



DECISION NO. 26-AT-MV-2021

April 14, 2021

APPLICATION by Theresa Lynn Sleeva (applicant) against Rider Express Transportation Corporation (respondent) pursuant to subsection 172(1) of the *Canada Transportation Act*, SC 1996, c 10 (CTA), regarding their accessibility-related needs.

Case No. 20-02712

SUMMARY

- [1] The applicant filed an application with the Canadian Transportation Agency (Agency) against the respondent concerning its alleged failure to provide bus services that are wheelchair accessible.
- [2] The applicant stated that travel options for persons with disabilities within Saskatchewan and beyond have been discontinued since the Saskatchewan Transportation Company (STC) and Greyhound have closed and have been replaced by the respondent.
- [3] The applicant asked that:
- the bus service be more reliable;
 - the drivers be fully trained to “deal with and properly strap in a variety of different wheelchairs and other mobility aids”;
 - the type of wheelchairs and mobility aids that can be accommodated on the buses be clarified, for example by specifying their measurements;
 - an attendant be entitled to accompany a person with a disability on the buses at no extra charge; and
 - service animals be permitted, if required.
- [4] A letter opening pleadings was sent to the parties on April 20, 2020. On April 27, 2020, the respondent verbally confirmed receipt of that letter to the Agency Secretariat. However, the respondent did not submit an answer to the application. On August 11, 2020, the Agency issued Decision No. LET-AT-MV-53-2020, in which it found that the applicant is a person with a disability and that they encountered an obstacle to their mobility. Decision No. LET-AT-MV-53-2020 was sent to the respondent by priority courier and signed for by the respondent on August 13, 2020.

- [5] In this decision, the Agency will address the issue of whether the respondent can remove the obstacle to the applicant's mobility without experiencing undue hardship.
- [6] For the reasons set out below, the Agency finds that there is no basis to conclude that the respondent cannot remove the obstacle to the applicant's mobility without experiencing undue hardship.
- [7] The Agency orders the respondent to provide bus services that are wheelchair accessible.

BACKGROUND

- [8] On October 30, 2018, the applicant, who uses a wheelchair, called the respondent to book transportation from Regina, Saskatchewan, to Saskatoon, Saskatchewan, for November 6, 2018. The applicant indicates that the respondent advised that its 14-passenger buses were not wheelchair accessible and that it would be receiving 40-passenger buses that were wheelchair accessible, without specifying the date when they would be received.
- [9] In Decision No. LET-AT-MV-53-2020, the Agency found that the applicant is a person with a disability as they use a wheelchair as a result of multiple sclerosis, and that they encountered an obstacle to their mobility when they were told that they could not travel on the respondent's buses. The Agency also noted that to the extent that any of the respondent's vehicles had or have some capacity to carry wheelchairs and other mobility aids, the specifications and measurements of those wheelchairs and aids should be provided on the carrier's website to ensure the accessibility of services for travellers who use such devices.
- [10] The Agency determined that the applicant did not provide sufficient evidence to demonstrate that they encountered an obstacle to their mobility in relation to service reliability, training of the respondent's drivers, the possibility to travel with an attendant at no extra charge nor travelling with a service animal.
- [11] The Agency provided the respondent with an opportunity to either:
- explain, taking into account any proposals from the applicant, how it proposes to remove the obstacle through a general modification to the rule, policy, practice, technology, physical structure or anything else constituting an obstacle, or, if a general modification is not feasible, an individual accommodation measure;
 - demonstrate, on a balance of probabilities, that it cannot remove the obstacle without experiencing undue hardship.

- [12] The respondent had until August 25, 2020, to submit its answer. It did not do so.
- [13] On December 3, 2020, the Agency issued Decision No. LET-AT-MV-81-2020 ordering the respondent, pursuant to section 25 of the CTA, as well as subsection 5(2) and section 24 of the *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)*, SOR/2014-104 (Rules), to provide information in regard to its fleet. This decision was sent to the respondent by priority courier and signed for by the respondent on December 7, 2020. The respondent had until December 14, 2020, to submit its answer. It did not do so.

THE LAW

- [14] The text of subsection 172(1) of the CTA that was in effect at the time the incident occurred read as follows:

The Agency may, on application, inquire into a matter in relation to which a regulation could be made under subsection 170(1), regardless of whether such a regulation has been made, in order to determine whether there is an undue obstacle to the mobility of persons with disabilities.

- [15] Further, the text of subsection 172(3) of the CTA read as follows:

On determining that there is an undue obstacle to the mobility of persons with disabilities, the Agency may require the taking of appropriate corrective measures or direct that compensation be paid for any expense incurred by a person with a disability arising out of the undue obstacle, or both.

- [16] The Agency determines whether there is an undue obstacle to the mobility of a person with a disability using a two-part approach:

Part 1: The onus is on the applicant to demonstrate, on a balance of probabilities, that:

- they have a disability, for the purposes of Part V of the CTA;

and

- they faced an obstacle. An obstacle is a rule, policy, practice, or physical structure that has the effect of denying a person with a disability equal access to services that are normally available to other users of the federal transportation network.

Part 2: If it is determined that an applicant has a disability and faced an obstacle, the onus shifts to the respondent to either:

- explain, taking into account any proposals from the applicant, how it proposes to remove the obstacle through a general modification to a rule, policy, practice, technology, physical structure, or anything else constituting an obstacle, or, if a general modification is not feasible, an individual accommodation measure;

or

- demonstrate, on a balance of probabilities, that it cannot remove the obstacle without experiencing undue hardship.

[17] The Agency will address the second part of the above two-part approach in this decision.

ANALYSIS AND DETERMINATION

[18] As set out above, subsection 172(1) of the CTA provides that the Agency may, on application, inquire into a matter in relation to which a regulation could be made under subsection 170(1), regardless of whether such a regulation has been made, in order to determine whether there is an undue obstacle to the mobility of persons with disabilities.

[19] While regulations have been made under subsection 170(1), the respondent is not subject to them. However, regulations could be made that would cover the respondent and it can still be subject of an application such as the present one.

[20] Transportation service providers, including the respondent, have a duty to accommodate persons with disabilities up to the point of undue hardship.

[21] In the opening pleadings letter, the respondent was invited to participate in the pleadings process and was advised that if it did not file an answer, the Agency would make its decision on the issues based on the information provided by the applicant. The respondent did not respond to the opening pleadings letter. In Decision No. LET-AT-MV-53-2020, the respondent was given the opportunity to comment on how it proposed to remove the obstacle but did not submit an answer. In Decision No. LET-AT-MV-81-2020, the Agency ordered the respondent to provide information in regard to its fleet (e.g., the number of wheelchair-accessible buses and the size of its total fleet, the number of passenger seats, the number of wheelchair-accessible/mobility aid space(s) and the accessibility features of these buses, etc.) but the respondent did not submit an answer.

- [22] The respondent has chosen not to participate in this proceeding despite the Agency's several attempts to reach out to the respondent by phone, email and mail. The respondent remained silent throughout the process and did not respond at any point, even when the onus shifted to it, in the second part of the proceeding, to explain how it would remove the obstacle or why it believed it could not do so without experiencing undue hardship.
- [23] Therefore, based on the record before it, the Agency finds that there is no basis to conclude that removing the obstacle to the applicant's mobility would result in undue hardship for the respondent. The Agency therefore finds that appropriate corrective measures should be ordered.

ORDER

- [24] In order to meet its obligation to provide accessible services to persons with disabilities, the Agency orders the respondent to provide bus services that are wheelchair accessible, by taking the steps described below.

Pre-existing buses

- [25] If the respondent presently has buses that can accommodate a wheelchair, the respondent must:
- accommodate the person with a disability who uses a wheelchair and makes a request for service at least 48 hours before the scheduled time of departure or make a reasonable effort to provide the service if the request is received less than 48 hours before the scheduled time of departure;
 - provide information about any stops and transfer points during reservation;
 - advise the person with a disability in advance if the route does not have a regularly scheduled stop at a rest stop that has a washroom that accommodates a person using a mobility aid and offer the person their choice of alternative rest stops on the route;
 - permit the person with a disability to board in advance of other passengers if the person has requested assistance with boarding;
 - assist the person with a disability in boarding and disembarking at any stops and with their baggage;
 - assist the person with a disability in moving in and out of the mobility aid space;
 - assist the person with a disability in storing and retrieving their carry-on baggage;
 - assist the person with a disability in retrieving their checked baggage;
 - assist the person with a disability to proceed to the curbside;
 - ensure that staff on board the bus, on the request of a person with a disability who is using a mobility aid, provide the following services:

- if the bus is not equipped with a washroom that accommodates a person using a mobility aid, stopping the bus, at least every two and a half hours, at a rest stop with such a washroom or at a rest stop chosen by the person with a disability;
- allow the person with a disability an adequate amount of time to use washrooms at rest stops, taking into account the additional time that is required for the person with a disability to board and disembark from the bus; and
- permit the person with a disability to board or disembark at a stop of their choice if the member of personnel who is operating the bus considers it safe to do so and, if not, informing the person of the location of the closest safe stop.

[26] The respondent is required to send an internal communication to all its personnel to explain the above-mentioned measures. In addition, the respondent must confirm that those measures are in place for all its routes and provide a copy of the internal communication to its personnel to the Agency's Chief Compliance Officer (CCO) no later than May 12, 2021.

Alternate transportation means

[27] If the respondent does not have buses that can accommodate a wheelchair or if not all of its routes are served by buses that can accommodate a wheelchair, the respondent must:

- offer, at no additional cost, an alternate transportation means that is accessible to a person who uses a wheelchair to the person with a disability who makes a request 48 hours before the scheduled time of departure (e.g. wheelchair accessible van or taxi) or make a reasonable effort to provide the service if the request is received less than 48 hours before the scheduled time of departure. The travel time and schedule offered should be reasonably comparable to the schedule originally requested by the passenger.

[28] The respondent is required to send an internal communication to all its personnel to explain these alternate transportation means. In addition, the respondent must confirm that the alternate transportation means are in place and provide a copy of the internal communication to its personnel to the Agency's CCO no later than June 10, 2021.

Future buses

- [29] The Agency orders the respondent to ensure that any buses that have a carrying capacity of 40 passengers or more that are acquired by the respondent in the future respect the following requirements:
- at least two mobility aid spaces, each of which must have a clear floor area of at least 1,220 mm by 760 mm.
 - a wheelchair-accessible washroom, that has:
 - doors that are equipped with handles, pulls, latches, locks and other devices that are operable using minimal force, with one hand in a closed-fist position, or by another method of operation that does not require tight grasping, pinching or twisting of the wrist;
 - toilets that
 - are equipped with an automated flush control or a flush control that is operable using minimal force, with one hand in a closed-fist position, or by another method of operation that does not require tight grasping, pinching or twisting of the wrist, and
 - have a back support if the toilet has no seat lid;
 - faucets that are positioned to be easily usable by a person using a wheelchair and that are equipped with
 - handles or other controls that are tactilely discernible, unless the water temperature is fixed to eliminate the risk of scalding,
 - in the case of non-automated faucets, handles or other controls that are operable using minimal force, with one hand in a closed-fist position, or by another method of operation that does not require tight grasping, pinching or twisting of the wrist, and
 - in the case of automated faucets, a water activation motion sensor that turns the water on automatically when a hand is below the faucet;
 - grab bars that
 - are located on a wall beside the toilet,
 - are rounded, slip-resistant and free of any sharp or abrasive elements,
 - have an exterior diameter and a clearance from the wall surface to which they are attached that permit them to be easily grasped, and
 - are capable of supporting a minimum weight of 113.4 kg;
 - toilet paper dispensers that are located so as to not interfere with the use of the grab bars;

- soap dispensers that are operable using minimal force, with one hand in a closed-fist position, or by another method of operation that does not require tight grasping, pinching or twisting of the wrist;
- at least one call button or other device for signaling an emergency that
 - is colour-contrasted with its background and identified by tactile and Braille signage, and
 - is operable using minimal force;
- a door or other opening to the washroom that has sufficient space in front of it and that is wide enough to allow the entry of a person using a wheelchair;
- sufficient space to allow a person, with assistance, to transfer to and from a wheelchair and the toilet;
- sufficient privacy, including with the use of retractable curtains or walls, to allow a support person or service dog to remain in the washroom with a person using a wheelchair;
- every washroom must be a wheelchair-accessible washroom, unless the washroom does not have
 - a door or other opening to the washroom that has sufficient space in front of it and that is wide enough to allow the entry of a person using a wheelchair; and
 - sufficient space to allow a person, with assistance, to transfer to and from a wheelchair and the toilet.

[30] The respondent is required to send a report no later than June 10, 2021 to the Agency's CCO detailing any plans to acquire buses – including the number of buses and the date they will be received and placed in service – and confirming that those buses meet or will meet all the requirements listed above.

[31] In addition, the respondent is ordered to send a report to the Agency's CCO every four months from the date of this Decision, until six reports have been filed, providing:

- Details of any plans to add buses, including the date they will be received and placed in service; and
- Confirmation that all buses planned to be received and placed in service meet or will meet all the requirements listed above.

Website

- [32] The Agency further orders the respondent to:
- publish on its website the maximum weight and dimensions of the wheelchairs and mobility aids that each make and model of its buses is capable of transporting;
 - publish on its website a list of the routes on which each type of buses is operated; and
 - keep the information on its website related to the two above requirements up to date at all times.
- [33] The respondent is required to comply with this measure and confirm to the Agency's CCO that this measure is in place no later than June 10, 2021.

(signed)

Scott Streiner
Member

(signed)

Mary Tobin Oates
Member