

ALJ/jn

Decision No. 92779 MAR 3 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

J. Mark Lavelle, dba
DOLPHIN TOURS,

Complainant,

vs.

PACIFICO CREATIVE SERVICE, INC.,
a Hawaii corporation, and
PACIFICO CREATIVE SERVICE
(CALIFORNIA) Inc.

Defendants.

Case No. 10952
(Filed February 17, 1981)

INTERIM ORDER

J. Mark Lavelle, dba Dolphin Tours (Dolphin), complains that Pacifico Creative Service, Inc. (Pacifico) and its wholly owned subsidiary Pacifico Creative Service (California) Inc. (Pacifico California) engage in the operation of the following passenger stage routes without having first obtained a certificate for them under Public Utilities Code Section 1032:

Berkeley - Sausalito - Muir Woods (Monday - Friday)

San Francisco Night Tour - Sausalito (Nightly)

Disneyland Tour (Daily)

Universal Studio Tour (Daily)

Knotts Berry Farm Tour (Daily)

Los Angeles Night Tour (Nightly)

The first two tours are alleged to originate in San Francisco and the remainder in Los Angeles.

Dolphin seeks a cease and desist order and initiation of contempt proceedings. The two requested remedies require separate discussions.

Cease and Desist Order

In Lavelle v Japan Air Lines, et al., ___ CPUC ___, Decision No. 92455 dated December 2, 1980 (Case No. 10732), the operations of Pacifico^{1/} were explored at length. Pacifico is associated with Japan Creative Tours (JCT) which in turn is a subsidiary of Japan Air Lines. Pacifico caters to members of JCT tour groups, offering sightseeing tours by bus over California intrastate routes.

Two types of passengers are served by Pacifico. The first is the member of the tour group who has paid a package price, in Japan, for air fare, accommodations, some meals, and some prepaid (nonoptional) bus tours. The second is a member of a JCT tour who, after arriving in the United States, pays separately, in dollars, for additional ("optional") tours in buses chartered by Pacifico. Narration is in Japanese, and the optional tours are available to members of JCT tours only.

In Decision No. 92455, supra, we deemed the nonoptional transportation paid for in Japan as part of the package to be beyond the scope of the complaint^{2/}, but we held that regarding the optional tours, Pacifico was performing passenger stage service over the following routes originating and terminating in San Francisco:

Yosemite National Park
Three Bridges and Bay Cruise
Marriott's Great America

1/ "Pacifico" will be used to refer to the parent corporation, which is incorporated in Hawaii and does business in California. Pacifico California, the subsidiary, is to the best of our information, inactive at this time.

2/ The question of whether the prepackaged tours are under our jurisdiction would seem to be raised in Case No. 10935, filed on December 24, 1980 by Dolphin against Pacifico.

Certain other routes alleged to be of the passenger stage category were found not to be running often enough to fall in this category. We also mentioned that Pacifico's Los Angeles operations were not explored, although they were generally similar to those in San Francisco. (Decision No. 92455; proposed report, page 8.)

Ordering Paragraph 2 of the Administrative Law Judge's (ALJ) proposed report, adopted by Decision No. 92455, reads as follows:

"Pacifico Creative Service, Inc., a Hawaii corporation shall cease and desist from promoting, selling, and conducting 'optional tours' over the routes set forth in Finding of Fact 12 without first obtaining a certificate of public convenience and necessity from this Commission, and shall not make use of its subsidiary, Pacifico Creative Service (California) Inc., for such purposes unless a certificate of public convenience and necessity is obtained for such routes from this Commission in the name of Pacifico Creative Service (California) Inc."

The routes referred to are the three mentioned earlier in this Decision. (The original Ordering Paragraph 2 in the ALJ's report was modified in Decision No. 92455 by deleting two routes on the ground that they were infrequently operated.)

As can be seen from a reading of Decision No. 92455 and its attached proposed report, it was our purpose to require Pacifico (and its subsidiary) to obtain passenger stage certificates for routes run frequently enough to be in the passenger stage category, before it can offer optional tours over such routes. Unfortunately, our order was drawn narrowly to cover three certain routes only, and we added no additional language to the effect that Pacifico should not offer passenger stage tours of the optional variety over any other intrastate routes without first obtaining a certificate.

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At this time, Pacifico holds no certificates for passenger stage service. Assuming arguendo that the allegations of the complaint are true, Pacifico may have employed the narrow limits of our order as an invitation to maintain, or to commence, other optional tours over routes not covered by our order in Decision No. 92455. Under the circumstances, and since Pacifico's methods of operation, and our jurisdiction over optional intrastate tours were exhaustively considered in Decision No. 92455, it is appropriate for us to issue an immediate cease and desist order against Pacifico conducting any intrastate optional-type passenger stage tours without first obtaining a certificate of public convenience and necessity as required by Public Utilities Code Section 1032. Our order, at this time, does not extend to the prepackaged nonoptional transportation nor does it cover transportation that is correctly classified as charter-party, either because of infrequency, lack of a fixed route, or for any other reason.

Request for Contempt Proceedings

We are not unmindful of our responsibilities to enforce our orders. However, because Dolphin's request for contempt sanctions is defective in both form and substance, it must be denied at this time. ✓

In form, a request for contempt must include declarations under penalty of perjury setting forth, as a matter of first-hand information, specific acts, including dates, times, places, etc. which are alleged to constitute contemptuous acts. The courts of this State have repeatedly held that contempt proceedings are quasi-criminal in nature and that respondents to such proceedings are entitled to precise notice of the acts complained of.

Secondly, because of the previously mentioned failure on our part in Decision No. 92455 to enjoin Pacifico's furnishing of optional transportation over routes other than the three which were the specific subject of that decision, there is no outstanding order of this Commission which can be the subject of a contempt action. This order will rectify this problem.^{3/}

Lastly, a petition to show cause why a defendant should not be held in contempt for violating an order of the Commission must be filed in the proceeding in which the order was made. Thus, assuming Dolphin alleges that Decision No. 92455 is violated, such a petition should be filed, with proper supporting papers, in Case No. 10732. Assuming the order in this present case is violated, it should be filed herein.

^{3/} It is possible that the "Berkeley-Sausalito-Muir Woods" tour mentioned in the complaint in this case is the same, or substantially similar to, the "three bridges and Bay" tour which is the subject of our order in Decision No. 92455, but we have insufficient information to determine this.

Findings of Fact

1. Dolphin alleges in the complaint in this case that Pacifico conducts optional tours (as that term is used in Decision No. 92455) over routes named in the discussion section of this decision. ✓

2. The complaint does not show that any of these routes are the specific subject of our order in Decision No. 92455.

3. Neither Pacifico, nor its subsidiary, Pacifico California, holds any certificates of public convenience and necessity from this Commission which permit them to conduct passenger stage service. ✓

Conclusions of Law

1. Whether Pacifico's prepackaged transportation of the non-optional variety is within the scope of our jurisdiction should be decided in Case No. 10935, or some other appropriate proceeding.

2. Pacifico and its subsidiary Pacifico California should be ordered to cease and desist from offering or conducting optional transportation on a passenger stage basis over any intrastate route not the subject of our order in Decision No. 92455 without first obtaining a certificate of public convenience and necessity.

3. The effective date of this order should be the date it is signed to terminate any unlawful operations.

4. The complaint, as drafted, does not afford us a basis for commencing contempt proceedings at this time.

IT IS ORDERED that Pacifico Creative, Inc., a Hawaii corporation doing business in California, and Pacifico Creative Service (California) Inc., a California corporation, shall cease and desist from promoting, selling, and conducting "optional tours" over any intrastate passenger stage routes within the State of California

without first obtaining from this Commission a certificate of public convenience and necessity for such routes.

The effective date of this order is the date hereof.

Dated MAR 3 1981, at San Francisco, California.

John E. Byrnes
President
Richard D. Broun
Thomas W. Jones
Walter Calver

Commissioners