

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2292

IN THE MATTER OF:

Served December 9, 1981

Investigation of Alleged Over-)
charges By and Order to Show Cause)
Directed Against JACK B. DEMBO)

Case No. MP-81-03

By application (styled petition) filed November 9, 1981, respondent Jack B. Dembo seeks reconsideration of Order No. 2258, served October 8, 1981. That order, inter alia, found respondent to have committed 16 knowing and wilfull violations of the Compact and the Commission's rules, regulations and orders thereunder and directed that certain sanctions be imposed.

Respondent initially objects to the Commission's findings of fact, characterizing the evidence in this case as "inconclusive". We disagree. The record contains substantial and convincing documentation (including respondent's admissions) of a wilfull and consistent pattern of wrongdoing.

It is also asserted that our jurisdiction does not extend to most of the taxicab trips at issue because the transportation was not "from one signatory to another within the confines of the Metropolitan District" as mandated by Title II, Article XII, Section 1(c) of the Compact. Respondent concedes, as he must, that if Washington National Airport is located in the Commonwealth of Virginia, no jurisdictional problem exists. However, that airport, according to respondent, is actually situated in the District of Columbia.

The land underlying the passenger terminals at Washington National Airport apparently is east of where the high water mark on the Virginia shore of the Potomac River was situated on January 24, 1791. Assuming this premise, respondent contends that original sovereignty over this land was with the State of Maryland, subsequently ceded to the United States for creation of the District of Columbia and technically still within the boundaries of the District of Columbia.

This argument relies on a misunderstanding of the Act of October 31, 1945, ch. 443, 59 stat. 552 (hereinafter the 1945 Act). Section 102 of the 1945 Act provides that the land in question ". . . is hereby ceded to and declared to be henceforth within the

territorial boundaries, jurisdiction, and sovereignty of the [Commonwealth] of Virginia: provided, however, That concurrent jurisdiction over the said area is hereby reserved to the United States." (Emphasis in original.) Other sections of the 1945 Act, including Section 107 upon which respondent heavily relies, merely specify how and by whom certain aspects of that concurrent jurisdiction should be exercised. Nothing in the 1945 Act purports to retain any sovereignty or jurisdiction over the subject land for the District of Columbia, and, unlike respondent, we do not view the United States and the District of Columbia as interchangeable sovereigns.

A careful reading of United States v. Herbert Bryant, Inc., 543 F.2d 299 (D.C. Cir. 1976), supports our position. Therein, the Court specifically noted that "Section 101 of the 1945 Act established the new boundary between the District of Columbia and Virginia for law enforcement (and perhaps other) purposes . . ." ^{1/} In that decision the Court also said that while being in the District of Columbia and being east of the 1791 high-water mark formerly ". . . were one and the same requirement; after 1945 the former no longer included all of the latter." ^{2/} Hence, we find no support for the proposition that Washington National Airport should be considered a part of the District of Columbia.

Similarly, respondent's reliance on Montgomery Charter Service, Inc. v. WMATC, 325 F.2d 230 (D.C. Cir. 1963) is also misplaced. Here, there is no contention, as there was in Montgomery Charter, that respondent was engaged in operations subject to the certification requirements of the Compact. What is involved here is the knowing and wilfull violation, on a consistent and egregious basis, of our rules, regulations and orders promulgated under Title II, Article XII, Sections 1(c) and 8 of the Compact dealing with rates, charges and related practices on interstate taxicab trips within the Metropolitan District. Title II, Article XII, Section 15 of the Compact clearly confers on the Commission the "power to perform any and all acts . . . as it might find necessary or appropriate to carry out the[se] provisions of . . ." the Compact. The exercise of that power, as directed in Order No. 2258, is both within the discretion of the Commission and warranted by the respondent's course of conduct.

^{1/} 543 F.2d at 306. Emphasis in original; footnote omitted.

^{2/} Id. at 305.

The Commission concludes that Order No. 2258 is in accord with the evidence and applicable law.

THEREFORE, IT IS ORDERED that the above-referenced application for reconsideration is hereby denied.

BY DIRECTION OF THE COMMISSION, COMMISSIONERS CLEMENT, SCHIFTER AND SHANNON:


GREGORY PAUL BARTH
Acting Executive Director