

**ORIGINAL**Decision No. 92165 'AUG 19 ~~1980~~

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of Frank C. Miranda for a Class )  
"B" certificate to operate as a )  
charter-party carrier of passengers, )  
Fresno. (File No. B-8.) )

Application No. 59073  
(Filed August 16, 1979)

O R D E R

By D.91254 dated January 15, 1980, Frank C. Miranda (Miranda) was granted a certificate of public convenience and necessity to operate as a Class "B" charter-party carrier of passengers. On January 29, 1980, a petition for rehearing of D.91254 was filed by Greyhound Lines, Inc. (Greyhound). By D.91962 dated June 17, 1980, rehearing was granted. The matter was assigned to Administrative Law Judge Patrick J. Power, and hearing was set for August 18, 1980, in San Francisco.

However, by ALJ's ruling dated August 5, 1980, the matter was taken off calendar and the parties directed to address certain legal issues arising from the apparent factual context of the proceeding:

"Specifically, the Commission's formal file indicates that the petition for rehearing was served on Miranda at 10293 'Dervolf', instead of 10293 'DeWolf', in Selma, California. As a matter of law this service appears ineffective; there is no indication that Miranda has waived the defect in service by replying to the petition for rehearing within the time limits provided by Rule 86.2 of the Commission's Rules of Practice and Procedure.

"Rule 85 provides (in part): 'Application for rehearing of a Commission order or decision shall be served on all parties and should be filed before the effective date thereof...' This language suggests that service is a

condition of filing - that without service the petition should not be filed. If so, and Greyhound's petition for rehearing was not effectively served, then the petition was not lawfully filed and should be stricken. In such case the order granting rehearing would be void and the original order would be effective.

"Therefore the parties are directed to address the legal and factual issues concerning this matter by way of written points and authorities and/or declarations, to be served not later than August 12, 1980. The shortened time is necessary in order to enable the Commission to act at its next scheduled conference in the event that some action is required."

Replies to the ruling have been received from Greyhound and Miranda.

Greyhound states that:

"Selma, being a small town, with limited streets, it is reasonable to assume that Miranda did receive the copy directed to 10293 South Dervolf instead of 10293 DeWolf or Dewolf despite the misspelled street name.

"Greyhound, therefore, contends that the application for rehearing was effectively served and lawfully filed with the Commission and should not be stricken as stated in the Administrative Law Judge's ruling. As an alternative, Greyhound will have no objection to applicant submitting any response it may desire to tender the Commission for consideration so that the Commission may determine whether its grant of a rehearing should proceed. In that connection, the Commission's attention is directed to Rule 87, i.e. special cases and where good cause is shown, permit deviations from its rules and thereby provide applicant with an opportunity to respond if he (Miranda) still desires to submit a response. The Commission is therefore urged to issue an order giving Miranda another fifteen days to respond after which the Commission can decide whether to proceed with the rehearing or vacate its order for rehearing. With this Memorandum, Greyhound is sending another copy of its Application for rehearing to applicant."

Miranda's reply is factual in nature, reciting the circumstances surrounding his original application and the actions undertaken in reliance on the Commission decision, culminating in the purchase of a used bus from Trailways in May. On June 18, 1980, Miranda received the order granting rehearing and initiated an investigation into the matter, eventually learning of Greyhound's petition for rehearing. Miranda states that if he had known of the petition, "we wouldn't have gone and purchased the bus without knowing what the outcome of the hearing would be."

Based on these facts we find that the original service of the petition for rehearing was not effective. Miranda had no opportunity to reply to the petition, and in the absence of that opportunity we conclude that the order granting rehearing is void and should be rescinded. The petition for rehearing remains lawfully filed and Miranda shall have until September 3, 1980, to file a reply.

By operation of Section 1733 of the Public Utilities Code the filing of the petition stayed the effective date of D.91254 for 60 days. The order granting rehearing reinstated the stay. The result of rescinding the order granting rehearing is to leave D.91254 in effect and ~~to restore to Greyhound the choice of treating the petition for rehearing as denied, or to wait for~~ further Commission action.

Findings of Fact

1. By D.91254 Miranda was granted limited Class "B" charter-party authority, on January 15, 1980.
2. Greyhound petitioned for rehearing of D.91254 on January 29, 1980.
3. Greyhound's petition for rehearing was incorrectly mailed to Miranda.
4. Miranda did not receive Greyhound's petition for rehearing.

5. Miranda relied on D.91254 by purchasing a bus and arranging charter business.

6. By D.91962 rehearing of D.91254 was granted.

7. Miranda has now been served with the petition for rehearing.

8. Because of hardship on Miranda, the effective date of this order should be the date hereof.

Conclusions of Law

1. Greyhound's service of its petition for rehearing was not effective.

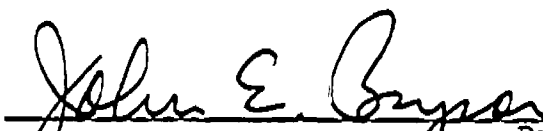
2. The order granting rehearing is void and should be rescinded.

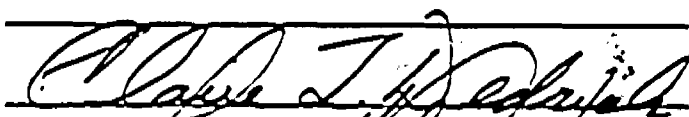
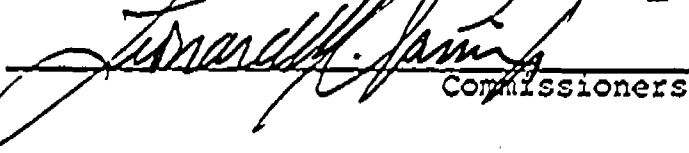
3. Miranda should have an opportunity to reply to the petition for rehearing before further action of the Commission.

IT IS HEREBY ORDERED that Decision No. 91962 is rescinded. Frank C. Miranda shall have 15 days from the date hereof in which to file a reply to the Petition for Rehearing and/or Reconsideration of Greyhound Lines, Inc., filed on January 29, 1980.

The effective date of this order is the date hereof.

Dated     AUG 19 1980    , at San Francisco, California.

  
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President

  
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Commissioners

Commissioner Richard D. Cravelle, being necessarily absent, did not participate in the disposition of this proceeding.