

Binding Decision 1 – November 2008

Subject: Removal of passenger with valid tickets from train service

Date: 17 November 2008

Status: Accepted by complainant

Background to complaint

1. This complaint concerns a passenger who was removed from a V/Line service on 18 May 2008 despite having valid tickets for the service.
2. The Public Transport Ombudsman (“PTO”) has conducted an investigation of the complaint, and the parties have been unable to reach an agreed resolution. As a result, the complaint has been resolved by way of binding decision – as permitted by Clause 6(1)(a) of the PTO Ltd Charter (“the Charter”). The complaint was originally made by the passenger’s father. Details of the identity of the passenger and his father (“the complainants”), and of certain parts of the PTO conciliation process have been removed to comply with the Charter and ensure confidentiality.

Information from the Complainant

3. A summary of the complaint is as follows:
 - The passenger, the holder of a weekly Metcard, was travelling on a V/Line service from Geelong to Melbourne, using an extension ticket.
 - The passenger was approached by the V/Line conductor. The conductor – who had had a previous incident with the passenger (see paragraphs 11 and 12) – checked the passenger’s tickets, and asked if he was getting off at Werribee. When the passenger advised that he was travelling to Melbourne, the conductor handed back the tickets and stated that the passenger would be getting off at Werribee or the police would be called.
 - The passenger replied that he had a valid ticket, and refused the requests from the conductor, at Werribee station, for him to leave the service.
 - The conductor became agitated and called the police. The train remained at Werribee for about 30 minutes, until the police arrived, and the police requested that the passenger leave the train.
 - The passenger was permitted to board the next Connex service for Melbourne.
4. The complainants are seeking compensation for the passenger’s treatment on the train service.

Information from V/Line

What happened on the train

5. The conductor completed a *security incident reporting form* of 18 May 2008. The account is similar to the complainants’ account:
 - the passenger presented his Metcard and V/Line ticket
 - the passenger advised of his intention to travel to Southern Cross Station

- the passenger was informed he was not permitted to do this under the ticketing regulations, and he would need to get off at Werribee and travel by Connex train to Melbourne
 - the passenger refused to leave and police were called and attended.
6. The *notes* of the conductor from 21 May 2008 include that the passenger presented a V/Line Geelong-Werribee ticket and Metcard and that the conductor informed the passenger he would need to purchase an extension ticket or he could de-train at Werribee. The conductor noted that after the passenger became threatening the police were called to remove the passenger from the train.
7. The conductor was interviewed by V/Line during the PTO investigation. The information provided by V/Line about the interview includes that the conductor stated that the passenger only 'flashed' his Metcard so that it could not be seen properly, and when the conductor asked to see the Metcard again the passenger became upset. This led the conductor to believe the passenger may be trying to fare evade.
8. This evidence is explored in further detail below.

V/Line response to complaint

9. V/Line has advised, in its various responses to the PTO investigation:
- V/Line believes that a copy of the tickets provided with the complaint, and believed to be the ones used by the passenger, would have been valid for the travel the passenger was undertaking
 - the conductor is aware he could have handled the incident better, and the conductor:
 - has been provided additional training on the Fares and Ticketing Manual
 - will attend a conflict management course
 - has been instructed to have no contact with the passenger, other than normal conductor duties, and if during the course of those duties the passenger reacts negatively, not to engage but to walk away
 - any additional actions in respect of the conductor's actions may be impractical and a breach of V/Line's employment contract with the employee.

V/Line also offered a number of gestures of goodwill to resolve the complaint.

Other relevant information

Previous extension ticket complaints

10. The issue of extension tickets is one that has been the subject of previous complaints by the passenger and his father, and the passenger has in the past been disadvantaged by conductors' lack of knowledge about these fare products.
- In March 2006 the passenger complained about troubles purchasing extension tickets for the Melbourne-Geelong service, apparently the result of an out-of-date fares and ticketing manual. The resolution of this included making staff aware of new ticketing conditions, and V/Line making specific arrangements to assist the passenger in purchasing a ticket.

- In May 2006 the passenger, while travelling on a V/Line Geelong-Melbourne service with a Metcard and V/Line ticket, was removed from the train for not having valid tickets. The resolution of this complaint included advice about an Information Alert provided to all conductors, an apology to the passenger and several daily return tickets as a gesture of good will.
- In November and December 2006, 2 further incidents occurred, where the passenger was advised by conductors that he had the incorrect tickets. These were examined by V/Line, and resulted in a written apology and 5 complementary travel vouchers for the passenger, and counselling/training of the relevant conductors.

Previous incident between the passenger and the conductor

11. The passenger and the conductor the subject of the current complaint had also had a previous conflict in January 2007. Unfortunately, as I understand it, this was a result of confusion about the entitlements granted by a complementary voucher provided by V/Line to resolve the previous complaint. The incident caused a further complaint to the PTO and eventual conciliation.
12. Although the accounts of what occurred are different, what is clear is both the conductor and the passenger believe the other behaved unreasonably. While this matter perhaps coloured the view of each of them on 18 May 2008, because no clear or agreed findings about the January 2007 incident were arrived at, it is not a matter I am able to rely upon in arriving at a decision in this complaint.

Reasons for binding decision

13. In deciding this matter, I have considered what is fair and reasonable for the passenger and V/Line, good industry practice and current law – as required by the PTO Ltd Charter at clause 1.5.
14. As this is the first matter in which the PTO has been required to make a binding decision, there are no previous decisions against which to benchmark my decision.
15. In the course of considering this issue, we have researched matters including the practice of other industry ombudsman. In addition to considering the law, industry practice and conduct of both parties, these schemes consider what an average or ordinary person would think is a fair outcome. While this may not be susceptible to a precise prescription, it provides guidance in determining any appropriate compensation in this matter.
16. On 24 October 2008, prior to finalising my decision, I provided V/Line an opportunity to comment on my preliminary summary of evidence, given that I was of the view that the accounts of the complainants about the incident should be accepted. I received advice from V/Line on 28 October 2008 to the effect that my summary 'looks fine'.
17. The complainants and V/Line were also provided an opportunity to provide any additional information in respect of the complaint and compensation claim before I made a decision about the complaint.

Factual matters

18. It appears that there is no dispute that the passenger had the correct tickets for his journey. The only significant unresolved factual issue is what occurred at the time of checking the passenger's ticket, which is relevant to the reason for his removal – I have set out the evidence for this point in more detail below:

The complainants state that the passenger showed the conductor both his weekly Metcard and daily extension ticket – valid tickets for the travel being undertaken by the passenger.

In his Security Incident Report, the conductor states that '*Male pax with V/Line ticket to Werribee and Zone 1&2 Metcard. Presented both tickets during the ticket check when asked what Metcard was for informed me of his intention to travel from WRB to MSC on V/Line Service. Was told this was not allowed under ticketing regulations he would need to get off at WRB and travel by Connex to Melb. Refused to leave ...*'. The 'Nature of Incident' tick boxes include 'Assault-verbal', 'Ticketing' and 'Unruly Passenger' – although no details of unruly conduct are included in the written report.

The conductor's notes are in a similar vein as regards the checking of the ticket. They also record that the reason for requesting police attendance was that the passenger had become threatening.

Subsequent V/Line advice is that the conductor has been interviewed twice. The PTO has been advised:

The conductor maintains that [the passenger] presented his V/Line ticket (as it had to be 'nipped') but only 'flashed' the Metcard at him so that the conductor could not see the Metcard properly and asked to see it again. The conductor said at this point [the passenger] became upset and aggressive towards him and he, in turn, started to get upset. The conductor believes that his request to see the Metcard clearly was reasonable. [The passenger]'s refusal to show the Metcard clearly made the conductor believe that [the passenger] was possibly trying to 'fare evade'.

19. It appears there are 2 different accounts from the conductor about the presentation of tickets:

- the first is that both tickets were presented by the passenger; this is supported by the conductor's own contemporaneous notes and consistent with the complainants' statements.
- the second is that the Metcard was not presented, or presented such that it could be examined; this is the account provided by the conductor on interview.

20. The PTO has requested copies of interviews with the conductor which would appear to be the basis of this second assertion. V/Line has advised these cannot be provided as they form part of the personnel record for the conductor and are therefore confidential.

21. It is a matter of some importance, as the second account would provide a basis for an authorised person to request the passenger to leave the V/Line train – see regulation 54(1)(b) of the Transport (Conduct) Regulations 2005 and regulations 6 & 7 of the Transport (Ticketing) Regulations 2006. However, if not, and the passenger did produce valid tickets, then there may have been no proper basis to request he leave the train for failing to hold or produce a valid ticket for travel.
22. On balance, I accept the account of the complainants. In particular, the account is consistent with the initial security report. It is also conduct consistent with a passenger who has valid tickets – a matter that is not currently in dispute. I therefore find that the passenger did hand valid tickets to the conductor. However, because the conductor was of the view that the tickets were not valid for the travel being undertaken by the passenger, he was requested to leave the train. The conductor's view in this respect was incorrect.
23. I also note that both parties have alleged that the other was variously agitated or threatening. What is clear, in my view, is that the ticketing dispute resulted in an unpleasant exchange. The cause of this was the wrong actions of the conductor. And it was the ticketing issue that resulted in the conductor calling police to remove the passenger from the V/Line service.
24. I should note that I am concerned that the conductor's account has changed over time. However, as I have been limited in my ability to explore this issue, I am not in a position to make any further observation or comment on this aspect.
25. The relevant facts of the incident on which I base my decision are therefore as set out below:
- the passenger was travelling from Geelong to Melbourne on a V/Line service with valid tickets
 - when these were handed to the conductor, the conductor formed the view that the tickets were not valid for travel, and requested that the passenger leave the V/Line service at Werribee
 - when the passenger refused this request, the conductor then requested police attend
 - the train was made to wait until police attended, and the passenger was removed from the V/Line Service.
26. It is also relevant that V/Line agrees the conductor could have handled the matter differently and has taken substantial action to address his conduct, including two additional training courses and instructing the conductor not to have dealings with the passenger other than normal conductor duties.
27. In addition, the following matters, personal to the passenger, are noted:
- this is not the first occasion the passenger has been removed from a V/Line service as a result of a conductor misunderstanding ticketing conditions
 - the passenger has advised that the impact of the incident includes that he will not travel by train to Geelong.

Management response of V/Line

28. My view, subject to the matter noted below, is that the actions taken by V/Line to deal with the conduct issues in this complaint represent a sufficient and reasonable management response for the conductor. The response includes very specific action to address the knowledge of the conductor, both about ticketing and dealing with commuters. The response also includes a formal record on the conductor's personnel file.

Compensation

Entitlement to travel on public transport

29. A person who holds a valid ticket or tickets for a public transport service should generally expect that they can travel on that service. While a specific statement of this entitlement is difficult to locate, it is implicit in Transport Act 1983 and the various regulations governing ticketing and conduct.

30. The travel permitted is closely regulated, but a passenger who abides by the various rules for travel should be entitled to travel, without being requested to leave a service through a mistaken understanding of ticketing requirements. This is reflected in regulation 54 of the Transport (Conduct) Regulations 2005.

No monetary loss

31. In considering whether the passenger should be entitled to any compensation in this matter, I firstly note that there has been no monetary loss directly arising from the incident, in that the passenger did not have to find alternative forms of transport or purchase a new ticket to complete his journey.

Other entitlement to compensation

32. In considering any additional compensation that should be payable, for the inconvenience and embarrassment to the passenger, the impact of the events upon him and the hurt to his feelings caused by the incident, I have had regard to factors including the following:

- the factual findings I have made in the matter at paragraphs 25-27
- there was no proper or legal basis for the conductor to ask the passenger to leave the V/Line service at Werribee.

33. I have also closely considered the compensation claim of the complainants, and goodwill gestures offered by V/Line during the PTO investigation.

34. My view is that a 26 week date to date full fare ticket (Melbourne-Geelong) provided at V/Line's cost is a fair and reasonable amount of compensation. If such a ticket were provided to the passenger, it should remove any prospect of a ticketing dispute between the passenger and V/Line conductors for that period. It would give a further opportunity for the passenger to regain confidence in the services of V/Line and the conduct of its staff. It would also recognise the hurt and embarrassment caused to the passenger from this incident.

35. In this respect, I have specifically considered whether the ticket ought to be a concession ticket or its cash equivalent based on a concession fare. Whatever the passenger's present entitlement is to concession travel, there is no certainty, for any number of reasons, that he would remain eligible for concession travel over the 26 weeks that the date-to-date ticket would cover. For this reason, and to provide finality to this complaint, my view is that the fair and reasonable outcome is that a full-fare ticket be provided to the passenger by V/Line.
36. Given that as a result of the incident on 18 May 2008 the passenger has stated that he has not travelled by V/Line services to Geelong, and so that the passenger is given the choice of using V/Line's services or finding other transport to Geelong, I determine that the passenger be given the option of nominating to receive an amount equal to the value of this fare – \$1245:40 – as compensation, as permitted by CI 6.1(a)(i) of the Charter.
37. In order to facilitate the passenger's use of V/Line services, and in particular the Melbourne-Geelong service, I will also direct – as permitted by CI 6.1(a)(vii) of the Charter – that the passenger be provided with a letter from a senior V/Line manager confirming the entitlement to travel with a V/Line extension ticket and weekly or other periodical Metcard. This will also assist in building the passenger's confidence in the services offered by V/Line, and further minimise any prospect of conflict between him and V/Line officers.
38. Finally, while it is not a matter I will formally make a decision about, the evidence in this matter strongly suggests there is value in V/Line again, in an appropriate manner, reminding all those with roles of selling or checking tickets for V/Line services of the nature of the entitlements of rail passengers to use extension tickets.

Binding decision

39. My decision in this matter under CI 6.1(a) of the Charter is as follows:

- a. V/Line is to provide compensation to the passenger, at his election, of either a 26 week, date to date, full fare ticket for travel between Melbourne and Geelong OR an amount of \$1245:40 (\$47.90 x 26 weeks).

The passenger is to advise the PTO of his election when advising of his acceptance of my decision.

V/Line is to provide the compensatory ticket or moneys to the passenger within 28 days of the PTO's advice to V/Line of the complainants' acceptance of my decision.

- b. V/Line is to provide to the passenger a letter from a senior V/Line manager confirming the passenger's entitlement to travel with a V/Line extension ticket and weekly or other periodical Metcard at the time of providing the compensation ticket or moneys.

Simon Cohen
Public Transport Ombudsman