BEFORE THE FEDERAL TRANSIT ADMINISTRATION

TLC Charters & Tours,
Complainant,

v.

Toledo Area Regional Transit Authority,
Respondent.

Charter Complaint
49 U.S.C. Section 5323(d)
Docket No. 2006-04

DECISION

Summary

On April 27, 2006, TLC Charters & Tours ("TLC" or "Complainant") filed a complaint with the Federal Transit Administration ("FTA") alleging that Toledo Area Regional Transit Authority ("Respondent" or "TARTA")[1] was providing service in violation of FTA's charter regulation, 49 Code of Federal Regulations (C.F.R.) Part 604. The allegations related to TARTA providing charter service for elementary school children to Fifth Third Field on April 27, 2006.

The Respondent filed its reply on May 25, 2006. In the reply, TARTA indicated that the service provided was regular route service for a "School Day" special Mudhens game.

FTA forwarded the reply to the Complainant for a rebuttal. On May 31, 2006, the Complainant filed a letter with a number of questions regarding the service. FTA formally forwarded Respondent's reply to Complaint on June 7, 2006, indicating that under the charter regulations TLC has thirty days to file a rebuttal, and stating that it is not FTA's role to answer questions in the context of the charter complaint process. TLC had until July 11, 2006, to provide its rebuttal.

After July 11, 2006, when Complainant had failed to provide a written rebuttal, FTA attempted to contact the Complainant via telephone to confirm whether it intended to provide any additional information. On July 19, 2006, TLC contacted FTA via telephone and indicated it would not be filing any other documentation.

Upon reviewing the allegations in the complaint and the subsequent filings of all the parties, FTA has concluded that the service in question does not violate FTA's regulations regarding charter service.

Complaint History

Complainant filed a complaint on April 27, 2006, indicating that that morning one of its drivers had seen five TARTA buses dropping off elementary school students at Fifth Third Field. TLC indicated it had called the Toledo Public Schools Transportation Division (TPSTD) to ask

[1] TARTA is a recipient of Section 5309 funds; therefore, it is required to comply with the charter regulations.

whether it had chartered any vehicles for an event at Fifth Third Field. TPSTD had indicated that it had not chartered buses and if its students were on TARTA vehicles, they would have been on a regular route.

On May 25, 2006, TARTA filed its response. It stated that Fifth Third Field is the home field of the Toledo Mudhens, a minor league baseball team. On April 27, 2006, the Mudhens had held a "School Day" Special event. TARTA runs a regular route service from a number of Park and Ride lots to all Mudhens games. The service is advertised on TARTA's website. In its reply, TARTA attached a printout of the website showing the regular service called the "Muddy Shuttle." According to the reply, the students walked from their school to one of the regular Park and Ride pick-up locations and boarded the bus to the Mudhens game from the regular stop. TARTA also indicated it is currently operating under a charter remediation plan, and it is required to notify FTA in advance of any proposed charter service for FTA concurrence. Because it did not consider this service to be charter, it had not contacted FTA. TARTA provided a carbon copy of its reply to TLC.

On May 31, 2006, FTA received a letter from the Complainant posing a number of questions to FTA regarding the April 27th service.

On June 7, 2006, FTA provided TLC with thirty days to file a rebuttal. Additionally, FTA indicated that it is not FTA's role to answer questions in the context of processing a charter complaint.

When thirty days had elapsed and the Complainant had failed to file a rebuttal, FTA attempted to contact TLC via telephone to confirm whether it intended to provide a written rebuttal. On July 19, 2006, contacted FTA via telephone and indicated it did not intend to file any other written documentation.

Discussion

The regulations define charter service as the following:

> transportation using buses or vans, funded under the Acts of a group of persons who pursuant to a common purpose, under a single contract, for a fixed charge for the vehicle or service, who have acquired the exclusive use of the vehicle or service in order to travel together under an itinerary either specified in advance or modified after leaving the place of origin. Includes incidental use of FTA funded equipment for the exclusive transportation of school students, personnel, and equipment. 49 C.F.R. § 605.5(e).

Thus, a determination needs to be made as to whether Respondent's service meets the definition of charter by examining the elements required for charter service. Additionally, "public transportation" is defined in 49 U.S.C. Section 5302(a)(10) as:

> transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include school bus, charter, or

> intercity bus transportation or intercity passenger rail transportation provided by the entity described in chapter 243 (or a successor to such entity) [Amtrak}.[2]

FTA needs to determine whether the service meets the definition of "charter" as the Complainant argues or "public transportation" as the Respondent argues.[3] In addition to the definitions referenced above, FTA describes three elements distinguishing "mass [public] transportation" from "charter service."

> 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.

Blue Bird Coach Lines, Inc. v. Linton, 48 F.Supp. 2d 47 (DC Dist. Co. 1999), citing 52 Federal Register 11916, 11920 (April 13, 1987).

Service to regularly scheduled but relatively infrequent events (sporting events, annual festivals) that is open door, with the routes and schedules set by the grantee is not charter service. (See FTA Questions and Answers, Number 27(c), 52 Federal Register 42248, November 3, 1987.)

In applying the definition of "charter service" and the three- prong test, both referenced above, to the Muddie Shuttle service, FTA has determined that the Muddie Shuttle service meets the definition of public transportation since it meets the criteria necessary for public transportation and does not meet the definition of charter service.

The TARTA service is not for the "exclusive use" of a single group of persons. As to the first prong of the test for public transportation – under the control of the recipient – TARTA controlled the route, schedule, and equipment used. TARTA advertises the service on its website and lists it as regular service for Mudhens games. It has regular stops at specific park and ride lots and the fare is $1. The first prong of the test has been met, the service was under the control of TARTA.

As to the second prong of the test – designed to benefit the public at large – the Muddie Shuttle service was open to the public. While it is clearly evident that the Muddie Shuttle service was intended to serve individuals attending the Mudhens games, that, in and of itself is not determinative of this factor. In *Blue Bird Coach Lines*, it was alleged that a recipient's bus shuttle service to carry passengers from the Rochester area to football and basketball games in Buffalo (150 miles round trip) and Syracuse (190 miles round trip) from designated departure areas to the stadium parking lot for the games and departed after the games ended or when all passengers were accounted for, was charter service. In rejecting this claim, and specifically as to prong two, the Court stated:

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[2] As part of Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), the definition of "mass transportation" was changed to "public transportation." Section 3004(d)(7)

[3] Since SAFETEA-LU changed the definition of "mass transportation" to mean "public" transportation, FTA will hereinafter refer to "public transportation" rather than "mass" transportation.

> Granted that sports fans are not the general public but a "subset of the general public," A.R. 37, "the service is designed so that anyone can board the bus, no reservations are required and, according to the brochure, fares are paid as you board." There is no evidence in the record that the shuttle service customers formed a "well-defined and cohesive enough group to be considered a 'special organization'"
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> 48 F.Supp. 2d at 51.

Here, the same can be said for the Muddie Shuttle. The service was designed to be open to anyone. No reservations were required. Anyone could take the service from one of the designated stops located at Park and Ride lots. The fact that school students were the majority of the riders since the Mudhens were having a "School Day" special does not mean the service was designated for a special group; it was still designed to benefit the public at large.

The third prong is that the transportation service is open to the public. As previously noted, the service is open door. And, the availability of the service was well publicized. The notification of the service was available on the TARTA website.

As to the definition of "charter" service, although TARTA is using FTA funded equipment for the Muddie Shuttle and there is a common purpose (to attend a Mudhens game), none of the other criteria for the charter service definition are met. There is no single contract, no fixed charge for the vehicle or service; no specific group has hired the service for its exclusive use under a specific itinerary. The Muddie Shuttle is run by TARTA as a regular route for the Mudhens' games. This service is similar to other service for sporting events that has been determined to not meet the definition of charter service. (See, *Blue Bird Coach Lines, Inc. v. Linton*) Additionally in *September Winds Motor Coach, Inc. and Tecumseh Trolley & Limousine Service v. TARTA*, Complainant No. 2004-02 (August 24, 2004), FTA previously ruled that the Muddie Shuttle service was not charter service.

Conclusion

Because TARTA did not violate the charter regulations, FTA denies the complaint.

Appeal

In accordance with 49 C.F.R. § 604.19, the losing party may appeal this decision within ten days of receipt of the decision. The appeal should be sent to James Simpson, Administrator, FTA, 400 Seventh Street, S.W., Room 9328, Washington, D.C. 20590.

Marisol Simon
Regional Administrator

Date 9-29-06