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ORIGINAL

Decision No. 87057

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

AIRPORT SERVICE, INCORPORATED,
a California corporation,

Complainant,

vs.

JAMES PHILLIP WHITAKER, an
individual, DOE 1 through DOE 5,

Defendants.

Case No. 9978
(Filed September 25, 1975)

AIRPORT SERVICE, INCORPORATED,
a California corporation,

Complainant,

vs.

TIMOTHY M. ENGLISH, an indivi-
dual, DOE 1 through DOE 5,

Defendants.

Case No. 9979
(Filed September 25, 1975)

AIRPORT SERVICE, INCORPORATED,
a California corporation,

Complainant,

vs.

DELANO KARL CAGNOLATTI, an
individual, DOE 1 through
DOE 5,

Defendants.

Case No. 9980
(Filed September 25, 1975)

James H. Lyons, Attorney at Law, for Airport Service, Incorporated, complainant.
James P. Whitaker, for himself in C.9978 and Timothy English, for himself in C.9979, defendants.
John E. deBrauwere, for the Commission staff.

O P I N I O N

Complainant Airport Service, Incorporated (Airport Service) is a California corporation authorized to conduct passenger stage operations by this Commission. Airport Service alleges, by separate complaint in these three matters, that each named defendant transported persons at per capita rates without lawful authority.

The three complaints were consolidated for a public hearing held at Los Angeles, California, on March 22, 1976 before Examiner Charles E. Mattson. The matters were submitted after receipt of a letter dated April 14, 1976 from complainant.

Case No. 9978 (Whitaker)

Complainant presented evidence that on July 27, 1975 defendant Whitaker picked up a passenger for hire at Los Angeles International Airport in the city of Los Angeles. Defendant was operating a 1973 Checker vehicle, license YH 2261.

Defendant testified that on July 27, 1975 he was operating the Checker vehicle under charter-party permit authority TCP-144 issued to C. T. Crawford dba Crawford Limousine Service. The vehicle was a Checker limousine type of taxicab, yellow in color, with a top light. Defendant denied that he solicited the passenger and testified that he had responded to a hail from the passenger.

One immediate problem with defendant's explanation is that on December 3, 1975, C. T. Crawford appeared at public hearing and presented a request for certification of tax clearance issued by the State Board of Equalization, Department of Business Taxes dated June 17, 1975 showing a 1973 Checker vehicle, license YH 2261 had been sold by Crawford on June 1, 1975 (Reporter's Transcript, volume 1, page 93, A.55863, December 3, 1975). Mr. Crawford testified that he sold the 1973 Checker vehicle to James P. Whitaker. Defendant's verified answer dated October 6, 1975 alleges that he had charter-party authority to operate as a passenger carrier on July 27, 1975.

We find that defendant had no charter-party operating authority on July 27, 1975. The transfer and sale of a vehicle does not transfer operating authority under a charter-party permit, since a permit to operate as a charter-party carrier cannot be transferred. (Public Utilities Code, Section 5377). Cruising at Los Angeles International Airport in a yellow color Checker vehicle with a top light and supplying passenger transportation for hire to the general public by responding to hails is clearly taxicab transportation service. Taxicab transportation service at Los Angeles International Airport is licensed and regulated by the city of Los Angeles, and such service is not authorized under the provisions of the Charter-party Carriers Act (Public Utilities Code, Section 5353 (g)).

The allegations of the complaint that defendant operated a vehicle for hire without lawful authority are correct. The defendant failed to comply with the city's applicable ordinance

requirements, and had no authority to operate the transportation service on July 27, 1975. The Charter-party Carriers Act is inapplicable and would not authorize the operations of defendant even if defendant had held charter-party authority at the time and place in question.

Case No. 9979 (English)

Complainant presented evidence that defendant on July 26, 1975 picked up four passengers and transported them for compensation from Los Angeles International Airport. Defendant was operating a 1971 Checker four-door vehicle, license No. Y42290. The four passengers had purchased tickets from complainant but cashed the tickets in and took defendant's vehicle to destinations in Orange County. A witness for complainant testified that defendant directly solicited the customers of complainant by appearing at the passenger area and stating "Anyone for Disneyland?"

In consolidated hearings involving charter-party permit applications, A.55863, et al., defendant testified and supported his application in those proceedings for a charter-party permit (Reporter's Transcript, volume 2, pages 192-223, A.55863, December 4, 1975). Complainant and defendant were parties to that proceeding, and stated that the testimony of defendant in that record could be utilized as his testimony in this complaint matter. In his testimony on December 4, 1975, defendant denied solicitation of any passengers. He testified that he was operating in a fashion similar to that previously described by defendant Whitaker, and that he was cruising past a passenger area at Los Angeles International Airport and answered a hail from members of the public. Defendant is an applicant for the charter-party carrier of passengers permit (A.55887). He testified that on July 26, 1975 when

he was hailed by the members of the public at the airport he was driving a Checker vehicle owned by Ted Say and operated under Say's charter-party permit.

Complainant's essential allegations are that defendant's operations were unlawful, that defendant solicited passengers at Los Angeles International Airport on a per capita basis, and conducted passenger stage operations without lawful authority.

We have concluded that charter-party operators are not authorized to conduct taxicab transportation service at Los Angeles International Airport. Cruising about the airport in a distinctively painted Checker vehicle with a top light and answering hails from the general public is taxicab transportation service; a service licensed and regulated by the city of Los Angeles.

Case No. 9980 (Cagnolatti)

The complaint alleged that defendant Cagnolatti resided at 1256 West 89th Street, Los Angeles, California 90044. Pursuant to Commission procedures, a copy of the complaint and an order to satisfy or answer was mailed to the named defendant by registered letter. The letter was returned unclaimed. ✓

Complainant presented evidence that Delano Karl Cagnolatti operated a vehicle for hire at Los Angeles International Airport on July 29, 1975. Said defendant had a driver's license with the address 1256 West 89th Street. Complainant alleges that the evidence established defendant operated unlawfully and that the Commission should take action to stop such unlawful operations. However, until complainant can supply this Commission with a current address for defendant, we cannot proceed against the absent defendant. A defendant must have reasonable notice of the hearing and an opportunity to appear and defend himself against the charges.

This complaint will be dismissed without prejudice.

Conclusion (Cases Nos. 9978 and 9979)

The record does not establish that defendants Whitaker and English conducted passenger stage operations. Such operations are over a regular route or between fixed termini (Public Utilities Code Section 226). We shall grant such relief as we find proper under the circumstances.

Findings

1. On July 27, 1975 defendant James P. Whitaker picked up a passenger for hire at Los Angeles International Airport in the city of Los Angeles. Defendant Whitaker had no operating authority from this Commission or any other government agency.

2. Defendant Whitaker was operating a Checker vehicle with a seating capacity of more than five persons excluding driver, license YH 2261, yellow in color, equipped with a top light. Defendant operated by driving around until hailed by a member of the public. Defendant alleges that he was operating under charter-party permit authority TCP-144 issued to C. T. Crawford dba Crawford's Limousine Service.

3. The records of the California State Board of Equalization, Department of Business Taxes, show that the Checker vehicle, license YH 2261, was sold by owner Crawford on June 1, 1975.

4. On July 26, 1975 defendant English picked up four passengers for hire at Los Angeles International Airport in the city of Los Angeles. Defendant English had no operating authority from this Commission or any other government agency.

5. On July 26, 1975 defendant English was operating a distinctively painted Checker vehicle with a seating capacity of more than five persons excluding driver owned by Ted Say and operated under a charter-party permit (TCP-516) held by Ted Say. Defendant English alleges he operated by driving about until hailed by a member of the public at the airport, and denies he approached the passengers and solicited customers.

6. The city of Los Angeles licenses and regulates taxicab transportation at Los Angeles International Airport.

7. The copy of the complaint and an Order to Satisfy or Answer mailed to defendant Delano Karl Cagnolatti at the address appearing in the complaint in C.9980 was returned unclaimed. There is no evidence that the said defendant received notice of the complaint on file or notice of the public hearing.

8. Defendants Whitaker and English did not conduct passenger operations between fixed termini or over a regular route, nor did they charge on a per capita basis.

Conclusions

1. Defendant James P. Whitaker conducted taxicab transportation service for hire at Los Angeles International Airport on July 27, 1975 without authorization from any state or local governmental agency.

2. Defendant English conducted taxicab transportation service for hire at Los Angeles International Airport on July 26, 1975 without authority from any state or local governmental agency.

3. The city of Los Angeles licenses and regulates taxicab transportation service at Los Angeles International Airport and defendants Whitaker and English have violated applicable and valid ordinance requirements of the city of Los Angeles. ✓

4. The complaint against defendant Delano Karl Cagnolatti should be dismissed because there is no evidence that he received any notice of the complaint against him or that he had any notice of an opportunity to be heard at public hearing. ✓

5. The complaints allege unlawful operations by defendants. Although unlawful passenger stage operations were not proved, it was proved that defendants Whitaker and English transported passengers

for hire without proper authority, either charter-party or taxicab. This Commission has a duty to protect its lawful permittees from unlawful competition. Our order will provide this protection.

O R D E R

IT IS ORDERED that:

1. Defendant Whitaker (C.9978) is prohibited from operating passenger transportation service for hire at Los Angeles International Airport without prior authorization from the city of Los Angeles or a city department with jurisdiction over said airport, or authority from this Commission.

2. Defendant English (C.9979) is prohibited from operating passenger transportation service for hire at Los Angeles International Airport without prior authorization from the city of Los Angeles or a city department with jurisdiction over said airport, or authority from this Commission.

3. The complaint against defendant Cagnolatti is dismissed without prejudice.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 9th day of MARCH, 1977.

Robert B. Brown
President

William L. Sturgeon

Thomas R. ...

Richard D. ...
Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.