

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1979

IN THE MATTER OF:

Served April 11, 1979

Investigation to Determine the)
Nature of Uncertificated Operations,))
if Any, by DIAMOND TOURS, INC.,)
between Points in the Metropolitan)
District)

Case No. MP-78-10

The Commission, pursuant to Title II, Article XII, Section 13(b) of the Compact, issued Order No. 1866 on July 27, 1978, instituting an investigation in the above-captioned matter, scheduling a public hearing in furtherance of the investigation, and directing production of certain corporate books, papers and records.

By Order No. 1874, served August 21, 1978, the Commission granted a petition for leave to intervene filed by The Gray Line, Inc., 1/ and cancelled the public hearing pending further order inasmuch as Diamond provided the necessary documents as directed, and all parties of record expressed a willingness to enter into a consent order if possible.

The Commission herein makes certain findings of fact and enters this order with the consent of the parties thereto, directing Diamond to comply with its terms and provisions. Order No. 1866 set forth four allegations of possible Compact violations, each of which will be discussed below, together with the positions taken by the parties.

The Commission had been informed that Diamond was operating an all-day sightseeing tour picking up passengers at motels along U. S. Highway 1 in Arlington, Va., which would be contrary to the Compact, Title II, Article XII, Section 4(a), inasmuch as Diamond does not hold authority to originate sightseeing tours in Virginia. Diamond admits engaging in improper pick-up service in Virginia for the period February 1, 1978, through late July 1978, but asserts that, since being advised by the Commission that it did not hold the requisite authority to do so, it ceased to perform and operate the service. Diamond also states that

1/ The operating rights of The Gray Line, Inc., have been purchased by Atwood's Transport Lines, Inc., as approved by Order No. 1912, served November 6, 1978.

it will not reinstitute such operations unless granted appropriate authority by the Commission. Diamond's rate for transporting sightseeing passengers picked up at Virginia motels was the same charge assessed for a tour originating in the District of Columbia.

Present management took control of Diamond's operations in September 1977, and continued the Virginia motel service that had been performed by the prior owners (as established by records Diamond filed with the Commission), in the belief that transportation from Virginia to the normal tour starting point in the District of Columbia, at no extra charge, could be performed without additional authority.

We find that Diamond has provided unauthorized transportation for hire as alleged. The non-interpretive transportation from Virginia to the District of Columbia must be viewed as part of a total transportation package and an invasion by Diamond of a sightseeing market which the carrier holds no authority to serve. The Commission, however, acknowledges the mitigating circumstances involved and Diamond's cessation of uncertificated service upon notification, and, therefore, concludes that appropriate remedial action should be limited to directing Diamond to operate in compliance with the terms of its certificate.

The second allegation of Order No. 1866 is that Diamond has been charging \$3.50 per person for an all-day sightseeing tour, an amount not covered in its tariff, in violation of Title II, Article XII, Section 5(d) of the Compact. Diamond states that its Tariff No. 5, effective June 5, 1975, captioned "Tour Shuttle Service" sets forth the charge in question.

A review of the tariff indicates that the tour shuttle originating in the District of Columbia is properly covered by Diamond's tariff. However, it is not clear that the shuttle service provided pursuant thereto has always been interpretive in nature, as opposed to a mere pickup and dropoff operation. This latter type of operation would not qualify as a sightseeing or pleasure tour within the ambit of Diamond's certificate. Diamond is cautioned that all "shuttle" transportation must include lectures provided by licensed guides. The guides (or drivers giving lectures) must have the appropriate District of Columbia "31c" guide license as required by the District of Columbia Code (1973 Edition), Title 47, Section 2338 and Metropolitan Police Department Regulations, Article 2, Section 4, thereunder.

The third allegation questions whether Diamond has operated in conjunction with Holiday Tours, Inc. Holiday Gift Shops or Holiday Travel Club, Inc., or has allowed others to operate under the penumbra of Diamond's certificate, contrary to the Compact, Title II, Article XII, Section 3. Diamond asserts that it does not now, and has not in the past, allowed others, including any of the Holiday entities, to operate under

its certificate or to use Diamond's name. It further states that it has leased buses with drivers from Holiday Travel Club, Inc., in the past, but it does not contemplate doing so in the future, and whenever it does lease equipment Diamond will use drivers on its own payroll. Diamond will place its own insurance on leased buses. In addition, it is Diamond's responsibility to be certain that any leased buses are in good, safe operating condition. Appropriate directives concerning drivers and insurance will be entered.

The Commission's final alleged Compact violation involves transportation service for the Department of the Navy between certain points in the Metropolitan District which would violate the mandate of Title II, Article XII, Section 4(a) of the Compact. Diamond had sought temporary authority to perform charter service throughout the Metropolitan District, but its application therefor was denied by Order No. 1837, served April 27, 1978.

Diamond states that it did not operate pursuant to the terms of the contract underlying its application for temporary authority, but instead provided service from April 27, 1978, to July 22, 1978, on a monthly basis on the belief that it did not need Commission authority to serve the Navy under the rationale of the decision of the United States District Court for the District of Columbia in Executive Limousine Service, Inc. v. Adams, (D.C.D.C. C.A. No. 76-1210, May 3, 1978).

The Commission, an intervening party in that proceeding, believes that the decision, presently on appeal to the United States Court of Appeals for the District of Columbia Circuit, Nos. 78-1623 and 78-1624, is premised on an erroneous principle of law, and, in any event, the decision has absolutely no application to Diamond's service for the Department of the Navy. The Executive Limousine case involves a jurisdictional dispute between the Commission and the Federal Aviation Administration concerning a carrier holding a certificate issued by the Commission, whereas the situation with Diamond vis-a-vis the Department of the Navy involves a carrier providing transportation for hire without appropriate Commission authority. Title II, Article XII, Section 4(a) specifies that "[n]o 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" Clearly, Diamond's after-the-fact rationalization does not excuse or explain transportation service provided without certification in violation of the Compact. 2/

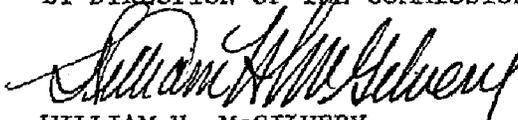
2/ Diamond admits serving Navy as early as April 27, 1978, whereas the Executive opinion was not printed in the Washington Law Reporter until June 9, 1978.

We therefore conclude that Diamond provided unauthorized transportation for hire for the Department of the Navy as alleged in Order No. 1866, and that reliance on the cited District Court case does not excuse uncertificated operations, especially in the face of the Commission's denial of the temporary authority application to provide charter service throughout the Metropolitan District pursuant to contract with the Department of the Navy. Diamond will be directed not to perform any operations within the Metropolitan District unless and until an appropriate certificate of public convenience and necessity is in effect.

THEREFORE, IT IS ORDERED:

1. That Diamond Tours, Inc., is hereby directed to comply with the terms of the Compact and to refrain from providing any service between points in the Metropolitan District not authorized in Certificate of Public Convenience and Necessity No. 2.
2. That Diamond Tours, Inc., is hereby directed to use only drivers on its own payroll for operating both its own and leased equipment.
3. That Diamond Tours, Inc., is hereby directed to ensure that any leased equipment be included in its own insurance coverage and that said equipment be in proper working order as defined in Commission Regulation Nos. 100-110.
4. That Diamond Tours, Inc., is hereby directed to provide interpretive lectures on its sightseeing operations by drivers or guides properly licensed in accordance with District of Columbia law, District of Columbia Code (1973 Edition), Title 47, Section 2338, and Metropolitan Police Department Regulations issued thereunder.
5. That, except to the extent ordered herein, the investigation of Diamond Tours, Inc., instituted by Order No. 1866, served July 27, 1978, is hereby discontinued.

BY DIRECTION OF THE COMMISSION:


WILLIAM H. MCGILVERY
Executive Director