

Decision No. 85779

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion to determine the ability of Valley Airlines, Inc. to provide passenger air carrier service, and to determine whether an unlawful merger has been negotiated between Valley Airlines, Inc. and Ram Airlines.

Case No. 9852
(Filed January 7, 1975)

In the Matter of the Application of VALLEY AIRLINES, INC., d.b.a. PNA-PACIFIC NORTHWEST AIRLINES for an ex parte Order or expedited authority to increase its fares.

Application No. 55415
(Filed December 26, 1974)

Donald L. Klein and Eugene J. Freeman, for Valley Airlines, respondent and applicant.
Wilmer J. Garrett, for City of Fresno; Richard A. Duste, for California Air Commuter and Marin Aviation; C. L. Banks, for Pacific Southwest Airlines; Charles G. Wiswell and Stephen C. Larson, for Swift Aire Lines, Inc.; Quentin F. Cede, for Apollo Airways, Inc.; and John C. Brawner and Allen C. Donohue, for Aerofin Incorporated; interested parties.
Janice E. Kerr, Attorney at Law, Edward Cole, and Milton DeBarr, Jr., for the Commission staff.

O P I N I O N

This is an investigation instituted upon the Commission's own motion to determine, among other things, whether the certificates of public convenience and necessity authorizing Valley Airlines, Inc. (Valley) to conduct passenger air carrier operations should be revoked. In Application No. 55415 Valley sought authority to increase certain of its passenger fares. By interim order in Decision No. 84145 entered March 4, 1975 the Commission authorized the fare

increases without hearing but, because Valley had interrupted service and allegedly had not refunded fares for canceled flights, ordered that hearings in the application be consolidated with proceedings in the investigation.

Public hearings were held on July 10 and 11, 1975 before Examiner Thompson at San Francisco.

The order instituting this investigation, issued January 7, 1975, covers inquiries into whether Valley has the ability to provide adequate passenger air carrier service on its present routes and whether Valley has attempted an unlawful merger. At the opening of the hearings, counsel for the Commission staff (Staff) stated that because of the condition of Valley's books of account Staff would not at that time undertake to present evidence of Valley's financial ability to conduct operations or evidence of the attempted merger. Staff asserted that it would present evidence of cancellation of service by Valley and of its failure to refund fares for canceled flights. Counsel stated that it would have recommendations to the Commission to defer the revocation or suspension of Valley's certificates.^{1/}

At the close of the hearings Staff offered what might be termed a stipulated judgment as follows:

"Valley's certificate be made temporary; said authority to expire on July 1, 1976; that Valley submit a plan for its service operations and financing by September 1, 1975 to the Commission staff; that said plan should contain specifics with regard to their financing, specific amounts, type, date. By November 10, 1975 Valley must have begun service of a portion or all of its certificated service; said service being in compliance with the Commission's rules and regulations, and that Valley make refunds of all unsatisfied complaints within 30 days from today. If any of these conditions are not met, the certificate should be revoked."
(RT 169)

^{1/} RT 6 "What we are interested in is giving Valley an opportunity to get itself in flying shape, but we are not going to wait forever."

Valley accepted the Staff's offer (RT 174). The investigation, other than the inquiries in the subject matter connected with the alleged merger, was taken under submission and Application No. 55415 was continued to a date to be set.

On January 12, 1976, Staff filed a motion for an order revoking Valley's certificates. In its pleading Staff asserts the following with respect to the conditions in its stipulation:

- (1) Valley submitted a satisfactory plan for its service operation by September 1, 1975; Valley did not submit a plan for its financing by September 1, 1975 and no financing plan has been received by the staff as of January 9, 1976.
- (2) Valley did not begin service over any of its certificated routes by November 10, 1975 and no service has been instituted as of January 9, 1976. On January 6, 1976, the Commission issued its Decision No. 85330 suspending Valley's certificate for failure to have on file evidence of liability protection insurance as required by General Order No. 120-C and Public Utilities Code Section 2764.
- (3) Valley did not satisfy all complaints for refunds by August 10, 1975 and six complaints remain unsatisfied as of January 9, 1976.

Valley has filed an answer to the Staff's motion.^{2/} It does not deny the allegations set forth in the motion other than the one concerning submitting a financial plan by September 1, 1975. It refers to its letter of August 29, 1975. Valley resists the motion, asserting that it is improper. It contends that if Staff

^{2/} All of the documents filed were photographic copies of a signed original which was not filed. This is at variance with Rule 7 of our Rules of Practice and Procedure. We have accepted the pleading for docketing (Rule 87). We note, however, that when the docket officer attempted to communicate with Pacific Airlines (Valley) at the address shown in the pleading, she was informed that the telephone had been disconnected.

desires to place in evidence the matters alleged in its motion it should file a Petition to Set Aside Submission as provided by Rule 84 of the Commission's Rules of Practice and Procedure.

Findings

1. By a certificate of public convenience and necessity granted, pursuant to Section 2754, in Decision No. 77965 dated November 24, 1970, and as subsequently amended, and more particularly by Decision No. 81416 dated May 22, 1973 in Application No. 53640, Valley Airlines, Inc., a corporation, is authorized to conduct passenger air carrier operations over the following routes:

Route 1 - Between Oakland and Fresno via San Jose.

Route 4 - Between Oakland and Bakersfield via San Jose.

Route 5 - Between Oakland and Santa Barbara via San Jose and Monterey.

Route 6 - Between Fresno and Bakersfield.

2. The certificate, as amended, provides that on each route each airport shall be served with a minimum of one flight in each direction on each of five days a week.

3. Prior to September 5, 1973 Valley operated three Beech D-18 aircraft in its passenger air carrier service.

4. On September 5, 1973 Federal Aviation Administration (FAA) grounded Valley's aircraft by recalling its airworthiness certificates. Valley ceased all operations.

5. On October 2, 1973 the FAA reissued a certificate and Valley reinstated service with one aircraft on a substantially reduced basis.

6. In December 1973 Valley discontinued service to Monterey. Valley had not obtained authority from the Commission to discontinue that service. Valley has not provided passenger air carrier service to or from Monterey since. As of July 11, 1975 Valley was still indebted to the Monterey Peninsula Airport District in the amount of \$1,102.44. Its lease for facilities at Monterey Airport has been terminated.

7. In July 1974 Valley discontinued service to Bakersfield. Valley had not obtained authority from the Commission to discontinue that service. Valley has not provided any passenger air carrier service to or from Bakersfield since. Its lease for facilities at Bakersfield Meadows Field Airport was terminated.

8. In February 1974 Valley commenced negotiations with Ram Airlines, Inc. (Ram) of Nevada which were aimed at merging the two corporations. At that time Ram conducted air charter and air taxi service between Carson City, Reno, Lake Tahoe, and San Francisco. On May 3, 1974 Valley and Ram filed Application No. 54858 requesting authority to merge. Air California filed a protest and petition to intervene. Prehearing conference in that application was scheduled on July 12, 1974. On July 17, 1974 Valley and Ram withdrew Application No. 54858 and on August 20, 1974 the Commission entered Decision No. 83313 dismissing the application.

9. By letter to the Commission dated October 30, 1974 Valley referred to the facts stated above and informed the Commission:

- a. Ram terminated all service on October 6, 1974.
- b. On October 7, 1974 through issuance of stock Valley purchased certain assets of Ram, including operational control of two DH-104 9-passenger Riley Turbo-Charged aircraft, aircraft spare parts, ground service equipment, and office equipment. It also acquired operational control of four 28-passenger DC-3 aircraft then at Oakland International Airport.
- c. Following an extensive annual inspection of aircraft, flight operation will commence Monday, November 4, 1974 with the first aircraft serving Oakland, San Jose, Fresno, and Santa Barbara.
- d. Within one week one DH-104 is planned to be placed in service and at that time Bakersfield flights will continue.

- e. Discussions have been held with Monterey Airport management and service at Monterey should start in November or early December.
- f. The second DH-104 will be in service and placed on the line for backup and extra section flights to meet public demand for service.
- g. One DC-3 aircraft will be placed in service as soon as Federal Aviation Administration certification of that aircraft is accomplished. Present estimates call for introduction to the public in January or February 1975.

10. Valley did not place DH-104 aircraft in operation. It did not resume service to Bakersfield or Monterey. It did not place any DC-3 aircraft in service.

11. On December 30, 1974 Sue Hanford, a resident of Las Vegas, boarded a Valley aircraft at San Jose Municipal Airport with destination at Santa Barbara. Enroute the plane turned back to San Jose because weather prevented landing at Santa Barbara. Upon return to San Jose she found that there were no Valley personnel at the airport terminal. About one week later she telephoned from Las Vegas to inquire about a refund. She was informed that it would be sent. About 10 days later her sister, Beth Hanford, who resides in Palo Alto, telephoned Valley to inquire about the refund and was informed that it probably was delayed in the mail. Two weeks later Sue Hanford mailed the unused portion of her ticket with a claim for \$28.64 to Valley. Subsequently she called a number of times inquiring about the refund but received no satisfaction. At one time she spoke with a Mr. Don Winton who said that she would have to contact Pacific Northwest Airlines [sic] regarding this because they were in charge of Valley Airlines. As of the date of hearing refund was not made.

12. Donald Winton is, and has been since at least October 7, 1974, comptroller for Valley.

13. On January 7, 1975 the Commission, on its own motion, instituted this investigation.

14. During the period December 5, 1973 to January 7, 1975 the Commission received 27 informal complaints alleging that Valley failed to refund unused tickets. Six of those complaints were satisfied; 12 were satisfied on April 21, 1975; one was satisfied May 30, 1975; and eight remained unsatisfied as of July 10, 1975.

15. Subsequent to January 7, 1975 the Commission received eight informal complaints alleging failure by Valley to refund unused tickets. None of those complaints were satisfied as of July 10, 1975.

16. Rule 8 of Valley's Local Passenger Tariff No. 1 provides that it will make refund upon surrender of the ticket. Rule 6 of the Commission's General Order No. 105-A requires air transportation companies to observe the rates and rules specified in their tariffs.

17. On February 13, 1975 Valley's sole operational aircraft (Beech D-18) was damaged while landing at San Jose Municipal Airport at which time service to all points and on all routes was discontinued.

18. On March 10, 1975 Valley amended its Local Passenger Tariff No. 1 and its Air Freight Tariff No. 1 to show itself operating under the style of "Valley Airlines dba Pacific Airlines, Inc."

19. On April 8, 1975 Valley Airlines, Inc., dba Pacific Airlines, Inc., purchased 100 percent of the stock of Pacific Coast Airlines, Inc. In a separate transaction Valley purchased three Convair 240 aircraft (specifically N196N, N91237, and N51331) over which Pacific Coast Airlines, Inc. had operational control.

20. Pacific Coast Airlines, Inc. holds a certificate, effective September 21, 1972 and reissued November 8, 1973, by FAA authorizing operations as an air taxi/commercial operator.

21. On July 30, 1974 the Civil Aeronautics Board (CAB) exempted Pacific Coast Airlines, Inc. from the provisions of Section 401 of the Civil Aeronautics Act and Part 298 of its Economic Regulations insofar as those provisions would otherwise preclude operations as an air taxi operator within the meaning of Part 298 with the three specified Convair aircraft. That exemption is scheduled to expire July 30, 1976.

22. Valley issued a press statement for release on April 24, 1975 announcing that it had purchased three 30-passenger Convair 240 aircraft for use starting in May on its flights from Fresno to San Jose and Oakland and that it had that day flown one of the Convairs to the Fresno Air Terminal for a preview and announced its schedules when service starts in May.

23. Valley, under the name of Pacific Airlines, Inc., had printed 40,000 copies of schedules showing service to Fresno, Oakland, San Jose, and Santa Barbara effective May 1975.

24. On May 22, 1975 Valley officially changed its corporate name to Pacific Airlines, Inc.

25. Since February 13, 1975 Valley has not provided any passenger air carrier service to or from Fresno. It had not obtained authority from the Commission to discontinue that service. As of July 11, 1975 Valley was still indebted to the city of Fresno in the amount of \$519. Its lease for facilities at Fresno Air Terminal has been terminated by the city of Fresno.

26. Since February 13, 1975 Valley has not provided any passenger air carrier service to or from Oakland. It had not obtained authority from the Commission to discontinue that service.

27. Since February 13, 1975 Valley has not provided any passenger air carrier service to or from San Jose Municipal Airport. It had not obtained authority from the Commission to discontinue that service. Its lease with the airport authority has been terminated.

28. Since February 13, 1975 Valley has not provided any passenger air carrier service to or from Santa Barbara. It had not obtained authority from the Commission to discontinue that service. Its lease with the airport authority has been terminated.

29. On January 6, 1976 the Commission issued its Decision No. 85330 suspending Valley's certificate of public convenience and necessity for failure to maintain on file evidence of liability protection insurance as required by General Order No. 120-C and Section 2764 of the Public Utilities Code.

Discussion

With respect to the events and circumstances recited above, Valley asserts that the causes were financial and equipment problems which it has been solving. Its president characterized the first 90 days after he assumed the management of the company on October 7, 1974 as a horror story in terms of discovering liabilities. He stated that on the day that he took over, Valley may have had \$5 in the bank, liabilities in the area of \$750,000, and had very sketchy accounting records. He had a survey made of Valley's equipment which disclosed one operational Beech D-18 aircraft, one at a repair station minus two engines and no spare engines to put on it, and one out of service which had been cannibalized for parts. He also received reports which disclosed that the Beech D-18 aircraft would be unreliable and uneconomical equipment for passenger airline service on Valley's routes. It was then that he attempted to acquire DC-3 aircraft as reported in the letter to the Commission

dated October 30, 1974. The attempted acquisition was not accomplished. The president stated that he then found he could obtain three CV-240 aircraft by acquisition of Pacific Coast Airlines, Inc., which had ceased operations. That was accomplished on April 8, 1975. It was believed that service could be resumed with those planes because of the exemption from the CAB; however, for their operation in scheduled service the FAA has greater requirements for certification than for unscheduled service. Valley thereupon commenced the equipment modifications, manual preparations, training of personnel, and change in its system of accounts in order to qualify for certification by the FAA. At the time of hearing one of the CV-240 aircraft had been completely modified; all manuals had been prepared and accepted by the FAA; all of the required ground training of personnel had been completed and over 70 percent of the required flight training had been accomplished; and an FAA audit of Valley's accounts was scheduled to take place July 16, 1975. The president estimated that operations could be resumed with one aircraft within 60 days and that the other aircraft would be operational within a few weeks thereafter. He was confident that service would be fully restored before November 10, 1975.

With respect to solving the financial problems, the president testified that between \$150,000 and \$200,000 was put into the company during the first 90 days after October 7, 1974, \$300,000 additional capital was raised assisted by guarantees of a group of stockholders, and additionally the company is in the process of completing a sale/leaseback of two of the three CV-240 aircraft which will provide \$180,000 in cash for current purposes. A stockholder had informed the company of an intention to invest an additional \$400,000 in equity in the company. The president described several other financing arrangements then under consideration, any one of which seemingly would solve Valley's financial problems.

The impression given by Valley at the hearing was that only a few odds and ends needed to be buttoned up and it would inaugurate service well in advance of November 10, 1975. That has not come to pass.

Section 2755 of the Public Utilities Code provides:

"The rights conferred by a certificate issued pursuant to Section 2754, 2754.1 or 2757 may not be revoked or suspended absent a finding by the commission, after notice and hearing, that the holder has abandoned such rights, or is no longer able to perform all or part of the certificated services, or to conform to the law and to the rules and regulations of the commission."

The facts show inability by Valley to perform all or part of its certificated services and to conform to the law and to the rules and regulations of the Commission. The certificate of Valley is already suspended. The question now is whether the certificate should be revoked as requested by Staff in its motion, or whether to reopen the matter for further hearing. Such determination is within the discretion of the Commission.

The obvious adverse effects of the revoking of the certificate are on the stockholders who have injected additional capital into the business, and the personnel who have undertaken training to meet the FAA requirements for scheduled airline service. The benefit to be derived is the establishment of service over the routes by other passenger air carriers who desire to provide that service. Two such carriers have applications on file with the Commission which have not been scheduled for hearing pending the results of a decision in this case.

Reopening the proceeding for further hearing would have the result of postponing a decision in the matter. If the matter were to be reopened, Valley's presentation at best could only be that it is solving its financial and equipment problems and expects to resume operations over part or all of its routes in the very near future. That, however, is what it assured us on July 10, 1975. Valley's response to Staff's motion is not supported by any showing that its condition has improved. It has not submitted any reports or evidence in the form of FAA certificates that it can in fact operate any of the CV-240 aircraft in scheduled service over its routes.

In its report dated August 29, 1975 Valley stated:

"The FAA has now issued Pacific Airlines, Inc. a new Operating Certificate. This action was taken pursuant to the Civil Aeronautics Board (CAB) notice to the FAA that Pacific Airlines may provide scheduled service, thus clearing the way for the operations outlined herein."

The outlined operations referred to in the quoted statement relate to statements in that letter that Valley would restore service in three stages, and that at the completion of Phase 3 it shall have completed resumption of operations over its certificated routes within the time period recommended by the Staff on July 11, 1975. We note, however, that in the next paragraph of the report Valley stated:

"The financing arrangements referred to in our testimony on July 11, 1975 are in the process of being implemented. The initial implementation is providing funds for completion of our FAA required training (flight) and maintenance facilities."

At the hearing it was testified that the training (flight) requirements are a prerequisite to the certification by the FAA.

With respect to the financing arrangements, Valley in its report stated that they were being "implemented" as indicated above. It also asserted that:

"...without certainty of the outcome of this Case, Pacific Airlines is hampered in many respects from finalizing many of the transactions necessary to meet, at the earliest possible time, the requirements of the Staff recommendation and the resultant resumption of service to the public for which we are presently certificated."

The time has come when we should no longer rely upon promises or assurances that a resumption of operations will occur. Those that were presented to the Commission by Valley on October 30, 1974 and on July 11, 1975 were not fulfilled.

We also must look to the evidence concerning Valley's attitude towards complying with the law and to the rules and regulations of the Commission. Because of Staff's motion to defer the taking of evidence concerning the alleged merger between Ram and Valley we make no findings on that issue. We also take into consideration that the management of Valley was changed on October 7, 1974 and therefore do not give weight to unlawful actions by Valley prior thereto. We do believe important the actions taken by Valley subsequent to January 7, 1975 when the order instituting this investigation was issued. In that order the Commission provided notice of actions by Valley that were considered to be just cause for the revocation of Valley's certificates, including failure to pay refunds to passengers denied boarding by reason of cancellation of flights and a possible unlawful merger with another common carrier. We note that subsequent to that date Valley continued to refuse refunds. We also note that three months after the issuance of the order Valley acquired 100 percent of the stock of another common carrier, namely Pacific Coast Airlines, Inc. Valley admitted that it fully intended to operate pursuant to the CAB

certificate of exemption granted to Pacific Coast Airlines, Inc. Such actions in the face of the notice contained in the order of investigation indicate a disregard by Valley's management of the laws and the rules and regulations governing passenger air carriers in California. We also note that the cancellation of Valley's insurance is further evidence of Valley's inability to perform service or to comply with the law.

All things considered, we cannot perceive any good cause to reopen the proceedings for further hearing. Valley was accorded full opportunity to be heard in this investigation. The Staff's offer, which Valley accepted, that Valley be accorded opportunity to resume operations by November 10, 1975 (121 days from July 11, 1975) was more than fair. A condition of certificates issued to passenger air carriers is the requirement that service be inaugurated within 120 days.

On March 5, 1976, immediately after the foregoing had been written, the Commission received a letter from Eugene J. Freeman, president of Valley. A copy of that letter is attached hereto. It was decided to defer consideration of this decision and to have the Commission staff investigate and report upon the statements set forth in that letter. We are informed by our staff that the FAA has not certificated Pacific Airlines, Inc. to operate any aircraft; that the three Convair aircraft that Pacific Airlines, Inc. had are now registered in the name of the Crocker National Bank; that Pacific's plans are to lease three Piper Chieftain aircraft, however, no FAA

certification has been issued as yet; that Mr. Bill Gastelum of WEDCO did not tender a "financing package" into the hands of Crocker National Bank by "Monday morning" or subsequent thereto; and that as of March 30, 1976 WEDCO had not obtained investors to provide financing for Pacific Airlines, Inc.

Once again the assurances of Valley appear to be illusory. We also note that what appears to be plans for operating eight-passenger Chieftain aircraft is somewhat inconsistent with the president's testimony regarding his study of the economic feasibility of operating small aircraft such as the Beech D-18 over Valley's routes.

Additional Findings

30. Valley is no longer able to perform all or part of its certificated services.

31. Valley has not conformed, and is not conforming, to the law and to the rules and regulations of the Commission and is no longer able to conform to such law, rules, and regulations.

Conclusions

1. The certificates of public convenience and necessity issued to Pacific Airlines, Inc. (formerly Valley Airlines, Inc.) should be revoked.

2. The tariffs and schedules of Pacific Airlines, Inc. (formerly Valley Airlines, Inc.), which are on file with the Commission, should be canceled.

3. Application No. 55415 should be dismissed.


O R D E R

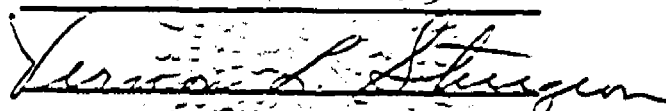
IT IS ORDERED that:

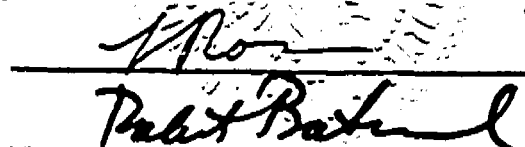
1. The certificates of public convenience and necessity granted to Pacific Airlines, Inc. (formerly Valley Airlines, Inc.), authorizing it to operate as a passenger air carrier over routes and between points in California, and as more particularly described in Appendix A of Decision No. 77965, as amended, are revoked.
2. The tariffs and schedules of Pacific Airlines, Inc. (formerly Valley Airlines, Inc.) governing passenger air carrier service over routes and between points in California are canceled.
3. Application No. 55415 is dismissed.

The Executive Director shall cause a copy of this order to be served upon respondent and the effective date of this order shall be twenty days after completion of such service.

Dated at San Francisco, California, this 22
day of MAY, 1976.


President


Commissioner


Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

PACIFIC AIRLINES, INC.

1335 COLUMBUS AVENUE • SAN FRANCISCO, CALIFORNIA 94133 • (415) 928-2156

March 4, 1976

Public Utilities Commission
Attn: Mr. William R. Johnson
Executive Director
California State Building
San Francisco, California 94102

RE: No. 9852

Dear Mr. Johnson:

Although we have been in contact by telephone with various people in the different departments from time to time, we wish to bring the commission up to date on the things we have been doing to remain viable during the period of waiting for a formal grant of the year to resume service which was informally negotiated at the time of the 1975 hearing. As you know, the absence of a formal award of the year has posed an enormous difficulty in securing the release of anticipated funds ... even to the point that the \$500,000. Promissory Note we had accepted from a major investor was defaulted on in December and January. Although we have not been specifically told as much, we believe that the default may have been caused by the delay in formally confirming that year.

Be all that as it may, I and the other full time officers of our company have worked full time performing personally all the heavy continuing paperwork procedures essential to the viability of our company. We have invested our total personal resources up to and including homes, cash and very heavy personal borrowings to keep the company afloat while awaiting the Commission's ruling.

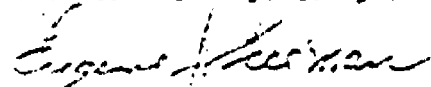
Now we are pleased to report that WEDCO, the Federal Minority Business Development contractor in Oakland has completed the financing package and this afternoon Mr. Juan Marichal (of Giants baseball fame) executed his personal guarantee on the \$600,000. package. Mr. Bill Castelan, WEDCO manager, will be putting the material into the hands of Crocker National Bank by Monday morning and they indicate that their processing can be accomplished within ten days.

Accordingly, we are meeting with the Oakland FAA air carrier people tomorrow to fix a plan of action for release of our certificate. Next week we shall begin with all the many pre-operational tasks which must be accomplished prior to active resumption of service on our route structure. Of course we shall devote first attention to our key route leg the Oakland/San Jose/Fresno run, to be at once followed by the Oakland/San Jose/Monterey/Santa Barbara service.

We should complete the many preliminaries within 30 to 45 days.

Respectfully,

PACIFIC AIRLINES, INC.


By: Eugene J. Freeman, President

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