

ANTIGUA & BARBUDA

IN THE COURT OF APPEAL

MAGISTERIAL APPEAL (CRIMINAL) No. 11 of 1991

BETWEEN:

FELMINA DAVIS

Appellant

and

THE COMMISSIONER OF POLICE

Respondent

Before: The Honourable Chief Justice Floissac - President
 The Honourable Mr. Justice Byron, J.A.
 The Honourable Mr. Justice Matthew, J.A. (Ag.)

Appearances: Mr. S. Christian and Miss J. Walwyn for the Appellant
 Mr. D. Cenac, D.P.P. for the Respondent

 1992: June 10

JUDGMENTBYRON, J.A.

Arising out of prosecutions resulting from an incident at the V.C. Bird International Airport on the 3rd of November, 1990 in which a Police Officer told the Appellant to move her car from in front of the terminal building and park it in the official parking lot, and in which a struggle ensued, the appellant was on 15th January, 1991 convicted and fined for

- (i) failing to comply with the direction of a Police Officer contrary to Regulation 19(2)(c) of the V.C. Bird International Airport Regulations 1988
- (ii) assaulting a Police Officer in the execution of his duty; and
- (iii) malicious damage to his uniform shirt.

The findings of fact by the Magistrate have not been challenged. This appeal raises one issue only; namely whether Regulation 19(2)(c) aforesaid is ultra vires section 4 of the Civil Aviation Act 1982 under which it was made. It was conceded by Counsel for the appellant that the appeal should be dismissed if the regulation was found to be intra vires the Act, and the D.P.P. conceded that if the Regulation was ultra vires then all the convictions would have to be discharged because the Police Officer would have been acting under a mistaken notion of his power and not in execution of his duty. See Gillette v Glasford & Benn 7 W.I.R. 1 per Bollers J. at p. 15.

The contention of the appellant in this case is that the Regulation exceeds the legislative power conferred on the Minister by the Act and was ultra vires.

The principle of law is clearly stated in Craies Interpretation of Statutes 6th Edition at page 329 -

"Bylaws made in pursuance of a Statutory power must not go beyond, nor be repugnant to, the enactment under which they are made."

Section 19(2) of V.C. Bird International Airport Regulations No. 24/88 prescribes -

"Any person who

- (a) contravenes subregulation (1); or
- (b) without the due regard to other users of Airport drives or parks carelessly or dangerously; or
- (c) fails to comply with any direction given by a Police Officer or an authorised person commits an offence and is liable on conviction thereof to a fine of \$2,000 or imprisonment for six months."

These Regulations were made by the Minister of Public Utilities and Aviation and the D.P.P. submitted that Regulation 19(2) was made under section 4(1)(b) of the Civil Aviation Act no. 16 of 1982 which provides:

"(4)(1) The Minister may by Order make such provisions as appear to him to be requisite or expedient -
 (b).....for access to aerodromes and to places where aircraft have landed,....."

The sole issue in this case therefore, is whether Regulation 19(2)(c) was a provision which went beyond or was repugnant to what was expedient or requisite for "access to aerodromes and to places where aircraft landed".

The Civil Aviation Act, 1982, the enabling legislation, was clearly intended to provide measures for the safety of aviation, and it restricted itself to aerodromes.

In its definition section 2(1) "aerodrome" is stated to mean

"any area of land or water designed, equipped, set apart or commonly used for the landing and departure of aircraft and includes any area of the roof of a building designed, equipped or set apart for the vertical landing and take-off of aircrafts."

It is significant that the Regulations are entitled "The V.C.

Bird International Airport Regulations 1988" and that Regulation 3 states their purpose to be "the management and operation of the airport". No where in the Regulations is the word aerodrome used. In all relevant places the word used is airport. In its definition section, airport is stated to mean

"that area of land at V.C. Bird International Airport situated in the Parish of Saint George together with the terminal building and all other buildings thereon designed, equipped or set apart or commonly used for the landing and departing of aircraft and almost entirely enclosed by a wire fence."

It seems clear, and it was conceded by the D.P.P. that the words "aerodrome" and "airport" in these definition sections are not synonymous. The airport encompasses a greater area than the aerodrome. In fact, it would appear that in the enabling Act, the word aerodrome was limited to the landing strip and apron.

The D.P.P. argued that provisions regulating traffic within the airport was not ultra vires the Act, because those provisions would be regulating access to the aerodrome. Counsel for the appellant argued that access to the aerodrome had a much narrower meaning and was limited to access to the landing strip and apron from the rest of the airport and terminal buildings.

The issue in this case does not require resolution of that debate because Regulation 19(2)(c) was not limited in any way and enacted the kind of power that would be in the Police Act, and even though in the Police Act there would normally be some limitation on the power of the Police to give directions.

In my opinion, the unlimited prohibition against failing to comply with "any direction" exceeded the specific enabling power conferred by section 4(1)(b) which limited the Minister's power to legislate in relation to "access to aerodromes and to places where aircraft have landed". It is manifestly clear that this provision indicates that the Minister regulated much more widely than Parliament intended him to do. The provision is far too wide to be allowed to stand as though it were authorised by section 4(1)(b) of the Civil Aviation Act, 1982.

Ironically, the kind of Police power for which the Act could envisage a Minister to prescribe was granted in Regulation 17(2). The police power is specifically related to the apparent purpose of the rule, that is, the control of parking.

"17(2) The manner of parking vehicles in the place designated for parking shall be as specified

in a notice posted up at the entrance to the public car park or as directed by a police officer or an authorised person on duty."

One of the peculiar aspects of this case is that the appellant was charged with the offence of failing to park in the appropriate place - which seems to be an offence under Regulation 17. The Magistrate acquitted her of this charge. This highlights the wide ambit of Regulation 19(2)(c) because if the appellant was not parked inappropriately the justification for telling her to move her car to the official parking lot was not derived from any breach of the law with regard to parking.

In the circumstances and for the reasons given I have come to the conclusion that Regulation 19(2)(c) is ultra vires section 4 of the Civil Aviation Act, 1982, and that the Police officer was acting under a mistaken notion of his power and not in the execution of his duty.

Accordingly the appeal must be allowed and I order that the convictions be discharged and the sentences set aside.

(Sgd.) Dennis Byron

DENNIS BYRON,
Justice of Appeal

(Sgd.) V.F. Floissac

I concur.

V.F. FLOISSAC,
Chief Justice

(Sgd.) A.N.J. Matthew

I concur.

A.N.J. MATTHEW,
Justice of Appeal (Ag.)