

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3810

IN THE MATTER OF:

Served August 30, 1991

Formal Complaint of AIR COURIERS)
INTERNATIONAL GROUND TRANSPORTATION)
SERVICES, INC., Trading as)
PASSENGER EXPRESS Against MADISON)
LIMOUSINE SERVICE, INC.)

Case No. FC-90-02

This is a complaint proceeding filed by Air Couriers International Ground Transportation Services, Inc., trading as Passenger Express (Complainant), against Madison Limousine Service, Inc. (Madison or Respondent), pursuant to Title II, Article XII, Section 13 of the Washington Metropolitan Area Transit Regulation Compact¹ and the Commission's regulations issued thereunder. The complaint, filed March 27, 1990, alleges:

Madison does not hold a special authorization or certificate of public convenience and necessity from this Commission authorizing it to transport Pan Am flight officers and attendants between Dulles International Airport and points in the District of Columbia.

On or before December 12, 1989, Madison initiated motor carrier operations between Dulles International Airport and points in the District of Columbia transporting flight officers and attendants between Dulles International Airport and points in the District of Columbia, and continues to engage in such operations on an on-going basis at this time.

The Pan Am flight officers and attendants have been and are being transported by Madison for compensation between points in the Washington Metropolitan Area Transit District in violation of Article IV, Section 4, of the Washington Metropolitan Area Transit Regulation Compact.

The complaint seeks an order by the Commission commanding Madison to cease and desist from conducting operations in violation of the Compact and such other relief as the Commission may consider appropriate.

On April 26, 1990, Madison filed an answer to the complaint requesting dismissal, asserting certain defaults by Complainant, but not responding to the specific allegations of illegal operations. The

¹ The Compact was amended during the course of this case, and the complaints section was renumbered. However, the substance of the section remains the same as it relates to this case. See Compact (as amended) Title II, Article XIII, Section 1.

answer, however, does concede that an agreement was made between Madison and Pan Am in early December 1989 to enter into a contract on December 15, 1989, for transportation service.

On June 4, 1990, the Commission issued Order No. 3510, which, in pertinent part, provided as follows:

Madison holds WMATC Authorization No. SP-132-03, which authorizes:

CHARTER OPERATIONS PURSUANT TO CONTRACT with Air France transporting crew members of Air France, together with mail, express, and baggage in the same vehicle with passengers, between Washington Dulles International Airport, on the one hand, and, on the other, hotels located in the District of Columbia.

RESTRICTED: to transportation in vehicles with a manufacturer's designed seating capacity of 15 passengers or less, including the driver.

Authorization No. SP-132-03 is narrowly drawn and does not authorize the service here at issue.²

* * *

Respondent has not satisfied the complaint. It has neither denied nor refuted the central allegation of unauthorized operations. Commission Rule No. 13-02 requires that an answer to a complaint must admit or deny each material allegation. Any reasonable reading of Madison's answer of April 26, 1990, shows it to be an admission against interest that tends to establish the central material fact in the case.

* * *

Based on the record in this case, there is no doubt that Respondent has, and is, engaged in transportation for hire of persons between points in the Metropolitan District, within the purview of the Compact, Title II, Article XII, Section 1(a) and without a certificate of public convenience and necessity as required by the Compact, Title II, Article XII, Section 4(a). The Commission so finds.

* * *

Because of Respondent's carrier status, experience, and certified familiarity with the Compact and its

²On March 27, 1990, Madison filed Case No. CP-90-01 for authority to conduct the Pan Am service at issue. In support of the application, Madison filed a contract with Pan Am effective December 11, 1989, together with amendments dated February 5, 1990, and March 21, 1990. The application was denied by Order No. 3496, served May 2, 1990.

requirements, the Commission finds the violation to be wilful.

* * *

Respondent's motion to dismiss the complaint, filed as part of its answer of April 26, 1990, is hereby denied. Respondent is hereby directed to cease and desist from transportation covered by the Compact, except to the extent such transportation is authorized by Authorization No. SP-132-03. The Commission has determined that suspension or revocation of Authorization No. SP-132-03 is neither warranted nor appropriate at this time, and we do not at this time make a finding that Respondent is unfit to operate the service authorized therein.

The Commission does, however, make a tentative finding that the wilful violation found in this case may render Respondent unfit to receive any grant of additional authority. If continued, such violations would tend to show an unwillingness or inability of Respondent to comply with the requirements of the law and could, for that reason, necessitate the revocation of Authorization No. SP-132-03.

* * *

This proceeding will remain open. At the end of 90 days, Respondent will certify to the Commission in detail the steps taken to correct past mistakes, to establish prospective compliance fitness, and the status of its compliance with the Compact and the Commission's requirements thereunder.

On February 5, 1991, the Commission issued Order No. 3607, which, in pertinent part, provided as follows:

On September 20, 1990, Madison's president filed an unverified letter stating that Madison had discontinued serving Pan Am at Dulles and would consult with the Commission before entering into any new contracts.

On September 24, 1990, complainant's vice president filed an affidavit attesting that (1) complainant did not receive a copy of Madison's letter until one was sent it by the Commission; (2) Madison had discontinued serving Pan Am between Dulles and Washington, DC; (3) Madison continued to transport Pan Am flight crews between Dulles and Andrews; (4) Madison continued to transport Aeroflot flight crews between Dulles and unspecified points in Washington, DC; and (5) Madison continued to transport Lufthansa flight crews between Dulles and the Shoreham Hotel in Washington, DC.

On November 1, 1990, Madison's president filed an affidavit attesting that (1) Madison had ceased all transportation for Pan Am at Dulles; (2) Madison

transports Aeroflot flight crews within the confines of Dulles; (3) Madison provides transportation for British Airways solely within the Commonwealth of Virginia

On November 8, 1990, complainant's president filed an affidavit attesting that (1) Madison actively transported Pan Am flight crews between Dulles and Andrews until on or about October 31, 1990; (2) Madison continues to transport Lufthansa flight crews between Dulles and a hotel in Washington, DC; and (3) Madison is actively transporting flight crews of All Nippon Airways (ANA) between Dulles and the JW Marriott Hotel in Washington, DC.

On November 15, 1990, Madison's president filed an affidavit attesting that (1) Madison ceased all ground transportation for Pan Am flight crews on July 6, 1990; (2) Madison provides "ground transportation for Lufthansa flight crews within the Commonwealth of Virginia and only on very rare occasions in response to a specific request has any transportation been provided into Washington, [DC]. No such transportation is provided on a regular or scheduled basis"; and (3) Madison provides ground transportation for ANA flight crews within the Commonwealth of Virginia and denies providing any such transportation to the JW Marriott Hotel in Washington, DC.

The Commission then assigned the case for oral hearing to resolve the issue of whether, when, where, and in what manner Madison has transported, or is transporting, flight crews of Pan Am, Aeroflot, Lufthansa, and All Nippon. An oral hearing was held at the offices of the Commission on June 5, 1991, at which all parties were afforded full opportunity to present evidence and argument. Complainant and Madison have filed post-hearing briefs.³

DISCUSSION AND CONCLUSIONS

Our Order No. 3510, issued June 4, 1990, found that Madison had, and was at that time, engaged in unauthorized transportation; that such action was wilful, with full knowledge of the Compact and its requirements. Madison was directed to cease and desist from unauthorized transportation and to report in 90 days the actions taken to bring itself into compliance with the Compact and Commission regulations.

³On May 3, 1991, the Commission acting pursuant to the new Compact, issued to Madison a Certificate of Authority, in place of its former Certificate of Public Convenience and Necessity. See Compact, Title II, Article XI, Section 6. On or about May 23, 1991, pursuant to the new Certificate, Madison filed new tariffs, including tariffs and related contracts for the transportation of crews for All Nippon Airways, Air France, and Lufthansa, and since about May 30, 1991, has been authorized to perform this service.

Turning first to the alleged unauthorized service transporting Pan Am flight crews between Dulles Airport (VA) and Washington, DC, hotels, the record includes copies of invoices paid by Pan Am to Madison between June and November 1990.⁴ In June, there are shown 250 trips between Dulles and the Shoreham Hotel, Washington, DC, totaling \$11,035. In July 1990, there are shown 94 trips between Dulles, National Airport (VA), and Andrews Air Force Base (MD) and Washington, DC, hotels, totaling \$4,198. No movements are shown in August or September, but in October 1990, 27 trips were made totaling \$1,162, and in November three trips totalling \$122.

Prior to December 1990, All Nippon berthed its plane crews at the Key Bridge Marriott in Virginia.⁵ Thereafter, flight attendants continued to stay at the Key Bridge Marriott, but cockpit crews were berthed at the JW Marriott (DC). This transportation (from Dulles) had been provided by Madison, and, when the change in hotel arrangements was made, Madison continued to deliver crew members to both hotels. The extent of this service is not entirely clear, but appears to have involved six flights per week and continued to the present. In February 1991, Madison invoiced All Nippon \$7,736.22 for this service, including the additional transportation to the downtown Marriott.

The uncontradicted testimony of the Operations Manager of Lufthansa is that, from June 1990 to about the end of October, eleven flights a week were made into Dulles; dropping back to seven per week since. Flight crews are berthed at the Holiday Inn Crown Plaza, Washington, DC, and have been since June 1990. Madison has been, and is being, used exclusively for this service. No evidence was submitted to show the total invoiced amounts, but the foregoing testimony warrants a finding that between June 4, 1990, and May 1991, Madison made about 415 trips in this service. Madison, on brief, concedes that it failed to comply with the Commission requirements with respect to the transportation for Lufthansa.

The Washington Flight Manager for Aeroflot testified that his company has three flights a week to Dulles in the summer, and two per week in the winter. Beginning on December 11, 1990, Aeroflot berthed its crews during layovers at downtown Washington, DC, hotels and has continued this practice. Madison was, and is, still used for this service. The invoiced compensation is not of record, but this testimony warrants a finding that between December 11, 1990, and May 1991 Madison made about 48 trips in this service. On brief, Madison does not deny these facts.

It is also alleged that Madison is in violation of current regulations which require a tariff on file for its services to Aeroflot (Regulation No. 55). The owner and President of Madison admitted that it had no contract or tariff on file for Aeroflot, and, although its general tariff provided for a fare of \$85, Madison is

⁴Certified by Pan Am after a search of its files as being all such documents for the period June 5, 1990, to March 5, 1991.

⁵Service solely within the Commonwealth of Virginia is not within the jurisdiction of the Commission. Compact, Title II, Article XI, Section 3(g).

actually charging Aeroflot \$70 per trip. The record warrants a finding that this transportation, without a contract or tariff on file, and at a rate other than provided in its general tariff, was continuing at the time of the hearing in this case.

It is conceded that Madison, having transported All Nippon flight attendants to the Key Bridge Marriott (VA), then continued on to transport the cockpit crews to the JW Marriott (DC). Madison asserts that this extra transportation was without charge and that since the Commission's jurisdiction is only over "for-hire" transportation, no violation of the Compact occurred. The testimony of Madison's President, however, makes it clear that Madison billed for the transportation into the District of Columbia and expected to be paid. A dispute with All Nippon over the extra charge resulted in a payment of \$6,853.39, rather than the \$7,736.22 billed by Madison. That the service was, and was intended to be, transportation "for-hire" is obvious, and Madison's inability to collect its disputed charge does not change the nature of the service or eliminate the jurisdiction of the Commission.

With respect to the Pan Am service after June 4, 1990, Madison contends that it was provided only at the specific request of Pan Am on an ad hoc basis and falls within the exception to the Commission's rules as promulgated in its Order No. 2559 (In re Matter of Interpretation of Title II, Article XII, Section 1(c) of the Compact⁶, Case No. MP-83-01, served May 24, 1984). Service subsequent to June 4, 1990, is asserted to have been "bona-fide taxicab service."

In Order No. 2559, we held that the exception for certain vehicles having a seating capacity of 8 persons or less, excluding the driver, applied when engaged in performing a bona-fide taxicab service. That service was defined as follows:

- (a) transportation intended in good faith to be provided only between points selected at will by the person or persons hiring the vehicle in which such transportation is provided;
- (b) conducted in a vehicle subject to the exclusive use of the passenger or single party of passengers hiring the vehicle for the entire time such vehicle is under hire;
- (c) priced at rates based on the duration and/or distance of the transportation rendered; and
- (d) conducted in vehicles engaged solely in rendering or performing transportation as described in subparagraphs (a), (b), and (c) above.

The service performed by Madison after June 4, 1990, is manifestly not bona-fide taxicab service, nor did Madison so treat its operations. The service was an unbroken continuation of the contract operation, under an agreement with Pan Am, for the scheduled

⁶See Compact (as amended) Title II, Article XI, Sections 1(b), 2, and 3(f). See also Commission Regulation No. 51-09.

transportation of flight crews between the Virginia airports and Washington, DC, involving fixed termini. Charges for the service were fixed charges arranged by contract, not based on the duration and/or distance of the trip. These operations required a certificate from the Commission. Madison's attempt at this late date to dress these operations in the guise of taxicab service is without merit.

Upon consideration of the record herein, and our findings of fact based upon the evidence submitted by the parties, we find:

(1) Madison knowingly and wilfully continued to transport Pan Am crews as late as November 6, 1990, some five months after the cease and desist order entered June 4, 1990, in violation of the Compact and regulations. A total of 374 such trips are of record.

(2) On September 20, 1990, Madison informed the Commission that it had discontinued serving Pan Am at Dulles. In October 1990, however, Madison performed 265 trips for Pan Am between National Airport (VA) and Andrews Air Force Base (MD), as well as one trip from Dulles (VA) to the Shoreham Hotel (DC).

(3) In November 1990, Madison transported Pan Am crews between the Hyatt Hotel (DC) and Andrews Air Force Base (MD) and National Airport (VA).

(4) In December 1990, six months after issuance of the cease and desist order, Madison commenced serving All Nippon, in unauthorized transportation of cockpit crews from Dulles (VA) to the downtown Marriott (DC). At least 120 such trips are indicated by the evidence.

(5) On and after June 4, 1990, while the cease and desist order was in effect, until May 1991, when the new Certificate of Authority was issued, Madison conducted unauthorized transportation of Lufthansa crews from Dulles to Washington, DC; a total of about 415 trips being indicated by the evidence.

(6) In December 1990, six months after issuance of the cease and desist order, Madison commenced unauthorized transportation of Aeroflot crews from Dulles to Washington, DC. At least 48 such trips were made prior to issuance of the new Certificate of Authority in May 1991.

(7) Madison has, since December 11, 1990, and presently continues, to transport Aeroflot crews between Dulles and Washington, DC, without proper tariff authority and at rates unauthorized by its general tariff.

On June 4, 1990, our Order No. 3510 clearly and unequivocally apprised Madison of its wilful violations of the Compact and Commission regulations, and ordered such violations terminated at once. Madison not only failed to end its wilful violations with respect to Pan Am service, but continued its unauthorized service at least until November 1990. Madison's letter of September 20, 1990, certifying to termination of service to Pan Am at Dulles was knowingly misleading, in light of its equally unauthorized service to Pan Am in October at National Airport and Andrews Air Force Base. Madison's subsequent initiation of unauthorized service to All Nippon and

Aeroflot was wilful and with full knowledge of the outstanding cease and desist order. It is undisputed that Madison knew throughout the entire period that its only authority was for the transportation of Air France crews. At the time the cease and desist order was entered, Madison was engaged in unauthorized transportation of Lufthansa crews, a service which it made no effort to terminate and which continued unlawfully for nearly one year until the Certificate of Authority was issued.

On this record, we cannot find that Madison Limousine Service, Inc., is fit, willing, and able to conform to the provisions of the Compact and conform to the rules, regulations, and requirements of the Commission.

Upon complaint or the Commission's own initiative, the Commission, after notice and hearing, may suspend or revoke all or part of any Certificate of Authority for wilful failure to comply with a provision of the Compact or an order, rule, or regulation of the Commission. Compact (as amended) Title II, Article XI, Section 10(c). We find that Madison has wilfully and repeatedly failed to comply with the provisions of the Compact and the orders and regulations of the Commission.

We conclude that Certificate of Authority No. 132 issued to Madison Limousine Service, Inc., on May 3, 1991, should be revoked.

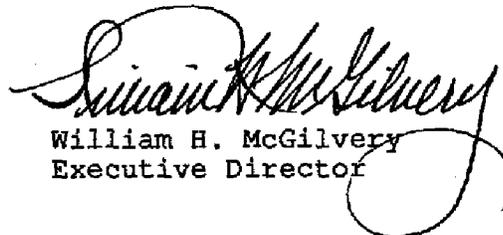
Consistent with our practice in two-carrier formal complaint cases, we assessed both the Complainant and the Respondent an amount preliminarily estimated to cover the expense of investigation that the Compact⁷ requires the carrier to bear. In this case we assessed each carrier \$750. It is also our practice in such cases that the final assessment is made against the carrier that does not prevail -- in this case, Madison. The direct costs of this proceeding -- the expenses for the transcript and the Administrative Law Judge -- came to \$1,250. Accordingly, Respondent will be assessed an additional \$500, and complainant's \$750 will be refunded.

THEREFORE, IT IS ORDERED:

1. That Madison Limousine Service, Inc., is hereby assessed the additional sum of \$500 and is directed to deliver that amount to the office of the Commission no later than Monday, September 16, 1991.

2. That Certificate of Authority No. 132 issued to Madison Limousine Service, Inc., is hereby revoked, effective immediately.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS SCHIFTER AND SHANNON:


William H. McGilvery
Executive Director

⁷See Compact (as amended) Title II, Article XIV, Section 1. Also see Order No. 3601, served January 17, 1991, in Case No. MP-91-05.