

Decision No. 85974

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of JAMES RANNEL HOLLINGSWORTH
 an individual dba JIMMIE'S LIMOUSINE
 SERVICE, of Berkeley, California, for a
 renewal permit to operate as a charter
 party carrier of passengers.

Application No. 55363
 (Filed December 4, 1974)

Moore & Ben, by Howard Moore, Jr., Attorney at Law,
 for James R. Hollingsworth, applicant.
James B. Brasil, Attorney at Law, for the City and
 County of San Francisco, protestant.
Emil Biagi and Robert Franchi, for Chauffeurs Union
 Local 265; Martin A. Levy, for Associated Limousine
 Operators of San Francisco; and Rick E. Oliver and
Doyle W. Elmore, for Airport Limousine Service,
 Inc.; interested parties.
Thomas T. Hamamoto, for the Commission staff.

O P I N I O N

James Rannel Hollingsworth, doing business as Jimmie's
 Limousine Service, holds Charter-Party Carrier of Passenger Permit No.
 TCP-293, and by this application seeks renewal of annual authority
 which was to expire October 31, 1974.

The Commission, by Resolution No. PE-279, extended the
 authority of applicant's permit until this proceeding is resolved.

A protest was filed by the city and county of San Francisco
 and a hearing was held on November 17 and 18, 1975 before Examiner
 Fraser. The matter was submitted on briefs, which have been filed.

The protestant owns and operates the San Francisco
 International Airport located in San Mateo County. The San Francisco
 Airport Commission has granted exclusive rights to solicit and pick up
 passengers to two limousine operators who own and operate 72 vehicles
 on a 24-hour day, 7 days a week basis. These operators are franchised

and have counter space inside the terminal and permanent parking areas nearby. They pay substantial fees to the airport for the preference in location and parking. Limousine operators who are not licensed by the airport are not allowed to solicit and can only pick up if they have a written request which identifies the passenger by name. The latter have the use of 3 parking areas with a total capacity of 8 vehicles and a 10-minute parking limit. Drivers of unlicensed vehicles are not allowed in the baggage areas unless they can identify the passenger to be picked up. A municipal airport owned and operated by a city in a proprietary capacity can regulate the access and conduct of limousine operators at the airport regardless of what PUC authority they hold (City of Oakland v Burns (1956) 46 Cal 2d 401; United States v Gray Line Tours of Charleston (4th cir 1962) 311 Fed 2d 779). Airport Rule 1.4.5(c) prohibits limousine operators not under written contract with the Airport Commission from soliciting fares at the airport (Exhibit 1). After a trial on April 4, 1975, the Superior Court of San Mateo County issued a judgment on June 24, 1975 which permanently enjoined James Hollingsworth, Joseph Burnley, Joe Burnley, also known as Joe Lee Burnley, and all persons acting on their behalf from soliciting passengers for transportation for hire at the San Francisco International Airport (Exhibit 8).

Applicant presented the following testimony. The owner of an Oakland supper club testified that he has frequently used applicant's service over a 3-year period; musicians and other performers are transported mostly between town and the airport; it is an efficient service with young, personable black drivers, which is important, since the performers are also black. Applicant's driver Joe Burnley testified he is black and has found it impossible to obtain a permit from the Airport Commission, even though he is willing to pay the required fees; he has been ordered off the airport

property and harassed by airport police; he applied for employment as a driver with Associated Limousine Service, one of the franchised operators at the airport and was told they needed no more drivers, although several men were hired after he applied; he finally leased his 1975 Cadillac Limousine to the applicant (Exhibit 11) on April 1, 1975 and provides a driver when the vehicle is needed; the non-franchised operators are not allowed to wear hats identifying them as limousine drivers and cannot use the airport paging system; passengers and drivers have to search for each other and he has lost fares due to these restrictions, which should be eliminated; applicant has provided service for Congressman Ron Dellums, the Black Muslims, James Brown, a singer, the Pointer Sisters, Bechtel Corporation, and others; he estimated that 80 percent or more of applicant's business is to or from the San Francisco International Airport; he operates under the Hollingsworth permit but does not have a copy; he drives to the San Francisco International Airport about every day and his right to earn a living has been curtailed by harassment from the airport police; he reported several instances to the San Mateo County Sheriff and was advised to file a complaint with the District Attorney; he has not done so as yet. Applicant and Joe Lee Burnley testified to explain or refute evidence introduced by protestant. This testimony will be considered in a later paragraph.

Protestant provided testimony from four witnesses and a number of exhibits. Exhibit 2 is a copy of the contract which controls the operation of the franchised limousines. Exhibits 3, 4, and 5 are photographs of the parking areas reserved for nonfranchised limousines at the airport. A sergeant of airport police testified that an officer of the limousine detail stands near the entrances used by the limousine operators who are not franchised by the airport; all the regular drivers are known and when the driver enters, the officer asks if he has authority from the PUC and if he has a waybill or slip with the name of the passenger he is to meet; the officer may stop the driver or follow him into the terminal if the latter is

uncooperative or lacks the required authority; if there is an argument or opposition, the officer is required to submit a written report on the incident describing what happened and who was present; the officers always ask if the driver has authority from the PUC; if not, prosecution under Section 602.4 of the Penal Code is authorized; airport regulations require that the PUC permit number be stenciled on the front and rear bumpers, or other suitable location; applicant owns a 1973 Cadillac with License No. ZZZ-804, which applicant stated was the only vehicle operated under his PUC permit, and has his permit number stenciled on the front bumper; this vehicle is also the only Cadillac listed on the Hollingsworth application for permit renewal dated September 15, 1975. On March 27, 1975 at 10:30 p.m., a copy of PUC permit TCP-293 (Exhibit 6) was confiscated from driver Herbert L. Burnley; the copy had Burnley's name and his Cadillac identification number typed in the lower left-hand corner with the word limousine misspelled; a phone call revealed that the original permit at the PUC did not have Herbert Burnley's name, although Joe Burnley, Sr. is listed as a Hollingsworth driver.

Another airport police officer testified that Joe Burnley, Sr. was in the PSA baggage area at 9:10 a.m. on July 23, 1974, where the officer (five feet away) overheard him asking people if they needed a ride; Burnley was observed on several occasions during the morning and through the noon hour; on August 14, 1974 the officer was in civilian clothes and heard Joe Burnley, Sr., offer to transport a couple to San Francisco for \$12.00, when the cab fare was \$10.50 or \$11.00; on October 2, 1974, January 1, 1975, March 3, 1975, and April 17, 1975 Joe Burnley, Sr. was observed at the airport at various times; on two of these occasions Burnley had adults with him who were apparently to ride in the Hollingsworth limousine he was driving. The officer was present on July 12, 1974, when an airport police sergeant walked up to Joe Lee Burnley (Joe, Sr's., son) in the

airport garage to serve certain papers; Joe Lee said "I am not the man you want", the sergeant asked for identification and Joe Lee entered his vehicle ostensibly to obtain the registration and other papers; the Cadillac started moving ahead without warning and one police officer was struck by the hood of the vehicle and carried until he fell off; the driver was arrested by other police officers who stopped the car.

A San Mateo County sheriff's lieutenant testified that he and another deputy encountered Sylvester Burnley at the airport on October 1, 1975 at 10:00 a.m., with passengers in a 1975 Cadillac, License No. 394 15Z; the passengers indicated they were solicited for taxi service; the driver advised that the vehicle was registered under the Jimmie's Limousine Service permit; the officer checked and determined the vehicle was registered to Herbert Lee Burnley and that it was not listed with the PUC; Joe Lee Burnley and Herbert Burnley were loading baggage into the same Cadillac at 2:55 p.m. on November 7, 1975; Joe Lee advised they were taking a fare to San Francisco and operating under the Hollingsworth PUC permit; a phone call revealed that the vehicle was not included in PUC records and a citation was issued under Section 654.1 of the Penal Code (Providing Transportation Without Permit-Unlawful). Additional testimony was provided by protestant to place applicant or one or more of the Burnley family at the airport at various times, during 1974 and 1975.

Applicant testified that he visited the Executive Director of the Public Utilities Commission during September or October of 1975 and had Herbert Burnley's name typed on the permit; Sylvester Burnley was also with him. He testified that he leased the Burnley Cadillac, License No. 394 15Z on April 1, 1975 (Exhibit 11). An employee from the Executive Director's office was called and testified that she typed Sylvester Burnley's name on the permit, not Herbert's, and that she did not type the Burnley note on Exhibit 6; it was not done on her typewriter. Applicant testified he does not know how or by whom the

Burnley notation was made (on Exhibit 6), if it was not by the Commission Executive Director; he was trying to have all vehicles used noted on his permit since it is required by airport regulations. Joe Lee Burnley testified regarding the incident on July 12, 1974; he was standing in the airport terminal when a police sergeant walked up and handed him certain papers; he accepted the papers and started to walk away; the sergeant walked up and grabbed his upper arm to walk him over to his vehicle and advise him it was illegally parked; Burnley entered the vehicle to move it to an authorized parking space; as the car started, one of the officers pounded on the fender and stepped off the curb in front of the vehicle; he was hit by the fender and slid onto the hood of the car.

Applicant argued that protestant has created a monopoly at the airport by authorizing only a few of its favorites to serve the public and has practiced racial discrimination by harassing applicant and his drivers. Applicant asserts that protestant is unlawfully interfering with the authority granted to him by the PUC.

Protestant argued that the limousine operators serving the airport under contract are required to meet rigid specifications and to have vehicles available every day, on a 24-hour basis. If the contract service is eliminated and all restrictions are lifted, there will be too much service during the day and none in the middle of the night. Operators who are required to provide permanent service around the clock are entitled to protection from unregulated drivers who serve only during convenient hours when assured of frequent fares. Protestant further argued that a limousine operator is immune from arrest at the airport (under the provisions of Section 602.4 of the Penal Code) if he has a valid PUC permit. Thus chronic violators apply for permits and the city of San Francisco files protests to preserve the status of the airport. There is no monopoly and no discrimination.

Discussion

The record indicates that airport regulations are enforced. Police officers at all entrances question limousine drivers as soon as they enter the premises. If a driver fails to answer, walks past, or becomes belligerent, another incident has occurred and drivers may feel they have been assaulted or harassed. Under the stated facts, the police officer has no choice. He must stop the transgressor or lose all value as a deterrent. Such incidents are not usually a basis for a claim of racial discrimination or harassment. All limousine operators who visit the airport daily, without a permit from the Airport Commission receive the same treatment. If a driver has no slip identifying the passenger to be picked up by name, flight, and airline, the officer will ask him to return to his vehicle. If the driver disregards this request and walks into the terminal he may be followed by a police officer and asked additional questions if he picks up a passenger. This policy was developed after unlicensed and unauthorized drivers were threatening the service provided by approved operators. The right of an airport to contract with a private transportation company has been sustained in the citations noted herein and by the San Mateo County Superior Court (City and County of S.F. v Joseph Burnley, et al., No. 178-384).

Applicant and drivers Joseph Burnley and Joe Lee Burnley were enjoined from soliciting at the San Francisco International Airport by a judgment of the San Mateo County Superior Court (No. 178-384), issued by Judge Robert D. Carter on June 24, 1975 (Exhibit 8). A Sylvester Burnley was stopped at the airport on October 1, 1975 and Joe Lee Burnley and Herbert Burnley on November 7, 1975; on both occasions passengers were in the vehicle which was registered to Herbert Burnley and was supposedly operating under applicant's permit, although not registered with the PUC. The passengers in the vehicle on October 1, 1975, thought they were in a taxicab. After the November incident, Herbert and Joe Lee were cited under Section 654.1 of the Penal Code.

Herbert Burnley was stopped at the airport on March 27, 1975 and a copy of applicant's permit was confiscated by airport police. The copy had Burnley's name, vehicle model, and identification number typed in the lower left-hand corner of the permit, with the word "limousine" misspelled. The PUC did not have this vehicle or driver listed under applicant's permit and applicant later testified that he did not know how or by whom the entry was made.

A Cadillac struck a police officer at the airport, while Joe Lee Burnley was driving. The facts indicate the driver was responsible. Joe Lee drives for applicant and was in his service when the incident occurred. Applicant did not deny that Burnley was employed on the date the officer was injured.

Competition is intense at the San Francisco International Airport. Those who observe all state and airport regulations cannot compete against the operators who violate these regulations. The latter are entitled to no consideration and fail to demonstrate the "reasonable fitness" required of a charter-party carrier under Section 5374 of the Public Utilities Code. Applicant and his drivers do not qualify under Section 5374 of the Public Utilities Code. The application should be denied.

Findings

1. Applicant holds Charter-Party Carrier of Passenger Permit No. TCP-293 extended by Commission Resolution No. PE-279 pending resolution of this application.

2. The Airport Commission of the city and county of San Francisco has contracted exclusively with other services to provide adequate limousine service to accommodate passengers arriving on all air carrier flight schedules.

3. The Superior Court of San Mateo County enjoined applicant and two of his drivers from further solicitation of passengers at the San Francisco International Airport. Applicant's drivers have solicited subsequent to and in violation of the injunction on at least two occasions.

4. Applicant by these actions has not demonstrated that he possesses the requisite "reasonable fitness" under Section 5374.

5. Lawful operators cannot compete for business against those who violate regulations and the former are entitled to the protection afforded by the provisions of Section 5374 of the Public Utilities Code.

6. There is no racial discrimination at the San Francisco International Airport in the enforcement of limousine service regulations.

7. Existing contractually authorized limousine service at the airport is adequate.

8. It is not in the public interest to grant the application.

Conclusion

The application to renew should be denied.

O R D E R

IT IS ORDERED that applicant's renewal request is denied, and the interim authority granted by Resolution No. PE-279 be terminated.

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

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

*I dissent
L. Ron
I dissent
Robert Bateman*

[Signature]
President
William L. Givens, Jr.
Vernon L. Sturgeon

Commissioners