

Taxi & Limousine Comm'n v. Pierre

OATH Index No. 3449/09 (Sept. 3, 2009)

In revocation proceeding, passenger accused driver of assaulting her, verbally harassing her, locking her inside the cab, and refusing to accept a credit card. The administrative law judge found that the passenger's testimony was less credible than driver's denials and recommended that the charges be dismissed.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
TAXI AND LIMOUSINE COMMISSION
Petitioner
-against-
LOUIS PIERRE
Respondent

REPORT AND RECOMMENDATION

JOHN B. SPOONER, *Administrative Law Judge*

This proceeding was commenced by the Taxi and Limousine Commission against taxi driver respondent, Louis Pierre, pursuant to the Administrative Code and the Taxicab Drivers rules, title 35, chapter 2 of the Rules of the City of New York (RCNY). Petitioner alleges that respondent assaulted a passenger, verbally harassed her, locked her inside the taxicab, and refused to accept payment by a credit card.

A hearing was held before me on July 7 and August 3, 2009. Petitioner presented the testimony of the passenger, while respondent denied the allegations.

For the following reasons, I find that the charges should be dismissed

ANALYSIS

This case concerns a taxi ride taken on the morning of May 20, 2009, from the upper east side of Manhattan to the West Village. The passenger, Ms. Milillo, testified that, at around 10:15 a.m. on that date, she bought a cup of coffee from Starbucks at around Third Avenue and East 66th Street and hailed a taxicab to take her to her office at Barrow and Hudson Street. She

was also transporting a wheeled suitcase and a laptop she had taken on a previous business trip. Respondent's cab stopped and the passenger gave him her destination. As they rode, the passenger spoke on her cell phone to her office, confirming that she was on her way for an 11:00 conference call (Tr. 14-15).

The passenger ended her call and realized that respondent had missed a turn on to Barrow Street. She told respondent he was going past her destination. Respondent "slammed on the brake and stopped just at the corner." Respondent then kept the cab stopped for several minutes. The passenger asked him, "What are you doing?" He shouted at her, "You told me to stop here. I've stopped here." She told him that she asked him to stop because he was passing her street, but that he could "continue down" to Leroy and "come back up" (Tr. 15). Respondent still refused to move, said "fuck you, fuck you," and told the passenger to "get out." The passenger replied, "I'm sorry if you're having a bad morning but it's really not a big deal and I have a conference call so can you just go further down and make a right and go up Leroy" (Tr. 16). Instead, respondent backed up the cab and turned down Barrow Street (Tr. 15-16).

The passenger told respondent she wished to get out at the end of the block at the corner of Barrow and Hudson. But respondent "just stopped in the middle of the street and once again told me to get out" (Tr. 16). The passenger refused, mentioning that she had luggage to carry. Through the plastic window inside the taxi, she pointed forward, indicating respondent should go further down the block. Respondent then "started grabbing" her and "being aggressive through the window." The passenger told him, "That's absolutely just not necessary" and asked again that he drop her off on Hudson (Tr. 17).

Respondent stopped the cab at Hudson and Barrow and started printing the receipt. The passenger "was about to pay him in cash," when he cursed again and locked the cab doors. The passenger said that she wanted to get out and asked respondent to open the doors, saying she just wanted to pay him and leave. Respondent unlocked the doors. With her coffee in her hand, the passenger got out of the cab, leaving her luggage in the trunk. She said that she just wanted to pay and leave and asked for a receipt.

Calling the passenger a "mother fucker," respondent grabbed her coffee cup, crushed it, and threw it in her face, causing coffee to spill all over her. The passenger said, "That was so unnecessary." Respondent spat in her face, causing saliva to drip down her cheek. The passenger announced she was calling the police, and respondent encouraged her to do so, saying that she had to pay him. The passenger said that she was "in shock" and went into a Chinese

laundry on the corner and asked them to call the police for her. The proprietor asked if she had a cell phone and she realized that she did. So the passenger used her cell phone to call 9-1-1 and report the incident, giving her location (Tr. 20).

When the police arrived, the passenger reported that respondent had just thrown coffee all over her. After speaking with respondent, the officers told the passenger that what they could do was "limited" and that respondent was asking to be paid. The passenger insisted that she would be "happy to pay" and gave respondent her credit card. The officers took down information from the passenger and told her she could file a complaint with the Commission. The complainant's assistant removed her luggage from the trunk. Later that day, the passenger called 3-1-1 and made a complaint about respondent (Tr. 21-22).

The passenger had a slip of paper (Pet. Ex. 1) which she identified as having received from the police officers. On it the officers wrote respondent's name, taxi license number, and the taxi medallion number. Later, on another piece of paper (Pet. Ex. 1), the passenger recorded the address of the Commission offices and a complaint number, which she said had been given to her by a Commission staff member when she called (Tr. 23-24).

When she made her complaint to the 3-1-1 call center at 11:23 a.m. on May 20, 2009, the passenger apparently accused respondent of assaulting her. A staff member recorded her statements as follows:

Caller states that she got in a taxi and ask [sic] him to go to Hudson and Barrow (the corner). As he was driving he passed the address. She told him that he missed it and told him to just turn around or go around and he just told her to get out and when she tried to get out he locked the doors and told her she needs to pay him and she said she was goin [sic] to pay him. So then he starts cursing at her and he phisically [sic] assaulted [sic] her and tried to grab her neck. Then he open [sic] her hot coffee cup and trew [sic] it at her. Caller is ready to press charges for assult [sic]. Caller called the police also.

(Resp. Ex. A).

Respondent offered a very different version of the incident, denying that he was in any way discourteous to the passenger. He testified that, when he picked up the passenger at 65th Street and Third Avenue, she directed him to drive to Barrow and Hudson Streets. The passenger was carrying two bags, both of which she placed in the passenger seat beside her. Respondent drove west across 66th Street through Central Park to Columbus Avenue, then south on Ninth Avenue to Bleecker Street and across Bleecker to Seventh Avenue. As he drove south

on Seventh Avenue, the passenger asked where they were and he said on Barrow and Seventh. The passenger said, "Oh, right here, right here" (Tr. 62-63).

Thinking that the passenger wished to get out, respondent stopped and turned off his meter. The passenger asked what she had told respondent her destination was, and he said Barrow and Hudson. She said she wanted to be taken there. Respondent apologized, saying he had thought she wanted to get out immediately. He then drove down to Leroy Street and around the block to Hudson and Barrow Streets, where he pulled over (Tr. 63-64).

At this point, the passenger asked how much the fare was. Respondent said it was \$15.30 and handed her a receipt. The passenger then asked to pay by credit card, causing respondent to say that he had already shut off the meter and was not sure he could still process a credit card payment, although he would try. The passenger stated that respondent did not deserve to get paid because he did not know the way. Respondent answered that the police would make her pay and took out his cell phone. The passenger then used her own cell phone, called 911, and said she was being threatened and needed help (Tr. 65-67).

The passenger then threw her cup of coffee at respondent's half-opened window. Most of the coffee splashed back on her, although a small amount went through the window and hit respondent. Explaining that "if I leave I'm guilty," respondent remained parked and inside his cab until the police arrived a few moments later (Tr. 68). When the police arrived, they spoke with several individuals who were seated on the sidewalk in a nearby restaurant. They then spoke with respondent, who complained that he had not been paid. A police officer asked the passenger where she had asked to go, and she said to Barrow and Hudson. The officer then told her that she had to pay respondent. Another man then intervened, giving respondent a credit card which respondent ran through for the \$15.30 payment. Respondent then left, returning home to clean his car and to get a clean shirt (Tr. 70-71).

At the outset, it is apparent that specification 2, alleging that respondent did not permit the passenger to pay with a credit card, cannot be sustained. In fact, the passenger herself admitted that she did, in fact, pay her fare with a credit card after being directed to do so by the police. It is true that, in response to questions on cross-examination, the passenger indicated that, after the incident, she had told unnamed Commission staff members that respondent became "angry" when she tried to pay by credit card (Tr. 34). She further indicated that, after being doused with coffee, she asked to pay by credit card and respondent said "no" (Tr. 34). However, even though asked repeatedly when and how she had attempted to pay by credit card, she

indicated only that she asked respondent for a second receipt and then declined to pay him because she was “frightened” and he was “acting crazy” (Tr. 35). Neither in her direct testimony nor in her complaint to the Commission did she state that she asked to pay by credit card or that respondent refused to accept a credit card. Based upon this record, there is no credible evidence that respondent refused to take a credit card and specification 2 must be dismissed.¹

The passenger’s portrayal of respondent was implausibly erratic and churlish, incompatible with a taxi driver who had been driving passengers for some 20 years and expected to be paid by them. She indicated that respondent stopped abruptly and then parked his cab for no apparent reason. He first ordered the passenger out of the cab, then started off again toward Hudson Street, then stopped again, and again ordered the passenger out of the cab, all without explanation. He grabbed at her hand through the partition, again for no apparent reason. He then drove her to her destination, stopped, and, just as she was about to pay, cursed and locked the doors. As he waited for her to pay, he grabbed her coffee and threw it at her and then spat in her face. Nowhere in her narrative did the passenger suggest any basis for respondent’s supposed fury at her or for his wildly contradictory actions.

The passenger’s testimony conflicted with various other pieces of evidence. Although she insisted several times that she was trying to pay respondent, only to be interrupted by his angry attacks, she admitted that she only paid the fare when the police demanded that she do so. In fact, I found her repeated protests that she intended to pay the fare to partially corroborate respondent’s testimony that she said at least once that she would not pay. In her testimony the passenger also insisted that her “final destination” was Moore Street, between Washington and Greenwich Streets (Tr. 25), and therefore suggested that respondent failed to deliver her to this address. However, this assertion was not included in her complaint to the Commission (Resp. Ex. A) and was also never explained in her own testimony, where she mentioned telling respondent only about the destination of Barrow and Hudson Streets.

Although she admitted that respondent never got out of his cab (Tr. 46), the passenger insisted that, as respondent sat inside the cab and she stood outside the half-closed taxicab window, he somehow grabbed, or attempted to grab, her neck. In her narrative on direct examination, the passenger never mentioned any grabbing or attempt to grab her body, only the crushing of the coffee cup and the spitting. In any event, I found the passenger’s description of

¹ Charge 4, alleging that respondent refused to retrieve the passenger’s property from the trunk, and charge 5, alleging that he refused to take her to her destination, were withdrawn at the close of trial (Tr. 102-03) due to counsel’s desire to “focus on the more serious” violations (Tr. 123).

respondent's actions impossible to credit. For a driver to grab someone's neck through a half-closed window while seated seemed an impossible feat. Even if such a gesture were made, it could have been dodged so easily by the person outside the cab taking a step backwards that it seemed highly unlikely that the passenger could have been menaced by it, as she stated.

In his testimony at trial, respondent was polite and soft spoken, a personality at odds with the foul-mouthed thug described by the passenger. In his account, he provided several unfavorable details which sounded truthful, admitting that the passenger never yelled at him while inside the cab (Tr. 73-74) and never used profanity or racial slurs. He also admitted that he did not speak "very good English" since it was not his first language (Tr. 75) and therefore acknowledged that he might have misunderstood the passenger's instructions after he drove past Barrow Street.

In short, the passenger offered an unconvincing description of a mad taxi driver tormenting an innocent passenger for no reason. Respondent, on the other hand, provided plausible motives for both his and the passenger's actions. For his part, respondent was trying to placate the passenger and collect his fare. The passenger was angry at respondent for missing her conference call and determined to avoid paying the fare. After the police arrived, she sought to justify her refusal to pay and perhaps to defend against the possibility that respondent might file a complaint against her by concocting other violations. Respondent provided various details which sounded authentic and would support such a theory. The passenger's words just before throwing the coffee were, "You don't deserve to get paid" (Tr. 101). As they waited for the police to arrive, she asked, "You still there?" (Tr. 87), further confirming that she was hoping that respondent would simply leave and thereby remove her obligation to pay.

One final issue merits mention. In his closing and in a post-hearing submission, counsel for petitioner argued that spitting on a passenger violates driver's rule 2-60 (b), prohibiting drivers from using physical force against any passenger. *See Taxi and Limousine Comm'n v. Vadrine*, OATH Index No. 1001/95 (Sept. 7, 1995). I found the proof here insufficient to prove that respondent did, in fact, spit on the passenger, and thus need not reach the issue in this case.

Based upon the credible testimony of respondent, I find that petitioner failed to prove the allegations of verbal or physical abuse, unlawful imprisonment, or refusal to pay with a credit card. Charges 1, 2, 3, and 6 (all of the charges remaining after petitioner's withdrawal of charges 4 and 5) should therefore be dismissed.

John B. Spooner
Administrative Law Judge

September 3, 2009

SUBMITTED TO:

MATTHEW W. DAUS
Commissioner/Chair

APPEARANCES:

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