

**ORIGINAL**

Decision No. 76253

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  
 Order to Show Cause Re Contempt  
 (Filed September 11, 1969)

Laurence L. Pillsbury, for Pacific Southwest Airlines, respondent.  
Bernard Peeters, for the Commission staff.

O P I N I O N

Pacific Southwest Airlines (PSA) was ordered to show cause why it should not be adjudged in contempt of the Public Utilities Commission and punished therefor according to law.

The order to show cause, issued September 11, 1969, recites the filing of an affidavit of William W. Dunlop, Secretary of this Commission, in which it is alleged that PSA knowingly and willfully failed and refused to obey a lawful decision and order of this Commission.

A certified copy of the affidavit and of the order to show cause was personally served on PSA prior to the hearing, which was held after due notice at San Francisco on September 18, 1969 before Commissioner J. P. Vukasin, Jr. and Examiner Robert Barnett. At the hearing counsel for PSA stipulated that the evidentiary matter in the affidavit of William W. Dunlop could be admitted into evidence. The staff presented some evidence in addition to the affidavit of

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Mr. Dunlop but in our opinion such additional evidence has little bearing on the issues of this case, and will be disregarded. PSA presented no evidence.

Evidence

On September 7, 1969 PSA sold a ticket at its counter in Oakland to Mr. Norriss M. Webb for a through flight from San Jose to San Diego via Hollywood-Burbank for a through fare of \$20.95 plus tax for a total of \$22.00, and thereafter PSA on September 7, 1969 carried Mr. Webb by air from San Jose to Hollywood-Burbank Airport; the service between San Jose-San Diego is a single plane service, and the passengers flying the San Diego-Hollywood-Burbank segment do not deplane at Hollywood-Burbank. Upon the arrival at Hollywood-Burbank the following announcement was made on Mr. Webb's flight: "For those of you continuing on to San Diego with us please remain seated as our stop here will be a brief one."

On September 10, 1969 PSA sold a ticket to Daniel J. Callaghan for a through flight from San Jose to San Diego via Hollywood-Burbank Airport for a through fare of \$20.95 plus tax for a total of \$22.00, and thereafter PSA on said date carried Mr. Callaghan by air on PSA Flight 302 on a through route by single plane from San Jose to San Diego via the Hollywood-Burbank Airport.

On September 10, 1969 PSA sold a ticket to Daniel J. Callaghan for a through flight from San Diego to San Jose via Hollywood-Burbank Airport for a through fare of \$20.95 plus tax for a total of \$22.00, and thereafter PSA on said date carried Mr. Callaghan by air on PSA Flight No. 403 from San Diego to San Jose via the Hollywood-Burbank Airport.

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.

Discussion

PSA does not dispute the evidence as to how it performs its service between San Diego-San Jose via Hollywood-Burbank. However, PSA argues that it is not in contempt because the Commission order on which the contempt is based is vague and ambiguous; more specifically, that the term "through route" is vague and ambiguous. PSA's argument is without merit.

In this case the evidence shows that PSA's current method of operation between San Diego and San Jose via Hollywood-Burbank is exactly the same as its method of operation prior to Decision No. 76104. We found that method to be a violation of its certificate and ordered PSA to cease and desist. It did not. It still provides continuous carriage from the originating point on one of its routes to the destination point on another of its routes for a fare which is less than the sum of the fare for each segment, in violation of its certificate, and Decision No. 76104.

PSA's compliance with Decision No. 76104 can be had only by its ceasing to provide through, single-plane service between San Diego and San Jose via Hollywood-Burbank Airport.

Findings of Fact

1. In Decision No. 76104 dated August 26, 1969 in Case No. 8937, this Commission ordered that PSA 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 the order was August 26, 1969.

2. On September 11, 1969, the affidavit of William W. Dunlop, Secretary of the Commission, in support of the order to show cause herein, was filed with the Public Utilities Commission of the State of California, in which it was alleged in substance, that PSA, after being served with a copy of Decision No. 76104, and having the ability to comply therewith, and while said decision remained in force and effect, knowingly and willfully failed and refused to obey said lawful decision and order of this Commission.

3. On September 11, 1969, subsequent to the filing of said affidavit, the Commission duly issued its order directing PSA to appear before Commissioner John P. Vukasin, Jr., and Examiner Robert Barnett at 2 o'clock p.m. on the 16th day of September, 1969 in the Courtroom of the Public Utilities Commission, State Building, San Francisco, California, and then and there show cause, if any it had, why it should not be adjudged to be in contempt of the Public Utilities Commission of the State of California, and punished therefor in the manner prescribed by law. A certified copy of said order to show cause, to which was attached a certified copy of said affidavit, was personally served on PSA. At the request of PSA, the order to show cause was continued until September 18, 1969 at 10 o'clock a.m. in the Commission Courtroom at San Francisco. On September 18, 1969 PSA appeared with counsel in response to said order to show cause.

4. On September 7, 1969 PSA sold a ticket at its counter in Oakland to Mr. Norriss M. Webb for a through flight from San Jose to San Diego via Hollywood-Burbank for a through fare of \$20.95 plus tax for a total of \$22.00, and thereafter PSA on September 7, 1969 carried Mr. Webb by air from San Jose to Hollywood-Burbank Airport; the service between San Jose-San Diego is a single plane service, and the passengers flying the San Diego-Hollywood-Burbank segment do not

deplane at Hollywood-Burbank. Upon the arrival at Hollywood-Burbank the following announcement was made on Mr. Webb's flight: "For those of you continuing on to San Diego with us please remain seated as our stop here will be a brief one."

5. On September 10, 1969 PSA sold a ticket to Daniel J. Callaghan for a through flight from San Jose to San Diego via Hollywood-Burbank Airport for a through fare of \$20.95 plus tax for a total of \$22.00, and thereafter PSA on said date carried Mr. Callaghan by air on PSA Flight No. 302 on a through route by single plane from San Jose to San Diego via the Hollywood-Burbank Airport.

6. On September 10, 1969 PSA sold a ticket to Daniel J. Callaghan for a through flight from San Diego to San Jose via Hollywood-Burbank Airport for a through fare of \$20.95 plus tax for a total of \$22.00, and thereafter PSA on said date carried Mr. Callaghan by air on PSA Flight No. 403 on a through route by single plane from San Diego to San Jose via the Hollywood-Burbank Airport.

7. 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.

8. PSA had notice of Decision No. 76104 and the order therein and had the ability to comply therewith. While said decision and order remained in force and effect, PSA, knowingly and willfully failed to obey and comply with said decision and order, in that on September 7, 1969 PSA carried passengers by air on a through route between San Diego and San Jose via Hollywood-Burbank Airport on at least one occasion; on September 10, 1969 PSA carried passengers by

air on a through route between San Diego and San Jose via Hollywood-Burbank Airport on its Flight No. 302; on September 10, 1969 PSA carried passengers by air on a through route between San Diego and San Jose via Hollywood-Burbank Airport on its Flight No. 403. Said failures to comply were in violation of law and in contempt of the Commission.

Conclusion of Law

For said contempts the Commission concludes that PSA should be punished according to law.

NOW, THEREFORE,

Based upon the foregoing opinion, findings of fact, and conclusion of law,

IT IS ORDERED, ADJUDGED AND DECREED that:

1. Pacific Southwest Airlines is guilty of three contempts of the Public Utilities Commission of the State of California in disobeying the decision and order issued in Decision No. 76104 dated August 26, 1969 in Case No. 8937, which it had the ability to comply with, in that it carried passengers by air on a through route between San Diego and San Jose via Hollywood-Burbank Airport on at least one occasion on September 7, 1969, and on Flight No. 302 and Flight No. 403 on September 10, 1969.

2. For said contempts of the Public Utilities Commission of the State of California, as hereinabove described, the following punishment is hereby imposed: PSA shall pay a fine of \$500 for each of said contempts for a total of \$1,500; said fines to be paid to the Secretary of the Public Utilities Commission of the State of California, Fifth Floor, State Building, San Francisco, California, within five days after the effective date of this decision.

3. The Secretary of the Public Utilities Commission of the State of California, if said fines or any part thereof shall not be paid by Pacific Southwest Airlines within the time specified above, shall collect said fines through the appropriate processes of law.

4. This decision shall become effective upon personal service of a certified copy hereof upon Pacific Southwest Airlines. The Secretary is directed to make personal service of a certified copy of this decision upon Pacific Southwest Airlines.

Dated at San Francisco, California, this 30th day of SEPTEMBER, 1969.

William J. ...  
President

[Signature]

Vernon L. Sturgeon  
Commissioners

Commissioner A. W. Gantov, being necessarily absent, did not participate in the disposition of this proceeding.

I will file a dissent  
Thomas M. ...

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THOMAS MORAN, COMMISSIONER, Dissenting:

I dissent.

I dissent for the reasons set forth in my Dissenting Opinion today in this Commission's companion Decision No. 76255 in Case No. 8937.

  
Commissioner

Dated at San Francisco, California  
October 1, 1969