

AIJ/BRS/jc

Decision **90 10 015** OCT 12 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Airport Limousine Service of
Sunnyvale, Inc., dba Airport
Connection,)

Complainant,)

vs.)

Arturo Luna, dba Bay Area
Shuttle,)

Defendant.)

CONFIDENTIAL

Case 89-10-002
(Filed October 6, 1989)

Clifford Orloff, for Airport Limousine
Service of Sunnyvale, Inc., dba Airport
Connection, complainant.
Rodel E. Rodis, Attorney at Law, and Jerry
Haddock, for Arturo Luna, defendant.

O P I N I O N

Summary

This decision finds that complainant Airport Limousine Service of Sunnyvale, Inc. (ALS), dba Airport Connection, did not adequately demonstrate that defendant Bay Area Shuttle (Bay Shuttle) operations warrant Commission action to either issue a Cease and Desist Order, or revoke defendant's operating authority. The complaint is denied.

Background

ALS filed this complaint requesting that the Commission take action against defendant Bay Shuttle for alleged improper and illegal operating practices. ALS alleges that Bay Shuttle, as part of its business strategy, regularly solicits customers of ALS by operating off schedule, especially at the Durant Hotel in Berkeley, and at the San Francisco International Airport (SFO).

Complainant requests that the Commission take the following action.

1. Issue an order directing defendant to cease and desist from soliciting passengers of complainant at SFO and other scheduled stops in common, and to operate only in accordance with its schedule on file at the Commission.
2. Revoke defendant's passenger stage corporation (PSC) operating authority if it continues to violate its schedule, or if it continues to solicit reserved customers of complainant.
3. Revoke defendant's PSC operating authority if it continues to operate in violation of SFO rules and regulations regarding scheduled and door-to-door services.

Position of Parties

A. Complainant

Complainant argues that it has spent over 13 years and considerable funds building up its business, only to see defendant operating off-schedule and soliciting its passengers on a regular basis. Defendant is allegedly looping at SFO in violation of airport regulations, transporting passengers to locations it does not have authority to serve, and of providing unauthorized door-to-door service.

Complainant presented the testimony of three witnesses, Lynell Phillips, Michael Sieverts, and David Hayduk. Complainant also called defendant Arturo Luna who owns Bay Shuttle as an adverse witness.

Phillips, who is vice president of Airport Limo, testified about the operations and recordkeeping at ALS.

Sieverts, a friend of Clifford Orloff who is president of Airport Limo, testified that, at Orloff's request he asked Bay Shuttle whether he could be driven from SFO to his residence on

Shattuck Avenue in Berkeley. The request was accommodated and Sievert was taken home.

Hayduk, who drives for Airport Connection, explained Exhibit 5, which is a compilation of alleged violations of defendant, as observed and logged by complainant's drivers. The violations include being off-schedule, looping, dropping-off or picking-up at the wrong locations, and solicitation. Approximately 50 incidents were noted over calendar year 1989.

Hayduk also testified that when he drives the first run of the day that originates at the Durant Hotel, he arrives 30 minutes ahead of schedule to prevent defendant from stealing his passengers.

Luna testified regarding Bay Shuttle's operations with regard to driver logs, the method of operations including control over drivers, the history of citations and violations, and dealings with SFO personnel.

B. Defendant

Defendant responded to the allegations of complainant as follows:

1. Defendant does not depend on soliciting customers of complainant. Defendant has a well established customer base, built up over three years as a result of lower cost and dependable service.
2. Complainant is guilty of the very practices it accuses defendant of; complainant arrives at the Durant Hotel in Berkeley as much as 45 minutes ahead of schedule to solicit passengers of defendant.
3. Defendant does not offer door-to-door service to Berkeley from the lower level of SFO. One occasion of a passenger being dropped off at other than a scheduled drop-off point was brought to defendant's attention by SFO authorities, and was corrected.

4. Despite operating more than 10,000 schedules over three years, defendant has received only three complaints, two of which were filed with the Commission by complainant in an attempt to eliminate competition.

Defendant offered the testimony of Luna, who testified that Orloff has attempted to purchase Bay Shuttle in the past. In Luna's opinion, since it was not for sale, Orloff has taken actions to steal some of Bay Shuttle's customers, as well as to make it more difficult for Bay Shuttle to compete.

Discussion

The undisputed facts in this case are:

1. Complainant provides on-call and scheduled airport transportation between points in Santa Clara, San Mateo, Alameda, Contra Costa, and San Francisco Counties, and the San Francisco, San Jose, and Oakland Airports under a Certificate of Public Convenience and Necessity (CPCN) as a passenger stage corporation (PSC 899).
2. Defendant provides scheduled transportation between points in the cities of Berkeley, Emeryville, and Oakland, and SFO and Oakland Airports under a CPCN as a passenger stage corporation (PSC 1420).
3. The complaint involves scheduled service between SFO and points in Berkeley, Emeryville, and North Oakland.
4. Complainant and defendant have certain scheduled stops in common.
5. The schedules of complainant and defendant have differed by as little as 10 minutes at common points.

Complainant makes many allegations regarding defendant's operations, including soliciting of passengers, violating published tariffs and schedules, illegal looping at SFO, and performing unauthorized door-to-door service to Berkeley from the lower level of SFO in violation of SFO rules and Commission authority.

Defendant in turn alleges that complainant solicits his passengers, especially at the Durant Hotel in Berkeley. The Durant Hotel is one of the prime stops on the Berkeley route, and is an originating point for both complainant and defendant. There are normally six to ten fares at the Durant Hotel for the first scheduled run to SFO.

Defendant further alleges that complainant blocks the curbside access at the Durant Hotel, so that defendant must double park at the pickup area. When defendant arrives there, its passengers have already been boarded onto complainant's vans.

Defendant's allegations are supported by complainant's witness Hayduk, who testified that when he operates the early scheduled run, he arrives at the Durant Hotel at 5 a.m., one-half hour ahead of the 5:30 schedule, in order to keep his passengers from being stolen. Hayduk also confirms that complainant's vans frequently occupy the entire passenger loading zone with two or three vans. Other parking is available to defendant, but not at the passenger loading area.

We conclude that both complainant and defendant appear to be soliciting passengers of its competitor by operating off-schedule. Complainant appears to be arriving not only ahead of its own schedule, but ahead of defendant's schedule, in order to obtain the maximum number of passengers. Under these circumstances we admonish both complainant and defendant to operate on schedule. We note that SFO's Land Management operations (SFO authorities) monitor PSC compliance with schedules. Complainant did not demonstrate that SFO authorities are concerned with defendant's operations regarding schedules. If schedule violations become a serious problem, we expect SFO authorities to either handle the problem through enforcement, or to notify the Commission. Complainant's own evidence demonstrates that its own operations involve some of the same violations it accuses defendant of. Both complainant and defendant admit that it is difficult to

monitor drivers sufficiently to prevent violations. If the alleged violations were pervasive and troublesome to SFO authorities, we would expect evidence of that. Having none, we assume that SFO authorities do not consider defendant's operations to be a significant problem.

We conclude that complainant has not adequately met its burden of proof regarding the allegations against defendant. We will deny the complaint.

Findings of Fact

1. Complainant requests that the Commission take action against defendant Bay Shuttle for improper and illegal operating practices.

2. Complainant and defendant have certain scheduled stops in common.

3. The Durant Hotel in Berkeley is one of the busiest stops for complainant and defendant.

4. Complainant's operations involve some of the same violations defendant is accused of.

5. There is no evidence that SFO authorities consider defendant's operations to be troublesome or pervasive.

Conclusions of Law

1. Complainant has not adequately demonstrated that defendant's operations warrant Commission action.

2. The complaint should be denied.

O R D E R

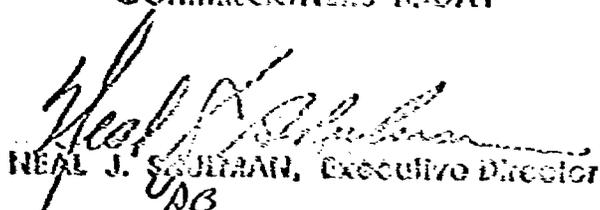
IT IS ORDERED that the complaint in Caso 89-10-002 is denied.

This order is effective today.

Dated OCT 12 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

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


NEAL J. SULLIVAN, Executive Director