

Decision No. 71790

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

M & M CHARTER LINES, INC.,
 a corporation,

Petitioner,

vs.

TANNER MOTOR TOURS, LTD.,

Respondent.

Case No. 8541
(Filed October 5, 1966)

James H. Lyons, for petitioner.
Bruce R. Geernaert, for respondent.
K. D. Walpert, for the Department
 of Public Utilities and Trans-
 portation of the City of Los
 Angeles, interested party.
Fred G. Ballenger, for the Commis-
 sion's staff.

O P I N I O N

Public hearings on the above matter were held in Los Angeles before Examiner Rogers on October 17, 19 and 20, 1966, and the matter was submitted.

The records of the Commission show that the name of the respondent (defendant) has been changed to Gray Line Tours Company (Gray Line). Reference herein to respondent will refer to either Tanner Motor Tours, Ltd., or Gray Line, as appropriate.

The petitioner herein (complainant) [formerly Dominic A. Mannino, doing business as M & M Charter Lines] alleges it is a passenger stage corporation operating in the City and

County of Los Angeles; that respondent is a passenger stage corporation; that prior to 1963 respondent operated passenger stage service between the City of Long Beach and Hollywood Park Race Track (race track) of Inglewood, California, during the harness racing season (season), which lasts for approximately seven (7) weeks each fall; that during the fall season of 1963 respondent did not operate such service; that in November, 1963, petitioner was advised by respondent that respondent was not interested in rendering the said service; that on December 3, 1963, petitioner filed Application No. 45995 alleging the abandonment of such service by respondent and requesting authority to render such service; that said application was served on respondent; that respondent filed no protest thereto; that by Decision No. 66819, dated February 18, 1964, the Commission issued a certificate of public convenience and necessity to petitioner to operate passenger stage service between Long Beach and the race track; that petitioner operated such service between Long Beach and the race track during the season in 1964 and 1965; that during said seasons respondent did not operate such service; that the 1966 season commenced on October 4, 1966, and will terminate on November 19, 1966; and that on October 4, 1966, respondent rendered the said service between Long Beach and the race track.

The petitioner further alleges on information and belief that respondent will continue to operate such service unless ordered by this Commission to terminate such service and that time is of the essence.

Petitioner prays that the Commission order respondent to cease any passenger stage operations between points in Long Beach and the race track during the present and during future seasons.

The petition was filed on October 5, 1966. On October 10, 1966, the Commission served a notice of hearing on the parties setting the matter for hearing on October 17, 1966. The notice of hearing recites that "it being found as a fact that public necessity requires a hearing on less than ten (10) days notice."

At the outset of the first day of hearing and in argument at the termination of the hearing respondent objected to the hearing being held on the grounds that the time allowed for preparation of defenses was inadequate and that the procedure followed did not comply with the rules of the Commission, specifically Rule 12, and Section 1704 of the Public Utilities Code. Rule 12 provides that "In particular cases, the Commission may require the filing of an answer within a shorter time" than ten days after service of the complaint. Rule 43 provides that in complaint proceedings ten days' notice of hearing will be given, unless it be found that public necessity requires hearing earlier. This is consistent with Section 1704 of the Code, which provides that when a complaint is filed the Commission shall fix the time and place when a hearing will be had and shall serve notice thereof not less than ten days before the time set for hearing "unless the commission finds that public necessity requires that such hearings be held at an earlier date."

On the allegations of the petition we found that public necessity required the hearing herein to be held on short notice. We hereby find that the notice given was reasonable; and that the procedure was in compliance with Rule 12 of the Commission's Order Revising Rules of Procedure and Section 1704 of the Public Utilities Code.

Dominic A. Mannino testified that he is the president of petitioner; that he had a telephone conversation in the fall of 1963 with Mr. John L. Hughes; that he telephoned Hughes from 1111 - 259th Street, Harbor City; that he made no notes of the day he called; that he asked Hughes what respondent's intentions were concerning the race track service during the season; that Hughes stated that respondent had no interest in the Long Beach to the race track season service; and that thereafter he filed Application No. 45995 (Exhibit 1) on which Decision No. 66819 (Exhibit 2) was issued on February 18, 1964.

Mannino further testified that he filed Application No. 45995 as a result of the conversation with Hughes; that in the fall of 1964 petitioner commenced service between Long Beach and the race track during the season; that a daily scheduled service was provided; that such service was continued during the fall of 1965; that the respondent did not provide service during the season in the fall of 1964 and the fall of 1965 between the race track and Long Beach; and that on the fourth day of October, 1966, respondent commenced operating service between Long Beach and the race track.

Mannino further testified that the petitioner is ready, able and willing to render its certificated service.

On cross-examination, Mannino testified in October, 1963, he observed that respondent had ceased operations (between Long Beach and the race track during the season); that he called the Los Angeles office of Tanner and was informed that respondent had no schedule for such service; that he had heard that respondent did not operate the service in 1962; that respondent was on strike in 1964; that one of respondent's employees advised Mannino that respondent had no interest in the season; and that there is not enough business for two passenger stage operations between Long Beach and the race track during the season.

John L. Hughes was subpoenaed by the petitioner and testified that he is employed by Gray Line, the successor to Tanner; that he is a vice president of Gray Line; that in 1963 he had nothing to do with operations but was familiar with the routes and operations; that he did not know whether or not respondent operated between Long Beach and the race track in 1962; that he did not know whether or not respondent operated between such points in 1963; that on October 18, 1964, respondent's employees went on a strike; that the strike lasted until January 23 or January 24, 1965; that Mannino contacted him in 1963 about the service and he told Mannino he did not think respondent would protest Mannino's application; that respondent did not operate the service in 1964, when the company was on strike, or in 1965; and that he did not feel that petitioner's proposed operations

(Application No. 45995) would be a hazard to respondent's operations or the respondent would have protested the application.

Mr. Hughes further testified that in 1965 respondent was still suffering from the strike; that in February, 1965, the union agreed to the respondent's proposals; and that in January, 1966, respondent was able to resume operations.

On direct examination by respondent, Mr. Hughes testified that Mr. Knight, respondent's executive vice president, is the person who would decide whether or not to protest an application; that in April or May, 1964, the union and respondent commenced negotiations; that as a result of the strike, bus operations were completely halted between October 18, 1964, and January 23 or 24, 1965; that during this period ten drivers were secured from other companies; that on January 31 or February 2, 1965, the union permitted resumption of service, although a settlement had not been reached; that not all drivers were willing to return; that during the spring of 1965, not all services were resumed as there were not sufficient customers or drivers; and that respondent did not ask the Commission for authority to suspend the operations.

The witness further testified that respondent normally had 60 regular and 30 extra drivers for all operations; that in the fall of 1965 respondent had fifty drivers; that respondent at that time resumed season operations between Hollywood and the race track and between Los Angeles and the race track, but not between Long Beach and the race track; and that in the fall of 1966, respondent had its full complement of drivers, and resumed all operations.

Mr. William A. Knight, the executive vice president of respondent, testified that he determined not to protest petitioner's Application No. 45995 as he believed it would be denied; that he did not consider that the petitioner's operations would be a threat to respondent; that he had not seen the application (Exhibit 1) until October 17, 1966; that between 1963 and 1965, respondent had financial trouble due to the death of a stockholder resulting in hundreds of thousands of dollars of taxes; that the stock had to be sold to satisfy the taxes; that during 1963 to 1965, negotiations for sale were conducted and in August, 1965, the stock was sold to the present operator (Gray Line); and that prior to the sale, some operations had to be curtailed.

The witness further testified that in 1963 and 1964, the respondent curtailed its operations due to its finances and weeded out its non-profitable operations; that in doing so it considered the availability of alternate transportation; that since the sale of the stock there has been an improvement in the respondent's finances; that respondent did contemplate abandoning the race track season services, but abandoned the idea because of objections; and that not as many people use the harness racing services as use the thoroughbred racing services.

On cross-examination, Mr. Knight testified that as early as 1961, respondent commenced curtailing services; that in 1962 respondent filed an application for authority to "abandon" all service to Hollywood Park and Los Alamitos (Application No. 44930); that this request was dismissed in 1963 (Decision No. 65195, dated April 9, 1963); that the attendance at the

harness meets is one-half to two-thirds of that during the thoroughbred season; that after the Gray Line took over in the year 1965, there was no need to curtail any services; and that cut-tailed services were operated in 1962, 1963, 1964 and 1965.

A witness further testified that during the season of 1965 (October - November), respondent operated one bus per day to and from the race track, but none between the race track and Long Beach; and that during the thoroughbred racing season, 1965 (May 12 to July 26), it operated six to seven coaches a day between the race track and various points, including Long Beach; and that from one to three of these coaches each day were between Long Beach and the race track.

Mr. Fred Ballenger, a Commission senior transportation engineer, testified that when Application No. 45995 was filed, he contacted Mannino and respondent to see what the parties would do; that he found that respondent was not operating its service in 1963 (Exhibit 12); that respondent told him it did not intend to operate its service in 1964; that he recommended that petitioner be granted the authority to serve the race track from Long Beach during the season; and that such authority was granted (Exhibit 2).

The testimony of Dominic A. Mannino and of Fred Ballenger, the Commission's senior transportation engineer, is convincing evidence that Tanner did in fact abandon harness racing service between Long Beach and Hollywood Park Race Track prior to the time Mannino filed his Application No. 45995 on December 3, 1963 for authority to render such service.

Findings

1. Since prior to 1961, to and including the dates of hearings herein, respondent has held an unrevoked certificate of public convenience and necessity issued by the Commission authorizing it to render a seasonal service as a passenger stage

corporation between Long Beach and the Hollywood Park Race Track. This authority allows it to render such service in the spring during the thoroughbred racing season and in the fall during the harness racing season. Respondent has never requested of the Commission authority to suspend services during the harness racing season between Long Beach and the race track. In 1962, respondent filed an application for authority to abandon the Hollywood Park service, but this application was dismissed.

2. Between October 18, 1964, and January 24, 1965, respondent's employees were on strike and respondent could not render service under its certificate. Prior to October 18, 1964, and subsequent to January 24, 1965, respondent could have rendered service under its authority.

3. During the calendar year 1963, the calendar year 1964, and the calendar year 1965, respondent did not provide service between Long Beach and the race track during the harness racing season. During the calendar year 1965 respondent did render service between Long Beach and the race track during the thoroughbred racing season. In the calendar year of 1966, respondent commenced operations between Long Beach and the race track during the harness racing season. Respondent has never received authority from this Commission to abandon or curtail either of the services herein considered.

4. In August, 1965, the stock ownership of the respondent was transferred, but the corporation continued in existence.

5. Petitioner contacted respondent in 1963 and was informed respondent had no intention of providing service between Long Beach and the race track during the harness racing season. Subsequently

thereto in 1963, petitioner filed a petition for authority to provide such service. The authority was granted on February 18, 1964. Petitioner commenced operation in the fall of 1964 and continued such operations in 1965 and 1966. On October 4, 1966, respondent resumed season operations.

The Commission concludes that respondent has abandoned its authority to render race track service during the season and should be ordered to forthwith cease and desist its operations between Long Beach and the race track during the harness racing season.

O R D E R

IT IS ORDERED that Tanner Motor Tours, Ltd., and/or Gray Line Tours Company as its successor in interest, shall forthwith discontinue operations as a passenger stage corporation transporting passengers between Long Beach, California, on the one hand, and the Hollywood Park Race Track, on the other hand, during the harness racing season.

The effective date of this order shall be five days after personal service on the respondent.

Dated at San Francisco, California, this 29th day of DECEMBER, 1966.

(circled initials)

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Frederick B. Holofoff did not participate in the disposition of this proceeding.

[Signature] President
George T. Brown
[Signature]
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Commissioners