

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint)	
of Randald N. Perry, dba Perry)	
Rentals, et al.)	
Complainants,)	
)	
v.)	Case No. 91-24-WT-CSS
)	
Miller Boat Line, Inc.,)	
)	
Respondent.)	

OPINION AND ORDER

The Commission, considering the complaints filed by Randald N. Perry on January 2, 1991, by Peter J. Palumbo on May 31, 1991, by Charles Wenger on July 16, 1991, and by Daniel M. Kover on August 13, 1991; the public hearing conducted July 19, 1991; the reports of the Commission's staff filed on October 17 and November 20, 1991; the stipulation of the parties filed on November 21, 1991; and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Randald N. Perry, dba Perry Rentals, P. O. Box 14428, Toledo, Ohio 43614.

Peter J. Palumbo, 4135 Lakewood Road, Ravenna, Ohio 44266.

Charles Wenger, 1097 Binns Boulevard, Columbus, Ohio 43204.

Daniel M. Kover, 1285 Millstone Square, Westerville, Ohio 43081.

Flynn, Py & Kruse, L.P.A. by Mary Jane Stauffer Hill, 165 East Washington Row, Sandusky, Ohio 44870, on behalf of Miller Boat Line, Inc., respondent.

Lee Fisher, Attorney General of Ohio, by Steven Nourse, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43266-0573, on behalf of the staff of the Public Utilities Commission of Ohio.

SUMMARY OF THE PROCEEDINGS:

Miller Boat Line, Inc. (MBL, company, or respondent) provides ferry boat service for passengers, motor vehicles, and freight

from Catawba Island in Ottawa County to South Bass Island and Middle Bass Island in Lake Erie.

On January 2, 1991, the Commission received a complaint from Randal N. Perry, dba Perry Rentals (Perry), alleging that MBL has established a practice of refusing to transport motor vehicles from Catawba Point to South Bass Island during weekends unless the owner of the vehicle owns real property on the island, is an employee of a business on the island, or has written proof of accommodations on the island. Perry contended that the alleged practice constituted unlawful discrimination, and requested that the Commission investigate his allegations and order MBL to cease such practice.

On March 1, 1991, MBL filed a motion to dismiss the complaint. Respondent admitted that it had adopted the alleged policy, but contended that such policy was approved by the island's police, fire, and emergency medical services, and was necessary due to the traffic congestion and limited parking facilities on the island. MBL acknowledged the statutory prohibition against discrimination by a common carrier, but argued that MBL's policy is not unreasonably prejudicial, as it is directly related to public safety and transportation concerns, and affects as few persons as possible. On March 28, 1991, Perry filed his reply to respondent's motion, arguing that MBL does not have the authority to create or implement such policy, that such policy is not necessary for the safety and welfare of the island, and that such policy was not mandated or approved by any governmental authority.

On May 31, 1991, Peter J. Palumbo filed a similar complaint regarding the respondent's policy. By entry issued June 24, 1991, the examiner found that reasonable grounds for the complaints existed and consolidated Palumbo's complaint with Perry's. The examiner denied MBL's motion to dismiss, ordered the Commission's staff to conduct an investigation, and set both matters for public hearing.

On July 16, 1991, Charles Wenger filed a complaint which alleged that MBL had charged varying fees and ultimately refused to transport his motorcycle to South Bass Island.

On July 19, 1991, a public hearing was conducted at the Catawba Island Community Hall in Port Clinton, Ohio, for the purpose of providing an opportunity for interested members of the public to testify in this proceeding. Prior to the public hearing, a prehearing conference was held for discussion of the issues by the parties. During the public hearing, numerous witnesses appeared and offered testimony. Mr. Perry was the only complainant present for these hearings.

On August 13, 1991, Daniel M. Kover filed a complaint alleging that MBL had caused unnecessary delay and confrontation when he attempted to take his car to Put-in-Bay, despite his reservation at a local motel.

SUMMARY OF THE EVIDENCE:

South Bass Island lies three miles north of Catawba Point in Lake Erie. The island is 1.5 miles wide by three miles long, and contains less than 12 miles of roadway. Approximately 450 residents live on South Bass year-round, but the population grows to 7,000 in the summer months. There are several summer resorts on the island which are reserved by tourists as much as two years in advance. The island is home to a state park which has four cabins available by reservation, and 135 campsites available only on a first-come, first-serve basis. The US Corps of Engineers leases rights to mooring buoys (permanent boat anchors) in the Put-in-Bay channel north of the island. The island also has a small marina for docking boats, and a public daytime boat dock. In addition to private cars, bicycles, mopeds, and golf carts, transportation on the island includes taxi and bus services. Tours of the island are offered on open trams, and bicycles or golf carts may be rented. Recreational vehicles may be used in the state park or on private property. (S.R. at 3-4).

Founded in 1905, MBL is currently owned and operated by Bill Market, Jr. and Bill Market III, residents of South Bass who purchased the company in 1974. MBL provides ferry service from Catawba Point to South and Middle Bass islands from April 1 through November 15 of each year, depending on weather. The company uses a fleet of four boats on a daily basis, and a smaller, fifth boat is employed for special shipments and to supplement the larger boats during peak demand periods. The respondent owns docks on Catawba Point and South Bass Island, and leases public dock space on Middle Bass Island. MBL provides the only ferry service to South and Middle Bass for freight and motor vehicles. During the warm weather months, the company handles virtually all freight moving to or from the islands, including food items, construction materials, store supplies, and refuse (Id. at 3).

During the summer months, MBL operates between 7:00 a.m. and 8:00 p.m. on weekends and holidays. Between Catawba Point and South Bass Island, MBL uses two boats which can each transport a maximum of 17 cars per hour. With this maximum vehicle capacity, the boat can also transport 190 passengers. For peak demand, MBL adds its smaller boat which is capable of hauling 11 additional cars per hour. Respondent's maximum vehicle capacity is, therefore, 585 automobiles per day. However, as passenger demand is given priority over vehicle traffic, MBL's available space for vehicles on a given day must be reduced in accordance with the

demands of its passenger traffic. For each additional 15 passengers, one vehicle must be dropped. The peak average passenger level per trip from South Bass Island in 1991 was 323. The vehicle capacity per boat during this peak time drops to only nine vehicles per hour, or 117 per day. During the busiest week of 1991, MBL transported 35,696 passengers, 3,168 cars, and 114 irregular-sized vehicles (Id. at 5-6; Supplemental S.R. at 1-2).

MBL's major problem in scheduling vehicle passage is the variance and unpredictability of the passenger traffic for any given day. Passenger levels fluctuate with the calendar, weather, and events on the island. The boat line has no control over the number of passengers that appear for passage on any given trip, and that number varies widely. Normally, MBL's scheduling difficulties only arise on weekends, and are due to the passenger and vehicle traffic wishing to return from the island on a Sunday or Monday holiday. This problem is further exacerbated by the South Bass Island State Park's first-come, first-serve reservation policy for its 135 campsites. As a consequence, MBL has developed its weekend vehicle restriction policy, which has ultimately resulted in the instant complaints (Supplemental S.R. at 2).

On a typical weekend, MBL begins on Friday morning to inquire of each passenger wishing to transport a vehicle to the island as to when that passenger expects to return. The company keeps a count of the number of vehicles which expect to return on Sunday. Once the state park has reached its capacity, the park officials notify MBL, which then limits vehicle transportation to those classes specified in its policy until a total of 325 vehicles for Sunday return is reached. When this 325 vehicle capacity limitation is reached, all further vehicles for Sunday return are refused, including vehicles of island residents. However, only vehicles which desire Sunday return are so restricted (S.R. at 6-7).

The first complainant, Perry, maintains a boat in the Put-in-Bay channel where he holds lease rights to a mooring buoy from the US Corps. of Engineers. On August 31, 1990, Friday of Labor Day weekend, Perry was denied transportation of his vehicle to South Bass Island because he did not have proof of accommodations on the island. His vehicle contained a carload of provisions for his boat which was moored in the bay. Perry complained that in addition to MBL's refusal to transport his car, he was not permitted to speak to an MBL supervisor, and was treated rudely by the MBL employee (Id. at 4).

The second complainant, Palumbo, stated that he has been a frequent visitor to the island since 1955, but had been unnecessarily interrogated and berated when he presented his vehicle for passage (Id. at 5).

The Wenger and Kover complaints were also included in the staff's investigation and report in order to resolve all issues as expeditiously as possible. Wenger was employed as a carpenter on the island in May 1991 when he attempted to take his motorcycle to South Bass Island. MBL refused to permit the motorcycle to be wheeled onto the ferry, but later permitted him to transport his bike as freight after loading the motorcycle onto respondent's pickup truck. Over the course of three weeks, Wenger was charged at least two different rates, and MBL ultimately refused to transport the motorcycle altogether. Wenger also reported very abusive treatment by MBL employees on the dock and in the freight office (Id.).

On Friday, August 2, 1991, MBL refused to transport Kover's vehicle when he was unable to produce written confirmation of his hotel reservation. He also complained that respondent's dock employee was unnecessarily abrasive, and denied him use of a telephone to confirm his reservation, although a second MBL employee eventually arranged for such confirmation (Id.).

At the July 19, 1991 public hearing the majority of witnesses who came forward were also residents of South Bass Island. These witnesses included local merchants, government officials, and representatives of the local police and fire departments who expressed their support for MBL's current policy, and voiced their concerns that any change might create health and safety problems as a result of vehicle traffic and congestion on the island. Most of the witnesses testified that MBL provides exemplary service, and requested that this Commission allow MBL to continue its present policy.

On October 17, 1991, the Commission's staff filed its report, and on November 20, 1991, staff filed a supplemental report recommending that the Commission adopt the stipulation and settlement agreement (stipulation) which was signed by all parties except Wenger. The stipulation provides that:

- 1) MBL will continue to follow its weekend vehicle policy except that after 325 vehicles have been counted and the state park has notified respondent that all campsites are occupied, MBL shall only transport automobiles for the following persons:
 - (a) owners or lessees of real property located on South Bass Island;
 - (b) guests of those real property owners or lessees;

- (c) persons with lodging accommodations on the island for Friday and/or Saturday night;
 - (d) employees of any business establishment or employer on the island;
 - (e) persons who have mooring buoys; and
 - (f) handicapped or physically disabled persons who object to using the public transportation available on the island, upon being informed of such alternative.
- 2) MBL will make a good faith effort to inquire and investigate into the authenticity of a person's status or accommodations. Such inquiry will include use of telephone or telecopier to confirm reservations or invitations. MBL will accept the authenticity of documents purporting to show that a person is included in one of the categories, unless MBL has a clearly appropriate reason to believe that such document is not authentic.
 - 3) MBL will establish reasonable methods of administering this policy, including employee meetings and training, creation and distribution of its written policy, and the publication of its policy in all promotional pamphlets and literature.
 - 4) MBL will file with the Commission an amended operating tariff which will include a description of this policy, and a reasonable labor charge for loading and unloading motorcycles as freight.

SUMMARY OF THE APPLICABLE LAW:

Section 4907.02, Revised Code, grants this Commission the power to supervise and control water transportation companies to the same extent as railroads. Section 4907.03, Revised Code, provides that the regulation of service applicable to railroads shall include common carriers engaged in the transportation of passengers or property by water. Section 4907.24, Revised Code, directs all railroads to furnish reasonably adequate service and facilities, and prohibits unjust or unreasonable charges for such service.

Section 4907.37, Revised Code, prohibits any common carrier subject to Chapter 4907, Revised Code, from giving any particular person, company, firm, corporation, locality, or particular description of traffic, an undue or unreasonable preference or advantage; and similarly prohibits such carriers from subjecting any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage.

Section 4907.08, Revised Code, imposes a duty upon the Commission to examine complaints where the Commission has reason to believe that a railroad, or any officer, agent, or employee of a railroad, has or is violating state law. Section 4905.26, Revised Code, provides that the Commission will hold a hearing upon a complaint where it appears that reasonable grounds for the complaint exist. This statute also directs the Commission to publish a notice of the hearing in a newspaper of general circulation in each county in which the complaint has arisen. Such notice must contain a description of the complaint, and be published not less than 15 days nor more than 30 days before the hearing.

Section 4905.54, Revised Code, requires every public utility or railroad, and every officer of a public utility or railroad, to comply with every order, direction and requirement of the Commission. This section further provides that any public utility or railroad which fails to comply with any order, direction or requirement of the Commission, shall forfeit to the state not more than \$1,000.00 for each such failure, with each day's continuance of the violation being considered a separate offense.

DISCUSSION:

MBL acknowledges that it is a water transportation company subject to the jurisdiction of this Commission under Section 4907.02, Revised Code, and that as a common carrier, MBL is prohibited from giving any particular person or type of traffic an undue or unreasonable preference or advantage pursuant to Section 4907.37, Revised Code. Respondent also admits that it has adopted the weekend vehicle restriction policy challenged by Perry in his complaint. However, MBL argues that this policy does not unreasonably prejudice or disadvantage any person, and does not create any unreasonable classification of passenger traffic. Rather, respondent asserts that its policy is directly related to public safety and transportation concerns of South Bass Island, and is narrowly tailored to affect as few persons as possible. Further, MBL points out that such policy does not financially benefit respondent.

The evidence of record clearly demonstrates MBL's need to restrict its transportation of vehicles during peak periods due to

the respondent's limited capacity for carrying such traffic. Quite simply, during the island's busy season, MBL is physically unable to accommodate all passengers wishing to transport their vehicles from South Bass Island at the end of a weekend. Absent respondent's policy, some vehicles would remain stranded on the island until the following day. Furthermore, the Commission is not unmindful of the concerns of the island's residents and safety officials due to the island's limited size and roadways.

Given the need for some restriction, we are asked to decide whether MBL's policy is unduly or unreasonably prejudicial in its preference of certain classes of passengers with respect to transportation of their vehicles. We find that respondent's policy, as modified by the stipulation of the parties, is not so unreasonable or unduly prejudicial as to be unlawful, despite its restriction of certain classes of vehicles during peak demand periods. However, we are concerned that common carriers provide all reasonable and necessary service in meeting the needs and expectations of the public. Respondent should request that all business establishments, residents, and owners of real property on South Bass Island, and the lessees of all mooring buoys in Put-in-Bay channel provide advance written confirmation of the status of accommodations for all employees or guests. Further, respondent's advertisements or promotional literature and schedule information should contain a statement, in bold print, that written proof of status or accommodations on the island may be required for transportation of motor vehicles during weekends or holidays. Finally, respondent should conspicuously post the following notice immediately at all ticket offices, and include such notice on all schedules and fare cards and on all promotional literature and schedule information prior to commencement of its 1993 operating season:

PUBLIC NOTICE

Miller Boat Line, Inc. is a water transportation company subject to the supervision and control of the Public Utilities Commission of Ohio. All complaints regarding the charges or service of Miller Boat Line, Inc. should be directed to the Public Utilities Commission. If you wish to file a complaint or obtain further information, please contact the Commission at 1-800-686-7826.

In a subsequent docket, the Commission intends to require all Ohio water transportation companies operating within its jurisdiction, to provide for similar public notice.

To ensure compliance with the forgoing directives, respondent should file with the Commission a monthly report during its 1992

operating season beginning May 1, 1992, setting forth all MBL actions taken in compliance with this opinion and order, any complaints received and disposition of such complaints, and any substantive changes in policy or procedure which respondent deems desired or necessary. Furthermore, staff should review respondent's revised tariff and monthly reports, conduct any additional investigation deemed necessary, and submit its report by September 30, 1992.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- 1) Respondent is a water transportation company subject to the jurisdiction of this Commission pursuant to Sections 4907.02 and 4907.03, Revised Code.
- 2) Pursuant to Section 4905.26, Revised Code, the Commission conducted a hearing upon the complaints which were filed and consolidated in this proceeding; notice of hearing was published in the News Herald, a newspaper of general circulation in Ottawa County, by the Commission in accordance with Section 4905.26, Revised Code.
- 3) Pursuant to Section 4905.26, Revised Code, a public hearing was conducted in Port Clinton, Ohio on July 19, 1991. On November 21, 1991, the parties filed a stipulation and settlement agreement which resolves the issues in this case. The terms and conditions of the stipulation and settlement agreement are reasonable and should be adopted.
- 4) Respondent's policy with respect to the transportation of motor vehicles during peak demand periods, as modified by the stipulation of the parties, does not unreasonably prejudice or disadvantage any particular person or type of traffic, or create an undue or unreasonable preference or advantage for any particular person or type of traffic within the meaning of Section 4907.37, Revised Code.

ORDER:

It is, therefore,

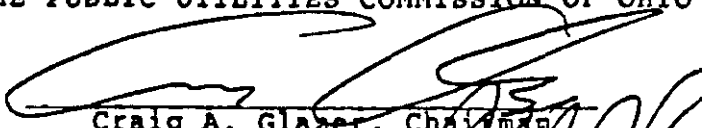
ORDERED, That the stipulation and settlement agreement filed by the parties be adopted. It is, further,

ORDERED, That respondent comply with all terms and conditions contained in the stipulation and settlement agreement, and provide such notice and reports as set forth herein. It is, further,

ORDERED, That the the Commission's staff review all matters as set forth herein and submit its report by September 30, 1992. It is, further,

ORDERED, That copies of this opinion and order be sent to the Erie Islands Public Library, Put-in-Bay, Ohio, the Ida Rupp Public Library, Port Clinton, Ohio, and served upon all parties of record.

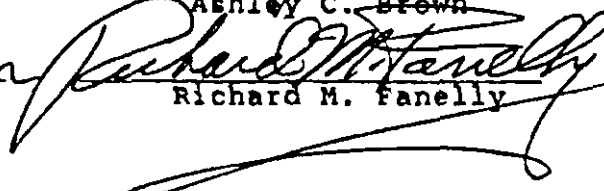
THE PUBLIC UTILITIES COMMISSION OF OHIO


Craig A. Glazer, Chairman


J. Michael Biddison

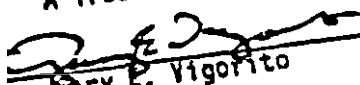

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Secretary