



18 January 2017

PRESS SUMMARY

FirstGroup Plc (Respondent) v Paulley (Appellant) [2017] UKSC 4 *On appeal from [2014] EWCA Civ 1573*

JUSTICES: Lord Neuberger (President), Lady Hale (Deputy President), Lord Kerr, Lord Clarke, Lord Sumption, Lord Reed, Lord Toulson

BACKGROUND TO THE APPEAL

The appeal concerns the lawfulness of a bus company's policy in relation to the use of the space provided for wheelchair users on its buses. Mr Paulley is a wheelchair user who attempted to board a bus operated by a subsidiary of FirstGroup PLC on 24th February 2012. The bus had a space marked by a wheelchair sign and a notice saying, "Please give up this space for a wheelchair user" ("the Notice"). At the time Mr Paulley attempted to board, a woman with a sleeping child in a pushchair occupied this space. She was asked by the driver to fold down the chair and move; however, she refused, stating that it did not fold down. Mr Paulley had to wait for the next bus as a result.

Mr Paulley issued proceedings against FirstGroup for unlawful discrimination on the ground of his disability, claiming that FirstGroup had failed to make "reasonable adjustments" to its policies contrary to section 29(2) of the Equality Act 2010. The Recorder found that FirstGroup operated a "provision criterion or practice" ("PCP") consisting of a "policy... of 'first come first served'... whereby a non-wheelchair user occupying the space on the bus would be requested to move, but if the request was refused nothing more would be done." This placed Mr Paulley and other wheelchair users at a substantial disadvantage by comparison with non-disabled passengers. There were reasonable adjustments that FirstGroup could have made to eliminate the disadvantage: (i) altering the Notice positively to require non-disabled passengers occupying a space to move if a wheelchair user needed it; and (ii) adopting an enforcement policy requiring non-disabled passengers to leave the bus if they failed to comply. The Recorder found in favour of Mr Paulley and awarded him £5,500 damages. FirstGroup's appeal was unanimously allowed by the Court of Appeal which held that it was not reasonable to hold that FirstGroup should adjust its policy so that its drivers required, rather than requested, non-wheelchair users to vacate a space when it was needed by a person in a wheelchair, and then to positively enforce that requirement with the ultimate sanction being removal from the bus.

JUDGMENT

The Supreme Court unanimously allows Mr Paulley's appeal, albeit only to a limited extent. Lord Neuberger gives the lead judgment (with which Lord Reed agrees) allowing the appeal but only to the extent that FirstGroup's policy requiring a driver to simply request a non-wheelchair user to vacate the space without taking any further steps was unjustified. Where a driver who has made such a request concludes that a refusal is unreasonable, he or she should consider some further step to pressurise the non-wheelchair user to vacate the space, depending on the circumstances. Lord Toulson and Lord Sumption write concurring judgments. On the issue of the order to be made, this majority declines to uphold an award of damages. Lady Hale, Lord Kerr and Lord Clarke also allow the appeal but they would have restored the order of the Recorder in full, including upholding the award of damages.

REASONS FOR THE DECISION

Under section 29 of the 2010 Act, as a “public service provider”, FirstGroup must not discriminate against a person requiring its services by not providing the person with the service, and it must make “reasonable adjustments” to avoid substantial disadvantage to disabled persons [20-26].

The Recorder’s judgment effectively required a policy that could lead to a non-wheelchair user being ordered off the bus [40-45]. The Court of Appeal was right to reject this. An absolute rule that any non-wheelchair user must vacate the space would be unreasonable: there are many circumstances in which it could be unreasonable to expect a non-wheelchair user to vacate a space, and even more, to get off the bus, even where the space is needed by a wheelchair user [46-48]. Even a qualified rule (i.e. that any non-wheelchair user must vacate if it is reasonable) implemented through mandatory enforcement would be likely to lead to confrontation with other passengers (not least where the non-wheelchair user vacating the space affected other travellers) and delay [50-51]. Passengers are not clearly subject to a statutory obligation to comply with a policy relating to the use of the space, and would not appear to be under such an obligation to get off the bus if they fail to do so [52].

Even though the hearing in the Court of Appeal had proceeded on the basis that it was not part of Mr Paulley’s case [59], the argument that FirstGroup’s PCP should have gone further than it did, albeit not as far as the Recorder concluded, has more force. FirstGroup cannot be criticised for choosing not to express the Notice in more forceful terms: it was aimed at politely requiring non-wheelchair users to vacate the space; there was evidence that “directive” notices are a less effective means of communication with the public; and the use of specially emphatic language should not determine legal liability in this case [63]. The suggestion that the Notice should state that priority of wheelchair users “would be enforced” would be false [64]. However, it was not enough for FirstGroup to instruct its drivers simply to request non-wheelchair users to vacate the space and do nothing further if the request was rejected. The approach of the driver must depend upon the circumstances, but where he or she concludes that the refusal is unreasonable, some further step to pressurise the non-wheelchair user to move should be considered, such as rephrasing the request as a requirement (especially where the non-wheelchair user could move elsewhere in the bus) or even a refusal to drive on for several minutes [67]. Lord Toulson agrees [83-85] adding that fresh legislative consideration is desirable [87]. Lord Sumption also agrees albeit with reservations [92].

So far as damages are concerned, Lord Neuberger (with whom Lords Sumption, Reed and Toulson agree) concludes that the Recorder did not specifically consider whether, if FirstGroup had simply required its drivers to be more forceful, there was a prospect that it would have made a difference in this case. It is therefore not possible to conclude that there would have been a real prospect that such an adjustment would have resulted in Mr Paulley not being placed in the disadvantage that he was, and so an award of damages is not possible [60-61].

Lady Hale, Lord Kerr and Lord Clarke dissent in part. As the Recorder found, it was reasonable to expect bus operators to do more than FirstGroup did [102-109]. His judgment did not necessarily require ejection of a passenger who refused to move from the bus nor did it create an absolute rule [106]; [129-131]; [137]. Had the practice suggested by the claimant been in force, there was at least a real prospect that Mr Paulley would likely have been able to travel [108]; [138]. This being so, it was unjust to deny Mr Paulley damages [109]; [160].

References in square brackets are to paragraphs in the judgment

NOTE: This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>