

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3519

IN THE MATTER OF:

Served June 20, 1990

Application of MADISON LIMOUSINE)
SERVICE, INC., for Special)
Authorization to Conduct Charter)
Operations Pursuant to Contract)
with PAN AMERICAN WORLD AIRWAYS,)
INC.)

Case No. CP-90-01

By Order No. 3496, served May 2, 1990, the Commission's Executive Director, acting pursuant to Commission Regulation No. 70-07, issued an initial determination denying the above-captioned application. In doing so, the Executive Director noted that the issue of applicant's fitness, a matter to be determined pursuant to Regulation No. 70-06, was then pending before the full Commission in Case No. FC-90-02, a formal complaint alleging that Madison Limousine Service, Inc. (Madison or applicant), was currently providing, without the necessary authority, the very service for Pan Am that is the subject of this application. For this reason, the Executive Director refused to find applicant fit. Such a finding might have been argued to be pre-emptive with regard to the same issue then pending before the Commission.

On May 31, 1990, applicant Madison timely filed an application for reconsideration of Order No. 3496. Therein, applicant argues that:

. . . (1) the Order failed to include certain determinations required by the Regulations; (2) Madison is fit to perform the transportation for which it seeks a special certificate in this proceeding and the transportation is in conformance with Regulation No. 70; (3) the Order improperly relied on a Protest filed in this proceeding and a Formal Complaint filed in another proceeding which are erroneous and misleading and which were made in bad faith; and (4) the public convenience and necessity will be served by the prompt issuance of the requested special certificate. [Application for Reconsideration, pp. 1,2.]

By Order No. 3510, served June 4, 1990, in Case No. FC-90-02, the Commission, inter alia, found that Madison was providing the Pan Am service in violation of the Compact without the necessary authority and that the violation was wilful. That order is included herein by reference.

Madison's argument that Order No. 3496 failed to include certain determinations required by Regulation No. 70-06 is essentially predicated on the statement in that order that "[t]he Commission's

Executive Director cannot find applicant fit to conduct these operations when this issue is pending before the Commission." Madison is correct that Order No. 3496 did not, in so many words, determine applicant to be "fit" or "unfit." The very point of Order No. 3496 was that the Executive Director deferred on an issue that was then pending before the Commission. This was forthrightly explained in Order No. 3496. Nonetheless, this provides Madison with adequate grounds to seek reconsideration of Order No. 3496 and to have the denial of its application reviewed by the full Commission. Upon review the Commission finds Madison unfit to receive the additional authority sought in this case. This finding is based upon the wilful violation found in Order No. 3510 and is fully consistent with the Commission's decision therein to provide Madison an opportunity to rehabilitate itself with regard to compliance fitness. We have examined Madison's other arguments and find them to be without merit.

Finally, we note that Madison objects to the protest against this application filed by Air Couriers International Ground Transportation Services, Inc., trading as Passenger Express, because the protest was filed out of time. We presume that Madison also objects to Passenger Express' reply to Madison's application for reconsideration because Passenger Express would not have been entitled to file a reply if it had been excluded from the case as a result of untimely filing. Passenger Express moves the Commission to accept the late-filed protest.

The Commission hereby grants the motion of Passenger Express. Passenger Express, as a carrier currently holding authority to provide the Pan Am service here at issue, has an obvious interest in this case. Passenger Express' interest in this subject was formally expressed on March 27, 1990, by the filing of a formal complaint against Madison. Given Passenger Express' previously demonstrated level of interest in this subject, we are inclined to accept the assertion in the motion that the untimely filing was an inadvertent error of counsel who had been instructed by his client to protest the application. While this action preserves Passenger Express' formal party status in this case, the Commission would have reached this same decision for the same reasons without Passenger Express' protest and reply.

THEREFORE, IT IS ORDERED:

1. That the application of Madison Limousine Service, Inc., for reconsideration of Order No. 3496 is hereby granted.
2. That upon reconsideration the application of Madison Limousine Service, Inc., is hereby denied.

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



Annette B. Garofalo
Acting Executive Director