

Decision No. 28233

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on the Commission's own motion into the operations and practices of E. H. MORGAN and TOM MORGAN, doing business under the fictitious name and style of The Santa Fe Bus Company, Santa Fe Trails Stages, Inc., a corporation, First Doe, Second Doe, Third Doe, Fourth Doe and Fifth Doe, for the transportation of persons, their baggage and/or express, as a passenger stage corporation, between San Francisco and Los Angeles and San Diego, and intermediate points.

ORIGINAL

Case No. 4047

Douglas Brookman for all respondents

Orla St. Clair for Passenger Carriers' Association and Pacific Greyhound Lines, Interveners.

R. E. Wedekind for Southern Pacific Company, Intervener.

Robert Brennan and W. F. Brooks, for The Atchison, Topeka & Santa Fe Ry Company, Intervener.

BY THE COMMISSION:

O P I N I O N

By its order issued herein on July 24, 1935, respondents E. H. Morgan, Tom Morgan, Santa Fe Bus Company and Santa Fe Trails Stages, Inc., et al., were cited to appear and show cause why they should not be ordered to cease and desist transportation of persons, their baggage and/or express, for compensation, as a passenger stage corporation, as defined in Section 2-1/4 of the

Public Utilities Act, said citation being set for hearing before Examiner Williams, at Los Angeles, August 9, 1935. At that time and place said respondents appeared personally and by counsel, together with certain interveners as their interests may appear. At this hearing the matter was duly submitted for decision.

Respondent Santa Fe Bus Company is the fictitious name of a co-partnership of Howard E. Morgan and Tom Morgan. It received a certificate of registration from this Commission on July 1, 1935. In its application it stated that "these vehicles are to be used in interstate operation to and from San Francisco, California, and Tia Juana, Mexico via Fresno, Los Angeles and San Diego. This was in compliance with G.O. No. 90. Agents (mostly those of Santa Fe Trails Stages, Inc. another respondent) were also authorized to sell tickets for such an operation. No rate schedule was filed but time schedules were. Daily service was provided therein. Service was begun under such filing July 2. Three 21-passenger vehicles, leased from an Arizona corporation (Citizens Auto Stages) controlled by the two Morgans were used. The vehicles were approved by the Commission's safety inspector; they bore on their sides the words "Santa Fe Trails System." Mr. Howard Morgan is vice-president and general manager of Santa Fe Trails Stages, Inc., a respondent herein. He testified that immediately (date not certain) entered into an interline agreement for exchange of through interstate passengers at Los Angeles, thus assimilating the San Francisco-Tia Juana operation as a part of the "system" whose main operation is between Wichita, Kansas, and Los Angeles, via Albuquerque and Needles. Under such provisions operation was begun July 2.

On July 1 and thereafter for a period the Santa Fe "System" advertised in the San Francisco papers a "new through service South and East. Tia Juana, stopover at San Diego, \$9.90 one way, \$16.85 round trip." (Ex.No.1). On July 30 the advertisement was changed to alter the fare to \$8.00 one way, and \$13.85 round trip, and also "stopover allowed." (Ex. Nos. 3 and 4). The advertisements were prepared by respondent T. Morgan.

However, none of the stages of the Bus Company ever operated under these provisions out of the State of California. They did operate between San Francisco and San Diego, via Fresno and Los Angeles. T. Morgan, "managing partner" in admitting this, explained they originally intended to operate over the Mexican border to Tia Juana and Agua Caliente by arrangement with the Mexican taxi operations stationed at the border opposite San Ysidro, California, but that such arrangements were cancelled by Mexican authorities. Hence no operation to a foreign country ever had been attempted. Howard Morgan testified he had not been able to arrange exchange of passengers with Pacific Southland Stages, Inc. operating between San Diego and the Mexican border and also (in foreign commerce) to Tia Juana and Agua Caliente in Mexico. Charles E. Cheney, manager of Pacific Southland Stages, testified that he had refused co-operation with the Morgans on July 1. Cheney testified his refusal was based on his belief that the stages of respondents (Morgans) "were to be used as a subterfuge" to provide intrastate operation. Further, that he had transported only such passengers of respondents as had purchased tickets at the full rate. There

Is no other operator between San Diego and Tia Juana. Passengers of respondent Bus Line did present coupons calling for transportation but were refused the privilege by Pacific Southland Stages.

Tickets were sold by respondents at San Francisco, Los Angeles and San Diego and elsewhere. Separate rates were provided. The fare between Los Angeles and San Diego, one way was \$2.95 and round trip \$3.75. (These tickets (Exhibit No. 5) included coupons "good for one trip San Diego and Tia Juana" and vice versa. Similar tickets were sold from all points bearing the simple sentence "subject to tariff regulations." T. Morgan testified that the "regulations" were those of Santa Fe Trails.

A copy of the tariff issued to agents of respondents, Morgans, was introduced by them as Exhibit No. 6. It purports to be a joint tariff with Dollar Line Stages, San Francisco to Portland and Union Stages, Inc. between Portland and Seattle. It contained this note:

"Fares and rates named in this tariff cover interstate or international traffic only, and are not applicable to traffic moving wholly within the States of Washington, Oregon or California."

T. Morgan testified that this note appeared in all tariffs issued by respondents. He also admitted no notice as to stopovers was in any tariff and that stopovers were only mentioned in advertising and verbally to ticket purchasers. He said 30 days "stopover" was permitted.

What actually happened to a passenger in possession of a ticket is best told by witnesses produced by Passenger Carriers' Association, intervener.

Noel O'Connell, San Francisco, purchased ticket No. 1 sold at the San Francisco office of the Bus Company, 775 Market Street. He was transported thereon to San Diego. He remained

two days there and returned on the same ticket to San Francisco. One of the passengers on the vehicle was a cowboy whose destination was Hollywood. His Tia Juana coupons were not mentioned by him or the driver of the vehicle during the round trip journey, he testified.

Ralph W. Blanchard, San Francisco, purchased a one-way ticket to Tia Juana, similarly, on July 9. He made the journey with five other passengers. En route between Los Angeles and San Diego, he testified, the driver told him he was "the only passenger going to Tia Juana." At San Diego he was provided with a one-way ticket to Tia Juana via the Pacific Southland Stages, after a delay of twenty minutes. On his return he asked for a rebate on his ticket, because he had to pay 75 cents for the return from Tia Juana. He testified he was told to produce his return stub and the amount would be refunded. He asked for a ticket from San Diego to San Francisco but was refused because the Bus Line had "no franchise." Also he was refused a ticket from Tia Juana to San Francisco but was refused because "they had no office in Tia Juana."

P. J. Coughlin, San Francisco, testified that he applied for a ticket to San Diego at the San Francisco office but was told he could purchase one to Tia Juana. Witness asked, if he did not use the ticket between San Diego and Tia Juana if a refund would be made and was told that it would not be. <sup>1</sup> Witness had the same experience at the office of the

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Mr. Morgan testified that the only refund made on a ticket between San Francisco and Tia Juana would be for the distance beyond the border, two miles, or 2-504ths of the \$8.00 fare collected. No refunds have been made.

Dollar Stages, 1087 Market Street and respondents' agency at the Continental Hotel; at the latter he was advised he would be permitted stopover of sixty days. Witness bought no ticket and made no journey. Similar testimony was given by Margaret Leusch as to San Francisco agencies of respondents and Charles W. Axtell as to the Los Angeles agency in the Hotel Cecil, 640 South Main Street.

The narratives of these witnesses were not refuted by respondents.

In this proceeding respondents are not cited because of any operations actually conducted of an interstate character or in commerce with foreign nations, nor the exchange of such traffic between the Bus Company and the Trail Stages, such operations having been undertaken by proper compliance with law and according to their declared purposes. However, the declared purpose of the Bus Company has never been accomplished. It purported to establish a service between San Francisco and Tia Juana, in the Republic of Mexico. The testimony of T. Morgan above clearly establishes the fact that no such operations ever has been conducted. The vehicles of the Bus Company never operated beyond San Diego. True Morgan explained that when the operations began (July 2) he expected to make joint interline arrangements with Pacific Southland Stages or to arrange entrance of the Bus Line Stages to Tia Juana. But when such arrangements failed respondents terminated their operations at San Diego. The record shows that respondents daily advertised in newspapers rates to Tia Juana with a stopover (which T. Morgan testified was 30 days) at San Diego, and that few passengers (not 5 per cent Morgan also testified) sought to use Tia Juana coupons. No ticket sold provided bona fide carriage to Tia Juana

either by the issuing carrier or any other. The passenger was required to get a full fare ticket at San Diego to the Mexican point. In view of the fact that the California Pacific International Exposition is a magnet for very heavy passenger traffic and the rate from San Francisco (cut to \$8.00 one way and \$13.35 round trip) is more attractive than other carriers, respondents have been able to transport a sharee of this intrastate traffic.

Full and fair consideration of the entire record discloses the operations of respondents as audacious subterfuge. There never has been bona fide operation by the Bus Company out of California. It possesses no interstate character except as to passengers to or from Washington, Oregon and points east of California and then only as such passengers may be received from or transferred to interstate carriers who have complied with California law. The declaration of commerce with a foreign nation is a sham and wholly unworthy of respondents who have conducted intrastate operations in California under this Commission for more than a decade with credit. The intrastate operations as conducted should cease, and an order to that end will be entered.

O R D E R

The above entitled matter having been duly submitted at a public hearing and the Commission being fully advised in the premises,

IT IS HEREBY FOUND AS A FACT that respondents, H. E. Morgan and Tom Morgan, co-partners, operating under the fictitious name of Santa Fe Bus Company, have transported passengers between San Francisco and San Diego via Fresno, Bakersfield and Los Angeles, and between all intermediate points, as a common carrier, as defined by Section 2½ of the Public Utilities Act of the State of California, and without a certificate of public convenience and necessity therefor, as required by Section 50½ of said Public Utilities Act of the State of California.

Based upon the Findings and the Opinion herein,

IT IS HEREBY ORDERED that H. E. Morgan and Tom Morgan, co-partners, and each of them, and Santa Fe Bus Company, their ~~fictitious~~ operating identity, be and they are hereby ordered to cease and desist from all operations of the transportation of passengers between San Francisco and San Diego, via Fresno, Bakersfield and Los Angeles, and intermediate points, or via any other route between termini or intermediate points, and between all intermediate points or between any two or more intermediate points, unless and until they, or any of them, shall have procured from the Railroad Commission proper certificate of public convenience and necessity therefor.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission shall immediately cause a certified copy of this decision to be personally served upon said H. E. Morgan and Tom Morgan, and upon H. E. Morgan and Tom Morgan, co-partners, operating under the name of Santa Fe Bus Company.



IT IS HEREBY FURTHER ORDERED that the complaint be and the same hereby is dismissed as to respondent Santa Fe Trail Stages, Inc.

The effective date of this order shall be twenty (20) days from the date of this service.

Dated at San Francisco, California, this 17<sup>th</sup> day of September, 1935.

John A. Whelan

M. B. Kania

STANLEY R. DEBNI

Commissioners.