

Decision No. 84745

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Richard Spindel and Keith L. Hurrell,  
Complainants,

vs.

Employee Shuttle Service, Inc., a  
corporation,

Defendant.

Case No. 9898  
(Filed April 10, 1975)

Richard Spindel and Keith L. Hurrell, for  
themselves, complainants.  
Andrew Mann, for Employee Shuttle Service, Inc.,  
defendant.

O P I N I O N

Complainants Richard Spindel and Keith L. Hurrell seek reparations from defendant including prepaid transportation, interest, driver wages, cost of a physical examination, and certain expenses.

A public hearing was held before Examiner Weiss in Los Angeles on June 23, 1975 and the matter was submitted.

By Decision No. 83279 dated August 6, 1974, superseding Decision No. 82046 dated October 30, 1973, defendant acquired authority to operate passenger stage service to and from the Los Angeles International Airport. This service was restricted to employees of Continental Airlines, Trans World Airlines, Inc., American Airlines, Inc., Flying Tiger Line, Inc., Delta Airlines, and the Los Angeles International Airport, and persons seeking employment from these employers.

Defendant's operations were managed and controlled by Fred La France, its president, until Mr. La France was discharged on or about April 14, 1975 from office and employment by stockholders

dissatisfied with his conduct of affairs. Previously the stockholders had been unsuccessful in negotiations with Mr. La France for sale of their stock to him. The corporation has not been financially successful and ceased operations in April 1975.

Complainants Spindel and Hurrell, employed during times relevant herein by Wacker Chemical Corporation and the B-1 Division of Rockwell International, respectively, utilized defendant's passenger stage operations on the Thousand Oaks route, ending on or about February 1, 1975 by reason of termination or transfer of employment by their respective employers.

Each complainant presented evidence of advance payment of \$55.00 to defendant's agents for passenger stage services to be received during February 1975. Each complainant also testified to advance notice to defendant's agent of potential termination of his patronage by reason of termination or transfer. Complainant Spindel testified to use of defendant's service during the week of February 3-7. Complainant Hurrell testified he used none of defendant's services in February. Both complainants repeatedly sought refund without success.

Defendant's tariff under the heading of General Authorizations, Restrictions, Limitations, and Specifications provides as follows:

"Item 10 - CREDIT FOR UNAVOIDABLE ABSENCE  
(Applies only when specific reference is made hereto.)  
Passengers will receive full credit for unavoidable absence i.e., each day paid for by passenger will be credited to that passenger, with reasonable cause. No money will be refunded to any passenger who decides to terminate his (her) ride agreement for vacation time provided sufficient notice is given the driver of the service vehicle (two calendar weeks)."

Complainant Spindel asserted he obtained a Class 2 drivers license at the verbal request of defendant's agent, and for two days in January 1975 performed driver services at an agreed upon rate of \$2.50 per day, for which services he was not paid.

Complainant Spindel also asserted that defendant's agent had agreed to pay the cost of the required physical examination for the license in the amount of \$21.25. Defendant could neither affirm or deny this understanding as it was made (if made) during the tenure of a corporate president no longer with defendant and no record was made.

By letter dated May 13, 1975, defendant advised "all corporate creditors" it was "insolvent" and had discontinued operations, adding that it would seek to avoid bankruptcy proceedings to conserve assets for pro-rata distribution to creditors. By letter dated May 20, 1975, defendant advised the Commission that as of April 1975 operations had ceased, and asserted it was "broke".

Item 10 of defendant's tariff evidences provision for "...full credit for unavoidable absence...with reasonable cause." Certainly loss of employment or transfer constitutes unavoidable absence with reasonable cause. But while credits are anticipated in defendant's tariff, it is clear that credits would not benefit complainants. To allow defendant to continue to refuse return of the unused prepaid fares would simply mean that defendant has charged an unreasonable, excessive, and discriminatory amount for the actual services rendered complainants. Under Section 734<sup>1/</sup> the Commission is empowered to order defendant to make due reparation

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1/ Public Utility Code Section 734:

"When complaint has been made to the commission concerning any rate for any product or commodity furnished or service performed by any public utility, and the commission has found, after investigation, that the public utility has charged an unreasonable, excessive, or discriminatory amount therefor in violation of any of the provisions of this part, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection if no discrimination will result from such reparation. No order for the payment of reparation upon the ground of unreasonableness shall be made by the commission in any instance wherein the rate in question has, by formal finding, been declared by the commission to be reasonable, and no assignment of a reparation claim shall be recognized by the commission except assignments by operation of law as in cases of death, insanity, bankruptcy, receivership, or order of court."

with interest<sup>2/</sup> from the date of collection to complainants for the unused prepaid fare provided complainants are not otherwise precluded from recovery.

Relevant to the issue of complainants' right to recover is the fact that neither is a member of that class of clientele encompassed by defendant's certificate of public convenience and necessity. Decision No. 82046 granting defendant authority limited clientele to employees of certain airlines, the Los Angeles International Airport, and applicants for employment to those specific employers. Complainants were employees of Wacker Chemical Corporation and Rockwell International - not within the class. However, both complainants in response to questions by the examiner at the hearing testified they were unaware of any limitations on clientele, and were not informed of any limitations when they tendered advance payment of February fares. The Commission therefore concludes that this technicality of eligibility cannot serve to bar complainants from recovery of reparations.

While under Section 701, this Commission "...may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction", any such exercise of our jurisdiction must be cognate and germane to regulation of the public utility. Extension of our jurisdiction here to include resolution of individual wage and employment expense claims would not meet that test. We believe that the California Labor Commissioner's office is more properly the forum wherein complainant Spindel should prove his claim for two days' driver wages and expenses attendant to obtaining a license for that position.

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2/ The Commission has traditionally applied the interest rate set forth in the California Constitution in connection with an award of reparations (Folger Athearn, Jr. v Paxton Trucking Co. (1971) 71 CPUC 816). The present rate is 7 percent (California Constitution Art. XX, Sec. 22 (Interest Rates)).

Section 2106 expressly reserves jurisdiction to hear actions to recover "loss, damages, or injury" arising out of unlawful actions, or omissions to act, by public utilities, to the courts of this State.<sup>3/</sup> Therefore, claimants' claim for costs is also brought in the wrong forum (M. W. McDaniel v PT&T (1965) 64 CPUC 707, 720).

Findings

1. Complainants Spindel and Hurrell, unaware of their ineligibility under defendant's tariff, did use defendant's passenger stage transportation services prior to February 1975, and both prepaid passenger stage service for February 1975.

2. On or about February 1, 1975 both complainants, after earlier having alerted defendant's agent to the possibility, were terminated or transferred by their employers. Therefore each complainant had "reasonable cause" not to be able to use some or all of his prepaid February service.

3. Complainants have fruitlessly sought refund of the unused prepaid fare.

4. Defendant's filed tariff provides for credits for service unused by reason of "reasonable cause". Credits would not benefit complainants, and in effect would merely result in defendant's

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3/ Public Utilities Code Section 2106:

"Any public utility which does, causes to be done, or permits any act, matter, or thing prohibited or declared unlawful, or which omits to do any act, matter, or thing required to be done, either by the Constitution, any law of this State, or any order or decision of the commission, shall be liable to the persons or corporations affected thereby for all loss, damages, or injury caused thereby or resulting therefrom. If the court finds that the act or omission was wilful, it may, in addition to the actual damages, award exemplary damages. An action to recover for such loss, damage, or injury may be brought in any court of competent jurisdiction by any corporation or person.

"No recovery as provided in this section shall in any manner affect a recovery by the State of the penalties provided in this part or the exercise by the commission of its power to punish for contempt."

unjust enrichment if allowed to rest on the books. Thus, defendant by retaining the unused portion has collected an unreasonable, excessive, and discriminatory fare for the services actually used.

5. Complainants, although of an ineligible clientele under defendant's tariff, are faultless, and should not be barred from recovery of unused prepaid fare and interest.

6. Complainant Spindel seeks to prove a wage claim and attendant employment costs in the wrong forum.

7. The Commission lacks the jurisdiction to find and award costs.

8. Defendant asserts it has ceased operations.

#### Conclusions

1. Complainants are entitled to reparations in the amount of unused fare for the month of February 1975, plus interest from date of collection of fares.

2. Complainant Spindel should file his wage and employment examination expense claim with the State Labor Commissioner.

3. The appropriate forum for proving an award of costs is any court of competent jurisdiction in this State.

4. Inasmuch as defendant has ceased operations, is assertedly insolvent, has violated the specific restrictions of this certificate of public convenience and necessity as to his clientele, has ceased being responsive to inquiry by its passengers, and failed to file formal answer to complainants' complaint, his certificate of public convenience and necessity should be revoked after a proper interval to afford opportunity to show cause to the contrary.

#### O R D E R

IT IS ORDERED that complainant Spindel be paid reparations by defendant in the amount of \$41.25 plus simple interest at the rate of 7 percent per annum from February 4, 1975 to the effective date of this order, and that complainant Hurrell be paid reparations by defendant in the amount of \$55.00 plus simple interest at the rate

of 7 percent per annum from February 1, 1975 to the effective date of this order. All other requests for relief are denied.

IT IS FURTHER ORDERED that defendant's certificate of public convenience and necessity to operate a passenger stage service be revoked twenty days after the effective date of this order, unless before such date there shall have been filed with the Commission written response to this order requesting public hearing in which event that portion of this order concerned with removal of certification shall be stayed until further order of the Commission.

The Secretary is directed to mail copies of this order to the complainants and the defendant in this proceeding at the last known addresses as shown on the Commission's records.

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

Dated at San Francisco, California, this 5th  
day of AUGUST, 1975.

William Synovis President  
Samuel A. Sturgeon  
Flora  
Robert W. Holmes  
Commissioners

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