

ALJ/VDR/sid *

Decision 99-02-023 February 4, 1999

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ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the operations and practices of Bahram Shahab and Merhdad Hajimoradi, doing business as L.A.Xpress Airport Shuttle (PSC 5038),

Respondents.

Investigation 95-06-007
(Filed June 21, 1995)

Order Instituting Investigation for revocation of Passenger Stage Corporation Certificate [PSC 8016] of Mini Bus Systems, Inc., doing business as Super Shuttle; and its sole shareholder and president, Carl Melvin.

Respondents.

Investigation 95-06-008
(Filed June 21, 1995)

OPINION

Summary

We approve settlements in two airport shuttle enforcement proceedings. Investigation (I.) 95-06-007 and I.95-06-008 are closed.

Background

In this decision, we close the book on two airport shuttle enforcement proceedings of similar origin and character by adopting a settlement in each which has been negotiated between our enforcement staff (Staff) and the respective shuttle operator. Although the settlement in each instance strikes us as being lenient in contrast to the seriousness of the concerns we expressed when we commenced each investigation, we recognize that each settlement is the

product of negotiations with our Staff rather than between third parties, as in a complaint case, and we will defer to the desires of Staff. In view of the longevity of these proceedings, the conduct of the respondents pending final resolution, and the existence of good faith controversy about the use of non-employee drivers (a major issue at the time we commenced the investigations), we believe this result is justified. We also share the expectation expressed by the parties in their settlements and supporting documents that this outcome will facilitate future compliance efforts by the respondents.

The respondents in I.95-06-007, Bahram Shahab and Merhdad Hajimoradi, doing business as L.A.Xpress Airport Shuttle (collectively, L.A.Xpress), are authorized to provide transportation of passengers between points in Los Angeles, Orange, Ventura, Riverside, and San Bernardino Counties, on the one hand, and Los Angeles Airport (LAX), Burbank Airport (BUR), Ontario Airport (ONT), Long Beach Airport (LGB), John Wayne Airport (SNA), Los Angeles Harbor, Long Beach Harbor, and Los Angeles Amtrak Station, on the other hand. Simply stated, L.A.Xpress is authorized by this Commission to operate what is commonly called an airport shuttle service in the greater Los Angeles Basin.

The respondents in I.95-06-008, Mini Bus Systems, Inc., doing business as Super Shuttle (collectively, Mini Bus), hold virtually identical operating authority, and operate an airport shuttle service in the same geographical area. Mini Bus was the subject of an earlier enforcement proceeding involving it and another shuttle operator, and a party to the resultant settlement agreement adopted in Decision (D.) 93-09-004. That settlement specified that Mini Bus would take certain steps to insure that its vehicles were repaired and maintained in a safe condition, report to the Commission concerning these compliance efforts, comply with the Department of Motor Vehicles (DMV) "Pull Notice" program, employ only bona fide employees or Commission-licensed charter

party subcarriers, and obey airport regulations. The Commission decision also barred members of Mini Bus' previous management team from holding any position with the company.

On June 21, 1995, we issued an order (OII) in each proceeding, instituting an investigation of each respondent, and requiring each to show cause why its operating authority should not be revoked. Each OII was based upon allegations by Commission Staff that the respondent had violated General Order (GO) 158 or other rules that the Commission is charged with enforcing. In each instance, one of the violations alleged by Staff to have been committed by the respondent was that of the so-called subcarrier rule, which prohibits the use of drivers who are neither bona fide employees of the shuttle carrier nor licensed charter party carriers. In addition, each OII alleged violation of other safety or licensing regulations that we enforce.

Both of the present proceedings, as well as I.95-07-001 (Prime Time), a similar investigation of a third airport shuttle company, were progressed by the assigned administrative law judge (ALJ) with the goal of holding formal evidentiary hearings. However, whereas Prime Time, which was the more serious and complicated case, was scheduled for hearing, the respondents in each of the present proceedings promptly began to negotiate settlements with Staff. The most significant issue to be litigated in Prime Time was the question whether, in the circumstances of that proceeding, Prime Time had violated the subcarrier rule. The ALJ indicated in preheating conferences that the result reached in Prime Time would provide guidance for resolving the present proceedings.

On April 1, 1996, Staff and L.A.Xpress filed a motion for adoption of a settlement which they had executed. Shortly thereafter, on May 3, Staff and Mini Bus filed a similar motion. In each case the settlement required the respondent to

pay substantial fines (\$45,000 and \$60,000, respectively), but the agreements did not allocate how much was assessed for alleged violation of the subcarrier rule as opposed to other alleged violations.

Prime Time went to full evidentiary hearing and was submitted on a substantial evidentiary record concerning all of the claims and defenses litigated therein. In D.96-08-034, we exonerated Prime Time from violating the subcarrier rule in that proceeding, interpreting the material provision of GO 158 favorably for Prime Time. In response to that outcome Mini Bus and L.A.Xpress each filed a formal request to withdraw its pending proposed settlement in recognition of this new development. On April 30, 1998, the ALJ granted each respondent's request, and provided an opportunity for the parties to negotiate new settlements consistent with the result in Prime Time.

Although at first the parties were unable to agree upon the terms for renegotiated settlements, eventually a proposed settlement agreement was reached in each proceeding. By joint motion, the parties moved for adoption of their agreement in the L.A.Xpress proceeding on September 8, 1998, and in the Mini Bus proceeding on October 8. In recognition of the similarity of the issues in the two proceedings, and in an effort to reach consistent results, we address both motions in this decision.

The Settlement in I.95-06-007

The terms of the settlement agreement in L.A.Xpress require the respondent to file quarterly compliance reports with Staff regarding its employment practices for a 12-month period, and commit the respondent to using only bona fide employees or licensed charter party carriers as drivers. The contents of the compliance reports are specifically described.

The recitals in the written settlement agreement contain a qualified admission of L.A.Xpress' subcarrier rule violation, and of the existence of

supporting facts set forth in the order. In contrast to the earlier settlement, however, the one before us has no provision for payment of fines or penalties.

The Settlement in I.95-06-008

The written settlement agreement in the second proceeding contains a number of provisions to compel compliance with the subcarrier rule and the DMV Pull Notice program. These include 12 months of probation, during which Mini Bus must submit quarterly compliance reports to the Staff, and requirements that Mini Bus immediately enroll all of its drivers in the Pull Notice program and have a written subcarrier agreement with each subcarrier. Mini Bus agrees that any use of subcarriers will comply with GO 157-C, GO 158-A, and other Commission regulations, and that it will enroll all of its drivers in the Pull Notice program. If Mini Bus fails to "materially comply" with the settlement, upon request by Staff the Commission may suspend Mini Bus' operating authority, with the proviso that Mini Bus is entitled to receive a hearing on the suspension order within 30 days. No fines or penalties are payable, in contrast to Mini Bus' earlier settlement.

Discussion

In urging us to adopt these settlements, the parties assert that settling these proceedings "presents a more cost effective outcome than a hearing," and conserves the parties' time, personnel, and money. This is generally true of settlements in any litigation. However, the first settlement agreements, which were withdrawn, contained substantial monetary penalties, whereas these do not. The absence of such penalties in the present settlement agreements strikes us as noteworthy, as we initially characterized Staff's allegations about L.A.Xpress' and Mini Bus' conduct as being "very serious" in the OIIs. (OII 95-06-007, p. 5; OII 95-06-008, p. 5.) Because the treatment of the respondents

under the present settlements may seem lenient by comparison, we are concerned whether the new circumstances justify this result.

We will not speculate as to what proportion of the fine in each of the earlier settlements related to alleged violations of the subcarrier rule, as the Commission then interpreted it. However, recitals in the motions proposing adoption of the current settlements evince Staff's belief that the settlement results here are within the realm of what could be achieved through litigation. This is a factor which we should consider in determining whether the settlement is reasonable. (See Malacha Hydro Limited Partnership v. Pacific Gas and Electric Company, 41 CPUC2d 66, 72 (1991).)

The only evidentiary record in either proceeding regarding the violations is a stipulation in I.95-06-007 that L.A.Xpress *may* have violated GO 158, part 5.01 by engaging drivers who are neither bona fide employees nor licensed charter party carriers as subcarriers; and *may* have failed to comply with LAX Regulations [III.B.151] by using non-employee drivers, in violation of GO 158, part 3.01. L.A.Xpress also stipulated that a factual basis supporting these allegations is presented by Special Agent Deborah Zundel's Declaration of April 13, 1995, and the exhibits/attachments thereto. Significantly, there is no stipulation as to what any other evidence might show, nor as to the extent of the alleged violations set forth in Ms. Zundel's Declaration. Thus, we have an insufficient basis in the record of either proceeding to determine what result might be achieved through litigation in light of all of the evidence available to the parties.

We are left with the procedural record in these proceedings as our only guidepost to determine whether the settlements are reasonable. Given the level of penalties which the respondents would have paid under the first settlement agreements, we infer that the absence of such payments now indicates a

significant weakening of Staff's litigation posture following the Prime Time decision, in which there was an interpretation of the subcarrier rule that was adverse to Staff. This inference is reinforced by the fact that the language of the stipulation in the L.A.Xpress settlement is equivocal at best. The elimination of the fines is, therefore, reasonable.

Each settlement commits the respondent to future compliance with applicable Commission regulations, which is in the public interest. Both carriers have been cooperative throughout the course of these proceedings, and their good faith is presumed. The Commission may take these enforcement proceedings into account if either carrier comes before the Commission again as a respondent, and we anticipate that recidivism will be dealt with severely. The public interest is, therefore, not being compromised by these settlements, despite Staff's dramatic change of position.

Finally, nothing to which the parties have agreed is inconsistent with the law. In view of the events which have transpired since we issued the OIIs, we believe that a softening of our position with respect to the original allegations is justified, and is well within the valid exercise of our discretion.

We will approve the parties' settlements.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to PU Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. The OIIs in I.95-06-007 and I.95-06-008 were issued on June 21, 1995. Both OIIs alleged various violations of the Commission's subcarrier rule under GO 158.

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2. The Commission subsequently interpreted the subcarrier rule in D.96-08-034 in a manner which was favorable to the respondent airport shuttle in that proceeding.

3. The settlements in I.95-06-007 and I.95-06-008 proposed for option here were negotiated after D.96-08-034, in response to a ruling by the ALJ.

4. Both settlements are reasonable in light of the whole record in each proceeding; consistent with law; and in the public interest.

Conclusion of Law

The proposed settlements in I.95-06-007 and I.95-06-008 should be approved.

O R D E R

IT IS ORDERED that:

1. The joint motion for approval of the parties' written settlement agreement dated September 8, 1998, in Investigation (I.) 95-06-007 is granted.

2. The joint motion for approval of the parties' written settlement agreement dated July 21, 1998, in I.95-06-008 is granted.

3. I.95-06-007 and I.95-06-008 are closed.

This order is effective today.

Dated February 4, 1999, at San Francisco, California.

RICHARD A. BILAS
Président
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners