

**ORIGINAL**

Decision No. 76104

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

AIR CALIFORNIA,  
a California Corporation,

Complainant,

vs.

PACIFIC SOUTHWEST AIRLINES,  
a California Corporation,

Defendant.

Case No. 8937  
(Filed July 21, 1969)

Brownell Merrell, Jr., for Air  
California, complainant.  
John W. McInnis, for Pacific  
Southwest Airlines, defendant.  
B. A. Peeters, Counsel, for the  
Commission staff.

O P I N I O N

Air California complains that Pacific Southwest Airlines (PSA) is providing passenger air carrier service between San Diego and San Jose, California, via Hollywood-Burbank Airport (Burbank) in violation of law, in that PSA is unlawfully "tacking" its San Diego-Burbank route to its Burbank-San Jose route to provide through service, San Diego-San Jose via Burbank. Air California asserts that this tacking subsidizes an excessive scheduling of PSA flights between Burbank and San Jose to the detriment of Air California, which also has a Burbank-San Jose route. Air California sought an ex parte cease and desist order to prevent this violation. By Decision No. 75957, dated July 24, 1969, this

Commission refused to issue a temporary restraining order in this matter and set the case for hearing at Los Angeles on July 31, 1969. On request of PSA the matter was continued to August 13, 1969 at Los Angeles. On August 13, 1969 the case was heard by Examiner Robert Barnett and the matter was submitted.

The method of operation of PSA between San Diego and San Jose via Burbank is not disputed. PSA has a filed tariff rate of \$7.14 for travel between San Diego and Burbank; a filed tariff rate of \$14.52 for travel between Burbank and San Jose; and a filed tariff of \$20.95 for travel between San Diego and San Jose. The total fare of the two routes, San Diego to Burbank plus Burbank to San Jose is \$21.66 as compared to the fare of \$20.95 for the flight San Diego to San Jose. PSA's published schedules show through flights between San Diego and San Jose with a stop at Burbank. PSA asserts that this routing is lawful. It claims that Public Utilities Code Section 2762 permits the tacking of its San Diego-Burbank route to its Burbank-San Jose route to provide through service San Diego-San Jose via Burbank, unless such tacking is expressly prohibited by its certificate of public convenience and necessity, and that there is no express prohibition against such tacking in its certificate. Air California and the staff contend that PSA's certificate does prohibit the tacking of the two segments under discussion.

PSA's operating authority was recently restated by this Commission as follows (Decision No. 75297 dated February 4, 1969 in Application No. 50730):

"Pacific Southwest Airlines, by the certificate of public convenience and necessity granted in the decision noted in the margin is authorized to transport passengers by air over numbered routes in either direction:

Routes

1. Between San Diego and Los Angeles, Burbank, San Francisco and Oakland.
2. Between Los Angeles and San Francisco and Oakland.
3. Between Burbank and San Francisco.
4. Between Los Angeles and San Jose.
5. Between Los Angeles and Sacramento.
6. Between Ontario International Airport and San Francisco International Airport.
7. Between San Jose Municipal Airport and Oakland International Airport, on the one hand, and Hollywood-Burbank Airport, on the other hand.
8. Between San Diego and Ontario.

Restrictions

Routes 1 through 5, inclusive

Passengers shall be transported by air in either direction in Lockheed Electra, Boeing 727, Boeing 737, or Douglas DC-9 aircraft.

Route 6

- (1) Passengers shall be transported by air in either direction in non-stop service at a minimum of four scheduled round-trip flights daily.
- (2) No non-stop service may be operated between Ontario International Airport (ONT) and any other points served by Pacific Southwest Airlines under other authorization with the exception of San Diego.

Route 7

- (1) Passengers shall be transported in either direction in Lockheed L-188 (Electra) Aircraft, Douglas DC-9, Boeing 727-100, Boeing 727-200 and Boeing 737 Aircraft with a minimum of four round trips daily.
- (2) This route authorization is limited to the specific segments of Route 7.

Route 8

Passengers shall be transported in either direction in non-stop service at a minimum of two scheduled round trips daily."

Public Utilities Code Section 2762 provides as follows:

Unless prohibited by the terms and conditions of any certificate that may be involved, any one passenger air carrier may establish through routes and joint rates, charges and classifications between any and all points served by it under any and all certificates or operative rights issued to or possessed by it.

(Formerly 2758, added Stats. 1965, c. 736, p. 2147, 1. Renumbered 2762 and amended Stats. 1967, c. 318, p. 1510, 10.)

In this case we are concerned only with two routes of PSA: San Diego-Burbank, and Burbank-San Jose. PSA's Route 7 (between Burbank and San Jose) is subject to the restriction "this route authorization is limited to the specific segment of Route 7." The sole question presented for decision may be stated as follows: Does the restriction on Route 7 prohibit the tacking of PSA's San Diego-Burbank route to PSA's Burbank-San Jose route, and thereby prevent through service San Diego-San Jose via Burbank? In our opinion, for the reasons stated below, the restriction does prohibit such tacking.<sup>1/</sup>

Since the advent of Air California into the California intrastate air passenger market there has been extensive competition between Air California and PSA for passengers and routes. From the beginning we have recognized the need to protect Air California from destructive competition, at least until it becomes a viable operation. To that end we have authorized the

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<sup>1/</sup> Tacking, when it is permitted, means that a carrier may give through service from point A to point C where it has two routes, one to serve point A to point B, and the other to serve point B to point C.

extension of its routes from its original Orange County-San Jose route so that it now serves Oakland, San Francisco, Burbank, and Ontario. During the period of Air California's expansion we have also authorized the expansion of PSA to such points as Ontario and San Jose. But, recognizing the need to give some protection to Air California we have denied authority to PSA to serve Orange County, and we have placed restrictions on some PSA routes, e.g. Burbank-San Jose, and Ontario-San Francisco. We have also placed restrictions on Air California routes.

The dispute in this case results from differences in the language used by the Commission in placing restrictions on routes. PSA has two route restrictions. Its route 6 (between Ontario and San Francisco) is restricted by the following language:

Route 6

(2) No non-stop service may be operated between Ontario International Airport (ONT) and any other points served by Pacific Southwest Airlines under other authorization with the exception of San Diego. 2/

Its Route 7 (Burbank-San Jose) is restricted by the following language: "This route authorization is limited to the specific segments of Route 7".

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2/ This restriction is itself ambiguous. It appears in Decision No. 75297 which expressly restated all operating authority granted to PSA by this Commission. Therefore, there is no "other authorization" outstanding. This restriction should read: No nonstop service may be operated between Ontario International Airport and any other points served by Pacific Southwest Airlines with the exception of San Diego.

Air California's route restriction reads as follows:

"No passengers shall be accepted for transportation solely between the following pairs of points:

- (a) Orange County Airport - Ontario International Airport
- (b) Orange County Airport - Hollywood-Burbank Airport
- (c) Hollywood-Burbank Airport - Ontario International Airport
- (d) San Francisco International Airport - San Jose Municipal Airport
- (e) San Francisco International Airport - Oakland International Airport
- (f) Oakland International Airport - San Jose Municipal Airport
- (g) San Francisco International Airport - Ontario International Airport
- (h) San Francisco International Airport - Hollywood-Burbank Airport"

Although couched in different language it is our opinion that one of the intentions of the Commission when it imposed those restrictions was to prohibit tacking.

PSA asserts that the restriction on Route 7 only prohibits service from Burbank to other points served by PSA which are not extensions of Burbank-San Jose service; for example, Burbank nonstop to Sacramento. Such a narrow interpretation would make the restriction essentially meaningless - PSA already operates Los Angeles-Sacramento; no carrier travels Burbank-

Sacramento; why prohibit PSA if the need is there?<sup>3/</sup> But there is a valid reason to prohibit tacking on the Burbank-San Jose route. This route is in direct competition with Air California. To permit PSA to tack would increase the load factor on PSA's flights through Burbank thereby making them more economical and efficient, and thereby enhancing its competitive position in relation to Air California. Clearly, routing San Diego-San Jose passengers through Burbank rather than through Los Angeles does not affect the passengers' trip, but it does create more traffic for the Burbank-San Jose flights.

In this case we are only determining the meaning of a route restriction. We are not concerned with the affect of competition between Air California and PSA (except as it is a reason for the route restriction in the first place), nor the

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3/ The converse of this argument leads to serious and complex problems of air carrier regulation and interpretation of Section 2762. That is, if the restriction is interpreted as PSA would have it then the total absence of the restriction would permit service Burbank-Sacramento. As Applied to PSA's other routes which have no point restrictions, e.g., Los Angeles-San Francisco (route 1) and Los Angeles-Sacramento (route 5), this interpretation would permit PSA to serve San Francisco-Sacramento. Prior applications of PSA before the Commission show that PSA does not believe it can serve San Francisco-Sacramento merely because it serves the points San Francisco and Sacramento. In Application No. 49512 PSA sought authority to serve San Francisco-Sacramento and such authority was denied (Decision No. 74114 dated May 14, 1968). PSA accepted that decision. Air California also agrees with this interpretation. (See Decision No. 75473 dated March 25, 1969 in Application No. 48406.) The precise question of combining any and all points is before the Commission in Cases No. 8780 and 8781.

operating efficiency of PSA. Elimination of the route restriction can only be considered in a separate proceeding.

PSA argues that at one time a similar restriction was placed against Air California (Decision No. 74248 dated June 11, 1968 in Application No. 50072); that at that time Air California had no routes that could be tacked and, therefore, the restriction could not be against tacking. PSA is correct only in the sense that the restriction was not to prevent Air California's immediate tacking, because Air California had no routes with a common point. But the restriction served to prohibit Air California from tacking to its Burbank-San Jose route any new routes it might obtain. More to the point, Decision No. 74248 granted authority to both PSA and Air California to enter the Burbank-San Jose market and placed similar route restrictions on both authorities. The Commission wanted competition on that route. And the way the Commission sought to insure fair competition between an established carrier and a comparatively new carrier was to restrict both carriers from tacking other routes, present or future to the authorized route.

Findings of Fact

1. Air California is a passenger air carrier as defined in Section 2741 of the Public Utilities Code.
2. PSA is a passenger air carrier as defined in Section 2741 of the Public Utilities Code.



3. PSA has been authorized by this Commission to provide passenger air service between the points San Diego on the one hand and Burbank on the other hand, among others.

4. PSA has been authorized by this Commission to provide passenger air service between the points Burbank on the one hand and San Jose on the other hand, (Route 7), among others.

5. Air California has been authorized by this Commission to provide passenger air service between the points Burbank on the one hand and San Jose on the other hand, among others.

6. PSA's Burbank-San Jose authority is subject to the following restriction in its certificate of public convenience and necessity: "This route authorization is limited to the specific segments of Route 7."

7. PSA is providing passenger air service between San Diego and San Jose via Burbank with five flights northbound during the business week and four flights southbound during the business week. PSA does not have a certificate of public convenience and necessity which expressly provides for service between San Diego and San Jose via Burbank.

8. The service described in Finding No. 7 is advertised as and tickets sold on the basis of being a through service.

9. PSA is tacking its San Diego-Burbank authority to its Burbank-San Jose authority in order to provide through service San Diego-San Jose via Burbank.

10. The tacking found in Finding No. 9 is prohibited by PSA's certificate of public convenience and necessity.

The Commission concludes:

1. That PSA is operating between San Diego and San Jose via Burbank in violation of its certificate of public convenience and necessity.

2. Pursuant to Public Utilities Code Section 2763 PSA should be ordered to cease and desist from operating between San Diego and San Jose via Burbank.

O R D E R

IT IS ORDERED that Pacific Southwest Airlines shall, within ten days after the effective date of this order, cease and desist from carrying passengers by air on a through route between San Diego and San Jose via Hollywood-Burbank Airport.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 26<sup>th</sup> day of AUGUST, 1969.

William J. ...  
President

[Signature]  
Commissioners

Commissioner Fred P. Morrissey  
Present but not participating.

Commissioner THOMAS MORAN  
Present but not participating.

