

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

The Rail Commuters Action Group and Others v Transnet Ltd t/a Metrorail and Others

CCT 56/03

Decided on 26 November 2004

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

In a unanimous judgment handed down today, the Constitutional Court upholds, in part, an appeal from the Supreme Court of Appeal brought by commuters concerned with violence on trains in the Western Cape.

The Rail Commuters Action Group, and other individual persons who have either suffered assaults or injuries while travelling on trains or are relatives of people injured or killed on trains, sought to hold certain organs of state responsible for the safety and security of rail commuters. They sued Metrorail and the South African Rail Commuter Corporation (“the SARCC”), which were created under the Legal Succession to the South African Transport Services Act, 9 of 1989, and are responsible for providing train services nationwide. Both are organs of state but their statutory mandate entitles them to pursue a profit. They also sued the Minister of Transport and the Minister of Safety and Security.

They applied to the Cape High Court seeking extensive relief grounded in contract, delict, the provisions of the Act and the Constitution. They succeeded in their application against Metrorail, the SARCC and the Minister of Transport, but failed against the Minister of Safety and Security. The High Court awarded mandatory relief requiring Metrorail, the SARCC and the Minister of Transport to take steps to improve safety and security on trains, prohibitory relief restraining them from running the rail commuter service without complying with their own operational guidelines, and a structural interdict requiring the respondents to report to the court on measures to be taken to improve safety and security on trains. The High Court held, however, that it could not be shown that the Minister of Safety and Security’s policy decisions taken, nor the implementation thereof, were not rational, taken lawfully and directed to proper purposes.

However, the High Court’s decision was overturned on appeal in the SCA, in three separate judgments which unanimously upheld the appeal with costs.

Writing for a unanimous Court, O’Regan J finds that although there are disputes of fact that cannot be resolved on the papers, there are sufficient common cause facts for some of the legal issues to be resolved. It is clear that there is a serious problem of

crime on trains in the Western Cape, even if there is a dispute as to whether crime is “rife” or not, or in excess of other crime rates. It is also common cause that Metrorail and the SARCC are not meeting their own targets in relation to crime rates. These facts need to be considered in their historical and social context, in particular the effect that apartheid spatial planning has had on the customer base of rail commuter services. Commuter rail services now, by and large, provide poor communities with essential public transport.

Determining the scope of public power, and any duties attached to it, requires an analysis not only of the statutory provisions conferring the power, but also of the social, political and economic context within which the power is to be exercised and a consideration of the relevant provisions of the Constitution. In considering the statutory obligations of Metrorail and the SARCC in light of the spirit, purport and objects of the Bill of Rights, the principle of accountability is particularly relevant. O’Regan J holds that they bear a positive duty arising out of the provisions of the Act read with the provisions of the Constitution to take reasonable steps to provide for the security of rail commuters. What constitutes reasonable steps will depend on a range of factors. The Court holds that it is not appropriate to determine whether their conduct in 2002 in meeting their obligations was reasonable or not.

The disbandment of the Railway Police in the 1980s left a policing void. What is clear on the evidence is that Metrorail and the SARCC disclaimed responsibility for ensuring the safety and security of commuters, arguing that this was a police responsibility. O’Regan J holds, however, that they had a responsibility to take reasonable steps to fill the policing void.

The appropriate relief in the circumstances is to issue a declaratory order to the effect that Metrorail and the SARCC have an obligation to ensure that reasonable measures are taken to provide for the security of rail commuters. Metrorail and the SARCC are to pay the appellants’ costs.