

sjg/vo

ORIGINAL

Decision No. 79685

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Anaheim Jitney Systems, a Cali-
fornia 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.,
defendant.

James H. Lyons, Attorney at Law, for
Anaheim Jitney Systems, complainant
in Case 9063, defendant in Case 9086.

Elmer Sjostrom, Attorney at Law, for
the Commission staff.

OPINION ON REHEARING

By Decision No. 78679, dated May 18, 1971, the Commission in the above matter made findings that defendant, Valen, was on November 23, 24 and 27, 1970, operating as a passenger stage corporation in violation of law and ordered it to pay a fine of \$2,000. Payment of \$1,900 of said fine was suspended for a period of one year with payment thereof to be cancelled, if, during said period of one year, the defendant operated two percent, or less, of its total route mileage (excluding convention and sports events mileage) outside the city limits of the City of Anaheim. The order further provided that if it is determined that over two percent of its total route mileage (with the exceptions listed above) is outside the city, said \$1,900 shall become immediately due and payable and collection may be enforced by contempt proceedings.

On June 14, 1971, Anaheim Jitney Systems filed Petition for Rehearing, Reconsideration or Modification. By Decision No. 78975, dated July 27, 1971, the Commission granted rehearing.

Further public hearing was held on September 21 and October 5, 1971, before Examiner DeWolf and submitted on the latter date subject to the filing of briefs, which have been received.

Three transportation engineers of the Commission staff testified in regard to the amount of the bus operations of Valen within and outside of the City of Anaheim and in regard to a riding check which was recently made. Exhibits 1 and 2 on rehearing are a map of the area and a summary of Valen Parking operations in Anaheim and vicinity showing percentages of operations inside and outside of Anaheim. Observation of buses were made by Commission staff members and observed June 8 and September 7, 1971, and the calculations of Exhibit 1 in evidence show that Valen's operations average from 8.1 percent to 22.9 percent outside of the City of Anaheim.

The calculations of Exhibit 1 are as follows: %

44	Total entirely within City of Anaheim	125,620 ft.	78.1%
45	Total outside City of Anaheim	35,200	21.9%
46	Total Length of Routes	<u>160,820</u>	<u>100%</u>

Excluding Stadium Route because it is not a regular operation:

47	Total entirely within City of Anaheim	125,620	
	Less Item 17	- 2,500	
	Less Item 21	- 2,650	%
	Less Item 22	<u>- 1,900</u>	
48	Total entirely within City of Anaheim Excluding Stadium Route	118,570	<u>77.1%</u>
49	Total outside City of Anaheim	35,200	22.9%
50	Total Length of Routes Excluding Stadium	<u>153,770</u>	<u>100%</u>

Excluding Stadium Route and Deer Park Route

51	Total entirely within City of Anaheim excluding Stadium Route (Item 48)	118,570	<u>91.9%</u>
52	Total outside City of Anaheim (Item 49)	35,200	
	Less Item 39	-12,000	
	Less Item 40	- 4,700	
	Less Item 41	- 4,000	
	Less Item 42	<u>- 4,000</u>	
53	Total outside City of Anaheim excluding Deer Park Route	10,500	8.1%
54	Total Length of Routes excluding Stadium and Deer Park Routes	<u>129,070</u>	<u>100%</u>

NOTE: Routes were determined by P.U.C. staff members riding buses. Routes described in Items 1 through 38 were observed June 8, 1971; Items 39 through 42 were observed September 7, 1971.

Four witnesses testified on behalf of Anaheim Jitney Systems. One testified that he observed and followed a bus operated by Valen Parking and that it was driven north on Beach Boulevard to Knotts Berry Farm, where passengers boarded the bus.

The operator of Anaheim Jitney testified that his company discontinued passenger stage operations in December, 1970, on account of the operations and competition of Valen Parking Management, Inc. and that its certificate of public convenience and necessity is still in effect. The operator of Anaheim Jitney further testified that he could lease buses and resume operations within 72 hours if his company were permitted to operate without competition from Valen Parking between the City of Anaheim and Knotts Berry Farm.

Another witness testified that he is in a position to provide leased buses for Anaheim Jitney to resume passenger operations.

The owner and operator of Valen Parking denied that it conducted passenger stage operations to the Japanese Deer Park with collection of individual fares and testified that these buses were on a monthly lease. The witness denied knowledge of any violations of the established routes.

Defendant, Valen Parking, made objections to Exhibit 1 and the testimony of the Commission staff on the ground that no notice was given to defendant of this exhibit, and the alleged violations occurring after the previous hearing. The defendant requested a continuance on September 21, 1971, for the purpose of producing testimony on the new subject matter, and this was granted and the matter continued to October 6, 1971, and subsequently continued to October 21, 1971, when further hearing was conducted and the matter was submitted.

At the hearing and in its brief, defendant, Valen, objects as follows to the taking of testimony and evidence on events occurring on and after June 21, 1971:

"At the time of the hearing there was no evidence presented nor was there any argument regarding the two issues raised by the petition for rehearing. Instead the examiner considered completely new issues and took evidence as to events occurring on and after June 21, 1971, a date long after the original decision. (Public Utilities Code Section 1732)

"It is the contention of the defendant that the Commission also should not consider any ground or any matter on rehearing that has not been raised in the application for rehearing. It is further defendant's contention that it is a specific denial of due process to hold a hearing upon completely new matters for which no notice has been given. In addition, it would seem inherent in the concept of a rehearing that matters on rehearing would have to be limited to those issues and those complaints which were dealt with on the original hearing."

The Commission staff made the following recommendations in its brief:

"Based upon this record, the staff submits that defendant has been operating continuously in violation of Section 1031 of the California Public Utilities Code since May 12, 1970, and that said defendant is now and has been operating in violation of Decision No. 77723. It is submitted that in view of defendant's continuous and flagrant violation of the Commission's orders, a fine should be imposed in accordance with Section 2111 of the Public Utilities Code in the amount of \$6,000 for its obvious disregard for the Commission and its orders, rules and regulations. It is further submitted that the \$1,900 referred to in said Decision No. 78679 shall become immediately due and payable for violation of the order in said decision."

This order affirms Decisions Nos. 77723, dated September 15, 1970, and 78679, dated May 18, 1971. Valen Parking Management having asked for and having obtained continuances for the purpose of producing additional testimony on the subject matter of additional violations, and having produced such testimony, any defects of service or notice have been cured.

The records of the Commission show that Valen filed an application for a certificate of public convenience and necessity on October 15, 1971 and alleges that it has total assets of \$74,846 and an equipment list of nine passenger buses to conduct operations.

The Commission has continuing jurisdiction over its orders and the enforcement thereof and in Decision No. 78679 jurisdiction was retained for a period of one year after the date of said order of May 18, 1971, for the purpose of enforcing the provisions of said order.

Findings

We find that:

1. Valen Parking Management, Inc., was on June 8 and September 7, 1971, operating as a passenger stage corporation with an average in excess of 8.1 percent operations outside of the City of Anaheim.
2. Valen Parking Management, Inc., was on said dates and routes collecting fares on an individual basis.
3. Valen Parking Management, Inc., on said dates was operating between fixed termini and over regular routes.
4. Valen Parking Management, Inc., on said dates did not possess a certificate of public convenience and necessity as required by Section 1031 of the California Public Utilities Code.

5. Valen Parking Management, Inc., was on June 8, 1971 and September 7, 1971 in violation of Section 1031 of the California Public Utilities Code.

6. Defendant, Valen Parking Management, Inc., was on said dates operating in violation of Decision No. 78679.

We conclude that defendant, Valen Parking Management, Inc., has been violating the provisions of Section 226 of the Public Utilities Code of California since Decision No. 78679 and did operate more than two percent of its route mileage outside of the City of Anaheim on June 8 and September 7, 1971.

We conclude that the fine of \$1,900 which was deferred for a period of one year from the date of Decision No. 78679, dated May 18, 1971, should be declared immediately due and payable, and that the Commission staff's request for assessment of a fine of \$6,000 is not warranted by the evidence and will be denied.

O R D E R

IT IS ORDERED that Valen Parking Management, Inc., shall immediately pay to this Commission the sum of \$1,900 being that balance of the fine assessed in Decision No. 78679, dated May 18, 1971, and that in all other respects said decision shall remain in full force and effect.

C. 9063, 9086 - sjg *

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 Diego, California, this 8th day of FEBRUARY, 1972.

William J. ... Chairman
[Signature]
[Signature]
[Signature] Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

