

Decision No. 74899

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application
of SAN DIEGO ECONOMY LINE, INC.,
for authority to extend its
passenger stage service on its
Route "2" in the vicinity of
San Ysidro in the City of San
Diego, and removal of re-
striction.

Application No. 50367
(Filed July 2, 1968)

ORDER OF DISMISSAL

The above application requests removal of a restriction on operations of the applicant imposed by Decision No. 72002 dated February 15, 1967, and reviewed and continued by Decision No. 73865 dated March 19, 1968, to prevent destructive competition between applicant and the Greyhound Lines, Inc. on its numerous schedules to the Port of Entry at San Ysidro. Applicant also requests authority to operate an alternate route on the southern portion of its Route 2 from the intersection of North Vista Avenue and Dairy Mart Road, along Dairy Mart Road to San Ysidro Boulevard to the Port of Entry adjacent to its present route. This is also in competition with the many schedules of the Greyhound Lines, Inc.

All of the issues which would involve the lifting of the restriction were considered in the four days of two hearings resulting in Decision Nos. 72002 and 73865.

Applicant has not alleged any new facts or change in conditions which would present any new evidence, and applicant's request for the alternate route is for parallel service to the numerous routes operated by Greyhound Lines, Inc. The application for the new alternate route is indefinite and uncertain as to the material facts necessary to show public convenience and necessity for the requested additional service. No information is given as to the population of the area and the number of people involved who would use the service.

Applicant does not allege that any service by Greyhound Lines, Inc. or San Diego Transit Corporation is unsatisfactory or inadequate.

Request for dismissal of the application has been filed by the San Diego Transit Corporation on grounds as follows:

"Removal of these restrictions is to permit it to compete locally with service now being provided by San Diego Transit Corporation and by Western Greyhound Lines; that removal of said restrictions would not be in the public interest, and could eventually result in reducing the number of passengers now using San Diego Transit Corporation service even to the extent of a reduction in service; and that the request for the alternate route is a subterfuge to again request the Commission to remove the restrictions imposed in their Decision No. 72002 of Application No. 48622 dated February 15, 1967, and also in their Decision No. 73865 of Application No. 49702 dated March 19, 1968."

Motion to dismiss is filed by Greyhound Lines, Inc. for the reason that the same issues involving the same parties were decided by the Commission on March 19, 1968, and applicant did not avail itself of opportunities to request reconsideration or rehearing of that decision, and it should not be permitted to accomplish the same purpose by a new application. Res judicata, an appropriate doctrine in this instance, calls for an end to this litigation. (Scott Transportation Co., 56 P.U.C. 1 (1957).)

The issue has been twice raised and adjudicated. The time and resources of the Commission and other concerned parties should not be again consumed on what should properly have been the subject of a timely Petition for Rehearing of Decision No. 73865, such decision having been issued only 100 days prior to the present application in which applicant attempted in the last two years to provide service duplicating that of protestant, Greyhound Lines, Inc. between Chula Vista and the San Ysidro Port of Entry.

The applicant was afforded two days of hearing, as in the prior application, but his request to remove the restriction was denied. The Commission's Decision No. 73865 issued March 19, 1968, found as follows:

"Summarizing the testimony and evidence...they do not show any need for additional service by applicant along the routes of the protestants which would require removal of the restrictions on applicant's operations to the Port of Entry. The evidence of protestants shows their service to the Port of Entry is adequate and that removal of the restrictions would tend to interfere with the service rendered by protestants on these routes, and to reduce their patronage. Applicant may have violated such restrictions and should be admonished against future violations. These restrictions should be clarified to prevent destructive competition between applicant and protestants' routes to the Port of Entry."

To further emphasize the purpose of the restriction the Commission's Finding No. 4 read as follows:

"Applicant will be restricted in the operation to the Port of Entry as herein provided to prevent destructive competition with protestants, and applicant will be admonished that failure to comply with said restriction may result in revocation or further restriction of this authority."

For the reasons indicated,

IT IS ORDERED that Application No. 50367 is dismissed with prejudice as to the request for the removal of the restriction and without prejudice as to the request for the alternate route.

Dated at San Francisco, California, this 6th day of NOVEMBER, 1968.

William A. Spencer
President
William A. Spencer
William A. Spencer
William A. Spencer
William A. Spencer
Commissioners