

Decision 89 02 006 FEB 8 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Airport Service, Incorporated,
a corporation,

Mailed

Complainant,

FEB 8 1989

vs.

Lounge Car Tours, Inc.,
a corporation, and
Lounge Car Tours Charter
Company, Inc., a corporation,

Case 84-10-063
(Filed October 24, 1984)

Defendant.

Lyons & Lyons, by J. Terrance Lyons,
Attorney at Law, for complainant.
Russell & Hancock, by John C. Russell,
Attorney at Law, for defendants.
Richard Brozosky, for the Transportation
Division.

ORDER OF DISMISSAL

Airport Service, Incorporated (ASI) alleges that Lounge Car Tours, Inc. (Lounge Car) commenced transporting passengers between Los Angeles International Airport (LAX) on the one hand and Anaheim on the other hand without first having obtained a certificate of public convenience and necessity authorizing such operations. The complaint also alleges that each of the defendants namely Lounge Car and Lounge Car Tours Charter Company, Inc. was the agent and/or alter ego of the remaining defendant.

Public hearing in this matter was held before Administrative Law Judge (ALJ) O'Leary at Los Angeles on December 5 and 6, 1984. The matter was submitted subject to the filing of concurrent briefs which were to be filed thirty days after the filing of the transcript. On March 27, 1985 Counsel for defendants

filed a motion requesting that the time for the filing of briefs be continued indefinitely until such time as the United States Court of Appeals for the Ninth Circuit rendered its final decision in its Case No. 85-7105 (Petition for review of I.C.C. Decision No. MC-153325) which case contained most of the issues raised in the instant proceeding. In the motion it was alleged that should Case No. 85-7105 be resolved in favor of complainant it could render moot the instant proceeding and should it be resolved in favor of defendants it could materially affect the issues in the instant proceeding. On April 1, 1985, ALJ O'Leary issued his ruling extending the time for filing of briefs to a date to be set.

In its decision the court held that the Interstate Commerce Commission has authority to issue a certificate authorizing intrastate transportation under the provisions of 49 U.S.C. 10922(c)(2)(B) only where the intrastate operations are conducted as part of interstate operations Funbus Systems, Inc. v. CPUC, 801 F. 2d 1120 (9th Cir. 1986). The court remanded the matters to the Interstate Commerce Commission (ICC) directing it to make further factual findings concerning the relationship, if any, between the intrastate services provided by the involved carriers and their interstate operations pursuant to the interstate/intrastate certificates issued by the ICC.

On August 11, 1988 the ICC issued its decision which concluded that defendant's operations between LAX and Anaheim under its Certificate No. MC-153325 (Sub-No. 2) are not being conducted in a lawful manner under 49 U.S.C. 10922(c)(2)(B). The ICC ordered defendant to cease and desist conducting under its Certificate No. MC-153325 (Sub-No.2) the intrastate, regular route operation between LAX and Anaheim until such time as it obtained appropriate State-issued authority.

By Decision 88-07-003 dated July 8, 1988 in Application 87-11-035, Lounge Car Tours Charter Company, Inc. was issued a certificate of public convenience and necessity authorizing

operations as a passenger stage corporation between LAX and the scheduled stops in the Cities of Anaheim and Buena Park.

Since the filing of this complaint and the hearings the authority of complainant has been acquired by Funbus Systems, Inc.

In view of the facts that Lounge Car Tours Charter Company, Inc. has been issued a certificate from this Commission authorizing the operations which are the subject of this complaint and since ASI has been acquired by Funbus Systems, Inc., it appears that the complaint is moot and should be dismissed.

IT IS ORDERED that Case 84-10-063 is dismissed.

This order becomes effective 30 days from today.

Dated FEB 8 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DODA
STANLEY W. HULETT
JOHN B. O'BANIAN
Commissioners

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


Victor Williams, Executive Director

AS