JONES v. GRAND TRUNK RAILWAY COMPANY

(1904), 3 O.W.R. 705

Ontario High Court, Britton J., 3 June 1904

(Appealed to Ontario Court of Appeal, **infra** p.139)

Railway- Expulsion of Passenger - Indian - Agreement between Council of Six Nations and Railway Company - Passenger Rates - Invalid Contract - Custom of Allowing Indians Half Rates – Withdrawal - Absence of Notice - Second Class Car - Sufficient Accommodation - Findings of Jury - Damages.

Action by Charlotte Jones, wife of Dr. Peter E. Jones, an Indian of the Mississauga band, residing at Hagersville, to recover damages for being ejected from a train of defendants. Plaintiff, though not by blood an Indian, was an Indian under R.S.C. ch. 43 sec. 1, as the wife of an Indian, and, by virtue of an arrangement with defendants, had been until shortly before the action was brought entitled as an Indian to be carried by defendants at half price between Hagersville and Hamilton in a first class car. Defendants recently began to issue special tickets called "Indians' tickets," which were sold to Indians at half of first class fare, but these tickets had "second class" printed upon them.

On May 18th, 1903, plaintiff purchased one of these tickets from Hamilton to Hagersville, but was not aware of the change, and did not observe the words "second class," Accordingly she was requested by the conductor to pay full fare or to go in what he called the second class car. Plaintiff refused to do either, the so-called second class car being, as she said, a smoking car. She was compelled to leave the train at Rymal, and brought this action to recover damages for ejection. She claimed that by virtue of a contract between the Six Nation Indians and the Hamilton and Lake Erie Railway Company (now merged into the defendants) she had the right to travel at half of a first class fare. (The Mississaugas live on the Six Nation Reserve.)

Plaintiff also set up that she should have had notice of the change, and that merely handing her a ticket on which the words "second class" were printed was not sufficient; also that there was no second-class passenger car on the train, and plaintiff could not be completed to travel in a smoking car. The jury found that the car to which plaintiff was assigned did not furnish sufficient accommodation for the transportation of plaintiff as a passenger, and assessed the damages at $10.

A.G. Chisholm, London, for plaintiff.

W.R. Riddell, K.C., for defendants.

BRITTON, J.- The evidence in support of the alleged contract is that on 16th March, 1875, at a council meeting of the Six Nations, at which there were present 41 chiefs and an interpreter, a deputation on behalf of the Hamilton and Lake Erie Railway Company was present by appointment. The president of the company and the general manager asked for a cession from the reserve of land for a right of way for their company, 37 12-100 acres, free of charge, the company to satisfy individual claims for improvements. . . The members of the deputation offered, on behalf of the company, for the concession of the right of way, to carry the people of the Six Nations at half fare to and from Hamilton. According to the minutes of that council meeting, it was argued that this would be a good bargain for the company, and then this appears: "The president of the company is asked by the council, if the offer to carry the Indians half fare on the railway would be binding on the company. The president replied 'yes.' and that it would be made so by the board of the company. The superintendent intimated that any such arrangement would be subject to the approval of the superintendent-general, who he doubted not would give his sanction."

The next meeting of council was on 2nd April, 1875, when 31 chiefs and an interpreter were present. The minutes of that meeting shew the following: "The superintendent read a resolution of the board of directors of the Hamilton and Lake Erie Railway Company pledging the company to carry members of the Six Nations over that railway at half fare in consideration of the grant of way free of charge."

The decision of the council was, "that the right of was through the township of Oneida, according to the plan of survey produced, be granted to the Hamilton and Lake Erie Railway Company, free of any charge, in consideration of passing members of the Six Nations over said railway at half rates for all time to come."

At a meeting of the council held on 17th August, 1875, at which there were present 45 chiefs and an interpreter, there was read a departmental letter disallowing the arrangement, and stating that the land must be paid for….

It was argued by counsel at the trial that I should, without the aid of a jury, determine the question of the treaty or contract right of plaintiff to travel as alleged, allowing the jury to find

mount of damages, if any, and to decide any other disputed questions of fact….

As to the ticket, the plaintiff did not ask for, nor did she in fact know that she received, a ticket marked "second class." She asked for an "Indian's ticket." The price she paid was what she had been accustomed to pay for an Indian's ticket, on which she had been allowed to ride in a first class car. She did not pay the ordinary second class fare.

I did not put the questions to the jury as to plaintiff's knowledge of the kind of ticket she received. I was not asked to do so, and had I done so, there could have been only one answer, for there was no evidence on the point except what plaintiff stated. . . The matter may be dealt with as a question of law: Watkins v. Rymilll, 10 Q.B.D. 178.

Upon the undisputed facts, I do not think defendants did what was reasonably sufficient to give plaintiff notice of the withdrawal of the concession….

As to the sufficiency of the car for the transportation of plaintiff as a passenger having a ticket marked "second class," the questions and answers were: "If plaintiff was only a second class passenger, did the car to which she was assigned furnish sufficient accommodation for the transportation of this plaintiff as a passenger?" The jury answered. "No." "If not, in what respect was it insufficient?" Answer: "On account of its being a smoking car." The jury found $10 damages, and thought the damages would be the same whether the plaintiff had a right to travel first or second class.

As to there being no completed contract with the Six Nations, the defendants' objection must prevail. The assent of the superintendent-general, virtually the assent of the Crown, was required to any such contract. The compensation for lands taken could not be paid to the Indians, whether in money or in reduced rates for travel. No doubt it was a wise thing to get the consent of the Indians in taking lands in their reservation, but for some, no doubt wise, reason, the negotiations did not result in contract.

It is not necessary, in the view I take of this branch of the case, to consider further what the plaintiff's rights would be as a member of the Mississauga band, to Six Nations contracts upon the Six Nations reserve.

On the other branch of the case, the evidence of plaintiff and of the conductor is that, as plaintiff would not pay an additional 40 cents, or go into what the conductor called the second class car, she was compelled to leave the train. No physical force was used to put plaintiff off. The defendants did not at the trial put in evidence any by-law or rule or regulation shewing what the conductor should do under the circumstances, or as to what a second class car should be or how equipped, or what kind of a car is sufficient for a second class passenger. The defendants relied for their defence upon the section of the Railway Act, sec. 248 of the Act of 1888, which was in the same words re-enacted in the Act of 1903. This is: "Every passenger who refuses to pay his fare may, by the conductor of the train and the train servants of the company, be expelled from and put out of the train…."

Plaintiff had paid her fare--but defendants contend that payment of fare means fare according to class. Without knowing what rules defendants have in regard to that matter, and dealing only with this particular case, without attempting to define the rights of railway companies in such cases, I think sufficient was not shewn in this case to entitle defendants to compel plaintiff to leave the train. And I know of no question upon the evidence on this point that I could have submitted to the jury.

The jury have found that the car did not furnish sufficient accommodation for this plaintiff as a second class passenger.

Section 246 of the Railway Act provides that "all regular trains shall be started and run as near as practicable at regular hours fixed by public notices and shall furnish sufficient accommodation for the transportation of all such passengers…."

The question of sufficient accommodation is one of fact. The word sufficient cannot be limited to space or capacity or strength. It must refer not only to these things, but also to the reasonable comfort, safety, and convenience of the traveller.

Sufficient--"being all that is needful or requisite, adequate," see Standard Dictionary. "Equal to end proposed, adequate to wants:" Imperial Dictionary.

There is nothing technical or difficult to understand as to what a smoking car is. The jury understood--so to do all the parties. The evidence of the brakesman Parker was that he did not think the car to which plaintiff was assigned had the words "second class" on it. There is no evidence that either conductor or brakesman pointed out to the plaintiff that she need not be in the same compartment with smokers if she rode in that car. Plaintiff stated that the conductor told her she must go into the smoking car or pay 40 cents.

The conductor says he called it a second class car, and plaintiff said she would not go, and that she called it a cattle car, and again a smoking car.

Upon the whole evidence and upon the answers of the jury to questions submitted, I think plaintiff entitled to judgment for $10 damages and to costs on High Court scale.

Plaintiff will not be entitled to include in her costs any subpoenas or copies or services or costs of witnesses for evidence exclusively as to alleged agreement (with the Indians). Defendants will not be entitled to set off any costs. Costs of examination for discovery allowed to plaintiff.