

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4609

IN THE MATTER OF:

Served June 7, 1995

Investigation of Unauthorized)
Operations of CAPITOL BUS RENTAL,)
INC., Trading as CAPITOL TOURS)

Case No. MP-95-04

This investigation was initiated in Order No. 4480, served January 24, 1995, to determine whether respondent's operations in the Metropolitan District in October and November of 1994, as evidenced by respondent's drivers' logs,¹ were in violation of the Compact. The order directed respondent to show cause by February 23, 1995, why a civil forfeiture should not be assessed with respect to those operations. Respondent filed a response on February 17, 1995.

At respondent's request, a hearing was scheduled for May 31, 1995.² Respondent was assessed \$400 in estimated hearing expenses pursuant to the Compact, Article XIV, Section 1, and directed to remit that sum to the Commission by May 18, 1995.³ The hearing was cancelled upon respondent's failure to timely comply.⁴ The matter is thus ripe for adjudication.

SUMMARY OF EVIDENCE

As a commercial motor carrier subject to federal motor carrier safety regulations, respondent is required to maintain hours-of-service records for each of its drivers in accordance with 49 C.F.R. Part 395. Nine such records were seized by the FHWA during a safety inspection of respondent late last year⁵ and forwarded to this Commission. Eight of the nine records describe transportation between

¹ The Commission obtained the logs from the Federal Highway Administration (FHWA) pursuant to a cooperative agreement under Public Law No. 89-170. See 49 C.F.R. Part 388 (1986) (governing cooperative agreements with states).

² Order No. 4585.

³ Id.

⁴ Order No. 4602.

⁵ FHWA cited respondent for 143 safety violations and shut respondent down for willful noncompliance with federal regulations. Washington Post, p.F3 (Dec. 9, 1994); Washington Times, p.C7 (Dec. 9, 1994).

points solely in the Metropolitan District,⁶ with five trips occurring in October 1994 and three in November. The driver's log for October 15, 1994, for example, contains the following entry: "From: Washington, D.C." "To: Mt. Vernon, Va. (And Return)". In the opinion of the FHWA inspector, these records "indicate point to point transportation within the jurisdiction of WMATC."⁷

DISCUSSION AND CONCLUSION

A person may not engage in transportation subject to the Compact unless there is in force a certificate of authority issued by the Commission authorizing the person to engage in that transportation.⁸ With few statutory exceptions, none of which pertain here, the Compact applies to the transportation for hire by any carrier of persons between any points in the Metropolitan District.⁹

The eight hours-of-service records maintained by respondent's drivers in the course of transporting passengers between points solely in the Metropolitan District are prima facie evidence of respondent's violation of the Compact on eight separate occasions. Respondent has adduced no evidence to the contrary and has asserted no defense, other than to suggest in its response to the show cause order that any such violations were "inadvertent". The response downplays the number of local trips respondent performs but admits such trips occur. We

⁶ The ninth record describes a charter operation between a point in the Metropolitan District and a point outside the Metropolitan District. The log for November 12, 1994, shows the driver deadheaded from DC to Temple Hills, MD, proceeded from there to Franklin Mills, PA, returned to Temple Hills, MD, and deadheaded back to DC. Such a trip is not within our jurisdiction. WMA Transit Co. v. Owens, No. 38, Order No. 321 (Oct. 22, 1963).

⁷ 49 C.F.R. § 388.4 provides:

Information that comes to the attention of an employee of the Federal Highway Administration in the course of his/her official duties of investigation, inspection, or examination of the property, equipment, and records of a motor carrier or others, pursuant to 49 U.S.C. 504(c), and that is believed to be a violation of any law or regulation of the State pertaining to unsafe motor carrier operations and practices, shall be communicated to the appropriate State authority by an official of the Federal Highway Administration.

Pursuant to WMATC Regulation No. 64 the Commission has adopted the federal motor carrier safety regulations as its own. Thus, a violation of 49 C.F.R. Part 395, "Hours of Service of Drivers," constitutes a violation of WMATC Regulation No. 64.

⁸ Compact, tit. II, art. XI, § 6(a).

⁹ Compact, tit. II, art. XI, § 1(a).

therefore find respondent violated the Compact on eight occasions in late 1994 by transporting passengers for hire between points in the Metropolitan District without a certificate of authority.

Article XIII, Section 1(d), of the Compact provides that if the Commission finds a respondent has violated a provision of the Compact the Commission shall issue an order to compel the respondent to comply with the Compact. A cease and desist order shall issue accordingly.

Article XIII, Section 6(f), 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. The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.¹⁰ The term "willfully" does not mean with evil purpose or criminal intent but purposely or obstinately, with intentional disregard or plain indifference.¹¹

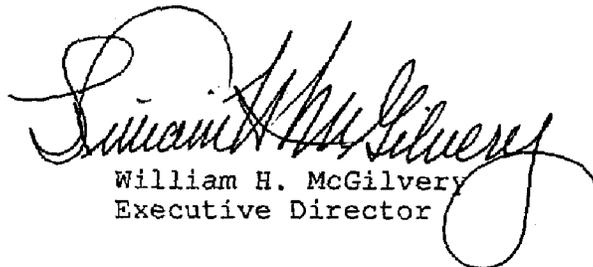
Respondent's status as a one-time WMATC carrier¹² compels a finding that the violations were knowing and willful. Accordingly, the Commission will assess a civil forfeiture against respondent in the amount of \$500 per day for eight days, for a total of \$4,000.

THEREFORE, IT IS ORDERED:

1. That Respondent shall immediately cease and desist from any transportation of passengers for hire between points in the Metropolitan District within the meaning of the Compact unless and until authority therefor is issued by this Commission.

2. That the Commission hereby assesses a civil forfeiture against respondent in the amount of \$4,000, for knowing and willful violations of the Compact, and that respondent is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashiers check, the sum of four thousand dollars (\$4,000).

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER, LIGON, AND SHANNON:


William H. McGilverey
Executive Director

¹⁰ In re Regency Limo. Serv., Inc., No. MP-94-01, Order No. 4323 (June 21, 1994).

¹¹ Id.

¹² In re Capitol Bus Rental, Inc., t/a Capitol Tours, No. CP-86-02, Order No. 2842 (Mar. 31, 1986).

