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Decision No. 84701

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
of ROESCH LINES, INC. for an Order  
authorizing Applicant to increase  
fares pursuant to Public Utilities  
Code Section 454, and Rule 23 of the  
Commission's Rules of Procedure.

Application No. 54883  
(Filed May 15, 1974)

Petition to Modify  
Decision No. 84294  
(Filed June 9, 1975)

O P I N I O N

Roesch Lines, Inc. (Roesch), a California corporation, requests that Decision No. 84294 dated April 8, 1975 in Application No. 54883, filed May 15, 1974, be modified by striking page 1 of Appendix A attached thereto. It also requests that evidence received at the hearing relating to the fare for transportation of passengers from Riverside, San Bernardino, and Ontario to the baseball games at Dodger Stadium and Anaheim Stadium and return (baseball stadiums fare) be stricken, or that no consideration be given such evidence, and that Findings Nos. 5 and 8 therein be stricken or disregarded.

Application No. 54883 sought authority only to increase passenger fares between Hemet and Riverside and points intermediate thereto (Hemet-Riverside). Roesch had previously been authorized to increase the baseball stadiums fare from \$3.25 to \$4.50 by Decision No. 83590 dated and effective October 16, 1974 wherein the Commission stated:

"Based upon the showing made, Roesch has not proved that the sought increase will reasonably cover expenses and will not be a burden upon the other bus operations it conducts. We do recognize, however, that Roesch's operating expenses have increased over the years and that a rate increase is justified. Because Roesch has filed Application No. 54883, increased fares for its Hemet-Riverside operation, we shall consider these matters with that application."

Roesch was served with a notice of hearing in Application No. 54883 (Hemet-Riverside), and a hearing was held in Hemet on December 12, 1974, eight weeks after the effective date of Decision No. 83590 (baseball stadiums fare). The notice made no mention of any application or decision other than Application No. 54883, and no mention of any subject relating to the baseball stadiums fare.

At the hearing, over the objection of Roesch, evidence was received from the staff relating to the excessiveness of Roesch's proposed baseball stadiums fare as set forth in Application No. 54793 dated April 5, 1974, upon which the previous Decision No. 83590 had been based, and the reasonableness of a lesser fare proposed by the staff. In Decision No. 84294 (Hemet-Riverside) Findings Nos. 5 and 8 read:

"5. Applicant's proposed baseball stadiums fare results in an increase of 38 percent, which is excessive."

"8. The round-trip fare of \$3.95 for the baseball stadiums operation proposed by the staff is reasonable and will be adopted."

Findings Nos. 5 and 8 are directly related to Application No. 54793, have no relation to Application No. 54883, and attempt to modify Decision No. 83590 by reducing the fare authorized in that decision from \$4.50 to \$3.95 without notice to the applicant prior to the hearing, either in the notice of hearing or the statement

of the Commission in Decision No. 83590 as set forth above. Due process requires adequate notice before a valid order may be made. (People v Western Air Lines, Inc. (1954) 42 Cal 2d 621, 632; Witkin, Summary Cal. Law, 8th ed., Const. Law, Sections 291 and 299.)

The Commission stated in ex parte Decision No. 83590 (baseball stadiums fare):

"Exhibit 1 shows that Roesch transported 3,722 passengers during the 1973 season. Applying the \$1.25 increase sought to this figure, Roesch estimates that the increase will produce \$4,653 increase in gross revenues for this operation. This will not approach offsetting the reported loss of \$16,208 on earnings of \$10,692 for the 1973 season."

With that as a basis, restoring the fare to \$4.50 from the \$3.95 ordered by Decision No. 84294 (Hemet-Riverside) will produce \$2,047 additional gross revenues.

Notice of the petition was published in the Commission's Daily Calendar on June 10, 1975. No protests have been received. A public hearing is not necessary.

#### Findings

1. Applicant was not given notice that the hearing on December 12, 1974 would relate to a decrease in baseball stadiums fare ordered in Decision No. 83590, either by the Commission's statement therein or by the notice of hearing served upon applicant.

2. Evidence of the excessiveness of such fare and the reasonableness of a fare in a lesser amount than set forth in Decision No. 83590 was received over the objection of applicant, did not relate to any issue to which applicant had notice of hearing, and such evidence should have been disregarded by the Commission in making its findings and order.

3. After disregarding such evidence, there is no evidence to support Findings Nos. 5 and 8, and in the absence of Findings Nos. 5 and 8 there are no findings and no basis to support the order as to page 1 of Appendix A, in Decision No. 84294 relating to the baseball stadiums fare, and it should be stricken.

4. The magnitude of the increase is not precisely determinable, but the modification of the order restoring the fare to \$4.50 will increase gross revenues approximately \$2,047.

Conclusion

Decision No. 84294 should be modified by striking Findings Nos. 5 and 8 and page 1 of Appendix A.

O R D E R

IT IS ORDERED that:

1. Decision No. 84294 is modified only by striking Findings Nos. 5 and 8 and page 1 of Appendix A, and shall remain in full force and effect as to all other matters.

2. Roesch Lines, Inc. is authorized to charge fares in its Local Passenger Tariff No. 1, Cal. P.U.C. No. 8 of \$4.50.

3. Tariff publications authorized to be made as a result of this order may be made effective on or after the effective date of this order.

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4. This authority shall expire unless exercised within ninety days after the effective date of this order.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 29th  
day of JULY, 1975.

William L. Simon President  
Vernon L. Sturgeon  
Donald Ross  
Paul S. Holmes Commissioners

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.