

BEFORE THE FEDERAL TRANSIT ADMINISTRATION

California Bus Association,

Complainant

Charter Complaint

v.

49 U.S.C. § 5323(d)

SunLine Transit Agency,

Respondent :

DECISION

Introduction

The California Bus Association (CBA) filed this complaint with the Federal Transit Administration (FTA) alleging that the SunLine Transit Agency (SunLine) is providing service in violation of FTA's charter regulation, 49 CFR Part 604. Specifically, CBA claims that SunLine's group trip policy and procedures are designed to promote charter service for school groups and that this practice excludes fixed-route riders. Applying a balancing test to the service in question, FTA finds that SunLine's group trip service is charter service in violation of 49 CFR Part 604 which implements Section 5323(d) of the Federal Transit Laws, as codified, 49 U.S.C. § 5301, et seq. Therefore, SunLine is ordered by this decision to correct the practices that do not comply with FTA's requirements.

Complaint

CBA filed this complaint with the FTA on June 24, 1996, and also provided photographic, video and documentary evidence. Specifically, CBA alleges that SunLine buses (aka "SunBuses") fail to stop for passengers waiting at designated bus stops, display unclear and misleading head-signs, and make off-route stops including loading and unloading passengers on school property. CBA's complaint and rebuttal describe incidents occurring on nine separate days between May 1993 and September 1996 all of which involved service to school groups.

Response to Complaint

CBA's complaint was forwarded to SunLine and by letters dated August 23 and September 3, 1996, SunLine provided its response. SunLine submitted additional documentation including its preprinted schedule, "SunBus Group Trip Policy Summary," and "Planning Group Trips" brochure. The brochure describes the service in question as trips made by a group of ten or more people from one mutual origin to one mutual destination. In addition, the brochure advertises that groups can go on field trips within a one-mile radius of the fixed route. To qualify for the group fare discount of fifty cents per rider, trips must be requested at least five working days prior to but no more than three months in advance of the trip. The brochure goes on to state that SunLine is

not a charter service; all SunBus services are open to the general public and operate on published fixed routes; all buses will make any stop on the route where passengers need to board or alight; additional buses may be placed in service for groups of forty or more at SunLine's discretion; and SunLine may limit the number of buses accommodating group trips, particularly during peak hours. According to the policy summary, SunLine reserves the right to cancel confirmed group trips because its first commitment is to meet regular fixed-route needs. The summary also contains procedures for groups to follow when cancelling trips.

In a July 12, 1996, memorandum, SunLine's Senior Trainer explains that new coach operators are advised that after picking up group trip riders, SunBuses must proceed along the regular fixed route, street by street, picking up regular passengers along the way until they reach their destination. At no time are SunBuses allowed to enter school grounds or private property. After the group has alighted the coach, the operators must remain in service until the end of the line unless a "follower" has caught up to them at which time they may transfer the remaining passengers. In addition, all "moneys" for the trips go through the farebox and the operators must log in the number of passengers in the group.

SunLine states that it sends the group trip brochure to schools annually and submitted a mailing list containing names and addresses of more than ninety schools and organizations. According to SunLine, the brochure is also included with a letter confirming group trip arrangements scheduled by a group leader using the service for the first time. Furthermore, SunLine acknowledged that it has performed over 4,000 group trips including most of the trips documented in CBA's complaint, for example, group service for Della Lindley Elementary School, Vista Del Monte Elementary School, Cahuilla Elementary School, Desert Springs Middle School, and Bubbling Wells Elementary School. SunLine maintains that it has instructed its operators not to enter school property to load and unload riders, and to pick up passengers along fixed routes.

With regard to CBA's allegations that SunBuses display clear and misleading head-signs, SunLine claims in its September 3 response that "Going into Service" is the correct head-sign to display while a group is boarding a bus, and that once the group has finished boarding, the sign should be changed to "Supplemental Service." SunLine's Senior Trainer states, however, that new coach operators are instructed to use headsigns reading "Supplemental, Limited Service" during group trips. Finally, SunLine maintains that it is intensifying its driver training and will discuss these issues in upcoming Operator Safety Meetings.

Rebuttal

In its rebuttal dated September 17, 1996, CBA challenges the legality of the group trip policy because the policy provides that SunBuses can deviate from established routes at the charter party's request and that the policy excludes fixed-route riders. Furthermore, CBA contends that when it became aware SunLine intended to provide the group trips in question, it monitored SunLine's activities and observed that SunBuses did not just occasionally pass up passengers

but rather, "never" stopped for passengers waiting at SunLine bus stops no matter how persistent the people were to board the SunBuses.

Moreover, CBA claims that SunLine has continued to perform closed-door charter service in spite of this complaint and SunLine's subsequent response thereto. Specifically, CBA alleges that on September 13, 1996, SunLine transported the Cathedral City High School band to the College of the Desert in two SunBuses displaying "Supplemental Service" and "Going into Service" head-signs. In support of this claim, CBA provided additional photographs. According to CBA, when one of the drivers observed someone taking pictures, the head-sign was changed to "Out of Service" for the duration of the trip. In addition, CBA claims that two female passengers were refused entry into one of the buses and that the SunBuses passed up fixed-route passengers along Highway 111 and travelled off-route.

Finally, CBA submitted correspondence regarding a November 10, 1992, complaint filed with FTA alleging that SunLine was operating exclusive school bus service in violation of FTA's school bus regulation, 49 CFR Part 605. In a December 2, 1992, response to CBA, SunLine represented that the service complained of was supplemental tripper service along fixed routes and that SunBuses did not enter school grounds or make off-route stops. CBA claims that SunLine's letter is a "local agreement" under 49 CFR 604.9(b)(7) and that SunLine is in violation thereof. CBA argues that despite FTA involvement and the subsequent "local agreement," SunLine has continued to operate closed-door service and that CBA's repeated efforts to resolve the matter over the course of three years have been unsuccessful.

Discussion

Before reaching the main issue of this complaint, it is appropriate to address a subsidiary question raised. CBA characterizes SunLine's December 2, 1992, correspondence as a "local agreement" within an exception to the charter regulation, and maintains that SunLine is in violation thereof. SunLine's correspondence, however, pertains to supplemental tripper service under FTA's school bus regulations, 49 CFR 605.3 and therefore, does not constitute a "formal agreement" as defined at 49 CFR 604.9(b)(7) of the charter regulation.

The FTA points out, however, that CBA properly brought this complaint under the charter regulation, not the school bus regulation. The preamble to FTA's school bus regulation explains that "school bus operations" generally take place during peak morning and evening hours. 41 Fed. Reg. 14127, 14128 (April 1, 1976). The transportation of students and personnel exclusively during off-peak hours would be charter service governed by 49 CFR Part 604. The group trips provided by SunLine for extracurricular school activities are clearly not "school bus operations" providing peak hour transportation to and from school; however, the service does warrant scrutiny under the charter regulation. We turn now to an examination of the main concerns of CBA's complaint.

The essential issue in this matter is whether the service provided by SunLine is impermissible charter service or permissible mass transportation. The definition of charter service found in FTA's regulations at 49 CFR 604.5(e) is as follows:

...transportation using buses or vans, or facilities funded under the Acts of a group of persons who pursuant to a common purpose, under a single contract, at a fixed charge...for the vehicle or service, have acquired the exclusive use of the vehicle or service to travel together under an itinerary either specified in advance or modified after having left the place of origin.

Charter service is usually thought of as a one-time provision of service and the user, not the recipient, has the control of the service. 52 Fed. Reg. 11916, 11919 (April 13, 1987).

In contrast, the Federal Transit Laws define "mass transportation" as transportation that provides regular and continuing general or special transportation to the public. 49 U.S.C. § 5302(a)(7). The FTA has articulated other features which logically flow from this definition:

First, mass transportation is under the control of the recipient. Generally, the recipient is responsible for setting the route, rate, and schedule, and deciding what equipment is used. Second, the service is designed to benefit the public at large and not some special organization such as a private club. Third, mass transportation is open to the public and is not closed door. Thus, anyone who wishes to ride on the service must be permitted to do so.

52 Fed. Reg. 11920.

FTA has previously stated that a balancing test must be applied to determine the nature of the service involved in any complaint filed with FTA because, as the preamble to the charter regulation points out at pages 11919-20, there is no fixed definition of charter service, and the characteristics cited by FTA are not exhaustive, but merely illustrative. Seymour Charter Bus Lines v. Knoxville Transit Authority, TN-09/88-01 (November 29, 1989). We have established the following findings and determinations on the basis of such an analysis.

1. Under the control of the recipient.

The record establishes that SunBuses deviate up to one mile from the published fixed routes to accommodate groups of ten or more. According to SunLine, the vehicles return to and continue along the regular route and stop at any bus stop where passengers need to board or alight. In addition, SunLine has discretion to increase or decrease the number of SunBuses used for group trips based on demand and volume. Next, SunLine has set a group-rate fare of fifty cents per rider, decides whether an additional fare will be required if transfers are involved, and advertises the fare in the preprinted fixed-route schedule and group trip brochure. Finally, according to the group trip brochure, the group representative must contact SunLine to schedule the trip and

supply the following information: date of trip, time of outbound trip, time of inbound trip, origin, destination, and group size. SunLine then confirms the reservations with a follow-up letter.

SunLine submits that the one-mile route deviations do not violate the charter regulation because SunBuses travel along the prepublished fixed routes during part of the group trips and stop to pick up regular route passengers. On the other hand, CBA contends that the group trip policy itself is irreversibly flawed both in theory and in practice because the policy provides that SunBuses can deviate up to one mile from established routes to perform services that are not regularly scheduled.

FTA finds that SunLine's group trip service does not operate on a regular and continuing basis within SunLine's control; rather, it is provided regularly to singular events at the behest of the group participants. The groups travel pursuant to a common purpose under an itinerary specified in advance in accordance with the group's selection of pick-up and drop-off points. Although SunLine decides the number of vehicles to be used for group trips and may determine the route to follow during the deviations, FTA has previously found that these are merely operational details and not determinative of actual control of the service (Seymour, at 10). As FTA has stated in Question 27(d) of its "Charter Service Questions and Answers," 52 Fed. Reg. 42248, 42252 (November 3, 1987), control of fares and schedules is the critical element in distinguishing charter service from mass transportation.

The FTA has previously determined that compensation on the basis of hours of service is evidence of charter operations, whereas individual fares paid by each rider indicates the service is mass transportation (Seymour at 9). Under the group trip policy, each rider pays an individual fare set by SunLine, and the money collected goes through the fare box. In this respect, the service conforms to mass transportation. FTA finds, however, that SunLine does not set the schedules for the group trips which is supported by the fact that there are no published schedules for the service. SunLine may have input in developing the group trip service schedules as any operator would, but the group representatives specify arrival and departure times and trip origins and destinations and thus, have the prerogative of altering schedules. Blue Grass Tours and Charter v. Lexington Transit Authority, URO-III (May 17, 1988).

In applying a balancing test to the foregoing factors, FTA finds that SunLine's group trip service does not meet the first criterion of mass transportation.

2. Designed to benefit the public at large.

CBA argues that SunLine's group trip policy is designed to promote group trip charters and to exclude fixed-route riders in violation of 49 CFR Part 604. In response, SunLine submits that SunBuses make one-mile deviations from the fixed route for the convenience of the groups as

long as SunBuses make all stops along the fixed route and the deviations do not inconvenience regular passengers.

The FTA has previously noted that service is designed to benefit the public at large when it serves the needs of the general public, instead of those of "some special organization such as a private club." 52 Fed. Reg. 11920 (April 13, 1987). The charter regulation requires that riders outside a target group of customers be eligible to use the service. See Annett Bus Lines v. City of Tallahassee, FL-TALTRAN/90-02-01 (April 28, 1992). SunLine's group trip policy targets groups of ten or more people and any members of the public who are unable or unwilling to form a group of at least ten riders are not eligible to use the service. Thus, the group trip service is not designed to benefit the public at large and in practice, is basically designed to meet the transportation needs of defined groups of students and school personnel as well as other organizations.

Indeed, the group trip service may cause inconvenience to members of the public. According to SunLine, the buses used for group trips stop at all stops along the fixed-route to pick up regular passengers. At SunLine's discretion, additional buses are added for groups of forty or more riders. These facts lead FTA to conclude that regular route passengers may be disadvantaged in either of the following ways. First, fixed-route riders, without prior notice, may be required to travel up to two miles roundtrip along route deviations made for group trips in SunBuses that do not keep within the fixed-route schedule; or second, supplementary SunBuses may be put into service solely to accommodate group trips with the result that regular passengers are excluded.

SunLine's group trip service is designed differently from SunLine's regular fixed-route service in other respects as well. For example, SunLine allows group participants to call from five days to three months in advance to schedule trips. Next, SunBuses deviate up to one mile from the fixed route to accommodate group trip passengers. Moreover, the photographic and video evidence show that there are no designated bus stop signs at the origin and destination points of the group trips. In addition, the group trip fare is fifty cents while SunLine's regular fare is seventy-five cents. Further, published schedules exist for SunLine's other routes but there are no published schedules for group trip service. Finally, group trip buses display restrictive headsigns. The reasonable conclusion adduced from these facts is that the group trip service is a special type of service which is set up, advertised and operated differently from SunLine's regular service, pursuant to a written agreement, to accommodate the special needs of the group participants (Blue Grass, at 4). Although the definition of "mass transportation" in the Federal Transit Laws, 49 U.S.C. § 5302(a)(7), does include the concept of "special" transportation, the type of service complained of in this case is not one of the two types of "special" service that legally fit the definition of "mass transportation." They are service exclusively for elderly and disabled persons and service provided for workers who live in the innercity but work in a factory in the suburbs. 52 Fed. Reg. 11920.

Thus, the group trip service is not designed to benefit the public at large and in practice, is designed to meet the transportation needs of school groups and organizations.

3. Open to the public and not closed door.

In determining whether service is truly "open door," FTA looks both at the level of ridership by the general public as opposed to a particular group and at the intent of the recipient in offering the service. The intent to make service open door can be discerned in the attempts to make the service known and available to the public. FTA thus takes into account the efforts a recipient has made to market the service. Generally, this marketing effort is best evidenced by publication of the service in the recipient's preprinted schedules. Washington Motor Coach Association v. Municipality of Metropolitan Seattle, WA-09/87-01 (March 21, 1988). FTA has also interpreted "open door" to mean a substantial public ridership and/or an attempt by the transit authority to widely market the service (Blue Grass, at 5). The posting of bus stop signs and the connections to other transportation routes are also considered indicators of "opportunity for public ridership" (Seymour, at 9). A recipient is not required to make all of these efforts in order to have manifested the intent to make service open door.

Although SunLine asserts that its buses are open to the general public at all times, SunLine's position is not supportable when the group trip service is examined against the complete definition and intent of the charter regulation as well as the system in actual operation. The opportunity to arrange group trips is briefly described on page 7 of the published fixed-route schedule along with a number to call for additional information. The "Planning Group Trips" brochure is printed separately and SunLine's submission indicates that it is mailed to at least ninety schools and organizations. In other respects, however, SunLine's group trip service is essentially closed door.

CBA argues that the group trip service is not available to the general public because SunBuses display unclear and misleading head-signs, and fail to stop for passengers waiting at SunLine bus stops. The photographs submitted by CBA corroborate these claims. In response, SunLine claims that "Going into Service," "Supplemental Service," and "Supplemental, Limited Service" are the correct destination signs to use on SunBuses performing group trips. These facts clearly contradict SunLine's assertion that all SunBuses are open to the public. Moreover, such practices are inconsistent with the instructions given to the general public on page 2 of the preprinted schedule which direct passengers to "[c]heck the destination sign at the front of the bus to be sure you are boarding the correct bus."

In order for service to be considered open to the public, head-signs on buses must display route numbers and destinations, and must operate according to the published schedule. Destination signs on buses such as those used by SunLine are not permitted under 49 U.S.C. 5323(d). FTA finds that SunLine has employed signing procedures of obvious impropriety. Furthermore, using a terminus where there is no bus stop sign and refusing entry to passengers render SunLine's claims that the service is open to the public unpersuasive. Therefore, FTA finds that the service in question is not "open door" and does not meet the third criterion of mass transportation.



Conclusion and Order

After applying a balancing test to the service in question, FTA concludes that SunLine's group trip operations are charter service in violation of 49 CFR Part 604. Therefore, SunLine shall immediately discontinue operating the service as it is presently configured. Should SunLine wish to reinstitute group trip operations, it must reconfigure the service to conform to FTA's mass transportation guidelines, and submit its plan to FTA for review and approval prior to implementation.

Within thirty days, SunLine must provide a written report to the FTA on the measures it has taken to ensure compliance with the terms of this order.

Margaret E. Foley
Margaret E. Foley
Regional Counsel

February 6, 1997
(Date)

Leslie Rogers
Leslie Rogers
Regional Administrator

FEB 10 1997
(Date)

