

The parties submitted a stipulation of facts in lieu of hearing. The stipulation contains eleven pages and is lodged in the file of this proceeding. Concurrent briefs were filed by both parties, and the respondent filed a reply brief.

Generally, the stipulation reveals that it has been necessary for the AEC to arrange for transportation between its Maryland site and Washington, D. C. This is handled by the annual issuance of an invitation to bid to the local transit industry. Initially, and for several years thereafter, through June 1963, Atwood was the successful bidder and thereby the recipient of the AEC contract. At first, only "official" passengers (that is, those on official AEC business and paid for by the government) were transported. This was done under a charter arrangement. It developed that there was a need for public transportation for "non-official" passengers (that is, people going to and from the AEC site who were not on AEC official business and whose transportation was not paid for by the government). Thus, two classes of passengers required service, which, if handled separately, would result in duplicative service with an attendant higher cost; whereas, a combination of the two classes of passengers by one service would provide a better operation at a lesser cost. Both Atwood and Transit ultimately received authority to render such regular route transportation, initially from the Interstate Commerce Commission and, subsequently, through the "grandfather" process, from this Commission. Since July, 1963, Transit has prevailed on the bidding and has operated the service in the combined manner. Atwood submitted bids for the contract in 1964 and 1965. Atwood has at all times maintained appropriate insurance and tariffs on file with this Commission for the operation. In addition to the submission of bids in the past, Atwood asserts that it holds itself out to provide this service in the future.

Atwood's certificate authorizes:

REGULAR ROUTES:

Passengers and their baggage, and express, mail and newspapers in the same vehicle:

Between Washington, D. C. and the site of the United States Atomic Energy Commission, near Germantown, Maryland, serving no intermediate points.

From Washington over city streets to the District of Columbia-Maryland line, thence over U.S. Highway 240 to junction Maryland Highway 118, thence over Maryland Highway 118 to the site of the United States Atomic Energy Commission, and return over the same route.

The certificate imposes the following obligation:

AND IT IS FURTHER ORDERED and made a condition of this certificate that the holder thereof shall render reasonable, continuous and adequate service to the public in pursuance of the authority granted herein, and that failure so to do shall constitute sufficient grounds for suspension, change or revocation of this certificate.

The following two sections of the Compact contain the pertinent statutory provisions which set forth (a) the basis and procedure for abandonment of service, and (b) our power to suspend or revoke a certificate, or any portion thereof:

4(i). "No carrier shall abandon any route specified in a certificate issued to such carrier under this section, unless such carrier is authorized to do so by an order issued by the commission. The Commission shall issue such order, if upon application by such carrier, and after notice and opportunity for hearing, it finds that the abandonment of such route is consistent with the public interest. The Commission, by regulations or otherwise, may authorize such temporary suspensions of routes as may be consistent with the public interest. The fact that a carrier is operating a route or furnishing a service at a loss shall not, of itself, determine the question of whether abandonment of the route or service over the route is consistent with the public interest as long as the carrier earns a reasonable return."

4(g). "Certificates shall be effective from date specified therein and shall remain in effect until suspended or terminated as herein provided. Any such certificate, may, upon application of the holder thereof, in the discretion of the Commission, be amended or revoked, in whole or in part, or may, upon complaint, or on the Commission's own initiative, after notice and hearing, be suspended, changed, or revoked, in whole or in part, for wilful failure to comply with any lawful order, rule or regulation of the Commission, or with any term, condition, or limitation of such certificate; provided, however, that no certificate shall be revoked (except upon application of the holder) unless the holder thereof wilfully fails to comply, within a reasonable time, no less than 30 days, to be fixed by the Commission, with a lawful order of the

Commission commanding obedience to the rules or regulations or orders of the Commission, or to the terms, conditions, or limitations of such certificate found by the Commission to have been violated by such holder...."

The primary issue in this proceeding is whether respondent's failure to conduct operations under WMATC Certificate of Public Convenience and Necessity No. 14, since June 30, 1963, has been "wilful" within the meaning of the Compact.

This is a case of first impression for this Commission. By virtue of Section 4(g) of the Compact, the Commission may, in its discretion, revoke a certificate, or any portion thereof, upon application of the holder, and the Commission may, after notice and hearing upon a proper showing, suspend a certificate for wilful failure to comply with any provision of the Compact, or with any lawful order, rule, or regulation promulgated thereunder, or with any term, condition, or limitation set forth in a certificate. However, before the Commission may revoke a certificate for the same failure, the requirements of the proviso must be met: that is, there must be a finding of a violation, an order demanding obedience within a reasonable period, and a wilful failure to comply with such order. Thus, it is apparent that revocation of a certificate may be affected only after notice and hearing, and then only for wilful failure to comply with an order issued after a notice and hearing.

There is no question that the respondent has ceased operations in violation of the condition of its certificate. The respondent stated that its interruption of service is temporary, but that in any event its failure to operate is not a wilful act. It further argued that the only reason it has not continued operations under the certificate was because of the award of the contract to the complainant. It would be absurd, it claimed, to require it to run empty buses with little expectation of a return during the current contract period. The respondent, therefore, concluded that the interruption of service could not be characterized as the consequence of its own voluntary acts resulting from the exercise of its own will and business judgment and therefore wilful. Stated another way, Atwood argued that its lack of service has been brought about by matters beyond its control, and that its annual bid in the past and its declaration to bid in the future precludes a finding of a wilful violation of the terms of its certificate.

The issue, then, is whether the failure of the respondent to perform that transportation, as required by terms of its certificate, is wilful. If not, then the complaint must be dismissed. On the other hand, if it is a wilful failure to perform, then the Commission should suspend the certificate, or, in the alternative, issue an order commanding obedience to the terms of the certificate.

At the outset, one fact is undeniable. Atwood can economically operate only if it succeeds in submitting the low bid, and is thereby awarded the contract by the AEC. As previously stated, the transportation of either class of passengers by itself is not economically feasible. Lack of the contract, however, would not legally prevent the operation of the service for "non-government" passengers. Thus, Atwood is in the position of desiring to perform the transportation, is authorized to do so, but, lacking the additional patronage from the AEC, cannot generate sufficient revenues from the "non-official" passengers to economically sustain the operation.

Each party has stated the similarity of language of the pertinent statutory sections of the Compact and the Interstate Commerce Act, and, accordingly, have cited decisions of the I.C.C. as precedent for their respective legal positions. Transit argued that lack of passenger demand and financial drains incurred in maintaining the service were not justification for wilful failure to operate, claiming even bankruptcy was a matter within the control of a carrier. Transit further claims that the authority should not be permitted to lie in a dormant state, readily susceptible of being revitalized by sale or lease. Atwood countered with the argument that the cessation is due to loss of the AEC contract and not to any lack of desire to operate; that there is no demand for the service and it would be unreasonable for the Commission to require Atwood to run empty buses.

Atwood's total cessation of operations can in no way be construed as being "adequate and continuous service," as required by its certificate. And, equally true, is the fact that its decision to cease service was freely and independently conceived. Where a carrier has control over the situation and ceases operation as a result of its own business judgment, such cessation is a voluntary wilful act.

The reason for the "wilful" cessation is a present lack of need for service. If the need for Atwood's service no longer exists, it would logically follow that the pertinent authority should be revoked. Revocation of Atwood's pertinent authority, however, would leave Transit as the only carrier holding the regular route authority necessary to transport both classes of passengers in the same vehicle. The AEC would accordingly be forced to discontinue its bid practice and rely solely on Transit's contract offer. The competitive practice would be eliminated. This is not in the public interest. Rather than revoke the Atwood authority, the Commission is of the opinion that the pertinent portion of the Atwood certificate should be suspended, subject to reinstatement, if and when Atwood is the successful bidder on a future contract with the AEC.

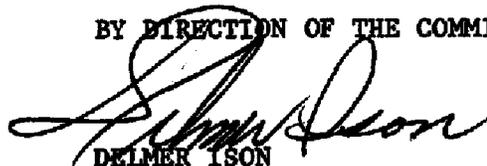
Transit's concern over the possibility of revitalization of the Atwood authority by sale or lease is premature and in any event is at least alleviated by the suspension order here. Any such attempt by Atwood in the future would present Transit with ample opportunity to raise its objections at that time.

The suspension ordered herein is specifically and exclusively limited to the regular route, common carrier transportation service between Washington, D. C. and the United States Atomic Energy Commission, near Germantown, Maryland; in the absense of any allegation and proof that respondent is and has not been rendering charter operations, the action herein shall not affect respondent's certificated authority to originate charter operations from points on the suspended route, or the area within one mile thereof.

THEREFORE, IT IS ORDERED that that portion of the Certificate of Public Convenience and Necessity (No. 14), heretofore issued to and held by Atwood Transport Lines, Inc., authorizing regular route transportation between Washington, D. C. and the United States Atomic Energy Commission near Germantown, Maryland, be, and it is hereby, suspended.

IT IS FURTHER ORDERED that Atwood Transport Lines, Inc., be, and it is hereby, directed to cease and desist from performing any regular route transportation thereunder while such suspension is in effect.

BY DIRECTION OF THE COMMISSION:



DELMER ISON
Executive Director