WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 930

IN THE MATTER OF: Served February 20, 1969

Order of Investigation of )
Fares of D. C. Transit ) Docket No. 194
System, Inc. )

By Order No. 911, served January 23, 1969, the Commission dismissed the application of Joel Yohalem for reconsideration of Order No. 900, for the reason that it was not timely filed within the statutory time period prescribed by Section 16, Article XII, of the Compact. In Order No. 912, we dismissed, on the same grounds, an application filed by the Democratic Central Committee, also seeking reconsideration of Order No. 900.

Both applicants have now filed a motion for waiver of Rule 8-01 and acceptance of the dismissed document. The rule requested to be waived provides that all pleadings must be filed at the office of the Commission "during normal business hours," and that any such papers "must be received... within the time limit...for such filing." Normal business hours of the Commission are "8:15 A.M. to 4:45 P.M." Rule 1-02.

We have considered these motions long and carefully. We are loathe to stand on technicalities, particularly where a denial of the relief sought has the effect of foreclosing an appeal. Nonetheless, after thoroughly considering all aspects of the problem, we have concluded that the motions should not be granted.

First, we are not even certain that it lies within our power to grant them. It is clear beyond question that the thirty-day period within which applications for reconsideration must be filed is mandatory and cannot be extended by us. The question then arises as to the status of an attempted filing following the close of regular business hours of the Commission. In the present instance, this Commission has a rule specifically

requiring the filing of pleadings during normal business hours. It has a further rule establishing those hours as 8:15 A.M. to 4:45 P.M. The law is well-established that where such rules exist, a filing following the close of business hours is untimely and must be rejected. Hilker & Bletsh Co. v. U. S., 210 F 2d 847 (7th Cir. 1954), Stebbins Estate v. Helvering, 121 F. 2d 892 (D. C. Cir. 1941); Lewis-Hall Iron Works v. Blair, 23 F. 2d 972 (D. C. Cir. 1928); Cf. Valley Broadcasting Co. v. FCC, 237 F. 2d 784 (D. C. Cir. 1956). There is a real question, therefore,whether, at the close of business hours on the thirtieth day, the statutory period expired, leaving us powerless to grant an extension. In other words, it could well be that, in these circumstances, we cannot waive our rule as requested.

We need not resolve that question with finality, however, since we have concluded that, even if we had the power to grant a waiver, we would not do so. As we stated earlier, we do not take this position simply as a result of rigid and mindless adherence to rules. Rather, we have considered the implications of our action and believe it to be required in the public interest.

We note, initially, that movants have offered no grounds whatever for granting a waiver of the business hours rule. Their position essentially is that they in fact filed within the prescribed hours. We know that this is not the case. Our Executive Director informs us that, knowing of this significant deadline, he was careful to check the time by telephone before closing the office and that the office was not in fact closed until a few moments after 4:45 P.M. 1/

Then, say movants, "If we were late, we were only a little late and a waiver should be granted." This argument certainly has an emotional appeal and we are drawn toward accepting it. Its implications are undesirable, however. At some point the

1/ We should make it clear that there is no dispute that the documents in question were filed before midnight on the deadline date. It happens that a Commission employee observed them lying on the floor of the Commission offices when he passed that point almost an hour after closing time. He left them there and they were found when the office was opened the following morning.

clock strikes and the filing is untimely and unacceptable. If we grant the present motion, where no substantive grounds whatever for doing so are urged, we would, in good conscience, have to grant any similar motion in future cases. Thus, the rule would then be that filings must be made during business hours, or "shortly thereafter." Our practical experience leads us to realize that, whatever the deadline, instances will arise when it is just missed. Thus, "shortly thereafter" could very readily become an ever-lengthening period with the eventual result that on any deadline date, it would be necessary to check the Commission office at midnight to see if filings had been made prior to that time. Since we issue a large volume of orders, there would be many such deadline dates. This, we believe, would create a thoroughly impractical situation.

Other practical reasons preclude granting the relief sought. Under Article XII, Section 16 of the Compact, the filing of an application for reconsideration automatically stays the order in question. If a filing after the office closed were acceptable, the Commission and other parties would be unaware of such filing, and its effect upon the order in question, until the following day. This could lead to considerable confusion as to the status of the directives contained in an order on the day following a "late" filing. When an order pertains to subjects such as fare increases, such confusion is highly undesirable.

We are concerned, in the first instance, by the apparent inequity of precluding an appeal because a filing was late by a small margin. On further consideration, however, we reflect that movants were afforded a full thirty days in which to file the documents in question. Both applications are relatively brief in length and do not appear to have required any lengthy background study. This is particularly true in the case of the application of the Democratic Central Committee. Their application for reconsideration consists of two pages and simply attempts to incorporate by reference material set forth in other applications for reconsideration. It could have been, and obviously was, prepared in less than fifteen minutes. That counsel was careless enough to have let this simple task go until the twelfth hour, thus missing the deadline, does not create any need for relief on equitable grounds.

The application of Mr. Yohalem is somewhat more lengthy and reflects more actual labor. Nonetheless, the work could clearly have been done well within the period necessary for a timely filing. Indeed, no claim to the contrary is made by either applicant in their present motions.

We note that the pleading filed by the Central Committee styles itself in part as a motion for reconsideration of Order No. 912. We have not considered the pleading in this light since we do not believe that a motion for reconsideration lies with regard to an order which itself denies reconsideration. Otherwise, there would never be an end to our consideration of a given order.

We do note, in passing, the Central Committee's claim that the order denying reconsideration (Order No. 912) was invalid under Article VI of the Compact because it was not participated in by the Chairman. Article VI does not appear to be applicable to Order No. 912 since it did not relate to matters "solely within the District of Columbia", but covered interstate fares as well. In any event, the Chairman's non-participation was due to his absence from the country. He participated in Order No. 900 itself, and he participates in the Commission's present action. The point requires no further discussion.

THEREFORE, IT IS ORDERED:

1. That the Motion for Waiver filed by Joel Yohalem on January 24, 1969, be, and it is hereby, denied.

2. That the Motion to Reconsider Order No. 912 and Motion for Waiver filed by the Democratic Central Committee, et al., on January 30, 1969, be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:

Melvin E. Lewis

MELVIN E. LEWIS
Executive Director