

ORIGINAL

Decision No. 83613

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

PACIFIC SOUTHWEST AIRLINES  
(a California Corporation)  
3225 North Harbor Drive  
San Diego, California 92101,

Complainant,

vs.

AIR CALIFORNIA  
4200 Campus Drive  
Newport Beach, California,

Respondent.

Case No. 9643  
(Filed December 18, 1973)

Dietsch, Gates, Morris & Merrell, by Brownell  
Merrell, Jr., for complainant.  
McDonald & Pulaski, by Edward J. Pulaski, Jr.,  
for defendant.

O P I N I O N

This complaint was taken under submission upon a stipulation of facts and on written argument filed June 8, 1974.

Pacific Southwest Airlines (PSA) has alleged that Air California (Air Cal) has violated Section 2752 of the Public Utilities Code, and has violated an order of the Commission by accepting passengers for transportation between San Diego International Airport and San Francisco International Airport via Orange County Airport.

The stipulated facts are and we find:

1. PSA is a California corporation operating as a passenger air carrier within the meaning of Section 2741 of the Public Utilities Code.

2. Air Cal is a California corporation and operates as a passenger air carrier within the meaning of Section 2741 of the Public Utilities Code.

3. The certificate of public convenience and necessity of Air Cal, as set forth in Appendix A of Decision No. 80439, page 5, states, inter alia, as follows:

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

- e. San Diego International Airport and other airports already served by Air California, except as authorized by Routes 3, 4, 10, 14 and 15. No passenger traveling between San Diego International Airport and San Francisco International Airport shall be carried on flights operated on Routes 3, 4, 10, 14 and 15."

Routes 3 and 4 authorize service between San Diego International Airport and San Jose Municipal Airport and Oakland International Airport. Under its certificate of public convenience and necessity, Air Cal is authorized to serve San Francisco International Airport.

4. Pursuant to its certificate of public convenience and necessity, PSA is authorized to and does provide passenger service between San Diego and San Francisco (Appendix A of Decision No. 79085).

5. On January 18, 1974 Mr. Lawrence Guske, Assistant Controller of PSA, contacted by telephone the local reservation number for Air Cal and requested transportation by air on Air Cal between San Diego International Airport and San Francisco International Airport for January 26, 1974. The Air Cal reservation agent confirmed that such transportation could be provided with the passenger changing planes at Orange County Airport. The reservation agent then confirmed Mr. Guske's reservation on Air Cal Flight 615 between San Diego and Orange County Airport departing San Diego at 9:50 a.m., and arriving at Orange County Airport at 10:15 a.m., connecting to Air Cal Flight 117 between Orange County Airport and San Francisco International Airport, departing Orange County at 10:30 a.m., and arriving at San Francisco at 11:30 a.m. On January 22, 1974 Mr. Guske purchased tickets for the flights reserved between San Diego and San Francisco.

6. Air Cal issued to Mr. Guske the tickets and ticket jacket depicted in Exhibit A attached to the stipulation.

PSA requests the Commission to issue its order directing Air Cal to cease and desist from issuing any tickets to passengers flying by and between San Diego and San Francisco unless there is a layover of at least 24 hours between flights and refrain from any and all statements of personnel, writings, or advertising indicating that Air Cal provides service between San Diego and San Francisco.

Air Cal contends that the stipulated facts do not constitute a violation of its certificate for a number of reasons, including: it only involves an occasional situation where a traveler utilizes Air Cal's service in the light of certain realities and inconveniences; its service is not competitive from a time or fare standpoint with PSA's; it does not schedule, advertise, or promote such service; the use of the words "solely" and "flights" in the restriction indicates while Air Cal cannot provide single-plane service between San Diego and San Francisco, it can accommodate the occasional passenger with service via a change of planes at Santa Ana; and that the issuance of two tickets, one for the local fare between San Diego and Santa Ana and the other for the local fare between Santa Ana and San Francisco, conforms with the guidelines orally recommended in the past by the Commission's staff. Air Cal urges that public convenience and necessity are served by its ability to provide the service complained of, that it is not in the public interest to restrict such occasional traveler to an arbitrary time limitation, and that the higher price and inconvenient schedules of Air Cal's service comprise sufficient safeguards to protect PSA's certificated service between San Diego and San Francisco. Air Cal asserts that if the Commission believes there is a compelling reason to impose a time requirement such as suggested by PSA, it should adopt the four-hour layover rule with respect to connecting service established by the Civil Aeronautics Board.

PSA and Air Cal have, by the activities described in the stipulation of facts and by the filing of this complaint, set in motion legal procedures before this Commission at a cost to the taxpayer and at the expense of other parties who appear before this Commission with real problems. Because of the nature of this proceeding, the time and effort of a Hearing Examiner was required, stenographic support for his work product was necessary, time and effort on the part of personnel in our Legal and Transportation Divisions were also required, also involving stenographic support for their work product, and lastly our Administrative Division, each Commissioner and their respective personal staff had to analyze and process a proposed draft decision.

PSA and Air Cal, as regulated entities, are each fully cognizant of the fact that the Commission avoids issuing declaratory decisions, no statutory basis existing therefor. The facts of this case, however, clearly seek just such an opinion, shielded only by the gossamer of a "formal complaint". No allegation exists, no facts were presented, no charges were levelled, that defendant was regularly or even intermittently engaged in some activity violative of statute or Commission order and detrimental to PSA or the traveling public. The through route service here in question utilized an intermediate airport (Orange County Airport) at which complainant possesses no operating authority.

The Commission's workload has increased steadily in recent years, as has the complexity of the matters before it. We have strived to be able to keep pace with such a workload with only minimum additions of manpower. For regulated entities to require us to engage in frivolous proceedings for whatever purpose might suit their fancy is an abuse of the Commission's process.

We do not deny the right of the litigants to bring legitimate matters to our attention. We do resent the use of the Commission

as a forum for the exercise of childlike petulance. Too often we have seen our procedures attempted to be turned into playgrounds for ill-tempered competitors. This is wasteful of the State's limited resources and a violation of the ethical constraints of Rule 1 of the Commission's Rules of Practice and Procedure.

The practices described herein are not limited to the passenger air carriers. They may be found in many of the industries regulated by the Commission. We urge managements and their attorneys to bring them to an end.

We find that:

No controversy requiring decision by this Commission has been presented herein.

We conclude that:

PSA is not entitled to any relief sought by this complaint.

O R D E R

IT IS ORDERED that this complaint is dismissed.

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

Dated at San Francisco, California, this 22nd day of OCTOBER, 1974.

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.

Vernon L. Stegman  
President  
William J. Lyons, Jr.  
Thomas Moran  
Commissioners