

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2168

IN THE MATTER OF:

Served November 24, 1980

Application of INTERNATIONAL)
LIMOUSINE SERVICE, INC., for)
Temporary Authority to Conduct)
Charter Operations Pursuant to)
Contract with USDA-APHIS)

Case No. AP-80-22

By application filed September 3, 1980, as supplemented on September 16, 1980, International Limousine Service, Inc. (International), seeks temporary authority to conduct charter operations pursuant to contract with the United States Department of Agriculture-Animal and Plant Health Inspection Service (APHIS), transporting APHIS employees and persons traveling on official business with APHIS together with mail in the same vehicle with passengers, between the Department of Agriculture South Building, Independence Avenue, S. W., Washington, D. C., the Federal Building, 6505 Belcrest Road, Hyattsville, Md., and the Presidential Building, 6526 Belcrest Road, Hyattsville, Md. APHIS has actually contracted with the United States Small Business Administration (SBA) for this service, and SBA has, in turn, subcontracted with International. Inasmuch as APHIS will have supervisory responsibility for the contract and make the payments thereon directly to International, we will consider APHIS to be the contracting agency for the purpose of this proceeding.

In Order No. 2143, served September 25, 1980, the Commission set the application for public hearing on the matter of fitness after determining that the sought service was being performed pursuant to temporary authority held by Beltway Limousine Service, Inc., which was due to expire September 30, 1980, 1/ and that there were serious

1/ See Order No. 2116, served June 6, 1980, granting Beltway 117 days temporary authority. The Compact, Title II, Article XII, Section 4(d)(3) provides that temporary authority may not be granted for more than 180 days. In its protest to the application, Beltway indicated a willingness to seek extension of its temporary authority.

allegations raised concerning applicant's fitness. The Compact, Title II, Article XII, Section 4(d)(3), provides that:

[t]o enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need, the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service.

While the issue of fitness is one of the elements to be considered in any application, it is weighed in light of the urgency for service in a temporary authority proceeding. Unlike proceedings in which a certificate of public convenience and necessity is sought, fitness is not a separate statutory criterion in temporary authority cases. 2/ Inasmuch as the Commission could not make a fitness determination on the evidence of record, and Beltway's grant of temporary authority was capable of being extended for up to 63 more days, the matter of fitness was set for hearing on an expedited basis. 3/

In a related proceeding, Case No. CP-80-04, International filed an application to provide service under a contract with APHIS pursuant to WMATC Special Certificate of Public Convenience and Necessity No. 1 and Commission Regulation No. 70. In that proceeding Commission Regulation No. 70-06 required the Executive Director to make a determination (a) of the applicant's fitness and (b) of the conformance of the proposed operation with the provisions of Regulation No. 70. The Executive Director found that in light of the Commission's action taken in Order No. 2143 and the pending public hearing, the issue of fitness could not be resolved favorably to applicant, and the application was denied subject to applicant's right to seek reconsideration. 4/

At the fitness hearing, the primary issue was the allegation that International had been conducting operations outside the scope of its certificated authority for a number of years and had continued to

2/ See Order No. 1716, served June 23, 1977, at pages 6-7.

3/ Effective October 1, 1980, APHIS commenced operating its own shuttle service leasing vehicles from applicant and employing drivers formerly on the payroll of applicant.

4/ See Order No. 2150, served October 6, 1980. Applicant applied for reconsideration on November 3, 1980, and that application is now pending.

do so until the latter part of September 1980. In fact, International's Authorization No. SP-38-01, which was limited to authority to provide specified charter operations pursuant to contract, expired March 31, 1980. Other than a grant of temporary authority, issued March 5, 1980, which expired August 31, 1980, 5/ International has held no authority from this Commission since March 31, 1980.

Initially, the Commission took notice of Order No. 1633, served December 2, 1976, in a proceeding 6/ in which International first came before the Commission seeking a grant of authority to provide service for a United States government agency. A certificate was granted to International, but the carrier was admonished ". . . to become familiar with the provisions of the Compact and the Commission's rules, regulations and requirements thereunder."

Subsequently, the Commission staff introduced uncontroverted evidence, approximately 200 service orders for the period June 1, 1980, through September 30, 1980, indicating service performed by International in a van-type vehicle seating in excess of nine persons, transporting passengers between points within the Metropolitan District in for-hire service. Applicant admits performing similar uncertificated operations for a number of years.

The president of Executive Limousine Service, Inc., a regulated carrier, testified at the hearing that over the last three or four years he has had conversations with the president of International concerning work being performed by International transporting "large group tours." Executive's president stated that he had informed International's president that van operations between points in the Metropolitan District must be certificated.

The president of International testified that, following the hearing in 1976 resulting in Order No. 1633 (and the admonition to become familiar with Commission procedure), he employed an attorney to represent him before the Commission. He further stated that he recognizes his obligation to become familiar with the Compact and Commission rules, regulations and orders, and admits to inadequate efforts in the past. Concerning recent operations, International's president stated that he operated 11 vehicles, using four vehicles under contract with the Department of Health, Education and Welfare -- Health Care Finance Administration and one vehicle under contract with the Equal Employment Opportunity Commission. The excess vehicle capacity was used upon request for charter work outside the scope of

5/ See Order No. 2090, served March 5, 1980.

6/ Application No. 957, Docket No. 345.

any certificated or authorized service. ^{7/} The witness asserted that he thought International had the necessary certification to provide all service requested. When he learned otherwise, in late September 1980, he ceased using his vans. He contended that he had no conversation with Executive's president concerning allegations of illegal operations.

The witness stated that he has tried to comply with all Commission requirements since 1976 and that any violations were unintentional and inadvertent. He had thought his attorney had made the necessary arrangements with the Commission, but apparently his attorney was not completely familiar with International's operations. Accordingly to him, there was a breakdown of communications between attorney and client. To eliminate any possibility of future problems International's president avers that he will more thoroughly study the Compact and Commission rules and regulations, continue the services of his attorney and retain the services of a second law firm to perform the following services:

(1) Investigate and analyze all of the transportation services performed by or proposed by International Limousine Service, Inc., and to ascertain all of the requirements of the Washington Metropolitan Area Transit Regulation Compact and the rules and regulations of the Washington Metropolitan Area Transit Commission, and to see that all the necessary documents and papers are filed, all the certifications, licenses, and approvals are granted and the Compact and the rules and regulations are complied with in connection with the performance of the transportation services.

(2) For the next 12 months conduct a monthly investigation of all the transportation services being provided by International Limousine Service, Inc., at the time of the investigation and assure that the requirements of the Compact, the rules and regulations are being complied with, with respect to all of the transportation services.

^{7/} At various times, International's equipment fluctuated up to 14 vehicles. Applicant's president stated that he never purchased equipment with the sole intention of using it for general charter work.

(3) Analyze reports from Mr. Fogliarino (applicant's president) to Mr. Aulette (applicant's attorney) and to this office of every new contract or transportation service undertaken by International Limousine Service, Inc., as soon as the contract or service is proposed or initiated.

(4) Alper, Schoene, Horkan and Mann (the second law firm) will report to the Commission on behalf of International Limousine Service, Inc., each quarter furnishing such information as is directed by the Commission, including but not limited to a list of all revenue vehicles being operated by International Limousine Service, Inc., a financial statement of the transportation operations of International Limousine Service, Inc., a statement of each contract under which International Limousine Service, Inc., is providing transportation services, and a statement of each type of transportation service being furnished by International Limousine Service, Inc., showing the dollar volumes of income received from the service and the vehicles being used in the performance of the service.

(5) Mr. Aulette and Alper, Schoene, Horkan and Mann will cooperate in preparation of the necessary petitions and filings for certifications and authorizations required by the Commission.

Mr. Aulette testified that since applicant's initial appearance before the Commission he has prepared and filed applications and other documents necessary to acquire various operating rights. He has also obtained temporary authority and certificates from the Interstate Commerce Commission for applicant. He stated that, during preparation of all applications, he conferred with International's president and other employees. The witness stated that, in 1979, he apprised International's president of the need to apply for new authority for each separate contract and the alternative possibility of seeking a grant of authority for general charter work. He added that he was not aware that the carrier was using vans to conduct charter and sightseeing service when not being used for certificated operations. Upon learning of those illegal operations, he counseled applicant to cease performing sightseeing and transfer service in vans.

The evidence of record clearly establishes that applicant committed violations of the Compact by providing for-hire transportation between points in the Metropolitan District without appropriate certification. International has had and continues to have an

affirmative duty to become familiar with the terms of the Compact and the Commission's rules, regulations and orders thereunder. The carrier has been specifically admonished in 1976 to meet this duty but obviously did not. Whether or not there was a failure of communication between International and its counsel, the carrier itself is under the obligation to adhere to the mandates of the Compact. In fact, testimony elicited at the hearing shows that the carrier's counsel explained the need to obtain certification for each separate transportation service to be offered, or for general charter authority, in 1979, yet International continued to provide uncertificated service obviously outside the scope of WMATC Certificate of Public Convenience and Necessity No. 38 or authorization issued pursuant to WMATC Special Certificate of Public Convenience and Necessity No. 1. A serious question is raised by the fact that International has been operating at least 11 vehicles in the recent past despite the fact that authorized operations called for the use of only five vehicles. Even given the need for backup equipment, it is apparent that International maintained equipment specifically for use in uncertificated charter operations.

Given the magnitude of illegal operations (approximately 200 instances in four months), whether or not the carrier was actively soliciting such service, the fact that the carrier was officially warned to adhere to the Compact and Commission rules and regulations in 1976, that International's attorney explained the need to have each and every transportation service certificated, that Commission orders concerning International's scope of authority have been served on the carrier as well as its attorney, and that the carrier was operating an excessive amount of equipment as compared to the scope of authorized operations, we are led to the inescapable conclusion that International's violations were knowing and willful, rather than resulting from ordinary negligence or inadvertence. Cf. Inland Freight Lines v. U.S., 191 F.2d 313, (10th Cir. 1951), U.S. v. John Henricks, Inc., 388 F.2d 677 (5th Cir. 1968).

If International were now providing service pursuant to Commission authorization, Title II, Article XII, Section 4(g) of the Compact, would undoubtedly be invoked. That section states, inter alia, that

[a]ny such certificate, may, . . . on the Commission's own initiative, after notice or 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 . . .; provided, however, that no certificate shall be revoked . . . unless the holder thereof wilfully fails to comply within a reasonable time . . . with a lawful order of the Commission commanding obedience to the rules or regulations or orders of the Commission. . . .

International will be directed to cease and desist all operations subject to regulation by the Commission unless and until it holds a certificate, authorization issued under Regulation No. 70 or temporary authority issued by the Commission.

As a result of the evidence of record and for the above-stated reasons, the Commission concludes that International is not fit to provide temporary authority service pursuant to a contract with APHIS, notwithstanding the cessation of illegal operations or the proposed plan to ensure compliance with the Compact and Commission rules, regulations and orders. To award temporary authority to this applicant under these circumstances would make a mockery of the regulatory scheme adopted by the signatories. We approve, in passing, the efforts outlined for insuring future compliance, and adherence to such efforts will weigh heavily in future determinations regarding International's fitness. It will be incumbent upon applicant in any future cases, affirmatively to demonstrate its compliance efforts and the ability of its operating personnel to understand and comply with the mandates of the Compact and our rules, regulations and orders thereunder.

This application will be denied.

THEREFORE, IT IS ORDERED:

1. That the application of International Limousine Service, Inc., in Case No. AP-80-22, is hereby denied.

2. That International Limousine Service, Inc., cease and desist from providing any service subject to regulation by the Commission unless and until appropriate authority therefor is issued by the Commission.

BY DIRECTION OF THE COMMISSION, COMMISSIONERS SCHIFTER AND SHANNON:


WILLIAM H. MCGILVERY
Executive Director