

ORIGINAL

Decision No. 85835

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter for the Application
of RICHARD H. THOMPSON and
RICHARD A. LIGHTHILL, dba WHIPPET
CHARTER SERVICE for the transfer
of Certificate of Public Convenience
and Necessity and the assets of said
partnership to a corporation,
WHIPPET CHARTER SERVICE, INC. in
consideration of the issuance of
stock and promissory note and for
authority to said corporation to
issue stock.

Application No. 55017
(Petition filed July 30, 1975)

Donald L. Klein, for Commute Service, Inc.,
petitioner.
Robert D. Ellis, Attorney at Law, for
Whippet Charter Service, Inc., respondent.
Thomas Hamamoto, for the Commission staff.

O P I N I O N

Decision No. 83587 transferred a passenger stage corporation certificate of public convenience and necessity from Richard H. Thompson and Richard A. Lighthill, doing business as Whippet Charter Service, to Whippet Charter Service, Inc. (Whippet), a corporation. The decision was issued ex parte and transferred operating rights between Hayward, Union City, Newark, Fremont, and Milpitas, on the one hand, and the United Air Lines Maintenance Base at the San Francisco International Airport, on the other hand, originally granted to Thompson and Lighthill by Decision No. 79990 dated April 25, 1972 in Application No. 53115. The authority granted by Decision No. 79990 restated the Hayward authority granted to Thompson and Rodney N. Cates, doing business as Whippet Charter Service, by Decision No. 77112 dated April 21, 1970 in Application No. 51581.

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Commute Service, Inc. (Commute) filed a petition on July 30, 1975 which requested that Decision No. 83587 dated October 16, 1974 in Application No. 55017 be modified by altering or eliminating from Whippet's passenger stage certificate the "Hayward Service Area" description, which reads:

"A. Hayward Service Area

"The City of Hayward and the area within a radius of three air miles of its corporate city limits." (Section 2A, Original Page 4, Appendix A, Decision No. 83587. First authorized in Decision No. 77112 dated April 21, 1970 in Application No. 51581.)

The petition alleges that Whippet is providing passenger stage service out of Dublin, which is in the area served by Commute. It further alleges that Whippet has continued to serve Dublin after receiving a letter from the Secretary of the Public Utilities Commission dated May 15, 1975 which requested that Whippet cease providing this service. Commute admits that Dublin is within three miles of the Hayward city limits and therefore within the area Whippet is authorized to serve; but it is alleged that the applications filed by Whippet have never requested a three-mile extension and that this area was arbitrarily granted by the Commission; it is further alleged that if Commute had been informed that the Whippet service area was to extend three miles past the city limits, a protest would have been filed. Whippet's reply was filed on August 6, 1975 in Case No. 9725 which was an investigation of the operation of six passenger carriers in Santa Clara County. Whippet alleged it is operating lawfully within its authorized service area and that service out of Dublin was instituted because of public demand. A hearing was held on November 29, 1975 in San Francisco. Briefs were filed and the matter was submitted.

Commute has operated since 1959 and was incorporated in 1975. It has served Dublin since 1971 as a stop on its Livermore-Pleasanton route. The service offered by Commute which is the subject of this controversy is a home-to-work service, limited to the day shift. Commute asserts there were sufficient passengers out of Dublin to justify the use of two buses in October 1975. Patronage has dropped off and the area is presently served by a single bus. Commute claims it suffered a loss of \$3,000 from April to November 1975 and ascribes its losses to the competition provided by Whippet. Commute's president testified that the loss of business is affecting Commute's financial stability. A recent application to borrow money for additional operating equipment was denied. The witness works at the United Air Lines Maintenance Base on the day shift. He testified that Commute seeks to have the Whippet certificate amended by deleting the three-mile extension out of Hayward.

Whippet started transporting the swing shift (working hours 4:00 p.m. to midnight) from Dublin in early 1974. Graveyard service (midnight to 8:00 a.m.) was started on April 27, 1975 and transportation for the day shift (8:00 a.m. to 4:00 p.m.) on April 28, 1975. One of the two men who own and manage Whippet testified that he and his partner work at the United Air Lines Maintenance Base and they provide transportation for workers (Dublin residents who are employed at the facility and requested service). Whippet started hauling the swing shift since the day shift was transported by Commute. Service was expanded to the other shifts at the request of Whippet's passengers. No one else would provide bus service for all three shifts. Whippet now transports 35 to 41 passengers on the swing shift, 20 to 25 passengers on the graveyard and about 30 passengers on the day shift. The same vehicle is used for all three shifts.

A passenger who works the swing shift testified for Whippet. He has used the service for two years and is satisfied. He pays \$8 a week and the money is usually collected twice a month. He stated that the bus driver works on the swing shift also, and parks the bus for the shift getting off work to board and return to Dublin. Everyone is returned to his place of origin. He contacted the president of Commute prior to the date Whippet started service and requested transportation for all three shifts. He was advised that Commute could not afford to provide the additional service.

Discussion

Commute argued that Whippet was granted a more extensive certificate than requested and that it should either be curtailed or the proceeding reopened so Commute has the opportunity to protest. This argument is not persuasive. Whippet's certificate to serve within three miles of the Hayward city limits was first authorized in 1970 and was granted on a finding of public convenience and necessity. The three-mile extension is found in other certificates and was not considered unusual when the certificate was granted.

Commute further argued that Whippet is disregarding a Commission Directive by continuing its Dublin operation after receiving the May 15, 1975 letter from the Secretary of the Public Utilities Commission which requested that Whippet cease and desist from operating out of Dublin.

Commission letters signed by the Commission Executive Director (formerly entitled "Secretary") are not Commission orders or directives; however, recipients are required to respond promptly so that the request, suggestion, or advice issued may be acted upon. Failure to observe a suggestion in a Commission letter is not a contempt of the Commission, which requires a deliberate failure to comply with the ordering paragraphs of a formal Commission decision; nevertheless, total disregard or continued failure to heed Commission

letters without explanation may be considered good cause to suspend any operating authority issued by the Commission.

Commute further alleged that Whippet has published and is charging an unauthorized rate from Dublin, which is 20 percent greater than its last authorized increase. The rate is classified as applying to "Extreme Hayward Service", on Routes 6, 12, and 16. The record indicates the rate was placed on Whippet's tariff without prior Commission approval. Whippet must obtain authority from this Commission before increasing its rates.

Whippet had instituted a swing shift service within its certificated area which Commute refused to provide. The service was needed and those who require it now ride with Whippet. Whippet expanded its service due to normal growth within its certificated area to include both the graveyard and day shifts. Commute now seeks to oust Whippet. The latter's action should be praised - not punished - and the petition to modify should be denied.

Findings

1. Commute provides daily passenger bus service for the day shift, between Dublin and the United Air Lines Maintenance Base in San Mateo County.
2. Prior to, and during early 1974 Commute refused to extend service to swing and graveyard shifts because of the expense involved.
3. Dublin is within a three-mile radius of the Hayward city limits, which constitutes a portion of the service area granted to Whippet.
4. Whippet's service to Dublin was authorized in Decision No. 77112 dated April 21, 1970 in Application No. 51581.
5. Whippet originated service out of Dublin in early 1974 for the swing shift and expanded it to transport the graveyard and day shifts during April 1975.

6. Commute's petition to modify Whippet's operating authority to eliminate Dublin from the latter's service area should be denied where Whippet instituted service required by public convenience and necessity, after Commute had refused to provide it, and where all points served are within Whippet's authorized service area.

7. Whippet should first obtain the necessary authority from this Commission before increasing its fares.

Conclusions of Law

1. Whippet should be ordered to cease and desist from charging and collecting fares which have not been authorized by this Commission.
2. The petition should be denied.

O R D E R

IT IS ORDERED that:

1. The petition to modify Decision No. 83587 is denied. ✓

2. Whippet Charter Service, Inc. shall cease and desist from charging and collecting fares which have not been authorized by this Commission.

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

Dated at San Francisco, California, this 18th day of MAY, 1976.

[Signature] President
William S. Gurnea Jr.
Vernon L. Stinger
[Signature]
Robert Bateman Commissioners