

ORIGINAL

Decision No. 78679

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Anaheim Jitney Systems, a California corporation,

Complainant,

vs.

Valen Parking Management, Inc.,
a California corporation,

Defendant.

Case No. 9063

(Filed May 12, 1970)

Valen Parking Management, Inc.,

Complainant,

vs.

Anaheim Jitney Systems,

Defendant.

Case No. 9086

(Filed June 30, 1970)

Dennis V. Menke, Attorney at Law,
for Valen Parking Management,
Inc., respondent.

James H. Lyons, Attorney at Law,
for Anaheim Jitney Systems, Inc.,
and C. J. Holzer, for Southern
California Rapid Transit District,
interested parties.

Michael J. Stecher, Attorney at Law,
for the Commission staff.

O P I N I O N

On May 12, 1970, Anaheim Jitney Systems filed a complaint with the Commission against Valen Parking Management, Inc. (Valen) alleging that the defendant was operating as a passenger stage corporation between the City of Anaheim and the City of Buena Park,

Orange County, California, in violation of Section 1031 of the California Public Utilities Code.^{1/} Hearings were held in August of 1970, and pursuant to a stipulation of the parties and Section 226, the Commission issued Decision No. 77723, dated September 15, 1970, in which it ordered that:

"1. Valen Parking Management, Inc., shall forthwith cease and desist from operating passenger stages to Knott's Berry Farm over the present route that is described in these proceedings to the extent that they proceed beyond the city limit of the City of Anaheim, north on Beach Boulevard, south on Grand Avenue, and east on Crescent.

"2. Valen Parking Management, Inc., shall not operate more than 2 percent of its total mileage outside the City of Anaheim. It is understood Valen Parking Management, Inc., may continue to operate to Knott's Berry Farm if that operation can be accomplished by keeping 98 percent of the operations of Valen Parking Management, Inc., as by the total route mileage regularly operated, within the City of Anaheim.

"3. Valen Parking Management, Inc., shall submit copies of the routes that it is regularly operating to the Public Utilities Commission staff and to counsel for the complainant."

A riding check was made by a representative of the Commission staff during the week of November 23-27, 1970, on all of the regular lines being operated by Valen at that time. The representative found that only 90.1 percent of the routes regularly operated during that period were entirely within the City of Anaheim. (Exhibit No. 21.)

^{1/} All statutory references are to the Public Utilities Code.

On January 5, 1971, the Commission ordered Valen to show cause why it should not be adjudged in contempt for violation of the Commission's order, Decision No. 77723 herein. A public hearing was held before Examiner Rogers on January 28, 1971, at Los Angeles. The parties were given thirty days in which to file concurrent briefs. At the expiration of said period the matter was submitted. It is ready for decision.

The staff introduced three exhibits at the hearing.^{2/} Exhibit No. 21, heretofore referred to, indicates the results of the staff witness' personal investigation of the routes operated by Valen on November 23, 24 and 27, 1970. The first portion of the exhibit, Items 2 through 48, establishes the route and percentage of travel outside the City of Anaheim, excluding the Artesia Freeway. This section shows that 2.2 percent of the route mileage was outside the City of Anaheim. The second section, Items 49 through 53, indicates the route that was actually followed on one of those days, including the Artesia Freeway. Including the freeway mileage, the exhibit shows that 9.9 percent of the route mileage was outside the City of Anaheim. This exhibit does not include the routes of service within Anaheim city limits claimed by Valen to be operated to and from the Anaheim Convention Center and the Anaheim Stadium.^{3/}

Exhibit No. 22 is a detailed explanation of what the staff witness did during his investigation.

^{2/} Exhibits Nos. 21, 22, and 23 were introduced at the hearing and No. 24 was a late-filed exhibit.

^{3/} Exhibit No. 21 also does not include Route 6 because Valen has never operated such a route.

Exhibit No. 23 is a summary of the routes submitted by Valen pursuant to ordering paragraph 3 in Decision No. 77723.^{4/} With the elimination of Route 6 from the operation, this exhibit shows the total percentage figure outside of the City of Anaheim to be 3.08 percent.

Late-filed Exhibit No. 24 is a summary of Valen's total operations, including the alleged convention and stadium routes, which the staff had previously excluded and which are seasonal or intermittent operations, and some of which services are chartered. If these routes are included, the operations of defendant appear to be beyond the jurisdiction of this Commission.

The defendant uses the staff's late-filed Exhibit No. 24, supra, as a basis for the argument that its operations are beyond the jurisdiction of this Commission. In its brief, the defendant conceded that it is operating as a passenger stage between fixed termini and over regular routes, but alleges it is within the exception to Section 226 of the Public Utilities Code which provides:

"'Passenger stage corporation' includes every corporation or person engaged as a common carrier, for compensation, in the ownership, control, operation, or management of any passenger stage over any public highway in this State between fixed termini or over a regular route except those, 98 percent or more of whose operations as measured by total route mileage operated, are exclusively within the limits of a single city or city and county, or whose operations consist solely in the transportation of bona fide pupils attending an institution of learning between their homes and such institution."

^{4/} This exhibit does include Route 6 and the routes of service within Anaheim city limits alleged to be operated to and from the Anaheim Convention Center and the Anaheim Stadium where baseball games are played about 75 days a year.

"For the purposes of this section, the percentage of the route mileage within the limits of any city shall be determined by the Public Utilities Commission on the first day of January of each year, and such percentage so determined shall be presumed to continue for said year."

The presumption of Section 226 that the mileage percentage determined January 1 continues for the year is rebuttable, and proof that a different mileage percentage obtains establishes that percentage as the new figure. In like manner, where no mileage determination is made as of January 1, a later showing by the Commission of a particular mileage percentage establishes that percentage for the purpose of Section 226. In this case there is no record of operations by the defendant on any January 1. The record shows that the defendant changed its routes to suit its whim and to attempt to bar action by this Commission. We do have, however, a record of actual operations on November 23, 24 and 27, 1970. This check shows that respondent was actually operating as a passenger stage corporation as defined in Section 226 in that 9.9 percent of its total route mileage was outside the City of Anaheim. Section 1035 of the Public Utilities Code, provides:

"Whether or not any stage, auto stage, or other motor vehicle is being, or is proposed to be operated as a passenger stage corporation 'between fixed termini or over a regular route' within the meaning of this part is a question of fact, and the finding of the Commission thereon is final and is not subject to review. Any act of transporting, or attempting to transport any person or persons by stage, auto stage, or other motor vehicle upon a public highway of this State between two or more points not both within the limits of a single city or city and county, where the rate, charge, or fare for such transportation is computed, collected, or demanded on an individual fare basis, shall be presumed to be an act of operating as a passenger stage corporation within the meaning of this part."

Defendant is transporting passengers on an individual fare basis between points not in a single city, and when it operates in excess of 2 percent of its route miles outside the City of Anaheim, it is subject to the jurisdiction of this Commission. It is obviously violating the law and the prior order of this Commission. The appropriate remedy is to issue another cease and desist order and to assess a heavy enough fine pursuant to Section 2111 of the Public Utilities Code to discourage future violation.

Findings

We find that:

1. On November 23, 24 and 27, 1970, defendant was operating between two different cities within the State of California.
2. On said dates defendant was charging on an individual fare basis for persons transported.
3. On said dates defendant was operating between fixed termini and over regular routes.
4. On said dates defendant was operating as a passenger stage corporation as defined by Section 226 of the Public Utilities Code.
5. On said dates defendant did not possess a certificate of public convenience and necessity as required by Section 1031 of the California Public Utilities Code.
6. Defendant was, in November 23, 24 and 27, 1970, operating in violation of Section 1031 of the California Public Utilities Code.

7. Defendant was, on said dates, operating in violation of Decision No. 77723, supra.

8. In computing the percentage of total route mileage within a single city or city and county, pursuant to Section 226 of the Public Utilities Code, defendant has improperly included seasonal or intermittent service to the Anaheim Convention Center and the Anaheim Stadium.

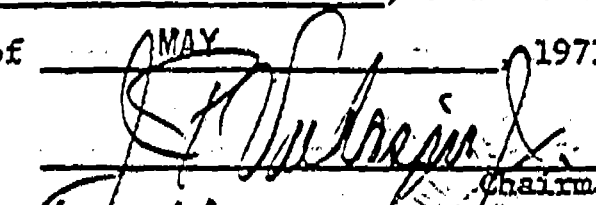
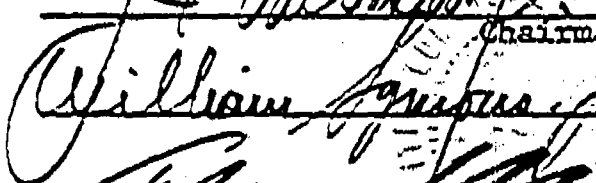
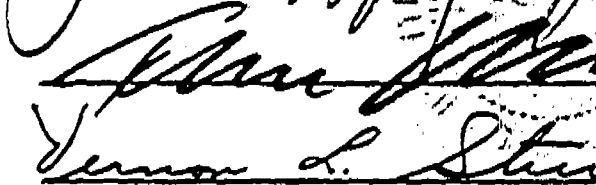
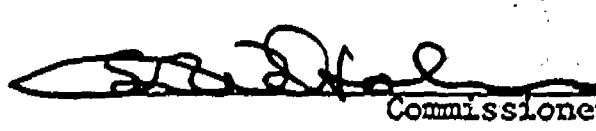
We conclude that defendant has been operating in violation of law and that it should be ordered to pay a fine of \$2,000.

O R D E R

IT IS ORDERED that Valen Parking Management, Inc., shall, within thirty days after the effective date of this order, pay a fine of \$2,000 to this Commission, provided that \$1,900 of such fine shall be suspended for the period of one year. If, during said period of one year, the defendant operates two percent, or less, of its total route mileage (excluding convention and sports events mileage) outside the city limits of the City of Anaheim, such \$1,900 fine shall be cancelled. If, however, it is determined that over two percent of its total route mileage (with the exceptions listed above) are outside the city, said \$1,900 shall become immediately due and payable and collection may be enforced by contempt proceedings.

The Secretary of the Commission is directed to cause personal service of this order to be made upon the defendant. The effective date of this order shall be twenty days after the completion of such service as to the defendant.

Dated at San Francisco, California,
this 17th day of MAY 1971.


Chairman


Vernon L. Sturgeon

Commissioners