

BEFORE THE  
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION  
WASHINGTON, D. C.  
ORDER NO. 119

P<sup>v</sup>

Served January 5, 1962

IN THE MATTER OF:

Petition of D. C. Transit System, )  
Inc., for Temporary Authority to )  
Provide Service Between the )  
Department of State, Washington, )  
D. C., and the Department of )  
State Annex, at Arlington Towers, )  
Arlington, Virginia, Under Contract )  
with the Department of State )

Application No. 137

This matter came before the Commission upon the petition of D. C. Transit System, Inc., for temporary authority to provide service between the Department of State, Washington, D. C., and the Department of State Annex at the Arlington Towers, Arlington, Virginia, under a contract with the Department of State. D. C. Transit System, Inc., was the successful bidder and consequently was entitled to perform this transportation upon the grant, by this Commission, of proper authority. The petition was protested by Washington, Virginia and Maryland Coach Company, Inc., hereinafter referred to as Arnold Lines. The applicant's position was that the proposed service was contract carriage and could be performed only pursuant to a contract carrier permit. It was stipulated that Arnold Lines held common carrier authority to serve between the two points in issue. Neither D. C. Transit nor Arnold Lines holds a contract carrier permit; consequently, the petition was filed by D. C. Transit System, Inc., for temporary authority to serve the points in question as a contract carrier.

Arnold Lines took the position that it was authorized to render the proposed service pursuant to its common carrier authority; that the proposed operation was not contract carriage and contended that the petition for temporary authority should be denied.

Oral arguments were heard on June 30, 1961, and at the conclusion thereof the application for temporary authority was denied on the grounds that Arnold Lines held appropriate authority to render the proposed service. Following this oral ruling, it was noted that a written opinion would follow.

All parties agreed that the sole question here is whether or not Arnold Lines may render the proposed service by virtue of its common carrier authority. If the question is answered in the affirmative, then the applicant has obviously failed to meet the test required under the Compact in regard to temporary authority, and consequently the application must be denied. Following our oral disposition of this case on June 30, 1961, the United States District Court for the Eastern District of Virginia in the case of Alexandria, Barcroft and Washington Transit Company and Washington, Virginia and Maryland Coach Company, et al., v. United States of America and Interstate Commerce Commission, Civil No. 2023, decided July 10, 1961, had occasion to consider similar legal issues as are involved herein. The parties involved in this proceeding were also parties in the District Court case referred to above. Since the parties are familiar with that case, it is sufficient to note here that the Commission is in complete accord with the principles laid down in that case and is of the opinion that those legal principles are particularly applicable to the conditions prevailing in the Washington Metropolitan District as defined in the Washington Metropolitan Area Transit Regulation Compact.

A legal principle which would permit a third party (United States Government) to interpose a restriction upon an otherwise unrestricted certificate would be antagonistic to the time-immemorial concept that a common carrier should be accorded the opportunity to transport all traffic along the route it serves and should be accorded the right to protest the application of anyone who would undertake to invade its territory.

The mere fact that a third party elects to contract with the carrier to assure itself of the availability of the carrier's service, rather than depend on the lawful obligation of the carrier to furnish such service pursuant to its duly granted authority, should not be permitted to change the scope of authority required to furnish such service. Again, it is important to note that the adequacy of service is not an issue - only the authority to furnish such service.

To rule here that the Arnold Lines cannot render the proposed service by virtue of its common carrier authority would have the effect of ruling that it would have no right to protest an application for a contract carrier permit to haul passengers moving between points it is authorized to serve under its common carrier authority.

Giving due consideration to all facts and issues involved herein, it is the opinion of the Commission that the proposed service can be performed by Arnold Lines pursuant to its common carrier authority.

THEREFORE, IT IS ORDERED:

That the application of D. C. Transit System, Inc., for temporary authority to perform the proposed service, more fully discussed herein, be, and the same is, hereby denied.

FOR THE COMMISSION:

A handwritten signature in cursive script, appearing to read "Delmer Ison".

DELMER ISON  
Executive Director