



DECISION

**IN THE MATTER of a review of licence
number 4183 granted to Voyages LeClerc
Tours Inc. and IN THE MATTER of the
Motor Carrier Act, R.S.N.B. 1973, c. M-16**

April 12, 2002

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 in the matter of the review of motor carrier licence number 4183 granted to Voyages LeClerc Tours Inc.

Board: Léonard Larocque - Chair
Jacques Dumont - Commissioner
Émilien LeBreton – Commissioner

Voyages LeClerc Tours Inc.: Robert Basque, Q.C., counsel

Board: Norm Bossé, counsel

The following allegations were considered at the hearing:

1. On or about January 6, 2000, Voyages Leclerc Tours Inc. did pick up, drop off and/or transport passengers in the Province of New Brunswick, when its vehicles did not have proper New Brunswick licence plates as required by the provisions of the *Motor Carrier Act* and Regulations thereunder, thereby violating the terms of its licence;
2. On or about March 3-11, 2000, Voyages Leclerc Tours Inc. did pick up, drop off and/or transport passengers in the Province of New Brunswick, when its vehicles did not have proper New Brunswick licence plates as required by the provisions of the *Motor Carrier Act* and Regulations thereunder, thereby violating the terms of its licence; and
3. On or about June 30, 2000, Voyages Leclerc Tours Inc. did pick up, drop off and/or transport passengers in New Brunswick when its vehicle did not have proper New Brunswick licence plates as required by the provisions of the *Motor Carrier Act* and the Regulations thereunder, thereby violating the terms of its licence.

At the hearing, Robert Basque, counsel for Voyages LeClerc Tours Inc., brought forward so-called technical arguments on the validity of Regulation 84-301 made under the *Motor Carrier Act* (O.C. 84-1079) as well as on the need for motor carriers to register the vehicles they operate.

We will therefore address those two arguments:

1. Validity of Regulation 84-301

Subsection 17(1) provides that the Board may, with the approval of the Lieutenant-Governor in Council, make regulations:

- (a) prescribing forms for the purposes of this Act;
- (b) requiring the filing of returns, reports and other data;

(c) prescribing forms of accounts and records to be kept by motor carriers, and providing for access by the Board to such records;

(d) establishing classifications or groups of motor carriers;

(d.1) prescribing, in relation to offences under the regulations, categories of offences for the purposes of Part II of the *Provincial Offences Procedure Act*;

(e) prescribing the term or duration of a licence;

(f) prescribing such fees as it sees fit for the issue of licences to the different classes or groups of motor carriers;

(g) respecting the schedules and service, rates, fares and charges of a licensed motor carrier;

(h) respecting the qualification of drivers;

(i) respecting the safety and convenience of the public;

(i.1) prescribing the type and amount of insurance required for the purposes of subsections 6(1) and 13(1.2);

(i.2) respecting proof of insurance for the purposes of subsections 6(1) and 13(1.2);

(j) respecting public motor bus terminals and waiting rooms;

(k) respecting the checking of passengers' baggage and limitations on the size, weight and value thereof;

(l) respecting motor carriers and public motor buses generally in so far as the Board deems such regulations necessary or expedient for carrying out the purposes of this Act;

(m) prescribing the practice and procedure with respect to all matters within its jurisdiction;

(n) with respect to any matter as may be necessary or, in the opinion of the Board, advisable for the more effective exercise of its powers and duties and the more effective administration of the Act and regulations.

Licence number 4183 granted to Voyages LeClerc Tours Inc. also states the following:

“This licence is granted subject to said regulations of the Board and may be revoked for cause.”

Accordingly, the Board finds that New Brunswick Regulation 84-301 made under

the *Motor Carrier Act* (O.C. 84-1079) is valid and applies in this instance.

2. Requirement to Register Vehicle Operated by Motor Carrier

The relevant sections of Regulation 84-301 are as follows:

- 16(2.1)** The Board, at the time of granting a licence to operate a public motor bus, or when reinstating a licence, shall issue to the licensee a plate for each public motor bus operated by the licensee.
- 16(2.2)** Every licensee referred to in subsection (2.1) shall attach the plate to the front of the public motor bus to which it refers.
- 16(3)** No person shall display any plate issued under the Act or this Regulation on any vehicle other than that for which the plate was issued.
- 17** Where the holder of a licence applies to replace the public motor bus in respect of which the licence is in effect with another public motor bus in respect of which no licence is in effect, the Board may permit the licence and plate or certificate, as the case may be, to be transferred to the substituted public motor bus upon payment of a transfer fee of twenty dollars and any difference in the fees provided in this Regulation for the substituted public motor bus, if the substituted public motor bus is of a higher classification.
- 19(3)** Upon the initial granting of a licence and issuing of plates, the licensee shall pay for each public motor bus operated by him a fee equal to seven per cent of the annual registration fee prescribed by the *General Regulation - Motor Vehicle Act* for that public motor bus.
- 20(1)** On or before the fifteenth day of May of each year, a licensee shall pay for each public motor bus operated by the licensee under the licence an annual fee equal to seven per cent of the annual registration fee prescribed by the *General Regulation - Motor Vehicle Act* for that public motor bus.

- 50** While a licence remains in force, the holder thereof shall file in the office of the Board as soon as he has received the same and annually thereafter, the registration numbers of the motor vehicles being operated under such licence.
- 52** The insurance required under subsection 6(1) of the Act in respect of each public motor bus operated by a licensed motor carrier shall be motor vehicle liability insurance as follows:
- (a) in respect of any one accident, a minimum of one million dollars, exclusive of interest and costs, against loss or damage resulting from bodily injury to or the death of one or more persons and loss of or damage to property; and
- (b) for each public motor bus with a seating capacity of
- (i) twenty persons or fewer, not less than two million dollars against loss or damage resulting from bodily injury to or death of one or more passengers, and
- (ii) more than twenty persons, not less than three million dollars against loss or damage resulting from bodily injury to or death of one or more passengers.

In accordance with these sections, the Board finds that a motor carrier must attach a plate to the front of each public motor bus operated by the carrier.

Relevant Facts Preceding Allegations of Violation under Review

On January 11, 1999, the Board of Commissioners of Public Utilities granted licence number 4183 to Voyages LeClerc Tours Inc.

Sometime in 1999, Voyages LeClerc Tours Inc. applied for registration plates for six (6) buses. Plates # 134, 135, 136, 137, 138 and 174 were issued to the corporation Voyages LeClerc Tours Inc. A certificate of insurance was issued by Lombard General Insurance Company of Canada on September 2, 1999. Such certificate confirmed that the six buses for which registration was sought were insured.

The Board received in evidence forms MC-105 for each one of the six buses together with the vehicle registration as well as a lease in instances where Voyages LeClerc Tours Inc. did not own the bus.

The Board also received in evidence three documents showing temporary authority granted to Voyages LeClerc Tours Inc.

On May 9, 2000, Voyages LeClerc Tours Inc. filed an application for motor carrier plates for six buses. Plates # 164, 165, 166, 167, 168 and 169 were issued.

On May 10, 2000, Lombard General Insurance Company of Canada issued a certificate of insurance for the six registered buses.

The Board received in evidence forms MC-105 for each one of the six buses together with the vehicle registration as well as a lease in instances where Voyages LeClerc Tours Inc. did not own the bus.

Allegations:

1. January 6, 2000

Following a complaint that Québus buses had dropped off passengers at the Moncton Coliseum for a Bryan Adams concert, the Board asked for information on January 25, 2000 (see Exhibit A-9). In his written reply dated February 9, 2000 (see Exhibit A-10), Mr. Morissette states:

“I should point out that there were eight (8), rather than five (5), vehicles at that location. Moreover, three (3) of these vehicles were registered in New Brunswick and picked up passengers only in ‘New Brunswick’. However, the other five (5) vehicles departed from the Province of Quebec with passengers and then picked up other passengers in New Brunswick, which is why these vehicles were registered in ‘Quebec’.”

At the hearing, Mr. Morissette tried to convince the Board that a more thorough investigation had shown that the contents of this letter was inaccurate. Apart from Mr. Morissette’s testimony, no other evidence was offered to the Board.

The Board finds, based on the facts contained in the letter dated February 6, 2000 (Exhibit A-10), that the holder of licence # 4183 picked up, dropped off and/or transported passengers in New Brunswick while its vehicles did not have proper licence plates.

2. March 3 to 11, 2000

The Board received a complaint dated March 21, 2000 (see Exhibit A-11) with respect to unregistered buses travelling to Florida.

The Board received in evidence bus leases between Voyages LeClerc Tours Inc. and Jeannine’s Tours with respect to five (5) buses.

Licence number 4183 appeared on the five bus leases. On each lease, a vehicle number identified the bus to which the lease applied.

Buses number 8253, 317, 8453, 319 and 110 were therefore leased by Jeannine’s Tours to transport passengers from Bathurst to Orlando.

Voyages LeClerc Tours Inc. had applied to register six vehicles, i.e., numbers 8253,

7310, 1872, 8455, 1832, and 8355. In fact, the same numbers appear on the certificate of insurance issued by Lombard General Insurance Company of Canada.

Furthermore, Mrs. Doucet testified that three of the buses were not registered. The Board finds, based on the leases and on Jeannine Doucet's testimony, that the holder of licence # 4183 picked up, dropped off and/or transported passengers in New Brunswick while its vehicles did not have proper New Brunswick licence plates.

3. June 30, 2000

This concerns a bus that broke down in the Tracadie-Sheila area. The bus was supposed to drop off passengers at the Moncton Airport. Employees of the Board inquired and Mrs. Stéphanie Moreau confirmed that the stranded bus was owned by Voyages LeClerc Tours.

At the hearing, Mr. Morissette tried to convince the Board that Mrs. Moreau had made a mistake, that the bus in question had been recalled the day before, and that Canadian Dream travel had hired a new carrier. No other evidence, apart from Mr. Morissette's testimony, was offered to the Board.

On the evidence heard, the Board finds that the holder of licence # 4183 picked up, dropped off and/or transported passengers in New Brunswick while its vehicle did not have proper licence plates.

Therefore, motor carrier # 4183 of Voyages LeClerc Tours Inc. violated the provisions of the *Motor Carrier Act*. Because of these violations and pursuant to subsection 7(2) of the *Motor Carrier Act*, R.S.N.B. 1973, c. M-16, licence # 4183 held by Voyages LeClerc Tours Inc. is hereby revoked.

The Board also orders that any application by Voyages LeClerc Tours Inc. for a new licence within the next twelve months shall be denied.

DATED at the City of Saint John, New Brunswick, this 12th day of April 2002.

BY ORDER OF THE BOARD

Lorraine R. Légère
Secretary