

Decision No. 46187

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| In the Matter of the Application of |) | |
| WALTER R. McCOY, doing business as |) | |
| McCOY LIMOUSINE SERVICE for certificate |) | |
| of public convenience and necessity to |) | Application No. 31651 |
| operate limousine and bus service to |) | |
| nonschedule air lines between Inter- |) | |
| national Airport Bldg., and Oakland |) | |
| and San Francisco. |) | |

Frank Loughran, for applicant.
Roland J. Henning, for Fialer's Limousines, Inc.,
 protestant.
Edward A. Goggin, for Oakland Board of Port Commissioners,
 interested party.

OPINION AND ORDER ON REHEARING

By Decision No. 45288, dated January 23, 1951, Walter R. McCoy was granted a certificate to conduct a passenger stage service for the transportation of nonscheduled airline passengers and their baggage from the Oakland Municipal Airport to specified hotels and depots in Oakland and San Francisco, and to Treasure Island.

A petition for rehearing was filed by protestant Fialer's Limousines, Inc., for the purpose of oral argument only, and granted by the Commission on April 3, 1951. Oral argument was had before Examiner Gillard in San Francisco on July 27, 1951.

Fialer's contends that certain findings in the opinion are not supported by the evidence; that the grant of a right to transport only nonscheduled airline passengers, and only from the airport, is unwarranted and unprecedented; that the order authorizes a diversion of traffic from Fialer's, which is now operating at a loss; that there is no evidence to support the finding that public convenience and necessity require the new service, and no evidence that Fialer's service has been inadequate or unsatisfactory; and that

there is no finding that Fialer's will not provide service to the satisfaction of the Commission. These points will be discussed in the sequence mentioned.

After a careful review of the record herein, we find that the representatives of five nonscheduled airlines, for periods of time ranging up to 18 months prior to the public hearing herein, have engaged only the services of applicant for the ground transportation of their incoming passengers on an individual fare basis, although some of them used Fialer's on a charter basis, i.e., the airline involved charters and pays for an entire bus to transport a particular group of passengers. Fialer's produced no public witnesses to testify that it was rendering any service for incoming nonscheduled passengers, except one who testified he was the principal shareholder in DeLuxe Air Coach, a nonscheduled airline, and a ticket agent for several other similar lines. He also owns his own limousine and employs a driver to provide ground transportation at the airport. He admitted he has never been at the airport to see his own planes arrive, and that he had been in Oakland very little and did not know when Fialer's had transported any of these passengers, although asserting that it "sometimes" carries them. Another witness for protestant testified she was the manager of the Pacific Southwest Airlines (a scheduled intrastate line) in the Beverly-Plaza Hotel in San Francisco, which is the terminal for that airline. She is also a ticket agent for several nonscheduled lines. Fialer's makes a scheduled daily stop at that hotel to pick up passengers destined to the Oakland Airport. She also gave an affirmative answer to the question, "Does Fialer's Limousines, Inc. transport passengers for you arriving at the Oakland Airport to your terminal in San Francisco?" We cannot infer that the question and answer refer to nonscheduled airline passengers being transported to the

terminal of Pacific Southwest Airlines.

The Superintendent of the Oakland Municipal Airport testified that three weeks prior to the public hearing herein (about three weeks after the application was filed), Fialer's requested a permit for parking space for its vehicles at the International Terminal Building, and that prior to that time it had parked them only at the Administration Building where the interstate scheduled airlines process their passengers. This change in policy was too late to be of help to it in this proceeding. Although there was evidence that Fialer's was furnishing ground transportation to the passengers of Pacific Southwest Airlines and California Central Airlines (a scheduled intrastate line) who were processed through the International Terminal Building, we cannot find, on the evidence of the public witnesses herein, that Fialer's was furnishing an available, continuous service, on an individual fare basis, to the passengers of nonscheduled airlines arriving at the Oakland Airport.

All findings in the original opinion inconsistent with the foregoing are hereby set aside.

No issue is raised by the contention that the certificate granted herein is unprecedented and unwarranted because it is for a one-way movement of only a portion of all available traffic at the Oakland Airport. Whether the factual situation be new or old is immaterial if public convenience and necessity have been established.

Fialer's also contends that the order authorizes a diversion of traffic from an existing carrier operating at a loss. However, the record shows that the nonscheduled airline passenger is new business which applicant developed and which, to that extent, was never captured by Fialer's.

We reaffirm our findings that Fialer's was not, at the time this application was filed, rendering an adequate service to these nonscheduled airline passengers arriving at the Oakland Airport, and that public convenience and necessity require the establishment and operation of the service proposed by applicant.

Petitioner's last contention is that the Commission has ignored that portion of Section 50 $\frac{1}{2}$ of the Public Utilities Act quoted in the original opinion, because it has not found that Fialer's "will not provide the same (service) to the satisfaction of the Railroad Commission." We have given careful consideration to this point, and also to the authorities cited from other jurisdictions by petitioner. The proviso to Section 50 $\frac{1}{2}$ under consideration was added by amendment in 1931. In 1933 the Commission analyzed this amendment (In re Fialer's, 38 CRC 880) and concluded that where an applicant sought to serve the same territory as that already served by an existing operator, the Legislature did not intend to circumscribe the long existing power of the Commission to grant a new, competitive certificate, when public convenience and necessity require that there be more than one carrier in the field, and that the ability of the existing utility to serve the public satisfactorily in the future may be judged as of the day the newcomer knocks at the door. A petition for a writ of review in this case was denied by the California Supreme Court on October 23, 1933.

No new facts or circumstances have been called to our attention which would warrant a change in this policy.

The Commission having considered the several allegations in the petition and the arguments in support thereof and being of the opinion that the decision except as modified herein should be affirmed,

IT IS ORDERED that the petition to vacate said decision be and it is hereby denied and that Decision No. 45288, as herein modified, be and the same is hereby affirmed.

Dated at Los Angeles California, this 18th day of September, 1951.

R. T. [Signature]
President
James J. [Signature]
Harold P. [Signature]

Commissioners