

Decision No. 80633**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
 on the Commission's own motion)
 into the adoption of a General)
 Order requiring passenger air)
 carriers to file public timetables.)

Case No. 9017
 (Filed February 3, 1970)

Investigation on the Commission's)
 own motion into the establishment)
 of rules in the tariffs of air)
 carriers providing for denied)
 boarding compensation.)

Case No. 9018
 (Filed February 3, 1970;
 Amended August 25, 1970)

(Appearances are listed in Appendix A)

O P I N I O N

Cases Nos. 9017 and 9018 are investigations on the Commission's own motion. The investigation in Case No. 9017 is for the purpose of determining whether it would be in the public interest to adopt a general order directing passenger air carriers certificated by the Commission to publish and file public timetables. The investigation in Case No. 9018 is for the purpose of determining whether it would be in the public interest to adopt a general order requiring said passenger air carriers and also common carriers of passengers by air certificated by the Federal Government, insofar as their California intrastate operations are concerned, to establish rules in their tariffs providing for compensation to passengers denied boarding on flights for which they hold confirmed reservations. Both cases were consolidated for hearing and were heard on an extensive record before Examiner Mooney and submitted on briefs subject to proposed report procedures which have been completed.

Proposed Report

The evidence, motions and briefs of record and the applicable law are summarized in the proposed report, a copy of which has been served on all appearances and parties of record, including all respondents upon whom the two orders of investigation were served. Said summarization will not be repeated in detail herein. The report recommends the adoption of two proposed general orders. The first relates to Case No. 9017 and would require all passenger air carriers certificated by the Commission to publish and file public timetables in accordance with the rules set forth therein. The second relates to Case No. 9018 and would require said passenger air carriers to publish rules in their tariffs concerning compensation for denied boarding for California intrastate passengers holding confirmed reserved space in conformity with the rules set forth in said general order. The proposed report states that the Commission has jurisdiction over the denied boarding rules of commercial air carriers certificated by the Federal Government insofar as their intrastate operations are concerned; that the Civil Aeronautic's Board (CAB) has promulgated denied boarding regulations for such carriers, with the exception of helicopter operators; that the tariff rules of said carriers published in conformity with the CAB regulations are applied to both interstate and intrastate operations and are substantially similar to those suggested herein for passenger air carriers certificated by the Commission. The report finds that it has not been shown on the record in Case No. 9018 that additional denied boarding regulations are necessary or required for air carriers certificated by the CAB, including helicopter operators, and concludes that they should not be made subject to the proposed denied boarding general order.

Exceptions

Exceptions to the recommended timetable and denied boarding general orders were filed by the Commission staff and by Pacific Southwest Airlines (PSA) and Air California (Air Cal) both of which operate pursuant to certificates issued by the Commission.

Exceptions to the finding in the proposed report that the Commission has jurisdiction over the California intrastate denied boarding rules of air carriers certificated by the Federal Government were filed by Western Air Lines, Inc. (Western), United Air Lines, Inc. (United), and Trans World Airlines, Inc. (TWA), each of which is certificated by the CAB. A reply to the exceptions by the aforementioned carriers was filed by the staff.

The exceptions generally set forth the positions taken by the parties in the two cases. The airlines certificated by the Commission urged that the two proposed general orders not be adopted. The airlines certificated by the Federal Government renewed their argument that denied boarding rules for their California intrastate operations are not subject to the Commission's jurisdiction. The staff recommended the adoption of the proposed general orders with certain revisions. The exceptions filed by each group of carriers and the staff are briefly reviewed hereinafter.

1. Commission Certificated Carriers

Both Air Cal and PSA assert in their exceptions that the evidence of record does not support the adoption of either of the proposed general orders. While the reasoning set forth in the exceptions of each of the two airline companies is not identical, the substance thereof is substantially similar and is set forth in the following two paragraphs.

With respect to the proposed timetable general order, the exceptions state in essence as follows: Both Air Cal and PSA have always voluntarily published and filed public timetables with the Commission; a general order requiring this is not necessary and would add nothing to the Commission's enforcement powers; although the proposed report states some smaller intrastate air carriers do not file timetables, this is not justification for the establishment of rules for the entire industry; according to the evidence, the number of complaints regarding timetables received by the Commission is miniscule and is certainly not a reasonable basis for a general

order; it would be burdensome and costly to the industry to comply with said proposal; there has been no showing that said cost, which would be passed on to the traveling public, is outweighed by the public interest or that the public has in any way been inconvenienced by the present practices of the intrastate carriers regarding time-tables.

As to the proposed general order regarding denied boarding of passengers holding confirmed reserved space, the two exceptions state generally as follows: Denied boarding has not been shown to be a problem in California; the complaints received by the Commission concerning this are few in number; the proposed general order is similar to and patterned after the CAB rules; however, California intrastate traffic cannot be compared with interstate traffic where distances are substantially longer and delays to passengers denied boarding could be considerable; in California, there are frequent flights between all points, and a passenger denied boarding can always be accommodated on another flight of the same or competing airline to arrive at his destination within two hours after the scheduled arrival time; to comply with the proposed general order would require the California certificated carriers to establish a mandatory check-in time of 20 to 30 minutes before flight time; a substantial number of intrastate passengers are businessmen; schedules are geared to their convenience; many do not have reservations; most that do arrive at the boarding areas at or close to flight time; a mandatory check-in time would be detrimental to said business commuters and would threaten the progress and continuance of the excellent commuter type air service in California; the cost of compliance with the proposed general order would be excessive in view of the lack of public interest therewith.

2. CAB Certificated Carriers

Western, United, and TWA, in their exceptions as hereinabove stated, strenuously oppose the finding in the proposed report that the Commission has jurisdiction over the California intrastate

denied boarding rules of CAB carriers and could, should it deem it appropriate, exercise such jurisdiction. In support thereof, they restate the evidence and motions they had presented on this issue which is basically as follows: The only jurisdiction the Commission has over the intrastate operation of CAB carriers under the Public Utilities Code and the State Constitution is rate regulation; denied boarding rules are not related to rates; Part 250 of the CAB Economic Regulations governs denied boarding compensation for air carriers certificated by it and is applicable to both their interstate and intrastate operations; by enacting said regulations, the Federal Government has occupied the field, insofar as CAB certificated air carriers are concerned, to the exclusion of any state regulation.

3. Commission Staff

The staff in its exceptions recommended that the proposed timetable general order be amended in accordance with certain suggestions it had presented at the hearings. It also suggested certain language changes which it stated were for clarification.

In its reply to the exceptions by the air carriers, the staff asserted that although the number of complaints received by the Commission from the public regarding timetables and denied boarding were not substantial in number, nonetheless, it points out problem areas which it states cannot be ignored; that the Commission does have jurisdiction over California intrastate denied boarding rules of CAB certificated carriers; that the proposed general orders, with the modifications it has suggested, are justified; and that any costs to the air industry in connection therewith is more than offset by the public interest.

Discussion

We agree with the analysis of the applicable law and the conclusions based thereon in the proposed report that the Commission has the requisite authority to promulgate general orders governing timetables and denied boarding for passenger air carriers certificated by it and that it has jurisdiction over the California intrastate

denied boarding rules of CAB certificated common carriers of passengers by air. We likewise agree with the recommendation therein that the Commission should not establish intrastate denied boarding regulations for said CAB carriers. However, based on a review of the record in both cases, we are of the opinion that the evidence presented in support of timetable and denied boarding general orders for Commission certificated carriers is not convincing. In the circumstances the general orders recommended in the proposed report will not be adopted.

As the evidence shows the Commission received 10 informal complaints relating to timetables and 21 informal complaints relating to denied boarding during the first six months of 1970. This is a minute fraction of one percent when compared with the millions of passengers transported by California passenger air carriers during said period. It is obvious that said complaints represent only a very limited number of isolated instances and certainly do not demonstrate that timetables and denied boarding have been a problem of any consequence whatsoever with the passenger air carrier industry of this state. It is to be noted that in those isolated instances where denied boarding might occur, the passenger has a remedy at law should he desire to pursue such course of action. Also, although no specific standards are set forth therein, passenger air carriers are required by the service regulations in the orders granting certificates to them to file timetables in triplicate with the Commission. It would be patently unjust and unfair to said passenger air carriers to require them to assume the burden and cost of regulations for which a reasonable public need has not been shown to exist. Additionally, as pointed out in Section 2739 of the Public Utilities Code, the purpose of regulation of passenger air carriers is to foster an orderly, efficient, economical and healthy intrastate passenger air network. Any regulations, and we consider the proposed general orders in this category, that adds to the cost of such service and are not shown to be required by the public interest are contrary to said legislative policy.

The two investigations before us will be discontinued. However, it by no means follows that they were improvidently instituted. Quite to the contrary, whenever it is brought to our attention that a problem which could significantly affect the public interest may exist, a most thorough investigation will be made.

Having determined that Case No. 9018 should be discontinued, we need not consider the merits of the motions filed by Western, United and TWA to dismiss CAB certificated carriers as respondents in said proceeding. However, we wish to make it clear that our action herein is in no way to be construed as a reversal of the Commission's prior decision which held that it has jurisdiction over the denied boarding rules of such carriers applicable to California intrastate passengers, In re American Airlines, Inc., et al., 63 Cal. P.U.C. 70 (1964).

All respondents herein are placed on notice that our decision herein is based on the evidence before us and that if at any time in the future timetables and denied boarding should become problem areas requiring our attention, said subject matters will again be investigated.

Findings and Conclusions

The Commission finds that:

1. The Proposed Report adequately summarizes the evidence, arguments and pleadings presented by the parties and the applicable law.
2. Timetables and denied boarding have not been shown to be a problem of any consequence whatsoever with the common carrier passenger air transportation industry in California.
3. The adoption of a general order governing the publication, filing and subject matter of timetables of Commission certificated passenger air carriers has not been shown herein to be required by the public interest.

4. The California intrastate rates of air carriers certificated by the CAB are subject to regulation by the Commission and the denied boarding rules of said carriers are a part of their rates and are therefore subject to the Commission's jurisdiction, In re American Airlines, Inc., supra.

5. The adoption of a general order governing denied boarding compensation and procedures for passenger air carriers certificated by the Commission and common carriers of passengers by air certificated by the CAB has not been shown herein to be required by the public interest.

The Commission concludes that the investigations in:

1. Case No. 9017 should be discontinued.
2. Case No. 9018 should be discontinued.

O R D E R

IT IS ORDERED that the investigations in:

1. Case No. 9017 is hereby discontinued.
2. Case No. 9018 is hereby discontinued.

The effective date of this order shall be twenty days after the date hereof.

Dated at Los Angeles, California, this 17th day of OCTOBER, 1972.

I dissent. Our excellent intrastate airlines should be required to follow the same rules as their interstate competitors, and therefore should be required at least to file their public time tables and pay compensation to passengers denied boarding.

Vernon L. Stenger
President
W. J. [illegible]
[illegible]
[illegible]
Commissioners

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APPENDIX A

LIST OF APPEARANCES

Respondents in Cases Nos. 9017 and 9018: Frederick R. Davis, for Air California; Caditz, Howard & Garcia, by Glenn A. Howard and D. Edward Garcia, Attorneys at Law, for Golden Pacific Airlines; John W. McInnis and Brownell Merrell, Jr., Attorneys at Law, for Pacific Southwest Airlines; Charles G. Wiswell, for Swift Aire Lines, Inc.; Henry R. Voss, for Golden West Airlines; Loughran, Berol & Hegarty, by Marshall G. Berol, for Holiday Airlines, Inc., and Borrego Springs Airlines; Norris M. Webb, for Holiday Airlines, Inc.; and James H. Stanhope, for Valley Airlines.

Respondents in Case No. 9018: Steinhart, Goldberg, Feigenbaum & Ladar, by James E. Reed, Attorney at Law, for Sam and John Kagel, Trustees in Reorganization for San Francisco and Oakland Helicopter Airlines, Inc.; Brobeck, Phleger & Harrison, by Gordon E. Davis, Attorney at Law, for United Air Lines, Inc., and Trans World Airlines, Inc.; and Darling, Hall, Rae & Gute, by Donald Keith Hall, Attorney at Law, for Western Airlines, Inc.

Interested Party: Robert W. Russell, Chief Engineer and General Manager, Department of Public Utilities and Transportation, City of Los Angeles, by Kenneth E. Cude.

Commission Staff: Elmer Sjostrom, Attorney at Law.