

Decision No. 74419

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

GOLDEN WEST AIRLINES, INC.,
a California corporation,

Complainant,

vs.

Case No. 8812

CABLE FLYING SERVICE, INC.,
a corporation doing business
as CABLE COMMUTER AIRLINES,

Defendant.

TEMPORARY CEASE AND DESIST ORDER

Complaint having been filed by Golden West Airlines in the instant case alleging that defendant Cable Commuter Airlines is presently providing service as a passenger air carrier between Orange County Airport and Los Angeles International Airport, and between Ventura County Airport and Los Angeles International Airport without a certificate of public convenience and necessity issued by this Commission; and

It appearing that the answer by defendant to said complaint admits said operations, but denies that defendant is under the jurisdiction of this Commission; and

It further appearing that at a hearing held on July 8, 1968 in Los Angeles, California, the allegation in the complaint that defendant is conducting unauthorized air passenger carrier operations over said routes was shown to be true; and

It further appearing that at said hearing defendant's operations over said routes appear to be subject to the jurisdiction of this Commission, and

It further appearing that at said hearing complainant, Commission staff and intervenor Los Angeles Airways moved that the defendant be ordered immediately to cease and desist its operations over said routes; and

It further appearing that defendant is presently violating Section 2752 of the Public Utilities Code and that this Commission pursuant to Section 2763 of the Public Utilities Code may order cessation of unlawful passenger air carrier operations; therefore,

IT IS HEREBY ORDERED that defendant Cable Commuter Airlines shall immediately cease and desist from providing transportation service as a passenger air carrier between Los Angeles International Airport, on the one hand, and Orange County Airport and Ventura County Airport, on the other hand, until a final determination is made in this proceeding.

The Secretary is directed to cause personal service of this order to be made upon defendant and the order shall be effective upon the completion of such service.

Dated at San Francisco, California, this 16th day of JULY, 1968.

William S. Lyons, Jr.
President
Augusta
John P. Morrissey
Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.

WILLIAM M. BENNETT, Commissioner, Dissenting Opinion

I dissent to today's order directing Cable Flying Service, Inc. to cease and desist certain operations. The Commission is proceeding upon the assumption that it has jurisdiction over all intrastate flights regardless of federal authority and regardless of overriding constitutional doctrine.

The legislation before us was never intended to give this Commission sweeping authority over every air passenger flight for compensation. The Legislature intended and the deliberate choice of the phrase "wholly within this state" makes clear that this Commission should regulate only passenger air carriers whose business is exclusively within the State of California. It did not envision regulation of a carrier as here flying between California and Arizona. The Commission places some reliance for today's order upon the fact that the record discloses that Cable deliberately established the Lake Havasu service in order to oust the Commission from jurisdiction over it. Even assuming such to be true, there is nothing improper, illegal or even suspect about engaging in interstate commerce in this manner. This does not place a new construction upon the California legislation.

Cable has the lawful right to fly to Arizona and if as an incident to such activity this Commission is ousted from jurisdiction such is only a consequence of constitutional doctrine and in this case makes Cable a carrier operating not "wholly within this state." It is plain to me that a carrier such as Cable which operates in California but which at the same time conducts operations into Arizona is not "wholly within this state."

The language of the statute is clear. The legislative history in my view supports my interpretation and further one must presume that the lawmakers were familiar with the limits upon state power and knew that California could not under the Commerce Clause regulate flights between the states.

There is, of course, the other question pertaining to the federal-state relationship, the nature of the union and the limits of state power over interstate commerce. In my view there is no room for state authority here and it would be unrealistic to assume that an order such as here interfering with the transportation service of Cable Commuter Airlines between Los Angeles and Orange County does not in fact affect interstate commerce. Certainly a passenger from Lake Havasu to Los Angeles to Orange County is himself deprived of Cable Commuter Airlines service between Los Angeles and Orange County which is merely a segment of an interstate flight. I do not know whether Cable has such through flights but it may contemplate such if they do not exist.

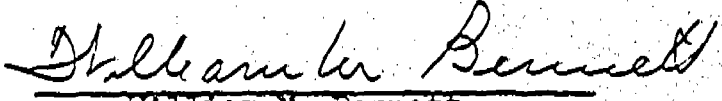
I am also struck by the fact that Cable possesses operating authority from the United States of America. And it begs the question of state as against federal authority to distinguish between an Air Taxi/Commercial Operator Certificate and a "current certificate of public convenience and necessity issued by the federal government" as set forth in Section 2743 of the Public Utilities Code. Both are operating authority derived from the federal government and both clothe the holder thereof with a federal right. In my view simply because the Legislature omitted reference to an Air Taxi/Commercial Operator Certificate does not thereby destroy the federal authority and give to a state the right to ignore it or interfere with it or to impose as a condition of its use an authority given by a state agency. Today's order interferes with the lawful use of the Air Taxi/Commercial Operator Certificate possessed by Cable. California by today's order is placing a condition upon the use of such federal certificate. To me it is clear that this applicant's operations are touched by interstate commerce. Therefore no state condition which interferes with such commerce may validly be sustained.

The rationale of this decision, if sound, places no limits upon the authority of this Commission so far as air commerce is concerned. And if we may say to Cable flying between Arizona and California that it must discontinue between Los Angeles and Orange County then so also may we say to TWA, United and all the others that simply because they conduct operations between California and Arizona does not immunize them from the authority of this Commission if exercised to ground the flights between Los Angeles and San Francisco. The test of a principle is its application without exception and I find nothing in today's order which would prevent the application of that principle--except of course basic constitutional law. And the enormity of such power becomes apparent when one contemplates the action of a mere state whether California or Rhode Island telling a worldwide air carrier that California is off limits unless authority is obtained pursuant to the passenger Air Carrier Act.

Even assuming the authority here exists I would resolve this question in favor of continued operation by Cable. It is to be noted that the language of the order is less than forthright--the Commission does not flatly state that jurisdiction exists or that a violation has occurred, it merely discloses that such "appears" and then implies some doubt as to today's order by referring to "a final determination" - which means a final determination as to jurisdiction, violations and all the rest. If nothing else, absent a clear and present determination that jurisdiction exists and that violations have occurred, the Commission unfairly penalizes Cable Commuter Airlines.

Today's order places in jeopardy the Passenger Air Carrier Act and properly so since it is being applied to commerce beyond the original intent of the lawmakers.

Dated: San Francisco, California
July 16, 1968


William M. Bennett
Commissioner