

Decision No. 92380 November 4, 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

AIRPORT LIMOUSINE SERVICE OF
SUNNYVALE, INC.,

Complainant,

v.

GOLDEN STATE LIMOUSINE, INC.,

Defendant.

Case No. 10853
(Filed April 23, 1980)

Bernard B. Siner, Attorney at Law, for
Airport Limousine Service of Sunnyvale,
Inc., complainant.
Walter H. Walker, III, Attorney at Law, of
Handler, Baker, Green & Taylor, for
Golden State Limousine, Inc., defendant.
R. O. Collins, for the Commission staff.

O P I N I O N

The complaint of Airport Limousine Service of Sunnyvale, Inc. (complainant) against Golden State Limousine, Inc. (Golden State) was heard June 30, 1980, before Administrative Law Judge James Squeri, and submitted on the record. The matter is ready for decision.

Complainant's Case

Complainant presented no affirmative case at the hearing and relies solely upon the allegations contained in its formal pleading. The complaint alleges that Golden State, in providing airport service, is operating with owner-drivers of five-passenger vehicles who are nonemployees and who do not individually hold charter-party authority issued by the Commission pursuant to Public Utilities Code Section 5371.^{1/} Complainant contends that such an operation violates Section 12.01(c) of General Order No. 98-A and Section 5371 which requires that a driver either work as an employee of the service

1/ All statutory references, unless otherwise noted, relate to the Public Utilities Code.

operator or hold individual Commission authority to provide the transportation service.

Complainant further contends that Golden State's use of owner-operators who drive sedan-type vehicles, which seat five passengers excluding the driver, violates Sections 5359 and 5360. Section 5359 states that a "'Motor vehicle' means every self-propelled vehicle with a seating capacity of more than five persons excluding driver." Section 5360 reads as follows:

"Subject to the exclusions of Section 5353 of this chapter, 'charter-party carrier of passengers' means every person engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway in this State."

As discussed more fully herein, complainant's theory of statutory violation is incomprehensible.

In support of its allegations, complainant attached three documents to its filed pleading: (1) a letter dated March 19, 1980 from complainant addressed to the Executive Director requesting issuance of a cease and desist order against Golden State for alleged illegal activities; (2) a letter dated March 24, 1980, from Edward Tanner, the Director of the Transportation Division, directing Golden State to cease and desist from illegally operating with independent owner-operators who do not hold individual charter-party authority; and (3) the affidavits of six individuals stating that a representative of Golden State had invited the individuals to join the organization as independent owner-operators.

Based upon all of the foregoing allegations and evidence, complainant requests the issuance of a cease and desist order against Golden State to remain in effect until Golden State can demonstrate its compliance with the provisions of the Code.

Golden State's Answer

Golden State filed an answer in which it denied that the company was operating with independent owner-operators in

violation of General Order No. 98-A, Section 12.01(c). The answer admitted that five operators of sedan-type vehicles are being used who do not individually hold Commission authority pursuant to Section 5371. However, Golden State contends that these five operators of sedan-type vehicles are employees of Golden State and are not required to hold individual authority.

Evidence was adduced which indicated that Golden State possesses a certificate of public convenience and necessity to operate as a passenger stage corporation. In providing airport service, Golden State uses five limousines and drivers with charter-party authority and five owner-operated sedan-type vehicles which are the subject of this complaint.

Eloise Brown, president of Golden State, appeared on the defendant's behalf. She testified that the five owner-operators in question were employees of Golden State who operated their own equipment pursuant to a lease agreement with Golden State and under the control of the lessee passenger stage corporation, Golden State. Lease agreements were submitted as evidence of the employer-employee relationship existing between Golden State and the five owner-operators. The owner-operators receive a portion of their own collections, pay Golden State a percentage of the gross collections, and absorb their own expenses. Golden State, in turn, pays FICA, SDI, etc., and other payroll expenses incurred by an employee.

Golden State submits that evidence of the lease agreements and payroll tax information are strong indications of its desire to comply with Section 12.01(c) of General Order No. 98-A, as well as relevant statutory provisions. Accordingly, Golden State requests that the complaint be dismissed.

Discussion

The issue before us is relatively straightforward. Section 12.01(c) of General Order No. 98-A in conjunction with relevant

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provisions of the Passenger Charter-party Carriers' Act requires that a driver either hold individual Commission authority or be an employee of an entity holding Commission authority. Since Section 5359 defines a charter-party carrier to include vehicles carrying more than five passengers exclusive of the driver, a charter-party certificate or permit cannot be issued to sedan-type vehicles which transport five passengers.

Since the five owner-operators of sedan-type vehicles cannot obtain individual charter-party authority, we need only determine whether the five drivers in question are legitimate employees of Golden State in compliance with Commission requirements or whether they are independent owner-drivers operating illegally.

In resolving this issue, we are confronted with a problem of proof. Complainant has presented no competent evidence that the drivers in question are independent owner-operators rather than employees. On the other hand, Golden State's evidence of lease agreements and payroll tax payments are insufficient to prove that the owner-operators are under the supervision, direction, and control of the lessee passenger stage corporation, Golden State. In fact, if the burden had been upon Golden State to prove an employer-employee relationship, such evidence would have failed to establish such a relationship under guidelines promulgated in Decision No. 77072, Case No. 8481, April 14, 1970, 71 CPUC 31.

However, this complaint was brought by Airport Limousine Service of Sunnyvale, Inc., and it was its burden to prove the lack of an employer-employee relationship. Complainant has failed to sustain this burden. Accordingly, we will deny the complaint with respect to the allegation that Golden State is operating in violation of General Order No. 98-A, Section 12.01(c).

With respect to the claim that Golden State is operating in violation of Section 5359, we are somewhat puzzled. First, it is seemingly impossible to violate a definitional statute. Second,

Section 5359 has the effect of excluding motor vehicles carrying only five passengers from operation of the Passenger Charter-party Carriers' Act. Since we are here concerned with sedan-type vehicles capable of transporting five passengers, Section 5359 does not apply. We fail to see any cause of action stated on these grounds, and with respect to complainant's allegation, we will dismiss the complaint.

Findings of Fact

1. Golden State possesses a certificate of public convenience and necessity to operate as a passenger stage corporation.
2. Golden State operates with five limousine drivers who hold individual charter-party authority and five owner-operators of sedan-type vehicles who hold no individual authority.

Conclusions of Law

1. There are insufficient facts to determine whether the five owner-operators are or are not employees under the supervision, direction, and control of Golden State.
2. Complainant has failed to sustain its burden of proof.
3. Complainant's request for issuance of a cease and desist order against Golden State should be denied.

O R D E R

IT IS ORDERED that the complaint of Airport Limousine Service of Sunnyvale, Inc. is denied. ✓

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

Dated NOV 4 1980, at San Francisco, California.

John E. Byrne
President
Hermon L. Sturgeon
Richard D. Howell
Clair T. Bessie
James M. Spitz
Commissioners