

Decision 88 11 012 NOV 9 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SUPERSHUTTLE OF LOS ANGELES, INC.)
(PSC-1275),)

Complainant,)

vs.)

METROPOLITAN PARATRANSIT CO.,)
INC. dba CELEBRITY AIRPORT LIVERY)
CO. (PSC-1316),)

Defendant.)

Case 87-05-022
(Filed May 12, 1987)

METROPOLITAN PARATRANSIT CO., INC.)
dba CELEBRITY AIRPORT LIVERY CO.)
(PSC-1316),)

Complainant,)

vs.)

MITCHELL ROUSE dba SUPERSHUTTLE OF)
LOS ANGELES, INC. aka SUPERSHUTTLE)
INTERNATIONAL, INC.)
(PSC-1275),)

Defendant.)

Case 87-05-051
(Filed May 28, 1987)

J. Terence Lyons, Attorney at Law, for
Metropolitan Paratransit Co., Inc.,
defendant in C.87-05-022 and
complainant in C.87-05-051.

Kirby & Kirby, by Steven Kirby, Attorney at
Law, for Mitchell Rouse, dba
SuperShuttle of Los Angeles, Inc.,
complainant in C.87-05-022 and defendant
in C.87-05-051.

S. E. Rowe, by K. D. Walpert, for
Department of Transportation, City of
Los Angeles, interested party in
C.87-05-022.

OPINION

In Case (C.) 87-05-022, SuperShuttle of Los Angeles, Inc. (SuperShuttle) seeks a cease and desist order and penalties against Metropolitan Paratransit Co., Inc., doing business as Celebrity Airport Livery Co. (Celebrity), on the grounds that Celebrity has been regularly providing passenger stage service between Los Angeles International Airport (LAX) and points outside its service area, and has not charged its filed tariff rates.

In C.87-05-051, Celebrity seeks a cease and desist order and penalties against SuperShuttle on the grounds that SuperShuttle (1) operated ticket booths at LAX in an illegal and discriminatory manner, (2) solicited passengers at LAX in an unethical manner, and (3) slandered Celebrity by telling potential customers that Celebrity's service is unreliable and poor.

The cases were consolidated for hearing before ALJ Robert Barnett.

C.87-05-022

SuperShuttle is authorized by Decision (D.) 85-10-024 to transport passengers between LAX and most points in Los Angeles County. Celebrity was authorized by D.83-10-084 to transport passengers between LAX and "a corridor along Wilshire Boulevard between Grand Avenue, Los Angeles, and Ocean Avenue, Santa Monica, and the area extending three miles to the north and three miles to the south of Wilshire Boulevard along its entire route." In addition, Celebrity was prohibited from serving some 22 hotels within its service area. The prohibition was imposed as part of a stipulation between Celebrity and Airport Service Inc. (ASI), a protestant in Celebrity's original application for authority, in which, in return for ASI's dropping its protest, Celebrity agreed to refrain from serving those points in Celebrity's certificated area which were on ASI's bus route to LAX. The Commission, at that time, invited Celebrity to have the restriction removed if changed.

circumstances warranted. On February 24, 1988 in D.88-02-049 the restriction against serving the 22 hotels was removed.

SuperShuttle employed two persons to either ride Celebrity's vans or observe the vans to determine if Celebrity was violating its authority. Between October 12, 1987 and December 17, 1987, these persons testified to some 23 violations of Celebrity's operating authority, most prevalent being transportation to or from one of the prohibited hotels. These examples are representative:

1. On October 12, 1987 one witness was transported from LAX to Marina Del Rey for a fare of \$15. Marina Del Rey is more than three miles from Wilshire Boulevard.
2. On October 16, 1987 one witness was taken from the Hyatt Wilshire hotel to LAX for a fare of \$14. The Hyatt Wilshire is one of the restricted hotels.
3. On October 28, 1987 one witness was taken from LAX to the Ambassador hotel for a fare of \$14. The Ambassador hotel is one of the restricted hotels.
4. On October 30, 1987, one witness was taken from LAX to the Sheraton Townhouse hotel for a fare of \$12. The Sheraton Townhouse is one of the restricted hotels.
5. On November 10, 1987, one witness was taken from LAX to the Ambassador hotel for a fare of \$14. The Ambassador is one of the restricted hotels.
6. On November 13, 1987, one witness was taken from LAX to the Los Angeles Hilton hotel in downtown Los Angeles for a fare of \$10. The Hilton is one of the restricted hotels.

At the time all the incidents occurred, Celebrity's tariff charge for its entire certificated area was \$8.50 per person.

In response, witnesses for Celebrity testified that the 22 hotel restriction was placed in Celebrity's certificate as part

of a settlement with ASI. In early 1987 ASI went out of business and Celebrity began getting requests from the hotels for service. It was only then that Celebrity began serving the 22 hotels, although, its president testified, not directly. Drivers were instructed to tell prospective customers for one of the 22 hotels that Celebrity couldn't serve the hotel but would take the customers to a nearby hotel, sometimes across the street. However, Celebrity admitted, on occasion, drivers went directly to the prohibited hotels. In regard to fares, Celebrity acknowledged that fares higher than the \$8.50 rate were charged. Celebrity has a fare increase application pending and drivers are instructed that the \$8.50 fare must be charged until new fares are authorized. A supervisor testified that drivers are disciplined and terminated for tariff violations.

C.87-05-051

Celebrity, in its affirmative case, sought to show that SuperShuttle acted in such a manner that other carriers, not just Celebrity, could not conduct their business in a responsible manner.

A witness called by Celebrity testified that when he was the manager for ground transportation ticket booths at LAX, his company asked Celebrity to participate in the service offered by the ticket booths; Celebrity agreed. But soon thereafter, an officer of SuperShuttle, which was also a principal in the ticket booth operation, told the witness not to do business with Celebrity. The witness then told Celebrity that it could not have its tickets sold in the ticket booths. The ticket booths are no longer in operation.

Four Celebrity drivers testified to SuperShuttle's practice of leaving a number of unattended vans parked at the loading curbs at LAX allocated to shuttle vans so that no other van service could conduct business at the curb. A former dispatcher for SuperShuttle, now a Celebrity driver, testified that her

superiors at SuperShuttle on occasion would order her to "flood the airport," which meant to call all available vans to circulate at LAX. SuperShuttle operates over 200 vans from its LAX facilities; Celebrity operates 15. Airport shuttle vans are permitted to continually circulate at the airport and solicit passengers at each terminal.

In response, SuperShuttle denied blocking loading curbs with unattended vans and defended its use of vans at LAX as providing maximum service to the public.

Discussion

We do not believe that the public interest would be served by imposing penalties for Celebrity's service beyond its certificated area. Mitigating factors are present.

The kind of restriction placed in Celebrity's certificate has been referred to by us as a "sweetheart stipulation" no longer in the public interest. [On February 24, 1988, we deleted the hotel restriction from Celebrity's certificate (D.88-02-049).] In Re Valley Airport Shuttle, D.88-07-029, in A.87-09-001, we said "the Commission favors a policy of removing such "sweetheart" restrictions in existing certificates and opposing the placing of such restrictions in new applications for new certificates. We will thus not hold Valley to the restriction contained in its certificate...." (at sheet 14). In that decision, Valley had been found to have violated its certificate restriction on a number of occasions.

There is no question that Celebrity has charged more than its filed tariff rates frequently during the period in question. Celebrity's own drivers testified to charging \$14 for trips that had a tariff rate of \$8.50. For those violations we believe a fine of \$3,000 is appropriate. Celebrity argues that evidence of fare violations is irrelevant to the issues framed by the SuperShuttle complaint and that Celebrity had no notice that the subject of fares would be addressed at the hearing.

Celebrity's argument is without merit. First, the SuperShuttle complaint alleges that Celebrity "has contravened the terms of its certificate and violated Sections 489, 494, 495, 532, 1031 and 2106-2113 of the Public Utilities Code." Section 494 specifically prohibits charging a different compensation for transportation of persons "than the applicable rates, fares, and charges specified in its schedules filed and in effect at the time...." Section 532 is to the same effect. Second, Celebrity made this objection at the hearing, was overruled, and presented evidence on the issue. The hearing covered five days between January 28, 1988 and April 21, 1988; Celebrity had ample time to respond.

We view the violation of the "sweetheart" restriction differently from the overcharge violations. The "sweetheart" restriction lessens competition and reduces service to the public. In this case especially so since the party who was to benefit from the restriction went out of business before the violations occurred. The overcharge violations, on the other hand, directly harm the public. Carriers are not free to charge whatever they wish to whomever they wish. This is rank discrimination which undermines the very purpose of rate tariffs to inform the public and denies unwary travelers of their statutory protection to have this Commission review rate increases. In mitigation we observe that SuperShuttle since 1985 has been charging \$10 from LAX to downtown Los Angeles and \$15 to most other points in the Wilshire corridor.

The remaining issue concerns the activities of SuperShuttle at the airport. The preponderance of the evidence shows that SuperShuttle is using its economic power to flood the airport with vans, but no certificate violation or other illegality has been shown. In our decisions granting certificates to airport shuttle vans, we have recognized the authority of the airport over

the airport aspect of this kind of transportation by restricting the certificates as follows:

This certificate does not authorize the holder to conduct any operations on the property of or into any airport unless such operation is authorized by both this Commission and the airport authority involved.

Both SuperShuttle and Celebrity have the restriction in their certificates. We believe that the complaints of Celebrity should be directed to the authority which operates LAX.

Comments on the ALJ proposed decision were filed by both SuperShuttle and Celebrity. We find nothing in the comments that persuades us to change the proposed decision.

Findings of Fact

1. At all times covered by this opinion, Celebrity operated pursuant to a CPC&N issued by this Commission.

2. On at least 23 occasions between October 1987 and December 1987, Celebrity transported persons outside of its certificated area or to hotels within its certificated area which it was prohibited from serving.

3. At all times covered by this opinion, Celebrity had on file with this Commission a tariff which stated its rates for transportation to any point within the Wilshire corridor at \$8.50 per person.

4. On at least six occasions between October 1987 and December 1987, Celebrity charged more than \$8.50 per person for transportation within the Wilshire corridor.

Conclusions of Law

1. For violating its tariff and Public Utilities Code Section 494 on at least six separate occasions, Metropolitan

Paratransit Co., Inc. (PSC-1316) should be fined \$3,000, pursuant to Public Utilities Code Section 2107.

2. All further relief requested should be denied.

ORDER

IT IS ORDERED that:

1. Metropolitan Paratransit Co., Inc. (PSC-1316) is fined \$3,000 payable to the Executive Director within 30 days after the effective date of this order.

2. All further relief requested in C.87-05-022 and C.87-05-051 is denied.

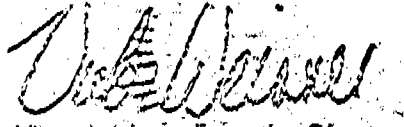
This order becomes effective 30 days from today.

Dated NOV 9 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, Executive Director

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