

Decision No. 84059

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MARK IV CHARTER LINES, INC.,  
Complainant,

vs.

SOUTHERN CALIFORNIA COMMUTER  
BUS SERVICE, INC., d.b.a.  
COM-BUS,  
Defendant.

Case No. 9839  
(Filed December 11, 1974)

Frank J. Mannino, for Mark IV Charter Lines,  
Inc., complainant.

Ronald J. Hoffman, for Southern California  
Commuter Bus Service, Inc., d.b.a.  
Com-Bus, defendant.

John deBrauwere, for the Commission staff.

O P I N I O N

Mark IV Charter Lines, Inc. (Mark IV) is a certificated passenger stage corporation operating, among others, a commuter bus route between Culver City and the McDonnell-Douglas plant in Huntington Beach, known as Route 3. The original authority was granted in Decision No. 80503 dated September 19, 1972 and restated in Decision No. 83627 dated October 22, 1974. Southern California Commuter Bus Service, Inc. (Com-Bus), also a certificated passenger stage corporation, was, until December 5 or 6, 1974, acting as Mark IV's agent in the latter's relations with its passengers, by collecting fares, making reservations, and the like. On December 5, 1974, Com-Bus sent Mark IV a mailgram terminating their oral agency agreement. Mark IV alleges that commencing December 9, 1974 Com-Bus was operating in competition with Mark IV without certification, along Routes 3 and 6 of Mark IV (the complaint as to Route 6 was withdrawn at

the hearing). Mark IV requested a cease and desist order prohibiting such operations, and the Commission entered such an order on December 17, 1974 stating therein, among other things, as follows:

"The Commission regards attempts by a certificated passenger stage corporation to interfere with the service of another passenger stage corporation as a most serious matter. ...there is not only a threat to the economic viability of both utilities, but also a peril to the safety of passengers, pedestrians, and other motorists. . . . One of the functions of certificates to operate specific routes and to utilize specific pickup points is to obviate this peril."

A hearing was held in Los Angeles on December 23, 1974 before Examiner Blecher.

#### The Evidence

The allegations of Mark IV were substantially admitted by defendant, though there was a difference of emphasis and interpretation placed on the facts and the applicable law by the parties.

The agency agreement and termination, as well as the unauthorized continuation of service over Route 3, after termination of the agency agreement were undisputed. Com-Bus attempts to justify its service for two weeks by saying that it had already collected fares for about 11 or 12 people on Monday, December 9, and thus had to provide service for the entire week, and that the following week, it did not charge any fare to these people, as a Christmas present, and was thus not operating as a passenger stage corporation. The basic justification for the unauthorized service was Mark IV's lack of capacity to carry the additional passengers on the 46 passenger coach it operated over this route. Defendant also admits that Mr. deBrauwere of the Commission staff orally advised it to cease and desist early in the week beginning December 9, 1974. Mr. deBrauwere was advised of the above facts and the additional facts that Mark IV had shown no interest in providing additional equipment to service

the passengers in excess of the existing coach's capacity and that Mark IV was making an unauthorized stop on the route of another certificated carrier, Leisure Lines. Defendant received a copy of the cease and desist order on December 19, 1974. On December 19, 1974 defendant sent a letter (Exhibit 4) to Mark IV advising it, among other things, of its failure to provide adequate service and asking Mark IV to notify defendant as to its intentions in regard to future service. On December 20, 1974, defendant advised its free passengers on Mark IV's Route 3 that if Mark IV provided sufficient service after January 6, 1975 (when the plant reopened after its Christmas holiday), the passengers should ride with Mark IV, but that if Mark IV could not accommodate them, Com-Bus would provide some service for them, otherwise, Com-Bus' service on Route 3 would end on January 6, 1975. The defendant also stated that it never told the people riding with it after December 6, 1974 that there was no room on the Mark IV coach, nor were these passengers advised to attempt to obtain seats on Mark IV, nor was a passenger list of some 25 people (Exhibit 5), all of whom wanted service effective January 6, 1975 turned over to Mark IV until ordered to so do at the hearing. It should be noted that of these 25 people, only one (Lababie) had made a reservation for January 6 with Mark IV, though eleven others<sup>1/</sup> had been riding with Mark IV while defendant was its agent, and with defendant during the first week of defendant's unauthorized operation. Exhibits 1 and 2, Mark IV's records of paying passengers for the weeks ending December 13 and December 20, 1974 respectively, showed 37 and 38 passengers (excluding the bus captain), indicating excess capacity of 8 and 7 respectively, for the two weeks in which defendant admitted unauthorized carriage of 11 or 12 passengers. Mark IV indicated it would cease making its unauthorized stop at 190th and

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<sup>1/</sup> Sofios, Chestnut, Close, Strommer, Keith, Galbraith, Yang, Johnson, Fitch, Casillas, and Feldman

Western on Leisure's route when the defendant ceased its unauthorized competition, though no evidence was introduced as to any relationship between the parties, Leisure Lines, and the unauthorized service involved. Mark IV also said it would provide seats for all additional passengers, either by adding equipment or by bringing in a bus with available seating from another of its routes. Mark IV also said it is not and would not oversell seats.

Mr. deBrauwere of the staff testified that on Friday, December 20, 1974 he saw Com-Bus' van stop twice on Mark IV's Route 3; that it appeared full at the last stop, and that when the Mark IV bus arrived later it had 6 to 8 vacant seats.

#### Discussion

It is apparent that the parties, formerly allies, had a serious falling out, causing an internecine battle, at the expense of the public whose interests the parties should be primarily serving, but obviously are not. We must not let this type of conduct become epidemic, as the primary interest and purpose of the Public Utilities Code (Code) and the Commission is to protect and serve the public interest. That is one of the objects of granting certificates of public convenience and necessity, and such certification subjects the carrier to our continuing jurisdiction and regulation, in accordance with the Code. A carrier who does not operate in accordance with the applicable rules and regulations is subject to the revocation of its operating rights. (Peninsula Rapid Transit Co. v Friend (1918) 15 CRC 373.) The Commission has broad discretion in the matter of certification, (See Barrett Garages, Inc. (1954) 53 CPUC 351) and in regard to unauthorized operators. (See Application of Henderson (1969) 69 CPUC 492.)

The defendant's violation of the Code has been admitted, albeit with some attempt at justification. In the light most favorable to it, defendant's proof is tantamount to threatening the complainant with the continuation of unauthorized operations if

Mark IV does not comply with defendant's demand for additional service. Mark IV responded with commencement of its own unauthorized operation as well as a novel method of supplying new service, i.e., utilizing equipment with unused seating from a different authorized route so as to operate in an unauthorized manner over an unauthorized route. This appears to efficiently utilize existing equipment, at least superficially. Yet to allow such diversions would create a helter skelter movement of vehicles over virtually any routing desired, with an unknown change in traffic patterns lending itself to additional unauthorized competition, with the consequent perils that certification was designed to avoid. It amounts to one bad turn leading to another, which does not appear to be the most efficient method of ending this turmoil in the commuter bus business. Rather, a vigorous enforcement of the Code would appear to have a more salutary effect upon the carriers involved. We cannot condone the carriers' taking the law into their own hands, as seems to be the case here. Nor can we allow an abdication of our authority under the Code. The conduct of both parties here leaves much room for improvement. The "free ride" given by defendant does not absolve its conduct. "Free rides" do not negate the passenger stage concept. (See Valley Transit Lines v California Transit Lines (1949) 49 CPUC 290.) Nor was this transportation free, as it was all to prospective customers, as in the case of Application of Stahl (1965) 64 CPUC 405. In any event, the giving of such free transportation by defendant is a violation of Section 522 of the Code, which prohibits common carriers from directly or indirectly<sup>2/</sup> giving free transportation to passengers (with certain exceptions inapplicable herein) and was certainly not intended to allow an evasion by a certificated carrier of the Code sections applicable to it.

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2/ Underlining supplied.

Thus, we must conclude that defendant's conduct, however allegedly altruistic the motive, must cease, as must complainant's irresponsible responses.

Findings

1. Defendant was operating along Route 3 of complainant without the requisite authority under Section 1031 of the Code.
2. Defendant has been directed to turn over the customer waiting list for Route 3 to Mark IV.
3. Mark IV was operating without the requisite authority under Section 1031 of the Code by unauthorized stopping in Torrance along the route of Leisure Lines.
4. A cease and desist order barring the defendant's conduct was entered by the Commission on December 17, 1974 and duly served on defendant.
5. Defendant made little or no effort to comply with the law and the requests of the staff until the cease and desist order and the complaint herein were filed and served.
6. Defendant attempted to evade the law by giving free rides to passengers being carried along an unauthorized route.

Conclusions

1. The furnishing of free transportation by an existing passenger stage corporation while operating without authority does not change its status and is in itself a violation of Section 522 of the Code, and should be prohibited.
2. The unauthorized operation along the route of another carrier, (Leisure Lines), whether or not by a carrier who has been unlawfully competed with, is itself improper, and should be discouraged and prohibited.
3. The rerouting of equipment by an authorized carrier over unauthorized areas or routes to increase service on another authorized route is improper and should be prohibited.

4. Both parties in this case should be reprimanded for their improper conduct, and are admonished that any further unauthorized conduct shall be more severely punished.

O R D E R

IT IS ORDERED that:

1. Southern California Commuter Bus Service, Inc. is hereby ordered to cease and desist from any and all operations not previously authorized by this Commission, including, but not limited to, the unauthorized operations along Route 3 of Mark IV Charter Lines, Inc., and the free transportation of passengers in violation of Section 522 of the Code.

2. Southern California Commuter Bus Service, Inc. shall pay a fine of \$500 to this Commission, pursuant to Code Section 2107, which fine is suspended, provided, that in the event the company fails to comply in any manner with this order, said suspension shall be vacated, and this fine, and any additional fine that may then be imposed, shall be payable immediately.

3. Mark IV Charter Lines, Inc. is hereby admonished that it shall not operate over routes not previously authorized by this Commission, including, but not limited to, the unauthorized operations along the route of Leisure Lines, and the deviation of its equipment along unauthorized routes and areas to service another of its routes.

4. The order of December 17, 1974 is superseded on the effective date of this order.

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

Dated at San Francisco, California, this 11<sup>th</sup> day of FEBRUARY, 1975.

Vernon L. Sturgeon  
President  
William J. ...  
...  
Leonard Ross  
Commissioners