

Decision 84 04 101 April 18, 1984

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

AIRPORT SERVICE, INCORPORATED, )  
a corporation, )

Complainant, )

vs. )

FUNBUS SYSTEMS, INC., a )  
corporation and doing business as )  
AIR LINK, )

Defendants. )

Case 84-04-068  
(Filed April 17, 1984)

INTERIM ORDER

On April 17, 1984 Airport Service, Incorporated (ASI) filed a verified complaint against FunBus Systems, Inc. (FunBus), a corporation doing business as Air Link, alleging that FunBus began carrying passengers on March 26, 1984 between Los Angeles International Airport (LAX) on the one hand and Anaheim and Buena Park on the other hand. These operations were alleged to be for compensation between fixed termini and/or over a regular route and as such require a certificate of public convenience and necessity issued by this Commission. ASI states that it has conducted transportation operations between LAX and Anaheim for 27 years and that this service forms the backbone of its operations and supports many other transportation services required of it by the Commission.

ASI alleges that FunBus is operating at least 16 schedules per day in each direction and that it is diverting substantial numbers of passengers from ASI by using the same terminal points as ASI and scheduling buses to leave those terminal

points a few minutes ahead of ASI schedules. ASI alleges substantial and irreparable injury from these operations. ASI requests an immediate cease and desist order and that the matter be set for hearing as soon as possible.

In support of its request for a cease and desist order, ASI has attached the declaration of Robert F. Herwig, Vice President and General Manager of ASI, who states that on April 11, 1984, he boarded the Air Link bus at LAX, was sold a ticket and charged \$8.75 and was driven over the public highways to Anaheim, debarking at the Disneyland Hotel. He states further that he has observed buses painted with a FunBus designation and carrying signs painted Air Link arriving and departing at LAX. It has been reported to him by others observing these arrivals and departures that the buses carry between zero and 20 persons per bus. Attached to his declaration are exhibits recounting the efforts of an Air Link driver to solicit ASI passengers at the Marriott Hotel in Anaheim on April 3, 1984, reporting an Air Line bus using ASI's loading zone at the Grand Hotel in Anaheim on April 6, 1984 and detailing solicitation by Air Link of 15 ASI customers bound for LAX from the Inn of Tomorrow in Anaheim on April 7, 1984.

ASI also attached a memorandum of points and authorities discussing the authority of the Commission to issue a cease and desist order, the requirement of having a passenger stage certificate to conduct the operations complained of, and FunBus' assertion that it is exempt from regulation by this Commission by reason of an "intrastate" authority granted by the Interstate Commerce Commission (ICC). This last point deserves some discussion.

Title 49 U.S.C. Section 10922(c)(2)(B) provides in relevant part:

"The Commission (ICC) shall issue a certificate to a person authorizing that person to provide regular route transportation entirely in one State as a motor common carrier of passengers in such intrastate transportation is to be provided on a route over which the carrier has been granted authority, or will be granted authority, after the effective date of this section, to provide interstate transportation of passengers..."

ASI alleges that:

The FunBus interstate service is between Las Vegas on the one hand and Anaheim or Los Angeles/Hollywood or San Fernando Valley/Universal Studios on the other hand. There is no mention of LAX.

The FunBus interstate service and the Air Link service are entirely independent, with different business names, with vehicles differently marked and with different advertising brochures.

Air Link service offers 16 daily schedules in each direction between LAX and Anaheim, but FunBus interstate service offers only one schedule to Las Vegas on a daily basis.

LAX is not on a route over which the carrier provides the interstate transportation.

ASI asks that an immediate cease and desist order be issued in view of the substantial and irreparable harm being incurred and in view of the Easter week/spring vacation period of heavy travel now beginning. ASI states that it has notified FunBus of the filing of the complaint and request for an immediate cease and desist order. A copy of the complaint was to be sent directly to FunBus by ASI. FunBus has protested the request for a cease and desist order.

From the contents of the verified complaint, the declaration, and points and authorities, it appears that FunBus is conducting a passenger stage operation between Anaheim and/or Buena Park and LAX which is subject to regulation by this Commission. FunBus does not possess the required certificate of public convenience and necessity to operate this service between these points and is therefore operating illegally. ✓

Because we are taking this action today and ordering FunBus to cease and desist operations, we will set an early hearing in this matter and will require FunBus to answer the complaint on shortened notice.

This matter did not appear on the public agenda as required by the Government Code; however, we are of the opinion that a sufficient emergency exists to justify our action today under the provisions of Public Utilities Code Section 306(b). Therefore, good cause appearing,

IT IS ORDERED that FunBus Systems, Inc., doing business as Air Link and its agents, servants, employees, attorneys, and all persons acting in concert with it and them are ordered to cease and desist from all transportation of passengers and/or their baggage by stage, auto stage or other motor vehicles between Los Angeles International Airport and Anaheim or Buena Park until further order of the Commission.

IT IS FURTHER ORDERED that this matter will be heard before Administrative Law Judge Frank O'Leary in the Commission Courtroom, 107 South Broadway, Los Angeles, California on Monday, April 30, 1984 at 11 a.m.

IT IS FURTHER ORDERED that defendant FunBus shall file its answer on or before April 26, 1984 and shall arrange to have copies of its answer in the hands of Administrative Law Judge O'Leary and Airport Service, Inc. on that date.

The Executive Director shall cause a copy of this  
cease and desist order and a copy of the complaint to be personally  
served on FunBus Systems, Inc., 304 Katella Way, Anaheim,  
California 92802.

This order is effective today.

Dated April 18, 1984, at San Francisco, California.

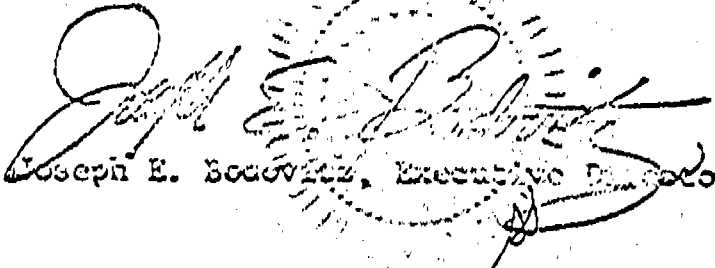
I dissent.

/s/ PRISCILLA C. GREW  
Commissioner

LEONARD M. GRIMES, JR.  
President

VICTOR CALVO  
DONALD VIAL  
WILLIAM T. BAGLEY  
Commissioners

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

  
Joseph E. Scoville, Executive Director

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In support of its request for a cease and desist order, ASI has attached the declaration of Robert F. Herwig, Vice President and General Manager of ASI, who states that on April 11, 1984, he boarded the Air Link Bus at LAX, was sold a ticket and charged \$8.75 and was driven over the public highways to Anaheim, debarking at the Disneyland Hotel. He states further that he has observed buses pointed with a FunBus designation and carrying signs pointed Air Line arriving and departing at LAX. It has been reported to him by others observing these arrivals and departures that the buses carry between zero and 20 persons per bus. Attached to his declaration are exhibits recounting the efforts of an Air Link driver to solicit ASI passengers at the Marriott Hotel in Anaheim on April 3, 1984, reporting an Air Line bus using ASI's loading zone at the Grand Hotel in Anaheim on April 6, 1984 and detailing solicitation by Air Link of 15 ASI customers bound for LAX from the Inn of Tomorrow in Anaheim on April 7, 1984.

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From the contents of the verified complaint, the declaration, and points and authorities, it appears that Funbus is conducting a passenger stage operation between Anaheim and/or Buena Park and LAX which is subject to regulation by this Commission. FunBus does not possess the required certificate of public convenience and necessity to operate this service between these points and is therefore operating illegally.

This matter did not appear on the public agenda as required by the Government Code; however, we are of the opinion that a sufficient emergency exists to justify our action today under the provisions of Public Utilities Code Section 206(b). Therefore, good cause appearing,

IT IS ORDERED that FunBus Systems, Inc., doing business as Air Link and its agents, servants, employees, attorneys, and all persons acting in concert with it and them are ordered to cease and desist from all transportation of passengers and/or their baggage by stage, auto stage or other motor vehicle between Los Angeles International Airport and Anaheim or Buena Park until further order of the Commission.

This order is effective today.

Dated April 18, 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.  
President

VICTOR CALVO  
DONALD VIAL  
WILLIAM T. BAGLEY  
Commissioners

I dissent.

PRISCILLA C. GREW, Commissioner