

Decision 88 03 005 MAR 09 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

YELLOW CAB COMPANY OF
SACRAMENTO dba SKYLINE
AIRPORTER,

Complainant,

v.

PHILIP NICOLA dba DOWNTOWN
SHUTTLE,

Defendant.

Case 86-12-061
(Filed December 31, 1986)

PHILIP NICOLA dba DOWNTOWN
SHUTTLE,

Complainant,

v.

YELLOW CAB COMPANY OF
SACRAMENTO dba SKYLINE
AIRPORTER,

Defendant.

Case 87-03-019
(Filed March 10, 1987)

YELLOW CAB COMPANY OF
SACRAMENTO dba SKYLINE
AIRPORTER,

Complainant,

v.

HAROLD E. CRAFT, JR., dba
DOWNTOWN AIRPORTER,

Defendant.

Case 87-01-004
(Filed January 5, 1987)

Brian DeAmicis, Attorney at Law, for Yellow Cab Company of Sacramento, complainant and defendant.

Livingston & Mattesich, by Melissa M. Meath, Attorney at Law for Philip Nicola, complainant and defendant.

Harold E. Craft, Jr., for himself, defendant.

O P I N I O N

Yellow Cab Company of Sacramento (Yellow Cab), a corporation doing business as Skyline Airporter, complains that Philip Nicola (Nicola), an individual doing business as Downtown Shuttle, and Harold E. Craft, Jr. (Craft), an individual doing business as Downtown Airporter, are soliciting Yellow Cab's passengers at Sacramento Metropolitan Airport (SMF) and at its scheduled stops in the County of Sacramento. Craft and Nicola deny any solicitation, and Nicola complains that Yellow Cab is harassing him and his drivers in the lawful conduct of his airport shuttle service.

All parties request that a staff investigation into the facts surrounding the complaints be instituted and that the Commission issue a general definition of on-call service.

Duly noticed public hearings were held in Sacramento before Administrative Law Judge Orville I. Wright in the Yellow Cab v. Craft case on June 29, 1987, and in the Yellow Cab and Nicola cases on June 30 and July 1, 1987, the latter being submitted on September 28, 1987, upon the filing of briefs.

Yellow Cab's Brief

Yellow Cab's brief reviews regulatory practices with respect to on-call services, both in California and in other states, and stresses that this entire case depends upon a general definition of on-call authority by this Commission.

The relevant facts are set forth in Yellow Cab's brief substantially as follows:

"This is a dispute between two shuttle services operating between Sacramento Metropolitan Airport (SMF) and the Sacramento metropolitan area.

"Complainant Yellow Cab of Sacramento does business as Skyline Airporter or Yellow Cab. It operates a scheduled van service between SMF and points in the Sacramento area pursuant to PSC-859.

"Philip Nicola does business as Downtown Shuttle. He operates as an on-call carrier between SMF and various points (primarily hotels) in the Sacramento area pursuant to PSC-1402.

"Yellow Cab operates between about 5 a.m. and midnight, every day. It has between one and seven vans on the street at any one time. Every half hour, its vans depart from the Senator Hotel, drive to the Downtown Plaza, seven blocks away, then to the Holiday Inn, another two blocks away, and thence to SMF.

"The Senator Hotel lies at Twelfth and L Streets in Sacramento across the street from the state capitol. It is now an office building rather than a hotel. The Downtown Plaza is a shopping mall a few blocks from the Senator. At Fifth and L Streets, it has airline ticket offices fronting L Street, with a driveway leading to a lower level where there is a small passengers' waiting area. The Holiday Inn is at Third and L Streets, facing L Street. It has a driveway leading from the street to its entry.

"Yellow Cab has operated taxi cabs in the Sacramento area for over thirty years. It has operated Skyline Airporter since 1967 on a regular schedule. Until 1984, Skyline Airporter was the only passenger stage service to and from SMF. (Sacramento County Ordinance No. 1274, effective August 1, 1984.) Over the years, the Senator has become known in the community as the primary departure point for airport vans and the chief destination for shuttle passengers coming from SMF.

"Nicola operates between ten and eleven hours per day, six days a week. Typically, a Nicola van will unload passengers at their respective destinations; once the passengers are unloaded, the van will pick up passengers who have called for service, drive to the Senator, and wait at the Senator to "see if anybody else wants to travel" with Nicola.

"The on-call passengers sometimes ask to be picked up at the Senator, and sometimes the Nicola dispatcher will advise the caller that the van will pick him or her up at the Senator.

"After Yellow Cab filed its complaint in this case, SMF adopted a new policy requiring all shuttle vans to wait, on a first-come, first-serve basis, in a separate waiting area and pick up passengers at a designated curb area when released by a dispatcher. Nicola and Yellow Cab must now wait their turn along with other shuttle operators.

"Yellow Cab's witnesses testified that Nicola engages in unfair competition and exceeds his on-call authority in three major ways:

- "1. Parking at the Senator Hotel, announcing themselves to waiting passengers as "next" van to the airport, then boarding the passengers and leaving minutes before the Yellow Cab van arrives.
- "2. Actively soliciting passengers who are waiting for a shuttle. Such passengers include those waiting for the next shuttle, without a preference as to the company, and those waiting specifically for a Yellow Cab vehicle.
- "3. Parking in the "Airport Shuttle" zone at the Senator Hotel so as to prevent Yellow Cab vans from stopping to drop off passengers and to pick up passengers who otherwise would have used Yellow Cab and so as to pick up passengers who otherwise would take a Yellow Cab van.

"Each of the above activities relies on the fact that Yellow Cab has established and operates a regularly scheduled service from the Senator Hotel. Nicola harms Yellow Cab by taking customers from Yellow Cab, especially during lucrative peak hours and especially (sic) from the Senator Hotel, while leaving Yellow Cab to operate at a loss alone during off hours when there are few passengers, and often the revenues are even less than the drivers' wages. Unless the Public Utilities Commission restricts these practices, Yellow Cab must abandon its present service and offer only on-call service. The public would not benefit and indeed would be harmed if this happens."

The foregoing factual discussion applies to the Yellow Cab v. Craft matter, as well.

Nicola's brief admits that he picks up passengers at the airport, drops them off at various points in Sacramento, and then picks up prearranged and scheduled on-call passengers as well as passengers who approach him or hail his service at other stops, including the stop at the Senator Hotel.

Staff Position

While not formally a party to these proceedings, Transportation Division staff has informed us that it expects to forward a major rulemaking proposal on airport access services to the Commission at an early date. It states that the issue of solicitation will be expressly addressed in this proposal.

Discussion

As the solicitation questions presented in these consolidated proceedings are general in nature, and not peculiar only to Sacramento, we will dismiss these complaint proceedings without prejudice and invite all parties to participate in the oncoming major rulemaking proceeding.

Nicola v. Yellow Cab

Nicola alleges that Yellow Cab harasses Nicola and his drivers.

The evidence is that on two occasions Yellow Cab drivers have commenced arguments with Nicola's drivers at the Senator Hotel and have told intending passengers there that Nicola was not authorized to take them to the airport.

As Yellow Cab has stated that occasions of verbal abuse, if any, will not reoccur, we do not view a cease and desist order to be necessary at this time.

Findings of Fact

1. Yellow Cab complains that Nicola and Craft unlawfully solicit passengers at Yellow Cab's scheduled stops in Sacramento County.
2. Yellow Cab, Nicola, and Craft request Commission investigation and rulemaking guidance as to a general definition of on-call airport shuttle transportation.
3. Transportation Division staff expects to forward to the Commission a major rulemaking proposal on airport access services which will expressly include the issue of solicitation.

Conclusions of Law

1. These cases should be dismissed without prejudice.
2. The parties are invited to participate in the on-coming major rulemaking proceeding.

O R D E R

IT IS ORDERED that C.86-12-061, C.87-03-019, and C.87-01-004 are dismissed without prejudice.

This order becomes effective 30 days from today.

Dated MAR 09 1988, at San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL

FREDERICK R. DUDA

G. MITCHELL WILK

JOHN B. OHANIAN

Commissioners

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

Victor Weiss
Victor Weiss, Executive Director
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