

Decision 83 04 044

APR 6 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SFO AIRPORTER, INC.,)
)
 Complainant,)
)
 vs.)
)
 WALTER PATRICK GIBBONS, an)
 individual, dba PAT'S)
 LIMOUSINE SERVICE,)
)
 Respondent.)

Case 82-08-10
(Filed August 24, 1982;
amended November 12, 1982)

Ray Greene, Attorney at Law, for SFO
 Airporter, Inc., complainant.
James S. Clapp, Attorney at Law, Clapp
 & Custer, for Lorrie's Travel & Tours,
 Inc., intervenor and protestant.
Walter Pat Gibbons, for himself, defendant.
William C. Taylor, Attorney at Law, for
 City and County of San Francisco,
 interested party.

O P I N I O N

Walter Patrick Gibbons, dba Pat's Limousine Service,
has authority to conduct charter-party carrier operations
(TCP-1532-P).^{1/}

SFO Airporter, Inc. (Airporter) alleges that Gibbons is
now operating, has in the past operated, and continues to operate
as a passenger stage corporation without authority by transporting

^{1/} Gibbons holds an annual permit, effective November 7, 1982,
issued under Public Utilities (PU) Code § 5384(b) for
carriers using vehicles under 15-passenger seating capacity
and under 7,000 pounds gross weight.

individuals and their baggage from points in downtown San Francisco to the San Francisco International Airport (SFO) at per capita fares. Airporter asks for a cease and desist order.

By his answer filed October 7, 1982, Gibbons admits that he has in the past operated beyond the scope of his charter-party carrier authority by providing the transportation services alleged in the complaint. However, he states that: (1) he has discontinued those services since receiving the complaint, (2) previous operations in excess of his charter-party carrier authority were the result of his confusion about the scope of his authority caused by lack of understanding about the distinctions between charter-party service and passenger stage service, (3) since the filing of the complaint, he has become aware of those distinctions, and (4) he has now altered his operating procedure to ensure compliance with all rules and regulations regarding charter-party operations. Gibbons declares his intention to abide by the limitations in his charter-party certificate, requests that the complaint be handled without hearing, and concedes that a cease and desist order may be issued by the Commission.

In its amended complaint filed November 12, 1982, Airporter alleges that notwithstanding Gibbons' allegations in his verified answer he has continued to and does continue to transport passengers and their baggage between SFO and downtown San Francisco at and for an individual per capita fare for which he has no authority. Airporter reiterates its request for a cease and desist order and in addition requests that Gibbons' charter-party permit be revoked.

A public hearing was held January 24, 1983 before Administrative Law Judge Robert T. Baer in San Francisco. Airporter and intervenor Lorrie's Travel & Tours, Inc. (Lorrie's) called witnesses and introduced documentary evidence. Gibbons did not testify, call witnesses, or introduce any documentary evidence.

Discussion

Gibbons' method of operation was proven through the testimony of three Airporter employees, two officers of the SFO Police Department, a private investigator, the manager of Lorrie's, and two employees of O'Connor Limousine. Since the facts are undisputed, we need only summarize them briefly.

Gibbons operates his van between San Francisco and SFO. He picks up individual passengers by appointments made through his answering service or by soliciting them at downtown hotels, at Airporter's downtown terminal, or at SFO.

At SFO he parks his van in the parking structure and enters the terminals on foot. He approaches passengers waiting for their baggage and asks them if they need transportation. In the six months before the hearing he was seen by the two police officers to be so engaged almost daily.

On at least one occasion he assembled four passengers, took them to his van, drove to a different area of the garage, left them there, and returned 28 minutes later with four more passengers from a different airlines area. On another occasion he solicited the private investigator who was tailing him closely. On still another occasion he was arrested by one of the SFO police officers for soliciting passengers at the airport.

To show that Gibbons provides passenger service at per capita fares two employees of O'Connor Limousine arranged through Gibbons' answering service to have Gibbons pick them up successively at two San Francisco hotels. They rode together to SFO, they were let off at different airline terminals, and each paid the \$14 individual fare to Gibbons.

There can be no question, given the uncontroverted evidence and his own admissions, that Gibbons is not operating

within the limits of his charter-party authority, but is soliciting and carrying individual passengers at per capita fares. Thus, he is operating as a passenger stage corporation without first having obtained from the Commission a certificate of public convenience and necessity in violation of PU Code § 1031.^{2/}

Since Gibbons has conceded that a cease and desist order may issue against him, the only issue remaining to be decided is Airporter's request that Gibbons' permit be revoked. Under PU Code § 5378:

"The commission may cancel, revoke or suspend any operating permit or certificate issued pursuant to the (Passenger Charter-party Carriers' Act) upon any of the following grounds:

- "(a) The violation of any of the provisions of (the Act), or of any operating permit or certificate issued thereunder.
- "(b) The violation of any order, decision, rule, regulation, direction, demand, or requirement established by the commission pursuant to (the Act)."

Gibbons' permit, issued October 25, 1982, and effective November 7, 1982, states:

"This permit does not authorize the holder to conduct any operations on the property of or into any airport unless any such operation is authorized by the airport authority involved."

^{2/} "No passenger stage corporation shall operate or cause to be operated any passenger stage over any public highway in this State without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation..."

Gibbons is not authorized by SFO to operate on its premises. Despite this fact he has continued his practice of soliciting passengers at the airport and elsewhere and carrying them to and from the airport as described above.

In addition Gibbons was informed by letters from the Assistant Executive Director dated October 20 and November 5, 1982, which letters he signed and returned, that:

"The issuance of a charter-party carrier authority allows the holder to transport groups of persons to places within the State of California designated by the chartering groups; the charges for such transportation are to be made only on a mileage or time-of-use basis, or a combination thereof.

"No passenger service may be operated on an individual fare basis, over regular routes or between fixed points, without the operator having first secured a Certificate of Public Convenience and Necessity as a Passenger Stage Corporation from the Public Utilities Commission. Under no circumstances is charter-party carrier authority to be construed as authorization for exemption from this requirement."

Despite these directions and requirements, Gibbons operated his van between San Francisco and SFO carrying individual passengers and charging them individual fares.

Findings of Fact

1. Gibbons is not authorized to provide passenger stage service.
2. Gibbons is not authorized by SFO to provide passenger transportation services at SFO.
3. Gibbons solicits passengers at SFO and charges them individual fares for transportation to San Francisco.

4. Gibbons solicits passengers at San Francisco hotels and charges them individual fares for transportation to SFO.

5. As late as January 23, 1983, the day before the hearing, Gibbons transported two individuals together from two San Francisco hotels to different airlines areas at SFO and charged them individual fares.

6. Gibbons has provided passenger stage service between San Francisco and SFO without authority.

Conclusions of Law

1. The request of Airporter for a cease and desist order should be granted.

2. Gibbons has violated the provisions of his permit by providing passenger transportation services at SFO without its permission.

3. Gibbons has violated the directions and requirements of the Commission by operating as a passenger stage corporation without authority and by charging individual fares.

4. Gibbons' charter-party permit should be revoked.

O R D E R

IT IS ORDERED that:

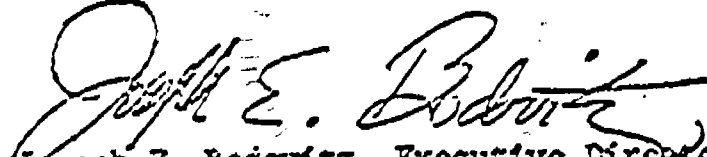
1. Walter Patrick Gibbons, dba Pat's Limousine Service, shall cease and desist from providing per capita passenger stage transportation between San Francisco and the San Francisco International Airport.

2. Charter-party Permit TCP-1532-P is revoked.
 3. In all other respects the complaint is denied.
- This order becomes effective 30 days from today.

Dated APR 6 1983, at San Francisco, California.

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

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


Joseph E. Bodovitz, Executive Director