

BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 251

IN THE MATTER OF:) Served April 25, 1963
)
Application of Airport Transport, Inc.,)
and Airport Transport, Inc., of Virginia,) Docket No. 34
for a Certificate of Public Convenience)
and Necessity (Grandfather application)) Application No. 46

APPEARANCES:

Linwood C. Major, Jr., Attorney for Applicant.

Manuel J. Davis, Attorney for W. V. & M. Coach Company,
Inc., Protestant.

Henry G. Bartsch, Pro se, Airport Dispatching Service,
Protestant.

John R. Sims, Jr., and C. Robert Sarver, Attorneys for
D. C. Transit System, Inc., Protestant.

S. Harrison Kahn, Attorney for A. B. & W. Transit Company,
The Gray Line and Diamond Tours, Inc., Protestants.

Robert J. Stanford, Attorney for Montgomery Charter Services,
Inc., Protestant.

Before Delmer Ison, Presiding Officer.

OPINION

By application filed June 20, 1961, under the grandfather clause of Section 4(a), Article XII, Title II, of the Washington Metropolitan Area Transit Regulation Compact, hereinafter referred to as Compact, Airport Transport, Inc., and Airport Transport, Inc., of Virginia, seek a certificate of public convenience and necessity authorizing continuance of operations

as carriers by motor vehicle between certain points within the Washington Metropolitan Area Transit District, hereinafter referred to as Metropolitan District.

Pursuant to public notice duly given, a hearing on the application was held on February 11, and 12, 1963. At the opening of the hearing, counsel for applicants tendered an amended description of operating authority applied for in their original application. The purpose of the amendment was to clarify the original request for operating authority.

In their application, as amended, applicants specifically seek a certificate of public convenience and necessity authorizing the following transportation services:

I. Passengers and their baggage in special operation service, over irregular routes, between the Washington National Airport, on the one hand, and points in the Metropolitan District, on the other, subject to the following restriction:

Restricted to passengers having a prior or subsequent movement by air to or from the Washington National Airport.

II. Passengers and their baggage in charter service, over irregular routes, between the Washington National Airport, on the one hand, and points and places in the Metropolitan District, on the other, subject to the following restriction:

Restricted to passengers having a prior or subsequent movement by air to or from the Washington National Airport.

III. Passengers and their baggage, limited to not more than seven passengers, not including driver, in any one vehicle, in special operations, on round-trip sightseeing or pleasure tours, restricted to traffic originating and terminating at the point indicated over irregular routes:

From Washington, D. C., to Mt. Vernon, Virginia, and return.

IV. Passengers and their baggage, limited to not more than seven passengers, not including driver, in any one vehicle, in round trip charter operations over irregular routes:

From Washington, D. C., to points and places in the States of Virginia and Maryland within the Washington Metropolitan Area Transit District, and return.

V. Passengers and their baggage, limited to not more than seven passengers, not including the driver, in any one vehicle, in special or charter operations between points within the District of Columbia.

The only operations not specifically included in the amended description of authority, but included in the original application, was the scheduled operations from the Statler Hotel, Mayflower Hotel, Willard Hotel and applicants' downtown terminal to the Washington National Airport.

Section 4(a) of Article XII, Title II, of the Compact under which provision the within application was filed, reads as follows:

"No person shall engage in transportation subject to this Act unless there is in force a certificate of public convenience and necessity issued by the Commission authorizing such person to engage in such transportation; provided, however, that if any person was bona fide engaged in transportation subject to this Act on the effective date of this Act, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within 90 days after the effective date of this Act. Pending the determination of any such application, the continuance of such operations shall be lawful."

Objections to the application have been duly entered by the carriers listed as "protestants" under the heading, "Appearances" of this Order. None of the protestants submitted the testimony of any witnesses at the hearing; their participation being limited to cross-examination of applicants' witnesses.

While the Commission was not required by the Compact to hold a hearing on the application, the nature of the issues involved prompted a hearing.

The application was seasonably filed under the Compact. The issue to be determined by the Commission is whether or not applicants were, on March 22, 1961, bona fide engaged in the transportation for which authority is sought.

Certain transportation, although performed within the Metropolitan District, is nevertheless exempt from the jurisdiction of the Commission.

Under Sections 1(b), Article XII, Title II, of the Compact, "transportation (performed) solely within the Commonwealth of Virginia" is not subject to the jurisdiction of the Commission. Thus, to the extent the

application seeks authority to continue operations solely within the Commonwealth of Virginia, the application must be dismissed. Section 1(c), Article XII, Title II, of the Compact, contains the normal taxicab exemption insofar as certification is concerned. Under this section, motor vehicles used in providing bona fide taxicab services are exempt from the jurisdiction of the Commission insofar as operating authority is concerned. A taxicab is defined in Section 2(d), Article XII, Title II, of the Compact, as follows:

"The term 'taxicab' means any motor vehicle for hire (other than a vehicle operated, with the approval of the Commission, between fixed termini on regular schedules) designed to carry eight persons or less, not including the driver, used for the purpose of accepting or soliciting passengers for hire in transportation subject to this Act, along the public streets and highways, as the passengers may direct."

Thus, applicants need no authority to continue operations coming within the taxicab exemption, and the Commission so finds.

Essentially, by this application, applicants seek authority to continue providing ground transportation for airline passengers to and from the Washington National Airport and to continue to provide transportation services with vehicles, limited to not more than seven passengers, not including the driver, as set forth in paragraphs III, IV, and V on page 3 of this Order. Based on numerous prior rulings of this Commission, no authority is required from the Commission for applicants to continue this special, charter and sightseeing operations in vehicles limited to seven passengers, not including the driver. The record shows and the Commission finds that this transportation is generally provided as the

passengers direct and, therefore, falls within the taxicab exemption.

Left for determination is that part of the application which seeks authority to continue transportation service for airline passengers between the Washington National Airport and points and places within the Metropolitan District.

When in this Order reference is made to "airline passengers" the term includes "airline crews".

Under Section 203(b), 7(a), Part II of the Interstate Commerce Act, transportation of persons by motor vehicle when incidental to transportation by aircraft is exempt from the certificate requirements of the Interstate Commerce Commission. Such transportation, however, is not exempt from the certificate requirements of this Commission under the Compact. The applicants claim a grandfather right by virtue of past operations conducted under the aforementioned exemption of the Interstate Commerce Act.

No one contested the legal basis of applicants' operations in providing ground transportation for airline passengers to and from the Washington National Airport. Applicants have been engaged in the performance of this transportation, under contract with the Federal Aviation Agency, since January 2, 1947, to date. The following quotation is taken from the contract effective July 1, 1956, through June 30, 1961:

"(a). Concessions. The Government hereby grants to the Contractor (applicants) subject to all the terms, conditions and covenants of this Agreement, the sole right,

power and privilege to operate a taxicab, limousine and motor coach service for passengers and baggage originating at the Airport. The Government will not authorize any other operator to conduct such a transportation service on the Airport during the term of this Agreement except the regularly scheduled service operated by the A. B. & W. Transit Company."

A new contract was subsequently entered into authorizing applicants to provide ground transportation to and from both the Washington National Airport and the Dulles International Airport. Applicants submitted numerous exhibits which explained in considerable detail the nature of their operations, type of equipment, volume of business, and other information relating directly to applicants' operations. The testimony of applicants, given both orally and through the introduction of exhibits, establishes the fact that applicants were, on March 22, 1961, providing ground transportation for airline passengers between points in the Metropolitan District and the Washington National Airport. Based on the evidence of record, the ground transportation provided by applicants falls within three major categories, namely; motor coaches (buses), group-riding limousines, and taxicabs.

The taxicab operations are conducted exclusively by Airport Transport, Inc., of Virginia, one of the applicants herein. It should be noted here that Airport Transport, Inc., and Airport Transport, Inc., of Virginia, have common directors, officers and employees. On the critical date, March 22, 1961, applicant performed taxicab service between the Washington National Airport and all points in the Metropolitan District. Approximately one hundred and nineteen (119) taxicabs

were devoted to this service. It being conceded by applicant, Airport Transport, Inc., of Virginia, that its operations were confined to taxicab operations, and thereby falling within the taxicab exemption of the Compact, no authority from the Commission is required for the continuance of such operations and the Commission so finds. Therefore, further discussions of the applicant, Airport Transport, Inc., of Virginia, and its operations, become unnecessary.

This leaves for consideration that portion of the application by which Airport Transport, Inc., seeks authority to continue to perform transportation for airline passengers by buses and limousines between the Washington National Airport on the one hand, and the District of Columbia, and points and places in Maryland, situated within the Metropolitan District, on the other. It developed during the course of the hearing that applicant is not seeking to serve between the airport and points and places in Virginia.

Specifically, the Commission must determine whether applicant, Airport Transport, Inc., was bona fide engaged, on March 22, 1961, in the transportation of airline passengers and their baggage as follows:

1. Airline passengers and their baggage in special non-scheduled operation service, over irregular routes, between the Washington National Airport on the one hand, and points in the District of Columbia and that portion of Maryland situated within the Metropolitan District on the other.

2. Airline passengers and their baggage in charter service, over irregular routes, between the Washington National Airport and points and places in the District of Columbia and that portion of Maryland situated within the Metropolitan District on the other.

3. Airline passengers and their baggage, in scheduled operation service, over irregular routes, from the Statler Hotel, Mayflower Hotel, Willard Hotel, and applicant's downtown terminal to the Washington National Airport.

The Washington National Airport is located on the Potomac River, within the geographical boundaries of the Commonwealth of Virginia.

The Commission will first discuss applicant's limousine operations. The manner in which the limousine operations are conducted can be summarized best by quoting the direct testimony of applicant's president appearing on pages 82, 83 and 84, Volume I of the Transcript. Applicant's counsel propounded the questions:

"Q. Mr. Lerner, as briefly as you can, sir, would you describe for us, first of all, the nature and extent of the limousine transportation services which your company, that is, Airport Transport, Inc., was performing on March 22, 1961, to and from the Washington National Airport?

A. Our limousine service is a highly specialized business, tailored expressly to cater to the air-line passenger to and from Washington National Airport. It's a group riding, as I said before, and an economy type of operation.

That's as far as the Aerobuses are concerned.

We also provide a Cadillac type of limousine that caters to the VIP, very important people, who require or

request exclusive limousine service on a charter basis.

Q. Now, with respect to the first type of service, your specialized ground transportation group-riding service, has that been an individual fare service?

A. Yes, sir.

Q. Is that the principal service or the backbone service that has been provided by your company?

A. It's primarily the principal service; yes, sir.

Q. Would you describe for us, sir, how your vehicles are loaded, dispatched and operated in that particular service -- first of all, from the airport?

A. When the passengers arrive at the airport, they go out the nearest exit and our dispatcher greets them, and he then will direct them to a particular Aerobus, limousine, if you want to call it, and he will group these people who will be going in the general, same direction, and when he has several people in this limousine he'll give the driver his slip, his loading slip, and tell him to get on his way.

Q. Who controls the movement of the vehicle, that is, who selects the route to be followed and the order or manner in which the passengers are to be discharged?

A. The driver.

He is equipped to designate the route because the route that he uses is dependent upon the time of the day, weather conditions, traffic conditions, and generally, they're well trained and they know what route to pursue in order to cause the least amount of inconvenience to the passengers.

Q. Now, in operating back from the airport to the Washington metropolitan area, do I understand that you originate passengers only at the Washington National Airport?

You don't pick up passengers at any other point in those vehicles after you once leave the airport, do you?

A. Oh, no. We don't pick up any passengers. We don't perform any service in any other area from one point to another. Our passengers either originate or they terminate at the Washington National Airport. They're air-line passengers.

Q. How are your vehicles dispatched or operated in the reverse direction, that is, from points in the Washington metropolitan area going back to the airport?

A. Exactly the same way.

Q. And, again, is the route selected by the driver?

A. Yes, sir.

Q. Do you combine pick-ups on your trips from points in the Washington area to the airport?

A. Yes, sir.

We have two-way radios, communications systems, that make it possible for us to combine and group people to the airport, the same as we do from the airport.

Q. Even prior to your installation of your two-way radios, did you combine passengers by prior request?

A. Yes, sir.

Q. Now, what area have you served, from the Washington National Airport in this group-riding limousine service?

A. The entire metropolitan area and any place a passenger wants to go.

Q. And how about in the reverse direction -- service to the airport? What areas have you served?

A. Metropolitan area or wherever a passenger may request to be picked up."

* * *

The witness went on to explain that this type of limousine service was provided to and from all points within the Metropolitan District, except points in Virginia.

The record shows that on March 22, 1961, applicant operated approximately fifty (50) limousines and employed seventy-three (73) full-time drivers and nine (9) part-time drivers. The record further shows that during the month of March, 1961, applicant transported a total of thirty-six thousand, nine hundred and twenty-eight (36,928) passengers, in its group-riding limousine service, between the Washington National Airport and points in the District of Columbia, and the counties of Prince George and Montgomery in Maryland.

Simply stated, the group-riding limousine service has been employed as a means to transport a group of airline passengers to or from the airport.

In connection with bus service of applicant, the Commission will again quote from portions of the direct testimony at pages 88-90, and 94-99, of Volume I of the Transcript. Applicant's president testified as follows, the questions being propounded by counsel for applicant:

"Q. Now, in addition to its limousine services that you've described, sir, was Airport Transport, Inc., providing any bus service?

A. Yes, sir.

Q. -- for passengers traveling between the Washington National Airport and points in the Washington Metropolitan Transit District--

A. Yes, sir.

Q. On March 22, 1961?

A. Yes, sir.

Q. Would you describe for us the nature and extent of that bus service?

A. Well, ever since we've been in business, we've leased buses from many or most of the bus companies in this area, and we use it during cancellations or diversionary actions or for some special peak period at the airport when we're unable to perform the service with just limousines and taxicabs.

Q. Normally, has the proximity of the Washington National Airport to the City of Washington, more or less demanded or required that you provide basically a limousine service for inter-line passengers?

A. Yes.

Q. Well, again, would you enumerate what situation or what occasion normally prompts the use of bus service by your Company?

A. Well, the majority of this business is caused by cancellations or diversions.

Now, cancellations means that New York is closed in, and therefore, the passengers -- the airlines will notify us, and the passengers will stream out of the airport most likely by the hundreds, and they'll want to be taken to the Union Station, and we then will charter or lease or rent buses, and we will put these passengers in these buses, collect the fares, and take them to the Union Station.

Q. Now, in that connection --

A. That's in regard to the cancellations.

Now, then, you have the diversions where the New York Airport might be closed and the airplane, instead of landing in New York, will land at the Washington National Airport, and then the passengers will come out and want -- or not necessarily New York Airport, but any airport; it might be Philadelphia; it might be Richmond; it might be Norfolk; it might be Friendship. They'll land at the National Airport and we will then be given

notice from the airlines to expect an unusual amount of passengers and prepare ourselves. We then will rent or lease a bus from different operators and provide this service.

Q. You mentioned cancelled and diverted flights. Are there any occasions where you have had large groups traveling together, so to speak, that requested bus service?

A. Oh, yes. We have provided service for large groups, such as football teams and baseball teams, schools.

Now, when schools are out, there'll be an unusually large amount of passengers who request service, and we might rent a bus either to or from the particular school.

Q. Now, in some instances, as I understand it, you are requested to provide charter service to the airlines for such large movements; is that correct?

A. That is correct.

* * *

Q. Were you conducting bus operations on March 22, 1961, such as you previously described --

A. Yes, sir; conducting --

Q. -- both on a charter basis and on an individual basis?

A. Yes, sir. We have been conducting ever since we have been in business.

Q. Now, prior to your company's affiliation with Airline Transport, Inc., in May of 1959, which is, I think, when that company first commenced business, did you normally lease or rent your equipment from Greyhound or Trailways or some other carriers?

A. We rented equipment where we could get it.

Q. After the affiliation with Airline Transport, Inc., in May of 1959, did you obtain your bus equipment from that affiliate company, except on a very rare occasion?

A. Yes, sir.

Q. Mr. Lerner, can you describe for us, sir, the nature of the arrangements under which your bus movements have been operated?

A. Well, we'd rent a bus for a particular movement and we would corral our passengers, collect the fares, in some instances, arrange for their baggage -- the baggage is a very important thing with air-line passengers, as you know-- and we would designate as to where this particular bus would go to.

We were entirely responsible for the transportation of the passengers, the safety of the passengers, the handling of the baggage. We carried special insurance to cover these passengers, to see that they were properly covered.

Where we didn't collect individual fares, we would bill, may have billed, a certain airlines for that particular service. We would collect from the airlines and we would pay the bus company direct.

* * *

Q. In those instances, Mr. Lerner, would you get the request for charter service direct from some airline?

A. Yes, sir.

Q. Then would you obtain the necessary equipment by renting or leasing it from Airline Transport, Inc.?

A. Right.

Q. And who would supervise the loading and the dispatching of that vehicle.

A. Our dispatchers.

Q. And would that be the same on the individual fare movements?

A. Yes, sir.

Q. Who pays the Federal Transportation tax for those movements?

A. Airport Transport. We did.

Q. Who paid the Federal Government any franchise fee on the revenue that was derived from traffic originated at the airport?

A. Airport Transport -- we did -- paid the franchise fees.

Q. Who billed the airlines for the charter movement?

A. Airport Transport, we did.

Q. Who collected it? Who collected for the charter movement?

A. We did.

Q. Who paid the Airline Transport for the equipment which was leased from it?

A. Airport Transport did.

Q. Who collected the individual fares and retained that revenue?

A. Airport Transport did.

Q. When you provided the bus service for individual passengers from the airport to points in the Washington Metropolitan Area Transit District, did you collect the same fare that you would get from your limousine service or not?

A. Yes. In all the cases that I know of; yes."

* * *

The record shows that for the period January 4, 1961, through March 22, 1961, both dates inclusive, applicant made sixty-seven (67) individual bus movements in the transportation of airline passengers to and from the Washington National Airport. The nature and purpose of these movements were dependent upon the circumstances prevailing at the time.

The transportation charges assessed were based upon the nature of the movement. In all instances, however, the transportation was incidental to transportation by aircraft.

An issue raised during the hearing was whether applicant could have been bona fide engaged, as of March 22, 1961, in transportation through the use of leased or rented buses. One of the determinant factors in resolving this issue is whether or not applicant, in its own right, was lawfully engaged in the performance of such transportation.

Prior to March 22, 1961, the transportation of persons by motor vehicle when incidental to transportation by aircraft was exempt from the certificate requirements of the Interstate Commerce Commission. The ownership of the "motor vehicle" was not the controlling factor. The important requirement was that the transportation be performed by motor vehicle. Even though in this case, the applicant may have leased or rented the motor coaches, it did exercise the degree of control over their operations to justify a finding that such operations were in fact conducted by applicant. In arriving at this finding, the Commission has taken into consideration numerous factors, including, but not limited to, the nature and extent of the operations, the fact these operations were conducted by applicant openly and without deceit, the contractual obligations under which these operations were conducted, the party arranging the transportation, and the fact that applicant was lawfully engaged in the performance of such transportation whether or not applicant was the owner of the motor vehicles involved.

The record shows conclusively and the Commission finds that on March 22, 1961, applicant was engaged, by motor vehicle, in the transportation of airline passengers, which transportation was incidental to transportation by aircraft, between the Washington National Airport on the one hand and points in the District of Columbia and that portion of Maryland situated within the Metropolitan District on the other; that applicant was lawfully and bona fide engaged in such transportation on March 22, 1961. This transportation was performed with motor vehicles ranging in size from five (5) passenger vehicles to large motor coaches (buses).

In view of the large area of operations allowable without operating authority under the taxicab exemption, supra, which encompasses a substantial portion of applicant's group-riding limousine service, it becomes necessary to carefully delineate specifically the authority being granted applicant in order to avoid any encroachment upon the exempt status of bona fide taxicab operations. This is essential because to grant an applicant a certificate of public convenience and necessity for the operation of vehicles with a seating capacity of eight (8) passengers or less is to deny in the same breath a non-holder of such a certificate the right to perform the same or similar service. The taxicab industry is entitled to the same protection under the law -- even though operating under a legal exemption -- as are holders of operating authority.

In order that the taxicab industry may operate in a flexible manner as contemplated by the Compact, the Commission has applied a liberal interpretation to the taxicab exemption as set forth in Section 2(d), Article XII, Title II, of the Compact, supra. The extent to which the Commission may control the operations of vehicles with a seating capacity of eight (8) passengers or less, is carefully set forth in the parenthetical clause in the aforementioned section of the Compact. This parenthetical clause reads as follows:

"....(other than a vehicle operated, with the approval of the Commission, between fixed termini on regular schedules)...."

Succinctly stated, the operation of motor vehicles having a seating capacity of eight (8) passengers or less, not including the driver, are exempt from the certificate requirements of the Commission unless such vehicles are operated "between fixed termini on regular schedules."

When this interpretation is applied to the instant application, the conclusion to be drawn therefrom is obvious. The only operations of applicant by motor vehicles with a seating capacity of eight (8) passengers or less coming within the certificate requirements of the Commission are those scheduled operations from the downtown hotels and the downtown terminal to the Washington National Airport. All other operations of applicant by this size vehicles fall within the taxicab exemption, supra.

There was some reference made to an alleged scheduled operation from points in Montgomery County to the Washington National Airport

during the course of the proceeding. This matter may be disposed of by merely pointing out that even though such operations have been conducted by applicant in the past, they were not being conducted on or before March 22, 1961.

Findings of Fact

In discussing the essential and relevant issues the Commission entered its findings along with the discussions and it is not deemed necessary to repeat them here. All statements of fact in this Order, for which a finding was not entered, are hereby adopted by the Commission as additional findings of fact.

Conclusions of Law

The Commission concludes as a matter of law:

1. That applicant, Airport Transport, Inc., of Virginia, was not bona fide engaged in the transportation of passengers by motor vehicle subject to the certificate requirements of the Commission pursuant to Section 4(a), Article XII, Title II of the Compact, on March 22, 1961.
2. That applicant, Airport Transport, Inc., was bona fide engaged in transportation of passengers by motor vehicle subject to Section 4(a), Article XII, Title II of the Compact, in the manner more fully set forth in this Order on March 22, 1961.

All other conclusions reached in other parts of this Order are hereby adopted as additional conclusions of law.

ORDER

THEREFORE, IT IS ORDERED:

1. That certificate of public convenience and necessity No. 7-B be, and it is hereby, granted to Airport Transport, Inc., to transport passengers for hire as follows:

(A) NON-SCHEDULED, IRREGULAR ROUTES, SPECIAL AND CHARTER OPERATIONS:

Passengers and their baggage between the Washington National Airport on the one hand, and points and places in the District of Columbia and that portion of Maryland, situated within the Washington Metropolitan Area Transit District on the other, restricted to passengers and aircraft crews having a prior or subsequent movement by air to or from the Washington National Airport.

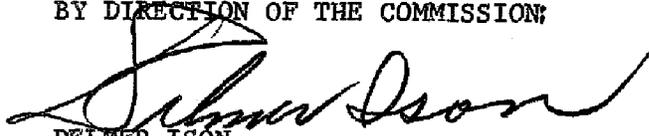
(B) SCHEDULED, IRREGULAR ROUTE OPERATIONS:

Passengers and their baggage from the Statler Hotel, Mayflower Hotel, Willard Hotel, and the downtown airport terminal, Washington, D. C., to the Washington National Airport, restricted to passengers and aircraft crews having a prior or subsequent movement by air to or from the Washington National Airport.

2. That Airport Transport, Inc., shall forthwith file with the Commission appropriate tariffs pursuant to the authority granted herein.

3. That in all other respects, the application of Airport Transport, Inc., and Airport Transport, Inc., of Virginia, be, and the same is, hereby denied.

BY DIRECTION OF THE COMMISSION:



DELMER ISON

Executive Director