

ORIGINAL

Decision No. 66408

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In The Matter of the Application of

GLENDALE CITY LINES, INC.

For an ex-parte order for authority to discontinue operations.

Application No. 44983

(Filed November 30, 1962)

Henry Melby and E. J. Diaz, for Glendale City Lines, Inc., applicant.  
Bodle & Fogel, by George E. Bodle, for Brotherhood of Railroad Trainmen General Grievance Committee, interested party.  
Elmer Sjostrom, for Commission staff.

O P I N I O N

The Commission, by Decision No. 64645, issued December 12, 1962, in the above-entitled matter, authorized applicant, Glendale City Lines, Inc., to discontinue passenger stage service in Glendale and vicinity. The order specified that applicant "shall not dispose of any of its assets pending further order of this Commission, to be issued after hearing on the question of severance damages has been held".

Subsequently, by Decision No. 65211, issued herein, on April 10, 1963, and by Decision No. 65315, issued herein, on May 1, 1963, applicant was authorized to sell certain buses, subject to the condition that the amount received from such sales be deposited in a separate bank account to be held in trust pending further order of this Commission.

Public hearing was held in Glendale, California, on April 9, 1963, and the matter was submitted subject to the filing of briefs which have been received.

Evidence was adduced at the hearing on the question of the claims of the Brotherhood of Railroad Trainmen, General Grievance Committee for severance pay for the bus drivers who were members of the union.

Evidence of Railroad Brotherhood

A representative of the union testified regarding the present status of the bus drivers and their previous term of employment. An expert witness testified for the union with regard to wages and rules and gave statistics regarding the seniority and salary of the bus drivers.

Exhibits offered by the union and received in evidence consist of:

Exhibit No. 7: Agreement between Glendale City Lines, Inc., and Brotherhood of Railroad Trainmen.

Exhibit No. 8: Motor Coach Operator's Seniority Roster as of December 12, 1962.

Exhibit No. 9: List of Motor Coach Operators and their Present Employment.

Exhibit No. 10: Operators' Loss of Accrued Pension Liability.

Exhibit No. 11: Operators' Loss of Earnings between December 12, 1962, and date of New Employment.

Exhibit No. 12: Illustrations of Operators' Expenses and Losses Resulting from Abandonment.

Exhibit No. 13: Supplemental Agreement between San Diego and Coronado Ferry Company and Marine Engineers Beneficial Association.

The Brotherhood requests severance pay for the 25 operators of one month's salary for each year of service with the company. The exhibits and evidence of a witness who testified for the Brotherhood in support of the losses sustained by the operators disclose accrued pension benefits for the 19 men with more than one year's service in the total amount of \$32,211. The witness for the Brotherhood testified to loss of wages for 17 men between December 12, 1962, and the date of new employment in the total amount of \$11,491.87. The witness for the Brotherhood also testified to other losses for the men exceeding \$2,500 for medical expenses resulting from cancellation of medical insurance. Ten operators will lose two weeks' vacation pay, five operators will lose one week, and in the next five years, 15 operators will lose 89 weeks' vacation pay, at a total estimated loss of \$8,900. The witness for the Brotherhood also testified to other losses for the operators consisting of moving expenses, incidental expenses, and inconvenience in adjusting to new jobs and schedules.

Exhibit No. 7 received in evidence is the last agreement between the Brotherhood and Glendale City Lines, Inc., and provides a rate of pay for the operators of \$2.21 per hour and for eight hours each day, five days of work each week, and provides for six holidays.

Evidence of the Bus Company

A representative of the bus company testified with regard to the economic loss of the bus company in the Glendale operations and its negotiations with the operators, and referred to Exhibit

No. 1 introduced in evidence in the first hearing showing the net income from operations by months from January 1, 1958, to October 31, 1962, inclusive; the exhibit shows figures for 58 months, of which four months were listed in figures in black ink as income, and all of the other 54 months were listed in red ink as losses, showing a total loss for the period of \$99,859.17.

The bus company also contended that its labor contract had expired and had not been renewed and that on December 12, 1962, it had no employees. A witness for the bus company testified that the company had offered all of the bus operators equivalent employment elsewhere. The company also further contended that the Commission has no jurisdiction to award severance pay to its employees.

The annual reports of Glendale City Lines, Inc., for the past five years were placed in evidence by reference, at the direction of Examiner DeWolf, for the purpose of showing the financial position of the company.

#### Discussion

The Commission's jurisdiction to grant the relief requested was previously considered and resolved in the Richmond & San Rafael Ferry case (52 C.P.U.C. 420; 52 C.P.U.C. 585) and in the Metropolitan Coach Lines case (55 C.P.U.C. 429; 55 C.P.U.C. 500). In those cases we decided that this Commission had jurisdiction to grant severance pay under proper circumstances.

The company, in support of its jurisdictional arguments, distinguishes our prior decisions on three alleged grounds: (1) each involved employees who were such at the time of the application; (2) each involved a sale of utility property; and (3) each involved an agreement for severance pay.

(1) The contention of the company that it had no employees because its labor contract had expired and had not been renewed is without merit. The reason that the labor contract had not been renewed was that the employees and the company could not agree on terms, so that employees at the time of the abandonment were on strike. The employment relationship between employer and employee is not terminated by such a strike. (Mark Hopkins, Inc. v. California Employment Comm., 24 Cal.2d 744.) The argument of the company that our order conditioning authority to abandon service upon payment of severance pay constitutes intervention in a labor dispute is also erroneous. (Metropolitan Coach Lines, 55 C.P.U.C. 500; Kent v. Civil Aeronautics Board, 204 Fed.2d 263.)

(2) The fact that prior decisions of this Commission on the question of severance pay have also involved sales of public utility property is jurisdictionally irrelevant. Our power to condition abandonments with severance pay provisions is not limited to cases which couple the abandonment with sales of public utility property or with other factors, such as consolidations, mergers, or new certificates of public convenience and necessity. (Metropolitan Coach Lines, supra, 55 C.P.U.C. 500.) In Richmond & San Rafael Ferry, supra, 52 C.P.U.C. 420, an abandonment case which incidentally involved a sale of public utility property, the Commission stated that "the dismissal of employees in situations involving the consolidation, merger or abandonment of public utility operations is a vital part of the public interest." (52 C.P.U.C. at 421.) A reading of the case shows that it was the abandonment aspect of the proceeding which prompted the Commission to protect the dismissed employees.

(3) The contention that our prior decisions indicate no power to impose our own conditions relating to severance pay because those decisions involved approval of agreements between labor and management relating to severance pay, is erroneous. In the Richmond & San Rafael Ferry case, supra, union and management could not agree on the terms of severance pay and the dispute was brought here for disposition; two plans had been discussed by the parties and no agreement had been reached. The Commission found that parts of one of the plans fulfilled the requirements of the public interest as to severance pay and an order was issued accordingly. In no sense was the order pursuant to an agreement of the parties; the Commission expressly commented on the parties' failure to agree. (52 C.P.U.C. at 587.)

The remaining questions for disposition are the amount of the severance pay award, if any, and who shall receive it. Upon consideration of all the facts and circumstances of this case, we find that severance pay should be awarded to those employees of the company who had more than one year of service with the company at the date of our order authorizing abandonment, December 12, 1962. We find that these employees were placed in a worse position because of the abandonment and are entitled to severance pay.

We have considered the following factors in determining the amount of severance pay to be awarded: (1) length of service with the company; (2) loss of seniority; (3) loss of vacation pay; (4) loss of health and welfare benefits; (5) loss of pension rights; (6) wage differences as between old and new jobs; (7) loss of wages due to unemployment while looking for new jobs (less any unemployment insurance collected); and (8) possibility of having to relocate

to obtain new work. (In different situations other factors could be added to this list.) Against these considerations we have weighed the ability of the company to pay severance pay.

Upon consideration of the evidence, the Commission finds that:

1. Public convenience and necessity require reasonable employee protection in connection with the abandonment of public utility operations here involved.

2. Glendale City Lines, Inc. had been operating at a loss from 1958 to date, and the number of passengers had been declining. Such decline continued to the date of abandonment.

3. On December 12, 1962, the date abandonment was authorized by the Commission, Glendale City Lines, Inc. had in its employ 25 motor coach operators, 6 of whom had less than one year's service, 11 of whom had more than one year's service and less than 15 years' service, and 8 of whom had more than 15 years' and up to 21 years' service. The employee relationship had not been terminated as of said date.

4. The 6 operators with less than one year's service are not, with respect to their employment, in a worse position than before the abandonment, and are not entitled to receive severance benefits.

5. The 19 operators whose names, ages, and years of service are set forth in Appendix "A" attached hereto have had more than one year's service as employees of applicant. They have all obtained employment with salary equivalent to that previously received from applicant, but they have suffered losses in seniority, pension rights, vacation and fringe benefits.

6. The company has the financial ability to pay the award of severance pay herein ordered.

7. Each of the 19 operators with more than one year's service is reasonably entitled to a sum of money for severance pay equal to one half of the month's regular pay for an average month of 22 working days at the rate of \$2.21 per hour (which is \$194.48), for each year of service with the company, but not to exceed 15 years.

The Commission concludes that severance pay should be awarded as provided in the following order.

O R D E R

IT IS ORDERED that:

1. Glendale City Lines, Inc. shall pay to each of the 19 motor coach operators named in Appendix "A" attached hereto severance pay equal to \$194.48 for each year of service up to, but not to exceed 15 years of such service, with interest at the rate of 7 percent per annum from the effective date of this order. The total amount thus due to each operator (except for such interest) is set forth in Appendix "A" attached hereto.

2. Glendale City Lines, Inc. shall file a report with this Commission within twenty days after the effective date of this order showing the payment of such severance pay to each operator, or the procedure by which the assets of the company will be made available for payment thereof.

3. Except to the extent otherwise heretofore provided, applicant shall not dispose of any of its assets pending further order of the Commission.



The Secretary of the Commission is directed to cause certified copies of this order to be served upon the applicant and upon the Brotherhood of Railroad Trainmen, General Grievance Committee.

The effective date of this order shall be twenty days after such service.

Dated at San Francisco, California, this 3rd day of DECEMBER, 1963.

William L. Dennis  
President  
Walter A. Ruge

George F. Trover  
Fredrick B. Hallock  
Commissioners

I concur in Order.

John E. Fitzhugh

Severance Pay Award  
for 19 Operators

<u>Name</u>	<u>Age as of 12/12/62</u>	<u>Age Enter- ing Service</u>	<u>No. of Years' Service as of 12/12/62</u>	<u>Severance Pay</u>
R. L. Lane	43	22	21	\$2,917.20
C. P. Tribble	54	33	21	2,917.20
R. R. Young	49	28	21	2,917.20
W. E. Wetmore	50	29	21	2,917.20
F. J. Vacher	58	39	19	2,917.20
H. C. Rowin	54	35	19	2,917.20
J. F. Gilmartin	47	29	18	2,917.20
R. A. McEvoy	41	24	17	2,917.20
D. E. Smith	41	30	11	2,139.28
J. A. Boytim	51	40	11	2,139.28
C. E. Weldon	56	47	9	1,750.32
H. W. Grant	45	42	3	583.44
D. M. Bush	42	39	3	583.44
W. C. Sharp	44	42	2	388.96
M. Trass	44	42	2	388.96
B. D. Townsend	35	34	1	194.48
K. M. Brennan	39	38	1	194.48
D. F. Turner	28	27	1	194.48
S. E. Dispennette	45	45	1	194.48

End of Appendix "A"