

Decision No. 88234

DEC 13 1977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of DIANE F. SHEDROFF)
dba MISSIONARY OF THE NEW TRUTH,)
for renewal of a charter party)
carrier of passengers permit,)
Berkeley. (TCP-671-P)

Application No. 57169
(Filed March 24, 1977)

Diane Faye Shedroff, for herself, and Michael A. Duke, for Diane Shedroff, applicant.
James B. Brasil, for City and County of San Francisco, protestant.
Barbara J. Weiss, for the Commission staff.

O P I N I O N

Applicant Diane F. Shedroff, dba TNT Charter Service, requests the renewal of her charter-party permit (File No. TCP-671-P) to operate vehicles under 15-passenger seating capacity and under 7,000 pounds gross weight. The application was protested by the city and county of San Francisco (the city) on the basis that applicant was unfit to hold a charter-party carrier permit because of her alleged continuing unlawful operations at the San Francisco International Airport (SFO). Applicant presently holds a temporary permit from the Commission, issued upon the expiration of her yearly permit, which is due to expire on the final determination of this case but no later than March 22, 1978. The matter was heard before Administrative Law Judge Pilling on August 17, 1977 at San Francisco.

Applicant's permits have contained the following written restrictions:

"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."

The city owns and operates SFO, located in San Mateo County. Airport Rule 1.4.15(c), promulgated by the city's Airport Commission, prohibits the solicitation of passengers on SFO airport property by drivers or operators of limousine companies who, like applicant, do not have a contract for limousine service with the Airport Commission, though noncontract limousine operators are free to deliver passengers at SFO. The rule allows a noncontract limousine operator to pick up passengers at SFO provided the pickup has been prearranged. The representative of the city explained that the reason for the no solicitation rule was to afford the contract limousine operators, who are required by contract to have limousine service available on a 24-hour a day, seven days a week basis, some protection from the itinerant limousine operator who serves only at hours convenient to him when assured of frequent fares.

Vehicles delivering passengers to SFO are directed to the second story unloading zones, while vehicles intending to pick up passengers at SFO are directed to the ground level loading zones outside the baggage pickup area on the ground floor of the terminal. Part of the loading zone is reserved for limousine parking and loading. In the SFO Central Terminal baggage pickup area counter space is provided at which contract limousine operators or drivers wearing badges specified by the city station themselves in readiness to respond to requests for limousine service.

Three SFO police officers testified variously that unauthorized solicitation for limousine service is usually made by a person standing inside the terminal by the door leading from the baggage pickup area to the outside loading zones and that while the officers were there assigned to the unauthorized limousine

activities detail on May 12, 1977 one of them heard Joseph Burnley, Jr., at the same location solicit four persons to ride applicant's limousine into the city. In regard to this incident, the officer hearing the solicitation approached the four persons and asked them if they had made prearrangements with the solicitor or his company to be picked up at the airport and they answered in the negative. One of the officers testified that on July 14, 1977 he witnessed Joseph Burnley, Sr., approach four persons in a group who were standing inside the door on the ground level floor of the Central terminal and ask them, "Need a bus, sir?". A private investigator hired by the Airport Commission for the purpose of determining whether noncontract limousine drivers were soliciting deplaning passengers to transport them to the city testified that on the afternoon of June 18, 1977 just inside the doors leading to the baggage pickup area at ground level at the Central Terminal at SFO he was solicited by a person later identified as Joseph Burnley, Sr., to ride to the city on an individual fare basis in one of applicant's vehicles identified by applicant's license plate IC75520. The private investigator asked Burnley, Sr. if his limousine was leaving right away and Burnley, Sr., answered that the limousine's departure would have to wait until he collected more passengers.

The representative of the city stated that the Airport Commission attempts to enforce its Rule 1.4.15(c) by bringing misdemeanor charges against unauthorized solicitors for transportation under Penal Code Section 602.4,^{1/} but because the holding of a

1/ Section 602.4 of the Penal Code reads in part:

"Every person who enters or remains on airport property owned by a city, or city and county but located in another county, and sells, peddles, or offers for sale any...services of any kind whatsoever, to members of the public, including transportation services, other than charter limousines licensed by the Public Utilities Commission...without the express written consent of the governing board of the airport property...is guilty of a misdemeanor."

charter-party permit from this Commission regardless of the scope of the permit would appear to exempt the holder from the operation of the misdemeanor statute, the Airport Commission's hands are tied in effectively enforcing its rule. Because of this broad exemption merely restricting a charter-party permit against all SFO airport operations may not have the effect of subjecting such a charter-party carrier to the misdemeanor statute should it engage in solicitation at SFO prohibited by the statute, hence the city recommends the complete denial of the permit as the only way to stop applicant's alleged improper solicitations.

Michael A. Duke (Duke), a reverend and the husband of applicant, testified that applicant herself had very little to do with the charter-party operation and that he undertook the responsibility to oversee the operations, though he does not draw a salary for his efforts. He testified that the name Diane F. Shedroff was his wife's maiden name and that he has many interests outside of the charter-party operations. He stated that present drivers in the operation were Sylvester Burnley, Jo Lee Burnley, Jr., Herbert Burnley, John Smith, and Russ Ellis and that at one time he employed Joseph Burnley, Sr., (father of the previously named Burnleys) and James Hollingsworth. He stated he considered the drivers to be employees of the charter-party operation even though none of the usual payroll withholdings, such as state and federal income taxes, were made from their compensation, because he has a contract with them. His arrangement with his drivers is that they merely pay the company 35 percent of the income they derive from transporting persons under applicant's charter-party permit. Currently none of the approximately six vehicles used in the operation have applicant's name displayed on them as required by Commission General Order No. 98-A, paragraph 10.02, though each of the vehicles displays the appropriate PUC sticker which contains the carrier's TCP file number but not the name of the carrier. Only one of the vehicles is owned

by the carrier and the rest are leased. Duke admits to a certain looseness in his organizational set up, that his records, particularly those required to be kept by General Order No. 98-A, paragraph 13.00, are not kept up, and that he devotes only a small percentage of his time to the charter-party operation. He stated that he gave the drivers their jobs mainly to keep them off welfare and has told them to keep away from the airport whenever possible. He stated that Joe Burnley, Sr. was not in applicant's employ at the time the officers said he was soliciting business for applicant at SFO. Duke was aware that Hollingsworth had been denied renewal of Hollingsworth's charter-party carrier permit because of fitness to operate by Decision No. 85974 based on the actions of Joseph Burnley, Sr., and his above-named three sons in conducting unlawful transportation solicitation at SFO. Duke testified that applicant's SFO operations constituted only a minuscule part of applicant's charter-party operations and that the major operations were in conducting tours where Duke, who claims to speak many foreign languages, on occasion acts as a tour guide. Duke stated he does not drive in the operations, rarely if ever visited SFO to check on his drivers or their actions, and has no personal knowledge of the incidents complained of by the city. The city's written protest to the application alleged that applicant's company was unlawfully soliciting at SFO and set forth details of certain instances in support of its allegations. Applicant did not present any of her drivers to testify at the hearing concerning their actions or practices at SFO, nor did applicant herself testify.

Subsequent to the hearing, under cover letter dated August 26, 1977 to the Commission, Duke requested the Commission to include as evidence in the case a printed brochure attached to the letter. The brochure advertises four tours which Duke says in his letter "we now conduct". An example of the manner in which the prices for the tours are advertised is the price of the Muir Woods tour:

"Muir Woods Tours ... \$8.00
Children Under 11 .. \$5.00"

The brochure is Exhibit 5 and is received into evidence.

Discussion

The evidence shows that applicant has placed herself in a position which raises some doubts that she will be able to faithfully comply with the rules and regulations adopted by the Commission with respect to the charter-party operation to be conducted under the permit. She has relinquished all the responsibility for the operation to her husband who acts as an unpaid manager and who is able to devote only a small amount of his time to the operation because of his other interests. The Commission requires an applicant for a permit and a permit holder to be more than a titular head of operations. Paragraph (2) of applicant's permit requires that "Said Carrier shall comply with all Commission order, decisions, rules, directions, and requirements governing operations of said Carrier." Applicant has not assumed an active role in her company's operation, particularly in respect to insuring that her drivers do not solicit fares on an individual basis as has obviously been the case with her drivers at SFO and of soliciting fares at SFO without authority from the Airport Commission contrary to the restriction in her permit.

Our acceptance of the late-filed brochure in no way denotes any findings of the legality of the tour operations.

Findings

1. Applicant seeks renewal of her charter-party permit.
2. Applicant's previous permits have been restricted against operations on the property of or into any airport unless any such operation is authorized by the airport authority involved.
3. The SFO airport authority rules prohibit the solicitation of passengers by charter-party carriers at SFO unless the charter-party carrier has a contract with the SFO airport authority.

4. On numerous occasions applicant's drivers or their representative were seen and heard soliciting passengers at SFO to ride in applicant's vehicles.

5. Applicant's drivers' solicitation of passengers at SFO was done on an individual fare basis.

6. Applicant does not have the required contract with the SFO airport authority authorizing applicant to solicit passengers at SFO.

7. Applicant exercises little or no control over her drivers' actions at SFO and has not conscientiously sought to control such actions.

8. Applicant is unfit to conduct charter-party operations.

Conclusions

1. Applicant's drivers violated the restriction in her permit by soliciting passengers at SFO.

2. Applicant's drivers violated Section 5401 of the Public Utilities Code by soliciting passengers at SFO on an individual-fare basis.

3. Applicant has failed to exercise any control over her charter-party operation resulting in continued non-compliance with the laws and the rules and regulations of the Commission governing her operations.

4. Applicant's charter-party permit should not be renewed.

ORDER

IT IS ORDERED that:

The application for renewal of the charter-party permit of Diane F. Shedroff, dba TNT Charter Service, File No. 671-P, to operate as a charter-party carrier of passengers, is denied.

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

Dated at San Francisco, California, this 13th day of DECEMBER, 1977.

I dissent -
William Quous-Jr.

Robert Bateman

President

I dissent
Vernon L. Sturgeon

Richard D. Gravelle

Carle J. Delrish
Commissioners