

Decision 84 02 077

FEB 16 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Mini Charter Co.,

Complainant,

vs.

Vada Incorporated, dba
The Great Pacific Tour Co.,
dba Tour Transport,

Defendant.

Case 82-07-07
(Filed July 23, 1982)

O'Connor Limousine Service, Inc.,
dba O'Connor Tour Service,

Complainant,

vs.

Vada Incorporated, dba The Great
Pacific Tour Company, and Tour
Transport, Inc., a corporation,

Defendants.

Case 82-10-01
(Filed October 1, 1982)

ORDER DISMISSING COMPLAINTS

The complaint of Mini Charter Co. (Mini) in Case (C.) 82-07-07, filed July 23, 1982, and the complaint of O'Connor Limousine Service, Inc. (O'Connor) in C.82-10-01, filed October 1, 1982, allege that defendant Vada Incorporated (VADA) and defendant Tour Transport, Inc. (Tour), which is an affiliate of Vada, were performing and continuing to perform round-trip sightseeing tour bus service in the San Francisco Bay Area without having obtained a passenger stage certificate as required by Public Utilities (PU) Code § 1031. Neither Vada nor Tour filed an answer to the complaints.

The complaints charge each defendant with offering, arranging for, and/or providing to the public passenger stage sightseeing transportation in the San Francisco Bay Area between fixed termini over the public highways on an individual-fare basis without defendants possessing a passenger stage certificate as required by PU Code § 1031. Both complaints have attached to them a sales brochure allegedly issued by defendants setting forth the particular operations complained of. The brochure advertises one San Francisco City tour, a combination San Francisco--Muir Woods tour, a Monterey-Carmel tour, and a Wine Country tour. All tours advertised originate in San Francisco. The brochures state:

"WE PICK YOU UP AT YOUR HOTEL
AND RETURN YOU AFTER YOUR TOUR"

As a basis for Mini's standing to bring the complaint Mini has attached a copy of its passenger stage certificate to the complaint which shows that Mini is authorized by the certificate to conduct the same tours which defendants are alleged to be conducting without a certificate. Mini's certificate reads in part:

"All service authorized shall be limited to the
transportation of round-trip passengers only."

O'Connor asserts its standing to bring the complaint is based on its passenger stage certificate issued in Decisions (D.) 90154 and 90518 which authorize it to engage in the same sightseeing tours which defendants are alleged to be performing without a certificate.

O'Connor's certificate provides as follows:

"All passenger service herein authorized shall
be limited to the transportation of round-trip
passengers only, originating and terminating
at the Union Square area in San Francisco."

Each of the complainants contends that defendants' noncertificated operations have caused and are causing monetary harm to complainants and request relief in a variety of ways.

D.82-09-87, dated September 22, 1982, found and concluded that round-trip sightseeing tour bus service is not a passenger stage corporation service and that such service is not and has not been within the Commission's jurisdiction to regulate. That decision indicated that the Commission expected parties who opposed the conclusion of the decision to seek a Writ of Review in the California Supreme Court to test the decision and, pending final judicial review, required that carriers wishing to provide that type of sightseeing service continue to apply for interim authority to conduct such operations.¹ These complaints were set aside pending final disposition by the court of D.82-09-87.

A Writ of Review was taken to D.82-09-87 (SF 24484, 6, 7, and 8), but was denied on February 10, 1983 and a petition for rehearing was denied by the court on March 19, 1983. Subsequently, the Commission cancelled all certificates or parts of certificates which provided exclusively for round-trip tour bus sightseeing service, including the interim certificate issued to Vada (D.83-05-108) and the certificates of Mini and O'Connor (D.83-05-108, dated 5/18/83).

On August 5, 1983 the Administrative Law Judge assigned to processing these complaints ordered the parties to file briefs dealing with the question whether or not the causes of action set forth in the complaint are maintainable in view of our holding in D.82-09-87 and in a later decision, D.83-05-108, disclaiming jurisdiction to regulate the round-trip sightseeing-tour bus service. Briefs were received from all parties except Mini.

O'Connor, in its brief, contends that since the alleged violations occurred while the Commission assumed it had jurisdiction to regulate round-trip sightseeing tour bus operations the causes are maintainable. O'Connor also points out that D.82-09-87 required that, pending final judicial review of the decision, carriers who did not have sightseeing certificates and who wished to provide sightseeing service

¹ Defendant Vada applied for and received such interim authority.

must apply to the Commission for appropriate interim certificates. In addition, D.82-12-37, which granted Vada an interim sightseeing certificate on December 1, 1982, required Vada to file a written acceptance of the certificate within 30 days, establish the authorized service and file tariffs and timetables within 120 days, and comply with the Commission's General Orders Series 79, 98, 101, and 104 pertaining to passenger stage corporations. Thus, until each and all of these requirements were satisfied by defendants, defendants continued to operate in violation of Commission orders.

Vada and Tour, in their joint brief, contend that the Commission must dismiss the complaints on the grounds that the PU Code, correctly construed, does not confer jurisdiction on the Commission to regulate the activities of which Mini and O'Connor complain. They also contend that for the Commission now to reassume jurisdiction over sightseeing operations would be unfair and discriminatory as D.82-12-37, which granted Vada an interim certificate, recited that "unauthorized operations are not sufficient evidence to warrant a finding of unfitness even if the allegations [in the two complaints] are true." Vada and Tour move that the complaints be dismissed for lack of Commission jurisdiction over the complained of operations.

Discussion

We will grant defendant's Motion to Dismiss the complaints. D.82-09-87 made it clear that the PU Code has never included a provision requiring round-trip sightseeing tour bus service operators to obtain a passenger stage certificate from us before they initiated that service:

"In the original decision we announced that the Commission was mistaken in 1927 when it undertook to regulate sightseeing. Our finding is based on an objective reexamination of the relevant sections of the PU Code." (D.82-09-87, mimeo. p. 8.)

"A close reading of Section 1031 - undertaken word for word - proved beyond doubt, in our view, that the statutory basis which had for years presumed to exist in fact did not exist. It was this review, undertaken for the first time, that led us to the conclusion that the Legislature had not devised a comprehensive scheme for regulation for sightseeing and that we lacked jurisdiction in this area." (D.82-09-87, mimeo. p. 9.)

Hence, if there never was a statutory requirement that defendants possess certificates for their round-trip sightseeing operations then they committed no statutory violation in conducting such service without a certificate.

Since the Commission lacked statutory jurisdiction to regulate the assailed operations it likewise lacked jurisdiction to impose, by Commission order, any public utility obligation on them. While PU Code § 702 provides that every "public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the commission", defendants, as we have seen, do not come within the definition of a "public utility" and therefore did not violate PU Code § 702 for failure to obtain certificates, file rates, and conform to other orders respecting passenger stage corporations.

Findings of Fact

1. Complainants allege that defendants have been and are continuing to conduct round-trip sightseeing passenger bus operations between fixed termini over the public highways for the public without possessing a passenger stage certificate and in violation of Commissions orders and rules pertaining to passenger stage corporations.

2. Complainants, at the time of the filing of the complaint, possessed certificates issued by the Commission to perform round-trip sightseeing tour bus operations which paralleled those which were being conducted by defendants on a noncertificated basis.

3. The Commission in D.82-09-87, dated September 22, 1982, concluded that round-trip sightseeing tour bus operations are not passenger stage corporation operations and that such service is not and has not been within the Commission's jurisdiction to regulate. (Writ of Review of D.82-09-87 denied, SF 24484, 6, 7, and 8.)

4. Defendants move that the complaints be dismissed on the grounds that the Commission does not have and has not had jurisdiction to regulate the type of operations complained of.

5. The operations assailed by complainants are the same type of operations which, in D.82-09-87, the Commission found it had no statutory authority to regulate.

6. A hearing is not necessary.

Conclusions of Law

1. The Commission does not have and has not had statutory jurisdiction to regulate the operations complained of.

2. Commission orders and regulations applicable to passenger stage corporations do not apply to the operations complained of.

3. The Motion to Dismiss the complaints should be granted.

4. The complaints should be dismissed.

IT IS ORDERED that:

1. Defendants' Motion to Dismiss the complaints is granted.

2. C.82-07-07 is dismissed.

3. C.82-10-01 is dismissed.

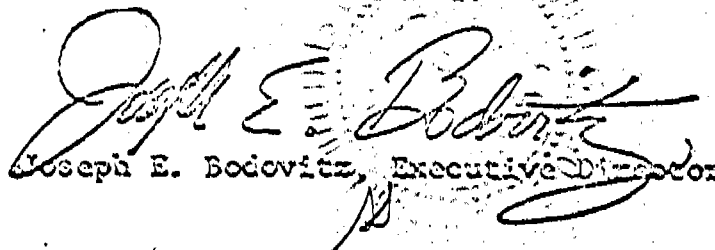
This order becomes effective 30 days from today.

Dated FEB 16 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

Commissioner Victor Calvo,
being necessarily absent, did
not participate

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovitz, Executive Director