  
Mr. Randy Bell

Secretary: Ms. Lorraine Legere

Counsel:

DRL Coachlines Limited: D. Kevin Burke, esq.

Board Counsel: Ellen C. Desmond, esq.

## **DECISION**

In October of 2005, Ruth Roberts-Tedford, President of DRL Coachlines Limited (hereinafter “DRL”) was provided with correspondence and supporting documentation which enumerated the allegations to be considered during a review of DRL’s motor carrier licence, pursuant to subsection 7(2) of the *Motor Carrier Act*, R.S.N.B. 1973 c.M-16.

At the outset of the hearing, the New Brunswick Board of Commissioners of Public Utilities (the “Board”) advised counsel on two items:

- (a) that any personal opinions expressed by Board staff in the supporting documentation or in memorandums would be disregarded; and
- (b) that while the Board was aware that DRL’s license had been cancelled in Nova Scotia, the Board had not read the Nova Scotia decision and it would have no impact on the hearing in New Brunswick or the Board’s deliberations.

The two day hearing commenced on December 13<sup>th</sup> 2005, at which time the Board heard evidence from Mr. Javis Roberts, Chief Executive Officer of DRL. On December 14<sup>th</sup>, 2005, counsel for DRL sought an adjournment so that his client could review the transcript and determine if there was any additional evidence to be presented. The hearing reconvened on January 30<sup>th</sup>, 2006, at which time Mr. Roberts gave further evidence. In addition, on January 30<sup>th</sup>, 2006, the Board had the benefit of evidence from Mr. John Harding, Assistant General Manager of DRL and Mr. Charles Wallace, employee of Universal Truck & Trailer in Saint John, New Brunswick.

The following allegations were the subject of the hearing:

#### Allegation #1

On or about March 17, 2004, DRL did, on three occasions, violate section 12.2(1) of the *Gasoline and Motive Fuel Tax Act*, R.S.N.B. 1973, c. G-3, by acting as an interjurisdictional carrier without being properly registered.

#### Allegation #2

On or about October 27, 2004, DRL did, on two occasions, violate section 12.2 of the *Motor Carrier Act (supra)* by operating a public motor bus without having a copy of the motor carrier licence authorizing the operation of that vehicle in its immediate possession or in a readily accessible place in that vehicle.

#### Allegation #3

On or about July 27<sup>th</sup>, 2005, DRL did violate section 250(2) of the *Motor Vehicle Act*, R.S.N.B. c. M-17, by operating a vehicle or permitting a vehicle to be operated after receiving an Order from the Registrar of Motor Vehicles under section 248(5) of the *Motor Vehicle Act (supra)* to take any bus being operated in New Brunswick to an official testing station and to have the vehicle and equipment tested at the station and to have repaired any equipment that upon testing is found not to comply with the requirements of the *Motor Carrier Act (supra)* or its regulations.

#### Allegation #4

On or about August 3<sup>rd</sup>, 2005, DRL failed to comply with directions issued by the Board and failed to provide details concerning New Brunswick contracts including the complete listing of all contracts with dates, times and departure locations contrary to section 7(5) of the *Motor Carrier Act (supra)*.

#### Allegation #5

On or about September 21<sup>st</sup>, 2005, DRL did violate the *Motor Carrier Act (supra)* by operating a public motor bus without having a copy of the motor carrier license authorizing the operation of that vehicle in its immediate possession or in a readily accessible place in that vehicle.

#### Allegation #6

On our about September 21<sup>st</sup>, 2005, DRL did violate section 250(2) of the *Motor Vehicle Act (supra)* by operating a vehicle or permitting a vehicle to be operated after receiving an Order from the Registrar of Motor Vehicles under section 248(5) of the *Motor Vehicle Act (supra)* to take any bus being operated in New Brunswick to an official testing station and to have the vehicle and equipment tested at the station and to have repaired any equipment that upon testing is found not to comply with the requirements of the *Motor Carrier Act (supra)* or its regulations.

#### Allegation #7

On numerous dates since the issuance of license 4182, DRL has been operating as an extra-provincial corporation and has been carrying on business in New Brunswick without having been registered to carry on business in New Brunswick contrary to section 196(1) and section 214(1) of the *Business Corporations Act*, S.N.B. 1981, c. B-9.1.

#### Allegation #8

On numerous dates since the issuance of licence 4182, DRL has been uncooperative and has wilfully disregarded requests for information that have been made by the staff of the Board.

The Board has carefully considered all of the evidence presented and the submissions of counsel. The Board finds as follows in relation to these allegations:

Allegation #1

It has been alleged that, on three occasions, DRL did violate section 12.2(1) of the *Gasoline and Motive Fuel Tax Act (supra)*. In support of this allegation, the Board was provided with copies of three tickets issued to three individuals on March 17, 2004, all of whom were operating buses for DRL.

In response to this allegation, the evidence of Mr. Roberts was that these tickets relate to the Interjurisdictional Fuel Tax Association (“IFTA”) and the need for all motor carriers to have current IFTA stickers while travelling in the Province of New Brunswick.

Mr. Roberts testified that when it came to DRL’s attention that their IFTA stickers were expired, DRL took immediate action and had temporary permits issued. Thereafter, these temporary permits were faxed to the various inspection stations in New Brunswick and telephone calls were made to the inspection stations to explain the situation. Unfortunately, as Mr. Roberts testified, not all inspectors were made aware that temporary permits had been issued to DRL and, consequently, three tickets were issued.

While the Board accepts that DRL may have taken some remedial measures to address the expiration of their IFTA stickers, DRL did not provide any evidence of its communications with the inspection stations in New Brunswick. There is no evidence that any remedial measures were taken in this Province. DRL also acknowledged that the fines were paid on the subject violations.

The Board finds that DRL did in fact violate the said *Gasoline and Motive Fuel Tax Act (supra)* on three occasions as alleged.

## Allegation #2

It has been alleged that DRL did, on two occasions, violate section 12.2 of the *Motor Carrier Act (supra)* by operating a public motor bus without having a copy of the proper motor carrier license authorizing its operation in its immediate possession or in a readily accessible place in that vehicle. In support of this allegation, the Board was provided with copies of two tickets issued to two individuals operating DRL vehicles on October 27, 2004.

In response to this allegation, Mr. Roberts readily admitted that two public motor buses were operating in the Province of New Brunswick and that they did not have a proper motor carrier license. Mr. Roberts stated that the buses were likely dispatched in error and that the tickets were not challenged in a court of law as DRL recognized the error had been made.

The Board finds that DRL did on two occasions violate the *Motor Carrier Act (supra)* on October 27, 2004, as alleged.

## Allegation #3

On July 20, 2005, DRL was issued an Order by the Registrar of Motor Vehicles (the “Registrar’s Order”) directing that any bus being operated by DRL in the Province of New Brunswick, be immediately taken to an official testing station for a safety inspection. It should be noted that in 2005, DRL had only one public motor bus registered with the Board and only one bus with a proper motor carrier license.

On July 27, 2005, DRL was issued a ticket for having failed to comply with the Registrar’s Order and failing to complete an inspection of its public motor bus.

With respect to this allegation, Mr. Roberts testified that the bus in question was presented for inspection at Universal Truck & Trailer in Saint John New Brunswick on July 25, 2005 at which time a number of necessary repairs were identified. Thereafter, the bus was driven to Moncton where the necessary repairs were made. Unfortunately, because the inspection had commenced

in Saint John, DRL was advised that the bus had to be returned to Saint John for re-inspection. Mr. Roberts testified that on July 27, 2005 the bus was *en route* back to Saint John when the ticket was issued.

Mr. Roberts indicated that this ticket is in the process of being challenged in a court of law and a trial date is now set for the summer of 2006.

The Board accepts the history of facts as described by Mr. Roberts. As such, DRL has satisfactorily answered allegation #3.

The Board would comment however, that the repairs that were required to the one bus legally operating in New Brunswick cannot be classified as “minor” despite Mr. Robert’s attempts to do so. The Board had the benefit of hearing evidence from Mr. Charles Wallace, who is a foreman with Universal Truck & Trailer and who was familiar with the inspection that had been had conducted on this bus. Mr. Wallace reviewed the inspection report and indicated that when the bus arrived in Saint John, the backup lights were out, the left taillight was out, the wheel seals were leaking, the U-joint at the rear was deficient and the fan belt required replacement.

Mr. Wallace further indicated to the Board that while the lights were minor infractions, the U-joint, wheel seals and fan belt were more serious concerns. The Board accepts the evidence of Mr. Wallace with respect to this issue. The Board finds that deficiencies of this nature would require immediate attention for the safety of passengers in New Brunswick.

#### Allegation #4

This allegation relates to a request by Board staff to DRL for detailed information relating to DRL’s business in New Brunswick. In particular, correspondence was sent by Board staff to Mr. Roberts on July 29, 2005 seeking that information be provided, in writing, no later than August 3, 2005. In a subsequent telephone discussion between the Board staff and Mr. Roberts on August 4, 2005, Mr. Roberts agreed to forward by email the requested information by the end of the day. No such information was ever forthcoming.



In response to this allegation, Mr. Roberts acknowledged that a request for information had been made by the Board, but that in his opinion, he verbally responded to this request and that nothing further was required of him. Mr. Roberts repeatedly stated that he is “not good at putting things in writing”.

The Board rejects the evidence of Mr. Roberts as it relates to this allegation. Numerous requests for information were made of DRL, including *written* disclosure of all contracts. The Board accepts the information contained in the memorandums of Board staff Isabel Fagan and Doug Goss, wherein Mr. Roberts was clearly advised that details of DRL’s contacts had to be confirmed in writing. The Board finds that DRL did fail to provide the information requested contrary to section 7(5) of the *Motor Carrier Act (supra)*.

#### Allegations #5 and #6

On September 21, 2005, DRL was issued two tickets for having violated both the *Motor Carrier Act (supra)* and the *Motor Vehicle Act (supra)*. These tickets relate to a 2003 public motor bus being operated by DRL in New Brunswick without a license and having failed to have an inspection completed as per the Registrar’s Order.

With respect to allegations #5 and #6, the evidence of Mr. Roberts was that the bus in question was dispatched in the Province of New Brunswick in error.

Mr. Roberts indicated that he attempted to remedy this situation by contacting Mr. Charles O’Donnell, the Registrar of Motor Vehicles, to advise that an error had been made and that the bus was just going through the Province of New Brunswick. Mr. Roberts indicated that every effort was made to correct the situation. Mr. Roberts believed that Mr. O’Donnell would talk to the necessary people to assist DRL.

There is no corroborating evidence before the Board of Mr. Roberts’ discussions with Mr. O’Donnell, or of any correspondence or documentation that may have been exchanged.

While Mr. Roberts testified that he thought he had done enough and that by contacting Mr. O'Donnell the Board would be aware of his situation, this panel cannot find such testimony to be reliable. It should be noted that Mr. Roberts, by his own evidence, operates several business enterprises and is subject to complex regulatory obligations. In the normal course, Mr. Roberts cannot assume that this Board would be aware of any telephone discussions he would have had with another government department.

It must be further noted that the evidence of Mr. Roberts on this issue was fraught with inconsistencies. In December, 2005, Mr. Roberts indicated to the Board that the bus was in New Brunswick for one day. The bus had originated in Halifax and was travelling to Prince Edward Island. He indicated that it was simply going through the province and that it was not picking up or dropping off any passengers.

In January 2006, Mr. Roberts further indicated to the Board that the passengers were travelling from Halifax to Prince Edward Island and eventually Newfoundland on a 14 day trip.

However, when Mr. Roberts was cross-examined on his evidence, he testified that the bus had arrived in New Brunswick one afternoon and would be leaving the following day. He indicated that passengers were possibly picked up in Aulac. When Mr. Roberts was asked to explain why the ticket was issued in Riverview New Brunswick (being some distance away from the New Brunswick and PEI border) he indicated that the passengers were sightseeing in New Brunswick and that they were possibly going to St. Martins. Given the numerous contradictions, the evidence of Mr. Roberts with respect to this allegation is simply not believable.

The Board finds that DRL violated both the *Motor Carrier Act (supra)* and the *Motor Vehicle Act (supra)* when DRL operated the said bus in New Brunswick without a motor carrier license and having failed to have the bus inspected on the terms outlined in the Registrar's Order.

### Allegation #7

This allegation states that DRL has been operating in New Brunswick without being properly registered to do business as required by the *Business Corporations Act (supra)*.

DRL readily admitted that the company was not registered to do business in New Brunswick. Mr. Roberts testified that DRL was registered in quite a few provinces but had no explanation as to why they were not registered in New Brunswick, other than this registration must have been overlooked. As such, the Board finds DRL was operating in New Brunswick in violation of the *Business Corporations Act (supra)*, as alleged.

### Allegation #8

It has been alleged that on numerous dates since the issuance of licence 4182, DRL has been uncooperative and has wilfully disregarded requests for information that have been made by the staff of the Board.

The evidence as it relates to allegation #8 was more detailed and complex.

Having reviewed the filed documentation and having listened carefully to the testimony of both Mr. Roberts and Mr. Harding, it is clear that DRL failed on several occasions to provide the correct and necessary documentation to the Board for the issuance of motor carrier plates. The Board staff was frequently required to follow up with DRL to obtain proper registration and leasing information.

In addition, and perhaps more troubling, was DRL's requests for "temporary permits" on an immediate and expedited basis from Board staff, even when the proper documentation had not been provided.

On at least one occasion, temporary permits were issued to and used by DRL, only for DRL to subsequently cancel the permit to “save costs”. Clearly, this was contrary to the intent of providing temporary permits as a convenience to DRL pending a full permit being issued.

By correspondence dated September of 2000, the Board specifically advised DRL that temporary permits would no longer be provided to them. The correspondence from the Board indicates that DRL simply did not understand the information that was necessary for this privilege to be continued.

Despite this direction, DRL again sought temporary permits in 2001 on an expedited basis, as the result of a trip that had been arranged and for which an alternative service provider could not be found. In an effort to accommodate passengers in New Brunswick, the Board again provided DRL with temporary permits but subject to very strict requirements. While Mr. Roberts testified that DRL did comply with all of these conditions, the evidence of such was not convincing.

Mr. Roberts testified, in an effort to address these concerns, that DRL always had a good relationship with the Board and that DRL was always cooperative. He pointed out that there were periods where DRL had few or no troubles complying with the New Brunswick regulations.

Having considered the entirety of the information and evidence before the Board, we find as fact that DRL has a significant history of failing to comply with New Brunswick regulations and failing to comply with Board requests.

**Order:**

In light of the allegations and the evidence provided and given our findings as enumerated herein, it is hereby ordered pursuant to section 7(2) of the *Motor Carrier Act, (supra)*, that license 4182, held by DRL is suspended for a period of six months. Following six months and upon reinstatement, license 4182 will be subject to the following conditions all of which will remain in place for a period of 24 months:

- a) no temporary permits will be issued to DRL for any reason;
- b) every motor vehicle operated in New Brunswick by DRL shall have an up-to-date inspection certificate issued by a New Brunswick inspection station in the same calendar year;
- c) all dealings between DRL and the Board shall be in writing. Board Staff shall be directed to not deal with DRL by telephone, except to indicate the amount of the certified cheque required by paragraph (d) hereafter;
- d) all documentation required for licensing will be provided to the Board in writing at least two full weeks in advance of the date for which the license is to be issued. The application shall be accompanied, in addition to the normal documentation, with the inspection certificate required by paragraph (b) above, together with a certified cheque in the amount of the required fees.
- e) any infraction that occurs pursuant to any motor carrier legislation in New Brunswick, including but not limited to the Motor Vehicle Act (*supra*) and the Motor Carrier Act (*supra*) will result in immediate revocation of DRL's license permanently.
- f) Any directions issued by the Board must be responded to and/or complied with within a period of two weeks. In the event DRL fails to follow the directions issued by the Board and/or or fails to make immediate arrangements to comply with the same, DRL's license shall immediately be suspended for a period of not less than 1 month.
- g) DRL shall appoint an agent for service within the Province of New Brunswick and shall immediately comply with section 196(1) and section 214(1) of the *Business Corporations Act*, S.N.B. 1981, c. B-9.1. Thereafter, DRL shall be required to be in

good standing with Service New Brunswick, Corporate Affairs Branch as a condition of its license.

DATED at the City of Saint John, Province of New Brunswick, this 30th day of March, 2006.

By Order of the Board

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Secretary of the Board