

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 3186

IN THE MATTER OF:

Served June 28, 1988

JAPAN TRAVELERS SERVICE, INC., )  
Suspension and Investigation of )  
Revocation of Certificate No. 74 )

Case No. MP-88-09

The certificate of insurance on file for Japan Travelers Service, Inc. ("JTS"), expired on April 24, 1988. By Order No. 3156, served April 26, 1988, and incorporated herein by reference, JTS's Certificate of Public Convenience and Necessity No. 74 was suspended. This proceeding was instituted pursuant to the Compact, Title II, Article XII, Section 4(g) to determine whether Certificate No. 74 should be revoked. JTS was directed within 30 days to comply with Title II, Article XII, Section 9(a) of the Compact and Commission Regulation No. 62 and was further directed to file within the same 30-day period an appropriate certificate of insurance or other evidence to show good cause why Certificate of Public Convenience and Necessity No. 74 should not be revoked.

In response, JTS filed a letter and a proposed Agreement of Settlement on May 9, 1988. JTS admits to not having proper insurance as required by the Commission. It also admits to receiving Commission Order No. 3156 which provided notice of possible revocation of Certificate No. 74. JTS states that the recent rise in motor vehicle liability rates forced the sale of the vehicle used in its WMATC operations. JTS argues that the increase in premiums ". . . constitutes a special and unusual circumstance of sufficient consequence as to warrant what might be a departure from the Commission's past practice [of revoking certificates of carriers that lack valid insurance coverage]." JTS proposes as an alternate remedy a settlement between it and the Commission. According to JTS this practice is followed by the Interstate Commerce Commission ("ICC").

In an attempt to alleviate concerns that the Commission may have concerning dormancy, JTS suggests that a two to three year cap be placed on the non-operational status of JTS which would arise as a result of the settlement. JTS states ". . . that Virginia does not suspend certificates on account of dormancy, and that the ICC likewise has not suspended a certificate on this ground for a number of years."

The proposed Agreement of Settlement, if entered into by the Commission, would have the following effects:

- 1) Certificate No. 74 would remain in force even though no valid certificate of insurance is on file with the Commission (and, in fact, JTS may lack any auto liability coverage) and
- 2) the Commission would be required to refrain from instituting other or further regulatory or legal action so long as JTS refrains from offering or providing transportation subject to the Compact

The proposed Agreement of Settlement is unacceptable. In effect JTS asks the Commission to contract away its legal obligation to enforce the Compact and Commission rules and regulations both administratively and through the courts. If the Commission abdicates its enforcement powers, it ceases being of use to the riding public. The rise in insurance rates has taken its toll on a number of carriers. JTS is not the first nor, unfortunately, is it likely to be the last carrier to feel the effects of the increases. JTS's claim of special and unusual circumstance is untenable.

By instituting this investigation the Commission has given notice to JTS that Certificate No. 74 may be revoked. The basis for revocation is not dormancy but JTS's admitted failure to maintain adequate insurance. Concern for the safety of the riding public and the availability of compensation to victims if an accident should occur, highlight the basic need for adequate insurance protection. However, we note that Certificate No. 74 imposes a service obligation on JTS which it apparently elects not to fulfill.

Since JTS finds it useful to compare ICC practice with WMATC procedure, we will note that, as regards insurance or lack thereof by a carrier, practices of the two Commissions appear to be identical. In Florence Lane - Revocation of Permit, 52 M.C.C. 427 (1951), the ICC determined that insurance shall be maintained at all times and that the ICC would not allow a certificate or permit to remain in force unless its insurance requirements were met, regardless of the existence of an extended period of non-operational status. Recently issued certificates of public convenience and necessity and orders indicate that the ICC adheres to this determination. Certificate No. MC-167255 Sub 1 issued to Washington Tours, Inc., on January 25, 1988, states "[t]his authority will be effective as long as the carrier maintains compliance with the requirements pertaining to insurance coverage for the protection of the public (49 CFR 1043) . . . ." When a carrier's certificate of insurance lapses, the ICC opens an investigation . . . to decide whether, in accordance with Section 10925 of the Act, the operating rights should be revoked due to the carrier's noncompliance with the Act and with the Commission's regulations." In re Freeport Transportation, No. MC-163659, slip op. at 1 (ICC Feb. 23, 1988). Once such an investigation is initiated a carrier is ordered within a specified time either to comply or file a statement showing

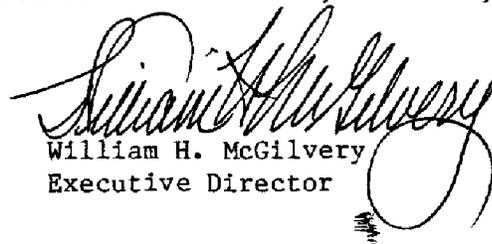
good cause why its operating rights should not be revoked. Failure to do either results in revocation of ICC authority. See In re Coleman Coach Corporation d/b/a Coleman Coaches, No. MC-169186, slip op. at 1 (ICC Dec. 1, 1987); In re J&J Bus Service, Inc., No. MC-142454, slip op. at 1 (ICC Nov. 2, 1987).

Although this investigation is based on violation of the Compact, Title II, Article XII, Section 9 and Commission Regulation No. 62, both dealing with security for the protection of the public, as opposed to dormancy, dormancy would become an issue if JTS's proposal were accepted. The concern over dormancy of a certificate was explored by the ICC in Florence Lane. In that case the ICC concluded "the existence of unused dormant permits or certificates constitutes a threat to other carriers who might invest money in equipment and facilities to provide needed service." Id. at p. 434. The existence of dormant WMATC certificates in addition to new carriers entering the market to meet the demand created by the "temporary" cessation of operations by certificate holders would be inconsistent with the Compact's objective.

For these reasons and having thoroughly reviewed and considered the evidence put forth by JTS, we determine that Japan Travelers Service, Inc., has failed to show good cause why its certificate should not be revoked. Thus, pursuant to the authority of Title II, Article XII, Section 4(g) of the Compact, Certificate of Public Convenience and Necessity No. 74 will be revoked for failure to comply with the Compact and a lawful regulation of the Commission. This revocation is without prejudice to JTS's filing an application for WMATC operating authority at such time as its finances warrant.

THEREFORE, IT IS ORDERED that Certificate of Public Convenience and Necessity No. 74 of Japan Travelers Service, Inc., is hereby revoked.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:

  
William H. McGilvery  
Executive Director