

[Faint stamp or mark]

Decision 83 01 063 JAN 19 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SFO AIRPORTER, INC.,)
)
 Complainant,)
)
 v.)
)
 HENRY JOE DANIELS, an individual,)
)
 Respondent.)

Case 82-09-08
(Filed September 30, 1982)

Handler, Baker, Greene & Taylor, by
Raymond A. Greene, Jr., Attorney at Law,
 for complainant.
 Graham & James, by Ann C. Pongracz, Attorney
 at Law, for defendant.

O P I N I O N

Statement of Facts

Under Public Utilities (PU) Code Section 5384(b), Henry Joe Daniels holds permit TCP-1655P, allowing operations as a charter-party carrier from his Oakland home terminal. His permit, first issued to be effective July 31, 1981, will expire July 31, 1983, and covers operation of a 14-passenger 1971 Dodge Sportsman van.

SFO Airporter, Inc. (SFO), a corporation, by Decision (D.) 87881 dated September 29, 1977 in Application (A.) 57482 (amended by D.90107 dated March 27, 1979 in A.58233), holds authority inter alia to conduct operations as a passenger stage corporation for the transportation of passengers and their baggage between downtown San Francisco and the San Francisco International Airport.

By this complaint SFO alleges that Daniels has solicited and continues to solicit and effect the transportation of individuals and their baggage from the airport to points in downtown San Francisco charging per capita fares, activities not within the scope of his permit authority,^{1/} and activities that damage SFO's ability to render adequate passenger stage service to the general public. By its complaint SFO asks the Commission to issue a cease and desist order to Daniels against further such activities, and to institute and prosecute action in Superior Court to assess the criminal and monetary penalties provided for by law.

By his answer Daniels denied SFO's allegations and asked for summary judgment on the pleadings denying the relief sought by SFO. However, since this Commission is not bound by many of the rules of formal pleading (PUC Section 1701), and since the general rule is that on a motion to dismiss we will confine our consideration to the face of the complaint to determine whether sufficient facts are stated to give rise to a cause of action within the ambit of our jurisdiction,^{2/} Administrative Law Judge John B. Weiss (ALJ) concluded,

^{1/} PUC Section 5401 provides that a charter-party carrier must compute and assess charges for his services on a vehicle mileage or time of use basis, or combination thereof, but not on an individual fare basis. Failure to comply carries a penalty of up to \$500 for each offense (PUC Section 5413), with actions to recover such penalties to be brought in Superior Court (PUC Section 5417).

^{2/} It is not essential that the complaint state a cause of action for the specific relief sought; it suffices that it states a cause of action for which the Commission can grant some relief (Bank of Calif. v Superior Court (1940) 16 C 2d 516, 526).

and we concur, that this complaint fairly stated a cause of action within our jurisdiction. He properly set the matter for hearing. Subsequently a duly noticed public hearing before ALJ Weiss was held in San Francisco on November 30, 1982.

At the outset of the hearing, after certain off-the-record compromise discussions, Daniels offered to enter a stipulation with SFO whereby in exchange for SFO's agreement to accept a Commission dismissal without prejudice of the charges against him, he as to the future would guarantee strictly to limit his passenger transportation activities to those charter-party carrier services provided under PU Code Sections 5351 et seq. for which he holds a permit, computing and assessing charges for such transportation on a vehicle mileage or time of use basis, or a combination thereof, and he would forbear entering upon any passenger stage activities without authorization. Further, he would agree to suffer imposition of a cease and desist order by the Commission containing such limitations.

Agreeing that substantial justice would indeed be served by such a stipulation and Commission order, and desirous of avoiding the expenditure of further time and effort which would be required were the matter to proceed to full hearing, SFO accepted Daniels' offer and entered the stipulation, presenting it to the ALJ. After admonishment from the bench to Daniels with reference to the adverse view the Commission would take were he to enter upon transportation activities outside the scope of his charter-party carrier permit during the interim period between the hearing and the effective date of a Commission decision in this matter, the ALJ took the stipulation under consideration, provisionally accepting it for the Commission, and submitted the matter.

Discussion

Stipulations are agreements between the parties, and so long as they are within the authority of the attorney offering them, they are binding upon the signatory parties (L.A. v Harper (1935) 8 CA 2d 552, 555). However, stipulations that encroach on the prerogatives of the court may not be entered into by the parties without the consent of the court. (See Robinson v Sacramento City Unified School Dist., (1966) 245 CA 2d 278, 287.) In public utility matters, protection of the public interest is the duty of this Commission, and the decision whether such a stipulation is in the public interest is a matter reserved for the Commission to determine. While stipulations can be helpful in reaching an equitable decision, parties to a proceeding cannot be permitted by use of a stipulation to arrogate to themselves so important and fundamental a Commission function, nor may they by stipulation oust the Commission of the jurisdiction given to it under the Code.

In the case before us it is alleged by SFO that Daniels, a charter-party permit carrier, has solicited and continues to solicit passenger traffic on an individual per capita fare basis. Daniels denies this allegation. The law prohibits a charter-party carrier from any such activity. Any act of transporting persons between two or more points not within the limits of a city or a city and county where the fare is on an individual basis is presumed to be an action of operating a passenger stage corporation (see PU Code Section 1035). While the Commission is always ready to hear requests for additional passenger stage service based upon demonstrated need for such additional service, and to entertain applications therefor (see PU Code Section 1032), the Commission will also compel obedience to the law by proceeding against those who operate without the requisite authority.

However, the Commission's first interest is to obtain compliance with the provisions of the law as expeditiously as possible with minimum application of legal process. If the ends of justice and fairness can be served without pursuing a matter to prosecution and punishment, we may order cessation of the unauthorized activity without imposition of a fine or other action. If the offense continues or is later resumed, the Commission has the power to punish for each and every contemptuous act and this power may be exercised in several ways, including recovering monetary penalties in an action brought in the name of the people of the State of California in a competent court of law (see PU Code Sections 5411 through 5417).

We believe that the stipulation entered by the parties to this proceeding and provisionally accepted by our ALJ will serve the ends of justice and fairness at this time relative to this situation, and that there is no present need to proceed further. Daniels was admonished and advised by the ALJ at the hearing of potential consequences should he operate beyond his authority after the hearing. We will, under the terms of the stipulation voluntarily entered, issue our cease and desist order commanding Daniels' compliance with the provisions of the Passenger Charter-party Carriers' Act hereafter, and dismiss the complaint without prejudice as to the allegations of past violations.

Findings of Fact

1. It is alleged by SFO that Daniels is and has been engaging in passenger transportation activities from the San Francisco International Airport and points in downtown San Francisco, charging on a per capita basis for the services rendered.
2. Daniels has authority from this Commission only to provide charter-party carrier service at this time.
3. SFO's complaint states a cause of action within the ambit of our jurisdiction, and the matter properly went to hearing.

4. At the outset of the hearing Daniels offered, and thereafter entered with SFO into a stipulation which obviated the necessity to proceed further with the hearing.

5. The Daniels-SFO stipulation provided that in exchange for dismissal of the SFO complaint without prejudice, Daniels would forbear, unless he obtains additional PUC authorization all further passenger transportation activities beyond the scope of his charter-party carrier permit, and would suffer imposition of a Commission cease and desist order to that effect.

6. Resolution of the complaint on the basis of the Daniels-SFO stipulation would obtain substantial justice and fairness to the public interest and for the parties to this proceeding.

Conclusions of Law

1. Daniels' request for summary judgment on the pleadings was properly denied.

2. Daniels should be ordered to cease and desist from any future passenger transportation activities beyond the scope of those authorized under his Passenger Charter-party Carrier's Act permit, unless he first obtains the requisite authority from this Commission.

3. The SFO complaint should be dismissed without prejudice.

O R D E R

IT IS ORDERED that:

1. Henry Joe Daniels shall cease and desist from engaging in any passenger transportation activities beyond the scope of those authorized under his Passenger Charter-party Carrier's Act permit, TCP-1655p, unless he first obtains additional authorization from this Commission.

2. The complaint of SFO Airporter, Inc. is dismissed without prejudice.

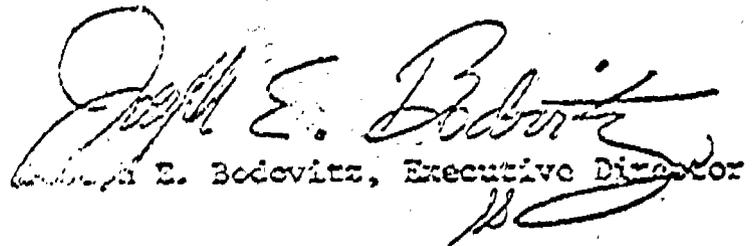
The Executive Director of this Commission shall cause personal service of this order to be made upon Henry Joe Daniels, and shall cause service by mail to be made upon SFO Airporter, Inc. The effective date of this order shall be 30 days after completion of personal service upon Henry Joe Daniels.

Dated JAN 19 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
PRISCILLA C. GREW
DONALD VIAL
Commissioners

Commissioner Victor Calvo,
being necessarily absent, did
not participate

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


Joseph E. Bodevitz, Executive Director