

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4225

IN THE MATTER OF:

Served December 16, 1993

Investigation of Unauthorized)
Operations and/or Tariff)
Violations of O. OLUOKUN, INC.,)
Trading as MONTGOMERY COUNTY LIMO)

Case No. MP-93-43

This investigation was initiated on September 23, 1993, in Order No. 4173. O. Oluokun, Inc., trading as Montgomery County Limo (OOI or respondent), was ordered to produce copies of its vehicle manifests and customer invoices for transportation performed during the period beginning June 1, 1992, and ending on the date Order No. 4173 was issued. OOI also was ordered to show cause why a civil forfeiture should not be assessed for knowing and willful violations of the Compact and regulations thereunder.

OOI filed its show cause response on October 29, 1993. The response included a request for oral hearing. On November 12, 1993, OOI withdrew its request for oral hearing and produced 19 invoices. The invoices establish a bare minimum of six trips, on six different days, between points in the Metropolitan District prior to the date Order No. 4173 was issued. The actual number of such trips likely is much higher. According to OOI, "the vast majority of transportation services provided to respondent's clients do not involve the issuance of invoices." The invoices also document a seventh trip, occurring after Order No. 4173 was issued.

The six trips were between points in Montgomery County, MD, on the one hand, and Dulles and National Airports, on the other; the seventh was between Washington, DC, and Dulles Airport. Transportation between those points clearly is within our jurisdiction. Respondent held no certificate of authority when those trips were performed. Transportation of passengers for hire between points in the Metropolitan District without a certificate of authority is a violation of Title II, Article XI, Section 6 of the Compact, unless the transportation qualifies for exemption under Article XI, Section 3.

OOI's response suggests that it attempted to structure its operations to qualify for exemption under Section 3(f). That section excludes from our jurisdiction "matters other than rates, charges, regulations, and minimum insurance requirements relating to vehicles and operations described in" Article XI, Section 1(b), including "other vehicles that perform a bona fide taxicab service, where the . . . other vehicle . . . has a seating capacity of 9 persons or less, including the driver . . . and provides transportation from one signatory to another within the Metropolitan District." Under Commission Regulation No. 51-09(c), such service must be "priced at rates based on the duration and/or distance of the transportation

rendered." The rates also must meet the requirements of the local licensing jurisdiction.¹ In OOI's case, those requirements are set by the Maryland Public Service Commission (MDPSC).

Prior to this investigation, respondent's MDPSC tariff and advertising flyers listed airport transfer rates which produced fares that varied according to the selected destination but not according to the selected route or according to the amount of time required to traverse the selected route. Respondent claims it believed that its rates did vary according to duration or distance because they "varied according to whether travel was to National Airport [or] Dulles Airport." Thus "[t]he variance in rates resulted directly from the variance in the durations and/or distances to these destinations."

We do not regard as reasonable respondent's professed construction of Regulation No. 51-09(c). Under respondent's reasoning, the exception would swallow the rule. All 8-passenger vehicles would qualify for exemption under Section 3(f), except in the extraordinary situation of a carrier charging a single fare to all destinations. Respondent's purported interpretation was anticipated in Order No. 2559, the precursor to Regulation No. 51-09. According to that order, other vehicles that perform a bona fide taxicab service are quite simply those vehicles which "behave like taxicabs but are not taxicabs." Order No. 2559 at 8.

[A] taxicab charges rates based on the duration and/or distance of the transportation rendered. Put another way, the charge is not a flat rate for service where the operator of the vehicle bears the risk of unforeseen delays or deviations from the most direct route. Instead, the charge for service rendered bears some relation or proportion to the factors of time and/or distance so that the risks of unforeseen delays and/or deviations fall on those who hire the vehicle.

Id. at 9 (emphasis added).

Respondent's airport transfer rates placed the risk of delays and deviations on respondent, not those who hired respondent's vehicles. Thus, those rates were not duration and/or distanced based within the meaning of Regulation No. 51-09(c). In any event, respondent has conceded the point. The Commission therefore holds that the six trips preceding the issuance of Order No. 4173 violated Article XI, Section 6 of the Compact.

The seventh trip occurred after Order No. 4173 was issued and after respondent began publishing a revised MDPSC tariff with rates based on duration and distance. The invoiced amount for the trip in question, however, does not comport with that tariff. Invoice #37 shows that on or about October 19, 1993, respondent charged \$45 for one limousine trip from Washington, DC, to Dulles Airport. Under respondent's revised tariff, passengers pay at the hourly rate for trips over one hour and at the mileage rate for trips of one hour or less. The fare for limousine service at the hourly rate can never equal \$45 because the minimum hourly rate of \$45 only applies when the service rendered exceeds one hour. Applying respondent's distance

¹ In re Title II, Art. XII, § 1(c) of the Compact, No. MP-83-01, Order No. 2559 at 16 (May 24, 1984).

rate of \$10 for the first three miles and \$2.50 for each additional mile, a fare of \$45 equates with a distance traveled of 17 miles. The shortest straight-line distance between Dulles and DC is approximately 18 miles. The roadway mileage is obviously greater.

Respondent's failure to charge the appropriate fare is a violation of the Compact, Article XI, Section 14(c), which constrains a carrier to charge only the applicable rate or fare specified in its tariff. Charging fares calculated at some other rate ultimately may lead to undue discrimination and preferential treatment. In the absence of strict enforcement of the filed rate:

past experience shows that billing clerks and other agents of carriers might easily become experts in the making of errors and mistakes in the quotation of rates to favored [customers], while other [customers], less fortunate in their relations with carriers and whose [business] is less important, would be compelled to pay the higher published rates.

Maislin Indus., U.S., Inc. v. Primary Steel, Inc., 497 U.S. 116, 110 S. Ct. 2759, 2766-67 (1990).

Article XIII, Section 6(f) of the Compact provides that a person who knowingly and willfully violates a provision of the Compact shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation and that each day of the violation constitutes a separate violation. "Knowingly" means with perception of the underlying facts, not that such facts establish a violation.² "Willfully" does not mean with evil purpose or criminal intent; rather, it describes "conduct marked by careless disregard whether or not one has the right so to act."³ Employee negligence is no defense.⁴ The record is replete with evidence of respondent's careless disregard, not the least of which is the tariff violation -- committed after Order No. 4173 was issued and while respondent was still under investigation.

When respondent applied for operating authority in April 1992, respondent's representative, Mr. Oluokun, swore on its behalf that respondent was familiar with and would comply with the requirements of the Compact and rules and regulations thereunder. The record in that proceeding indicates that Mr. Oluokun met with the Commission's General Counsel on April 6, 1992, to discuss the application. General Counsel informs us that during the meeting Regulation No. 51-09 and Order No. 2559 were discussed at great length. The application was granted in part on the basis of respondent's averment of compliance. Now, respondent would feign ignorance. Respondent cannot have it both ways.

² In re Madison Limo. Serv., Inc., No. AP-91-39, Order No. 3914 (Mar. 25, 1992) (on reconsideration).

³ United States v. Illinois Cent. R.R., 303 U.S. 239, 242-43, 58 S. Ct. 533, 535 (1938).

⁴ 58 S. Ct. at 535.

The evidence suggests respondent is playing fast and loose with the facts. The record in this proceeding discloses that Mr. Oluokun met with General Counsel on September 7, 1993, to discuss the tariff filed by respondent with the MDPSC in April 1992, and obtained by General Counsel from the MDPSC on August 27, 1993. That tariff essentially is the same as the tariff filed in connection with respondent's 1992 WMATC application, without certain "Shuttle Service Rates." We are advised that during the September 7 meeting, Mr. Oluokun stated he thought it was "okay" to operate a limousine service in the Metropolitan District without a certificate of authority as long as no shuttle service was offered. On October 29, 1993, to counter our findings in Order No. 4173 that the rates in respondent's advertising flyers did not conform entirely to the rates in its tariff, respondent submitted two revised tariffs allegedly filed with the MDPSC prior to the dates on which the tariff violations were found to have occurred. Both contain the admittedly unlawful shuttle rates.

Respondent's compliance with Order No. 4173 leaves much to be desired. Respondent's first filing in this proceeding was a motion for enlargement of time to respond. The motion claimed that more time was needed in part because the "requested materials" were "voluminous." We do not see how nineteen invoices reasonably can be described as voluminous. Moreover, several appear to be missing. The invoice numbers begin with 14 and end with 38. Invoice Nos. 16, 20, 24, 28, 30, and 32 were not included in the November 12 production.

In light of the foregoing, we find that the seven violations were knowing and willful. We will assess a forfeiture of \$500 per violation for a total of \$3,500. Respondent will be directed to cease and desist from providing transportation from one signatory to another within the Metropolitan District unless and until the assessment is paid.

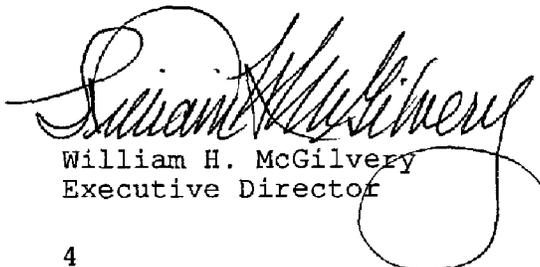
We note that respondent filed a new application for a certificate of authority on November 12, 1993, and that the application was rejected and returned on November 15 for noncompliance with our filing requirements. In the event respondent submits an application acceptable for filing, no certificate will be issued, if any, prior to the date the assessment is paid.

THEREFORE, IT IS ORDERED:

1. That O. Oluokun, Inc., trading as Montgomery County Limo, is hereby directed to pay to the Commission by money order, certified check, or cashiers check, within thirty days from the date of this order, the sum of three thousand five hundred dollars (\$3,500).

2. That O. Oluokun, Inc., trading as Montgomery County Limo, shall cease and desist from providing transportation from one signatory to another within the Metropolitan District unless and until respondent has paid the civil forfeiture assessed herein.

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


William H. McGilvery
Executive Director