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Decision No. 89945 JAN 30 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
 of A.C. CAL SPANISH TOUR SERVICE,)
 a partnership consisting of Victor)
 Meneses and Graciela Arturi, and)
 AGENTOURS, INC., a corporation, to)
 transfer Certificate of Public)
 Convenience and Necessity issued)
 under authority of Decision No.)
 79688, as amended by Decision)
 No. 85084.)

Application No. 57371
 (Filed June 9, 1977)

OPINION ON REHEARING

Decision No. 89469 in this case, dated October 3, 1978, denied the application of A.C. Cal Spanish Tour Service (A.C. Cal) to transfer A.C. Cal's certificate of public convenience and necessity to Agentours, Inc. (Agentours) on the ground that A.C. Cal abandoned its operating authority. A.C. Cal filed a petition for rehearing on November 30, 1978. We are convinced from a review of the petition, the responses thereto filed by protestants Gray Line, Inc. and SFO Airporter, Inc., and the record in this proceeding, that our finding of abandonment was erroneous and that the transfer should be authorized.

We were greatly influenced by the fact that A.C. Cal stopped its attempts to solicit the classification of non-English speaking passengers to which the certificate is restricted, at the beginning of the Gray Line strike in 1976. (The testimony of Mr. Meneses, A.C. Cal's owner, to the contrary was regarded as improbable for the reasons discussed in the decision.) However, while nonoperation is strong evidence of intent to abandon (M. Lee [1966] 65 CPUC 635) it is not necessarily conclusive, and extenuating circumstances may be considered (Teskey Transp. Co. [1962] 60 CPUC 92). We have very recently stated:

"Abandonment in the regulatory sense is the voluntary, intentional relinquishment of a public utility franchise. It includes the intention to abandon and the external act by which such intent is carried into effect."

(Kadletz v. Gray Line Tours Co., CPUC Decision No. 89804, Case No. 10601, December 19, 1978, slip opinion p. 6).

And while a certificate of public convenience and necessity is not a property right, we note that cases concerning property hold that temporary absence unaccompanied by an intention to abandon does not establish abandonment (Bittman v. Courington [1048] 26 CA 2d 213).

This is not to say that we must accept the testimony of a certificate holder to the effect that there was no intent to abandon over circumstantial evidence which clearly negates the testimony. (Cf. Kadletz, supra, in which Gray Line Tours, Inc. was found to have abandoned certain routes by virtue of nonoperation for 13 years, notwithstanding last-minute revival.) However, in the case now before us, we believe that intent to abandon over the period of nonoperation cannot be shown because of Meneses' letter requesting a suspension (for part of the time) which we granted, and because of reinstatement of service.

When Meneses wrote (through counsel) to the Commission for a suspension, it was obviously because he treated his certificate as active. The Commission regarded it in that light too, since the suspension was granted. ~~It is inconsistent with this fact situation for us to find that, prior to this correspondence, an abandonment took place.~~ And while it may be argued that resumption of operations ten days before the scheduled hearing was primarily intended as window-dressing, it also means that at that point, A.C. Cal treated its certificate as active. Moreover, during the period of nonoperation, Meneses actively engaged in negotiations with Agentours to sell the authority. We thus distinguish this case from Kadletz, in which there was a 13 year period of nonoperation with no extenuating circumstances, prior to a last-minute effort to revive the route. AD

We affirm our policy statements on the subject of abandonment made in Kadletz. We are ruling here only on the issue of abandonment and on the facts in this case. The applicants here and others similarly situated are admonished that we have the power to initiate investigations into the level of service offered under our certificates and, even when there is no abandonment, to revoke operating authority when perfunctory or intermittent service convinces us that revocation is in the public interest.

Agentours, Inc., is placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

FINDINGS

- (1) Findings 1 through 6 of Decision No. 89469 are incorporated herein by reference.
- (2) Commencing with the Gray Line strike in 1976, and until on or about October 10, 1977, A.C. Cal ceased any reasonable or organized effort to solicit non-English speaking business.
- (3) A.C. Cal permitted its insurance to expire on November 5, 1976, resulting in the suspension of his operating authority four days later. After the expiration, counsel for A.C. Cal wrote to the Commission requesting a further voluntary suspension for the reasons stated in the letter. The Commission, in response, granted a further suspension until March 1, 1977.

- (4) After the suspension, A.C. Cal initiated discussions with Agentours for sale of the business.
- (5) On or about October 10, 1977, A.C. Cal revived operation of its route.
- (6) The record is fully developed and no further hearings are necessary.

CONCLUSIONS

- (1) No abandonment took place.
- (2) The transfer should be authorized.

O R D E R

IT IS ORDERED that:

1. On or before 90 days after the effective date hereof, A.C. Cal Spanish Tour Service may sell and transfer the operative rights referred to in the application to Agentours, Inc.
2. Within thirty days after the transfer the purchaser shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.
3. Purchaser shall amend or reissue the tariffs and timetables on file with the Commission, naming rates and rules governing the common carrier operations transferred to show that it has adopted or established, as its own, the rates and rules. The tariff and timetable filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and the public, and the effective date of the tariff and timetable filings made pursuant to

this order shall comply in all respects with the regulations governing the construction and filing of tariffs and timetables set forth in the Commission's General Orders Nos. 79-Series and 98-Series. Failure to comply with the provisions of General Orders Nos. 79-Series and 98-Series may result in a cancellation of the operating authority granted by this decision.

4. On or before the end of the third month after the transfer, the purchaser shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the seller for the period commencing with the first day of the current year to and including the effective date of the transfer. (Omit par. 4 if change in form of entity only.)

5. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 3, a certificate of public convenience and necessity is granted to Agentours, Inc., a corporation, authorizing it to operate as a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, between the points and over the routes set forth in Appendix A of this decision.

6. The certificate of public convenience and necessity granted by Decision No. 79688 as modified by Decision No. 86084 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

7. Purchaser shall comply with the safety rules administered by the California Highway Patrol, the rules and regulations of the Commission's General Order No. 98-Series, and the insurance requirements of the Commission's General Order No. 101-Series.

8. Applicant shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of its operations

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in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

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

Dated at San Francisco, California, this 30th day of JANUARY, 1979.

President

George L. Sturgeon
Charles D. Howell
Walter T. DeLoach

Commissioners

Commissioner John E. Bryson
present but not participating.

Commissioner Leonard M. Grimes Jr.
present but not participating.