

BEFORE THE  
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 586

IN THE MATTER OF:

Served March 25, 1966

Application of D. C. Transit )  
System, Inc., for Authority )  
to Increase Fares. )

Application No. 226

Docket No. 32

On April 12, 1963, the Commission issued Order No. 245, in which it denied the requested increases in fare by D. C. Transit System, Inc. ("Transit"), but authorized and approved an increase in token fares of 1-1/4 cents. Upon review, the United States Court of Appeals for the District of Columbia Circuit remanded the Order to the Commission to "determine the margin of return over and above operating expenses that Transit should be allowed."

While this matter was under consideration by the Commission, Transit filed a new application for increases in fares on September 17, 1965.

On January 26, 1966, the Commission issued Order No. 563, which set forth supplemental findings to Order No. 245 and affirmed its decision as to the margin of return allowed in said Order No. 245. At the same time, it issued Order No. 564, in which it decided the new application.

An application for reconsideration of Order No. 563 has been filed by protestants Williams and Trask, in which they allege six grounds of error.

In Order No. 563, the Commission stated:

The Commission is of the opinion that further hearings are not necessary. Pleadings filed with the Court subsequent to the date of the Court's Opinion consumed several months. Before the Commission could act, Transit filed a new application for increase in fares. Voluminous data was developed at hearings on the new application. We feel that all answers to questions raised in the remand opinion not existing in the record of this proceeding are contained in the record of the new proceeding. A separate proceeding to redevelop facts already before us would be undesirable. Therefore, where it has been necessary for us to utilize the new record, we have so indicated.

Petitioners claim it was error for the Commission to issue the order without giving notice to the parties or affording them the opportunity for hearing or cross-examination, and in relying upon evidence dehors the record, "some of which resides in the record of another proceeding to which your petitioners" were not parties.

Williams and Trask filed a joint protest at the beginning of this proceeding, by their counsel, Leonard Bebchick. Both Mr. Trask and Mr. Bebchick were parties in the proceeding held on the new application.

Order No. 563 clearly reveals the evidence adduced in the new proceeding which was made a part of the record in this proceeding. On pages 2 and 3 of Order No. 563, the Commission took notice of a full scale depreciation study of Transit's operating property, other than buses. Orders entered in that proceeding were served on petitioners' counsel, Mr. Bebchick. The other evidence incorporated from the new proceeding is disclosed on page 12 of Order No. 563: "We take notice of staff Exhibit No. 14 in the case now pending before the Commission for decision (Docket No. 101). This document, and the accompanying testimony...."

Despite the fact that both Mr. Trask (one of the joint protestants herein) and Mr. Bebchick had the opportunity to adduce evidence relating to the matter of past earnings in the new proceeding, upon receipt of petitioners' application for reconsideration the Commission by letter of March 7, 1966, inquired of petitioners' counsel whether they desired the opportunity to adduce evidence contrary to that relied upon by the Commission. Through counsel, they replied as follows:

In response to this limited question and for no other purpose, this will advise you that my clients do not feel obliged to adduce evidence contrary to that relied upon by the Commission in the matter of Transit's past earnings. We, of course, continue to rely upon such material on this point as we originally adduced.

In the absence of notification that further hearing to adduce additional evidence is sought, the Commission must assume that the procedural requirements of due process have been met, and that all relevant evidence has been placed before it.

The remaining contentions set forth in the application for reconsideration are matters that have been thoroughly considered and discussed in the order. There is no error therein. Order No. 563, being correct and just in every respect, the Commission is of the opinion that the application for reconsideration should be denied.

THEREFORE, IT IS ORDERED that the application of Richard Williams and Alfred Trask for reconsideration of Order No. 563 be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:

A handwritten signature in cursive script, appearing to read "Delmer Ison".

DELMER ISON  
Executive Director