

ORIGINAL

Decision No. 48357

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of AMALGAMATED ASSOCIATION)	
OF STREET, ELECTRIC RAILWAY AND MOTOR)	
COACH EMPLOYEES OF AMERICA, A. F. OF L.,)	Application No. 33923
DIVISIONS 1225, 1222, 1055 and 1223 for)	(Filed December 4, 1952)
modification of Section 12.09 of General)	
Order No. 98.)	

- C. J. Simpson, National Labor Bureau, for applicants.
- G. W. Ballard, for Brotherhood of Railroad Trainmen, interested party.
- H. B. Markley, for Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, A.F.L., Division 1225, applicant.
- Douglas Brookman, for Pacific Greyhound Lines, interested party.
- J. R. Worthington, for Key System Transit Lines and Los Angeles Transit Lines, interested parties.
- Charles R. Wood, for Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, A.F.L., Legislative Council of California, supporting applicants' request.
- John Power, for Commission's staff.

O P I N I O N

Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, A. F. of L., Divisions 1055, 1222, 1223, and 1225, hereinafter called "Amalgamated," requests the Commission to amend Section 12.09⁽¹⁾ of its General Order No. 98, which became effective January 1, 1951, to provide for periodical physical re-examination of drivers of passenger stages and trolley coaches at three-year instead of two-year intervals.

(1) Section 12.09 provides as follows: "Periodical Re-examination Required. Drivers shall be re-examined in the same manner as provided in Section 12.06 at not less than two-year intervals to ascertain whether they still meet the qualification requirements of Section 12.01 to 12.04 inclusive."

A public hearing was held at San Francisco, before Commissioner Huls and Examiner Silverhart, on February 16, 1953, on which date the matter was submitted. Notices of such hearing were mailed to passenger stage corporations and street railroad corporations subject to this Commission's jurisdiction and to representatives of labor organizations concerned.

The only passenger transportation companies which appeared and upon whose behalf testimony was offered were Los Angeles Transit Lines, Key System Transit Lines and Pacific Greyhound Lines.

Counsel for Amalgamated stated it did not oppose physical examinations but sought uniformity between Section 12.09 and Section 191.9⁽²⁾ of the Motor Carrier Safety Regulations of the Interstate Commerce Commission. He said that Arizona, New Mexico, Texas, Utah, Nevada, and Oregon, which with California constitute Pacific Greyhound Lines' operating area, follow the regulation providing for a three-year physical re-examination period. According to counsel, the difference between these regulations would give rise to administrative and functional problems, involving local operations since employees in intrastate operations sometimes are required to operate interstate lines.

The business agent for Amalgamated's Division No. 1225 testified that the regular drivers employed by Pacific Greyhound

(2)

Section 191-9 reads as follows: "Periodic Physical Examination of Drivers. On and after January 1, 1954, every driver shall be physically re-examined at least once in every 36 months and no person shall drive nor shall any motor carrier require or permit any person to drive any motor vehicle unless such person shall have been physically examined and certified by a licensed doctor of medicine as meeting the requirements of 191.2; provided, however, that this section shall not apply to drivers of motor vehicles controlled and operated by any farmer when used in the transportation of agricultural commodities or products thereof from his farm, or in the transportation of supplies to his farm."

Lines⁽³⁾ are subject to assignment to any of its divisions and may be called upon to perform extra work anywhere in its system. His testimony disclosed that such drivers operate runs departing from or entering into California. To compel a driver, qualified in other states, to relinquish operation of a bus at the California State line where usually there are no facilities to accommodate passengers, he stated, would be bad for business and create an administrative problem. He stated also that employees' seniority rights would be restricted, and bidding for assignment to runs would be affected, resulting in discrimination against employees operating in California, requiring them to move to other states.

The witness assumed that a driver who failed to pass the physical examination required by General Order No. 98 would be permitted to drive in another state because of Section 191.9, supra. The Motor Carrier Safety Regulations contain nothing to warrant such an assumption. Both General Order No. 98 and the Motor Carrier Safety Regulations prohibit any person from driving unless he possesses certain minimum physical and mental requirements. Such minima are substantially similar and it must be expected that the Interstate Commerce Commission will insist upon compliance with its requirements, whether the defect is made apparent by a physical examination under its own rules or under those of California.

Key System Transit Lines' traffic engineer testified that the provision for re-examination every three years is reasonable and a sufficient safeguard, and that this Commission's rules and those of the Interstate Commerce Commission should be compatible.

(3)

Amalgamated and Pacific Greyhound Lines are parties to a collective bargaining agreement relating to wages, hours and working conditions.

The chief safety director of Pacific Greyhound Lines testified that the period of time within which re-examinations would be held was not a matter of moment but that it was concerned because this Commission's rule and that of the Interstate Commerce Commission provided for re-examination within different periods. He stated that examinations of 2,145 drivers situated in seven states will be difficult to administer under the two rules. In this connection, it should be noted that the witness's testimony disclosed that Pacific Greyhound Lines, which had last conducted a general examination of its drivers in November, 1950, had made preparations to hold re-examinations during December, 1952, in accordance with Section 12.09 of General Order No. 98 but had held them in abeyance only because of the pendency of the instant proceeding. He also stated that Pacific Greyhound Lines takes out of service any employee who is considered dangerous and should not be driving. On cross-examination he stated he believed the requirements of General Order No. 98 to be reasonable.

The Metropolitan Life Insurance Company's associate medical director, who supervises the activities of 900 medical examiners employed in its Pacific and Mountain States District, was called as a witness by the Commission's staff. The doctor testified that the medical profession generally favored annual physical examinations. He stated that more care should be exercised as to examinations of persons over 40 years of age who operate motor vehicles on public highways. This should be done, he said, because age 40 is the time usually to anticipate the beginning of degenerative diseases which cause disabilities. Further, the witness stated that such physical examinations reveal conditions of which the examinee is unaware. He considered a physical examination once every two years not unreasonable.

A document prepared by an associate transportation engineer and an associate transportation operations supervisor of the Commission's staff and entitled "Report Relating to Physical Examination as Required by Section 12.09 of General Order No. 98" was received in evidence as Exhibit 7. This exhibit shows that in 1951 three drivers employed by one passenger stage corporation were disqualified because of physical disabilities. It also showed that during the period from July, 1946 to November, 1952, twenty-seven drivers whose ages ranged from 27 to 60 were disqualified by another passenger stage corporation because of disabilities such as coronary disease, arterial hypertension, diabetes, defective vision and impaired hearing.

It appears from such exhibit that from 1947 to 1951 Pacific Greyhound Lines conducted annual re-examination of its drivers. Exhibit 7 further discloses that Pacific Greyhound Lines during such period from 1947 to 1951 reported no accidents or casualties as a result of its drivers becoming incapacitated. During the same period, all other bus carriers reported that injuries to 13 persons resulted from 5 accidents caused by incapacitation of their drivers.

Exhibit 7 also indicates that the number of accidents per bus mile arising out of all bus operations from 1949 to 1951, inclusive, has steadily increased.

The testimony of the associate transportation engineer revealed that 54 per cent of the passenger transportation companies, which informed this Commission of their positions concerning frequency of re-examinations, supported the two-year period.

It is the responsibility of this Commission to require passenger transportation companies subject to its jurisdiction to

operate their lines, systems and equipment in such manner as to promote and safeguard the health and safety of their employees, passengers and the public.

Case No. 5098, an investigation by this Commission for the purpose of determining the reasonableness and propriety of adopting a general order containing safety rules and other regulations applicable to passenger stage corporations and street railroad corporations, resulted in Decision No. 45011, dated November 8, 1950. In such decision at mimeograph page 6 we said, "It appears that a full investigation and hearing of the matters involved in this proceeding have been had and that all parties interested have had a full opportunity to present to the Commission suggested changes in the rules. It is our conclusion, therefore, based upon the testimony and evidence introduced during the proceeding, that the safety rules and other regulations covering the operations of passenger stage corporations and street railroad corporations set forth in the attached General Order No. 98 are reasonable and will promote safety in the transportation of passengers on the highways in California" (under-scoring added). Nothing contained in the record before us indicates that the safety of passengers and the public will be promoted and protected by granting this application. Rather, the evidence compels the conclusion that a lengthening of the period between re-examination of drivers would have an adverse effect upon the public safety.

In passing, it should be said that the administrative difficulty allegedly arising because of a two-year period contained in Section 12.09 of General Order No. 98 and a three-year interval set forth in Section 191 of the Interstate Commerce Commission's motor safety regulations could be obviated merely by conducting re-examinations every two years.

The application will be denied.

O R D E R

A public hearing having been held and based upon the evidence therein adduced,

IT IS ORDERED that Application No. 33923 is hereby denied.

The effective date of this order shall be twenty days after the date hereof.

Dated at South Pasadena, California, this 10th day of March, 1953.

[Signature]
President

[Signature]

[Signature]
[Signature]

Commissioners

Commissioner JUSTUS F. CRAEMER, being necessarily absent, did not participate in the disposition of this proceeding.