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ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

AIR CALIFORNIA,

Complainant,

vs.

PACIFIC SOUTHWEST AIRLINES,

Defendant.

Case No. 10626
(Filed July 20, 1978)

Graham & James, by Boris H. Lakusta and David Marchant, and Robert Barnett, Attorneys at Law, for complainant.

Brownell Merrell, Jr., Attorney at Law, for defendant.

James Cherry, Attorney at Law, and Richard Brozosky, for the Commission staff.

O P I N I O N

Complainant alleges that defendant is violating Section 2752 of the Public Utilities Code by engaging in the operation of transporting passengers between Oakland International Airport (OAK) and San Diego International Airport (SAN) via San Jose Municipal Airport (SJC) without a certificate of public convenience and necessity authorizing such operation. Public hearing was held July 24, 1978 before Administrative Law Judge J. E. Thompson at San Francisco and the matter was submitted.

Findings

1. Defendant is a passenger air carrier with authority to transport passengers between points over numerous routes within California. Those pertinent to the inquiry here are:

Route 1. Between San Diego and Los Angeles, Burbank, San Francisco, and Oakland.

No service shall be operated between any of these five points and any other points authorized in other routes by the Commission, except through service between San Diego and San Jose via Los Angeles, through service between San Diego and Sacramento via Los Angeles, and the through service authorized in Route 19.

Route 7. Between SJC, OAK, and Hollywood-Burbank Airport.

Route 11. Between Long Beach Airport, SJC, and OAK; nonstop between Long Beach Airport and SJC; and nonstop between Long Beach Airport and OAK.

Service between the points authorized shall not be connected, combined, or operated in combination with points or routes previously authorized, or with each other except...to provide through service to passengers as follows:

San Diego - Long Beach -
Oakland
San Diego - Long Beach -
San Francisco
San Diego - Long Beach -
San Francisco - Sacramento
San Diego - Long Beach -
Oakland - Sacramento
San Diego - Long Beach -
San Jose - Oakland -
Sacramento

Route 19. Between SAN and Sacramento Metropolitan Airport via intermediate point of OAK.

Route 26. Nonstop between SAN and SJC.

2. By Decision No. 83476 dated September 17, 1974 in Application No. 53289, defendant was awarded a certificate of public convenience and necessity authorizing it to operate as a passenger air carrier between OAK and SJC on flights operated on its Route 7 and Route 11. That

certificate is subject to the express condition that any combining of the authority therein granted with any other certificate or operating authority issued to or possessed by defendant for the purpose of establishing through routes, rates, charges, and classifications as provided for in Section 2762 of the Public Utilities Code is prohibited.

3. Defendant has published and distributed a timetable effective July 19, 1978 setting forth Flights 167 and 169 from SAN to OAK with one intermediate stop at SJC, and Flights 766 and 666 from OAK to SAN with one intermediate stop at SJC.

4. Since July 19, 1978 defendant has operated those flights as shown in its timetable. It has notified ticket agents not to issue any ticket for transportation between OAK and SJC on those flights. It has not been shown that defendant has transported passengers between SJC and OAK on flights operated via the route SAN - SJC - OAK.

Discussion

Complainant alleged that defendant is "tacking" its Route 26 onto the SJC - OAK authority granted in Decision No. 83476 in violation of the restriction contained in that decision against the combining of that authority with any other certificate. Defendant asserts that it is not attempting to combine those routes and that it does not claim any "tacking" authority to operate over the route SAN - SJC - OAK therefrom. It contends that Decision No. 83476 relates only to transporting passengers between SJC and OAK and that it does not do this on the flights involved. It contends that Route 1 is unrestricted as to the number of stops, and their sequence, with respect to operations between SAN and OAK. That is true, however, only with respect to the points named on that route, of which SJC is not one. Moreover, the limitations or restrictions attached to that route prohibit any service to SJC other than a through service between SAN and SJC via the Los Angeles International Airport (LAX) (a combining of the SAN - LAX authority in Route 1 with the LAX - SJC authority in Route 4).

Essentially, defendant's claim for authority to operate over the route SAN - SJC - OAK is that it holds authority to transport passengers nonstop, one-stop, and even two-stop operations and it holds authority to transport passengers between SAN and SJC in nonstop and one-stop operations. It makes little difference to the SAN - OAK passenger whether the one stop is at Burbank, Los Angeles, or San Jose. It is not conducting passenger air carrier operations over the SJC - OAK segment of the route because it transports no passengers between those points on that route. We are not impressed by this reasoning. Fundamentally, the operation, as described by defendant, is a route between SAN and OAK via SJC with a closed door between SJC and OAK. It has long been recognized that a closed-door route is a passenger air carrier operation for which a certificate from the Commission is required. There are a number of closed-door certificates outstanding. A proposed operation involving similar circumstances to those here was in Application No. 54878 of Air California. There the applicant requested authority to operate over the route SJC - Ontario - SAN with a closed door between Ontario and SAN. It already held authority to operate nonstop between SAN and Ontario, and authority to operate nonstop and one-stop (via Orange County) between SJC and SAN. The Commission held that the proposed operation required a certificate. In Decision No. 84703, dated July 29, 1975, it denied that authority.

We conclude that defendant's service between SAN and OAK via SJC is a passenger air carrier operation for which a certificate of public convenience and necessity is required under Section 2752 of the Public Utilities Code. Defendant does not hold such certificate.

In its complaint and in its argument, complainant alleged that defendant's operation is causing it hardship. In its argument, defendant contends that the operation is practical and that SJC and OAK have always been considered as co-termini or joint termini with respect to certificates which have been issued to complainant and defendant. It asserts that the public is not being injured, and that

with respect to complainant's argument of loss of traffic, defendant intends to continue to provide three daily nonstop flights between SJC and SAN pursuant to its authority granted in Decision No. 88921 whether or not the terminus of those flights is OAK or some other point so that complainant's claim of possible injury is illusory. *WJ*

Those arguments are not material as to whether a cease and desist order should issue herein. The law is plain. Section 2752 provides that no passenger air carrier shall engage in any operation in this State without first having obtained from the Commission a certificate of public convenience and necessity authorizing such operation. There is no equivocation nor does the statute provide for any extenuating circumstances. Section 2763 provides for the Commission to make its order requiring defendant to cease and desist from operations without a certificate and requires the Commission to enforce such order. While surrounding circumstances do not permit discretion as to whether a cease and desist order should be entered, they may be considered, with respect to the time, when the activity should be ceased.

In Decision No. 88921, in which we granted defendant authority to conduct nonstop operations between SAN and SJC, we announced our concern regarding the possible effect of those operations on the operations of complainant between the same points. That concern was manifested in our Conclusion 4 in that decision which states:

- "4. PSA and Air California are to report to the Commission each month the prior month's load factors on a day-to-day basis between San Diego and San Jose. The Commission will expect that flight schedules will be arranged so that the overall load factors between San Diego and San Jose will remain compensatory for each carrier."

We therefore consider the circumstance here to be an unforeseen emergency situation requiring prompt action for causing the operation

to cease. At the same time, there are no doubt passengers who have made future reservations for one or more of the flights under consideration here. We recognize that some time will be required for internal communications within defendant's organization necessary for discontinuance of these operations and for communications to passengers now holding reservations permitting them reasonable opportunity to make other transportation plans. Accordingly, in order to avoid inconvenience to the public, we consider this matter today as an unforeseen emergency situation under Section 306(b) of the Public Utilities Code and shall require defendant to cease and desist on or before August 8, 1978, which is the date of the next regular session of the Commission.

Conclusions

1. Defendant has and is violating Section 2752 of the Public Utilities Code.
2. Defendant should be ordered to cease and desist from conducting passenger air carrier operations between OAK and SAN via SJC.
3. This matter came to the attention of the Commission on July 20, 1978 and is an unforeseen emergency situation as described in Section 306(b) of the Public Utilities Code necessitating prompt action by the Commission.
4. To permit defendant reasonable opportunity to comply with the cease and desist order herein, and to avoid the inconvenience to the public who presently have future reservations on the flights herein involved, defendant should be ordered to cease and desist the unlawful operations on or before August 8, 1978.

ORDER

IT IS ORDERED that Pacific Southwest Airlines, a corporation, shall on or before August 8, 1978 cease and desist from carrying passengers by air on a through route between San Diego International Airport and Oakland International Airport via San Jose Municipal Airport.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 25th day of JULY, 1978.

*I dissent.
I would have made the
C&D effective August 31, 1978.
Robert W. Goble*

Robert Bateman
President
William J. Gerson
Vernon L. Sturgeon
Clarence J. DeBailly
Commissioners