

ORIGINAL

Decision S3 06 035

JUN 1 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LEV AKOBIANOFF (and all other
passengers of BART),

Complainants,

v.

BART (BAY AREA RAPID TRANSIT
SYSTEM),

Defendant.

Case 82-08-05
(Filed August 4, 1982)

Lev Akobjanoff, for himself, complainant.
John R. Vickland, Attorney at Law, for
BART, defendant.

O P I N I O N

This is a complaint by Lev Akobjanoff (Akobjanoff) against the Bay Area Rapid Transit (BART) District. The complaint alleges an incident on a BART train in which Akobjanoff claims to have suffered personal injuries. The complaint seeks an order: (1) providing for a comprehensive investigation of BART safety, (2) requiring BART to provide easily identifiable agents at strategic locations, (3) requiring BART to install grab-bars, distress alarms, and other safety devices in trains and stations, and (4) requiring BART to instruct train operators to warn passengers when trains stopped at stations move to adjust position.

A duly noticed hearing was held in this matter before Administrative Law Judge (ALJ) Donald B. Jarvis in San Francisco on November 29, 1982. The matter was submitted subject to the filing of a transcript which was received on December 6, 1982.

Preliminary Considerations

The alleged incident, which is the subject of the complaint, is also the basis of a personal injury action by Akobjanoff against BART. The Commission has no jurisdiction to award damages for the tortious conduct of a regulated utility. (Mak v PT&T (1971) 72 CPUC 735, 737-38.) The Commission's jurisdiction in this matter is derived from Public Utilities Code Section 29047 which provides that:

"The [Bay Area Rapid Transit] District shall be subject to regulations of the Public Utilities Commission relating to safety appliances and procedures, and the commission shall inspect all work done pursuant to this part and may make such further additions or changes necessary for the purpose of safety to employees and the general public."

"The commission shall enforce the provisions of this section."

To the extent facts which give rise to a tort action also relate to matters of safety the Commission may consider these facts in exercising its jurisdiction over safety.

In the personal injury action Akobjanoff claims he was injured as the result of a sudden movement of a BART train. BART contends it has no evidence the alleged occurrence took place. Akobjanoff testified about the injuries he claims to have suffered. No medical evidence was presented.

Commission decisions are res judicata as to matters litigated between the parties. (PU Code § 1709; People v Western Air lines (1954) 42 C 2d 621, 630; Pratt v Coast Trucking, Inc. (1964) 228 CA 2d 139; Goodspeed Co. v Great Western Power Co. (1939) 33 CA 2d 245, 264-65, rehearing denied 33 CA 2d 245.) In the light of the record presented, the Commission will make findings in a manner not to prejudice either party in the personal injury action.

At the hearing Akobjanoff sought to testify about incidents involving BART not alleged in the complaint. BART objected. The ALJ properly overruled the objection and admitted the evidence for the purpose of showing the manner of conduct but not as the basis for affirmative relief.

Most of these incidents deal with matters outside the Commission's jurisdiction.

Akobjanoff testified that on August 23, 1982, while a passenger on a BART train he observed two juveniles attempting to set a seat cushion on fire with a cigarette lighter. He yelled at the juveniles who desisted. He contacted the train operator on the intercom, told her of the situation, and asked that the juveniles be arrested. The operator told the juveniles to get off at the next station, which is the station where Akobjanoff also embarked. On his way out he contacted the station agent, who he says was eating dinner in her booth, and told her of the incident. The agent said the train operator had probably done what was necessary, and did nothing. On his return, he again inquired of the station agent if anything had been done and was told not to worry.

After the incident, Akobjanoff remembered a program called "We Tip" which gives rewards to people who help solve crimes. He sought to claim a reward for his part in the incident. He called the "We Tip" 800 number in Los Angeles and was informed that they were only interested in major crimes. He was told to call BART in Oakland. When he would not give his name, and insisted on being given a code number, he was referred back to the Los Angeles number. Akobjanoff gave up on the telephone. The next day he went to BART headquarters in Oakland to claim a reward. He spoke with a BART police sergeant who told him that BART could not reward all passengers who did their civic duty. Akobjanoff was dissatisfied. He went to the fifth floor, where he knew the general manager's

office was located. Akobjanoff asked to speak to the general manager and was told he was not in. As Akobjanoff was asking to see an assistant the sergeant and another BART police officer appeared and forced him to leave the building.

BART's procedures dealing with fire safety are within the jurisdiction of the Commission. However, fire safety was not made an issue in the complaint. The incident does not show a manner of conduct relevant to the allegations in the complaint which deal with unexpected car movement, safety devices, and personnel to assist injured riders. The Commission has no jurisdiction over the administration of the "We Tip" reward program or the manner in which BART police treat patrons.

Another unpleaded series of incidents occurred on November 20, 1982. Akobjanoff boarded train No. 140 in Daly City. The doors did not stay closed. The operator kept opening and closing the doors. The passengers were told to go across the platform and take another train. Akobjanoff took the other train, but got off at the next station to see what would happen. The next train was No. 140 which Akobjanoff boarded. He claims that the ride was jerky, which made him nervous and he got off at the next station. While he was on the platform waiting for another train Akobjanoff heard a hysterical voice over the public address system alerting all station agents to "trouble validation station Code 14", which he thinks related to train 140.

As to this portion of the incident, BART's superintendent of operations and safety testified that the repetitive opening and closing of doors is a standard door fault trouble shooting procedure. The Code 14 message referred to a ticket machine problem at Station 14 and had nothing to do with Train 140. This portion of the incident does not show a manner of conduct relevant to the allegations of the complaint.

Akobjanoff boarded the next train and exited at a Berkeley station. Akobjanoff is a senior citizen and uses BART Senior Citizen tickets, which are sold at a discount. He contends that BART ticket

machines do not always print the amount of usage on a ticket. The fare from Daly City to Berkeley was \$1.55. Akobjanoff thought he had \$2.25 left on the ticket he used. When he sought to exit at Berkeley the ticket machine refused to accept the ticket. The agent told Akobjanoff that there was only 70¢ on the ticket and he would have to put 85¢ in the add fare machine to exit. Akobjanoff told the agent that he was a senior citizen and only had to pay 10 percent of the fare. He offered to pay 8.5¢. The agent responded that the only way to get the senior citizen discount was to buy a senior citizen ticket. A dispute ensued and Akobjanoff was arrested by BART police, handcuffed and then escorted to a holding cell in the BART station. In the holding cell Akobjanoff produced an unused senior citizen ticket which he claims was put through a ticket machine and reduced by \$2.00. After this he was released and permitted to exit. ✓

As indicated, the Commission has no jurisdiction over the manner in which BART police deal with patrons. If Akobjanoff believes he was aggrieved by the incident his remedy is in the Civil Courts.

The final nonpleaded incident occurred at the Oakland 12th Street station. It was a rainy day and as Akobjanoff went up the stairs he saw a man lying motionless on them, with blood on the stairs. Akobjanoff told the station agent, who raced out of his booth. Akobjanoff did not stay at the scene. Upon his return shortly thereafter he saw an ambulance at the foot of the stairs. Akobjanoff attributes the accident to disrepair of the stairs.

There is nothing in this incident showing a modus operandi with respect to the allegations of the complaint. In addition the record indicates that all BART station agents maintain current certification of CPR and Red Cross first-aid. They will give emergency assistance and seek additional medical aid for persons whether they are in the paid or free area of a BART station.

On March 2, 1983, Akobjanoff filed a petition to set aside submission seeking leave to present additional evidence dealing with the November 20th ticket machine and arrest incident. Akobjanoff filed amendments to the petition on March 7 and April 5, 1983. On March 22, 1983, BART filed a response in opposition to the petition. As indicated, the Commission has no jurisdiction over BART ticketing and police procedures. The petition to set aside submission is denied.

Having considered the preliminary matters, we turn to matters raised by the complaint.

Material Issue

The material issue presented in this proceeding is do the facts presented require the Commission to issue an order requiring BART to take any action with respect to the safety of its operations?

Facts

Akobjanoff testified that: On March 26, 1982, he was a passenger standing on a BART train which had stopped at the 19th Street Station in Oakland. The doors were not opened. The train moved in a jerky manner to get a better position. It moved a second time in a similar way and Akobjanoff fell backwards and hit his back on something hard. He believes it was the arm of one of the seats. Akobjanoff ended up on the floor, unable to breathe or speak. Passengers grabbed him and pushed him out of the train on to the platform. The train departed and he was by himself on the platform. He regained his breath and then made his way to a bench, where he sat for half an hour. Akobjanoff decided to report the incident to BART. He went to the station booth. It was locked and there was no agent there. He observed a white courtesy phone for contacting agents outside the ticket machines. Akobjanoff decided not to use the phone because he would have to exit the paid area and pay another fare to reenter.

Akobjanoff proceeded home and then went to Herrick Hospital in Berkeley where he was told he had broken ribs. He was given some medication and told to go home and rest. After four weeks of pain he returned to Herrick Hospital where he was told to see a private doctor, whom he consulted.

The BART superintendent of operation and safety testified that: BART had no report of Akobjanoff's alleged injury. Examination of supervisor's logs and incident reports failed to disclose such an occurrence. No train operator interviewed recollected the train problem described by Akobjanoff.

Discussion

For the purposes of discussion we assume, arguendo, that the facts alleged by Akobjanoff are true.

Akobjanoff seeks a general investigation of passenger safety on BART. The record indicates that in 1981 BART had 25 reports of incidents similar to that alleged by Akobjanoff. In that period it carried 50,126,000 passengers and ran 673,500,000 passenger miles. In view of these statistics, the unfortunate occurrence to Akobjanoff does not provide a sufficient basis for ordering a general safety investigation with the attendant costs.

Akobjanoff next requests that BART be required to provide at all times easily identifiable agents at strategic locations.

SS? The record indicates that, except for plainclothes BART police, the collective bargaining agreement provides for the furnishing of uniforms for field services' forewalkers, station agents, and train operators and the mandatory wearing of the uniform. A pamphlet "Wearing The Uniform" is distributed to all BART workers and provides as follows:

"Please pay particular attention to Paragraph 4, Section 69 of the Agreement, which reads, 'Employees receiving a uniform under this provision shall be required to wear the specified uniform at all times while on duty (*exception). Employees who fail to comply with this regulation may be relieved from duty and shall, if relieved, forfeit compensation for that shift.' This section of the Agreement will be strictly enforced by supervisory authority."

No order dealing with the wearing of uniforms is warranted.

BART introduced in evidence a floor plan of the 19th Street station. The plan shows that on the lower platform level, where Akobjanoff was pushed off the car and boarded the subsequent car to go home, there are five courtesy telephones in that paid area. On the concourse level, where Akobjanoff sought an agent, there are the booths for agents, two courtesy telephones within the paid area and two courtesy telephones in the free area.

It appears that at the time of the accident 7 courtesy telephones in the paid areas and at least one booth with an agent were available to Akobjanoff. An order requiring extra facilities would not be warranted.

Akobjanoff also requests an order requiring the installation of grab-bars, distress alarms and other safety devices within trains and stations.

The BART superintendent testified that existing BART cars have grab-handles on the edge of every perpendicular seat. The entry doors to the car are bracketed by windscreens. Each windscreen has a vertical handrail as part of its construction. Overhead handrails extend from the windscreens to the end of the car. The overhead handrails were not extended into the doorway area to encourage passengers to walk down the aisles and clear the doorway areas. This concept has not worked. All new BART cars have been ordered with overhead handrails extending into the doorway areas, with additional vertical bars in each doorway. Commencing in the spring of 1983, BART will retrofit all existing cars with the extended overhead handrails as part of work to be done in conjunction with its fire safety program.

Considering the evidence produced by Akobjanoff and BART's program for extending overhead handrails it would not be appropriate to order any relief with respect to grab-bars in this proceeding.

The record indicates that all BART cars which have operator booths have intercoms at the opposite end of the car. All other cars have intercoms at each end. Within the context of this proceeding, the courtesy telephones and station agent booths at the 19th Street station have already been described. Nothing in this record would support an order requiring distress alarms or other safety devices.

Finally, Akobjanoff seeks an order requiring BART train operators to warn passengers about possible jerky movements when stopped trains move to adjust their positions.

The BART superintendent testified that train operators have with them a complete set of approved announcements. When a train is operated automatically by the BART computer, the operator does not have control over when a stopped train will readjust position and is not in a position to make an announcement. When a train is operated manually and there is a long stop, the approval announcement is: "The train is about to move. Please hold on if you are standing."

The record does not support an order requiring BART to make an announcement every time a stopped train moves to readjust position.

No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. None of the evidence dealing with matters not pleaded in the complaint establishes a manner of conduct with respect to any matter at issue in this proceeding.
2. All BART cars which have operator booths have intercoms at the opposite end of the car. All other cars have intercoms at each end.
3. On March 26, 1982, the upper platform of the 19th Street, Oakland BART station was not in use. Trains operated on the lower platform. At that time there were five courtesy telephones in the paid area on the lower platform. On the concourse level there were three agent booths, two courtesy telephones within the paid area and two courtesy telephones in the free area. At least one of the agent's booths was staffed at the time of the incident here involved.

4. The collective bargaining agreement between BART and its employees requires BART to provide uniforms for employees, except plainclothes police, and requires the employee to wear the uniform while on duty. Employees who do not wear the uniform are relieved from duty and are not compensated for the particular shift.

5. Existing BART cars have grab-handles on the edge of every perpendicular seat. The entry doors to the car are bracketed by windscreens. Each windscreen has a vertical handrail as part of its construction. Overhead handrails extend from the windscreens to the end of the car. The overhead handrails were not extended into the doorway area to encourage passengers to walk down the aisles and clear the doorway areas. This concept has not worked. All new BART cars have been ordered with overhead handrails extending into the doorway areas, with additional vertical bars in each doorway. Commencing in the spring of 1983, BART will retrofit all existing cars with the extended overhead handrails as part of work to be done in conjunction with its fire safety program.

6. BART train operators have with them a complete set of approved announcements. When a train is operated automatically by the BART computer, the operator does not have control over when a stopped train will readjust position and is not in a position to make an announcement. When a train is operated manually and there is a long stop, the approved announcement is: "The train is about to move. Please hold on if you are standing."

7. Akobjanoff claims that the following events occurred on March 26, 1982. He was a passenger standing on a BART train which had stopped at the 19th Street Station in Oakland. The doors were not opened. The train moved in a jerky manner to get a better position. It moved a second time in a similar way and Akobjanoff

fell backwards and hit his back on something hard. He believes it was the arm of one of the seats. Akobjanoff ended up on the floor, unable to breathe or speak. Passengers grabbed him and pushed him out of the train on to the platform. The train departed and he was by himself on the platform. He regained his breath and then made his way to a bench, where he sat for half an hour. Akobjanoff decided to report the incident to BART. He went to the station booth. It was locked and there was no agent there. He observed a white courtesy phone for contacting agents outside the ticket machines. Akobjanoff decided not to use the phone because he would have to exit the paid area and pay another fare to reenter.

Akobjanoff proceeded home and then went to Herrick Hospital in Berkeley where he was told he had broken ribs. He was given some medication and told to go home and rest. After four weeks of pain he returned to Herrick Hospital where he was told to see a private doctor, whom he consulted.

BART claims that: It had no report of Akobjanoff's alleged injury. Examination of supervisor's logs and incident reports failed to disclose such an occurrence. No train operator interviewed recollected the train problem described by Akobjanoff.

8. In 1981 BART had 25 reports of incidents similar to that alleged by Akobjanoff. In that period it carried 50,126,000 passengers and ran 673,500,000 passenger miles.

9. Assuming, arguendo, that the facts claimed by Akobjanoff are true, in the light of all the facts in the record it would not be reasonable to grant the requested relief.

Conclusions of Law

1. The Commission has no jurisdiction to award damages for the tortious conduct of a regulated utility.

2. The Commission's jurisdiction over BART relates to safety appliances and procedures for the purpose of safety to employees and the general public.

3. The Commission has no jurisdiction over how the "We Tip" reward program is administered.

4. The Commission has no jurisdiction over the manner in which BART police treat persons at BART headquarters or enforcing the payment of fares.

5. The Commission has no jurisdiction over BART discount ticket policies.

6. Akobjanoff is entitled to no relief in this proceeding. ✓

O R D E R

IT IS ORDERED that the complainant is entitled to no relief in this proceeding and the complaint is denied.

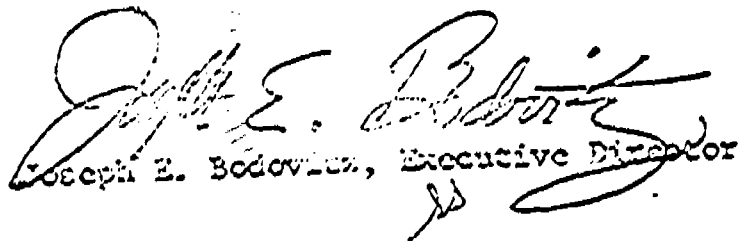
This order becomes effective 30 days from today.

Dated June 1, 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. Bodovick, Executive Director

SS machines do not always print the amount of usage on a ticket. The fare from Daly City to Berkeley was \$1.55. Akobjanoff thought he had \$2.25 left on the ticket he used. When he sought to exit at Berkeley the ticket machine refused to accept the ticket. The agent told Akobjanoff that there was only 70¢ on the ticket and he would have to put 85¢ in the add fare machine to exit. Akobjanoff told the agent that he was a senior citizen and only had to pay 10 percent of the fare. He offered to pay 8.5¢. The agent responded that the only way to get the senior citizen discount was to buy a senior citizen ticket. A dispute ensued and Akobjanoff was arrested by BART police, handcuffed and then escorted to a holding cell in the BART station. In the holding cell Akobjanoff produced an ^{unusual} senior citizen ticket which he claims was put through a ticket machine and reduced by \$2.00. After this he was released and permitted to exit.

As indicated, the Commission has no jurisdiction over the manner in which BART police deal with patrons. If Akobjanoff believes he was aggrieved by the incident his remedy is in the Civil Courts.

The final nonpleaded incident occurred at the Oakland 12th Street station. It was a rainy day and as Akobjanoff went up the stairs he saw a man lying motionless on them, with blood on the stairs. Akobjanoff told the station agent, who raced out of his booth. Akobjanoff did not stay at the scene. Upon his return shortly thereafter he saw an ambulance at the foot of the stairs. Akobjanoff attributes the accident to disrepair of the stairs.

There is nothing in this incident showing a modus operandi with respect to the allegations of the complaint. In addition the record indicates that all BART station agents maintain current certification of CPR and Red Cross first-aid. They will give emergency assistance and seek additional medical aid for persons whether they are in the paid or free area of a BART station.

4. The Commission has no jurisdiction over the manner in which BART police treat persons at BART headquarters or enforcing the payment of fares.

5. The Commission has no jurisdiction over BART discount ticket policies. 6. Akobjanoff is entitled to no relief in this proceeding.

SS
6. ORDER

IT IS ORDERED that the complainant is entitled to no relief in this proceeding and the complaint is denied.

This order becomes effective 30 days from today.

Dated JUN 1 1983 at San Francisco, California.

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