

The Commonwealth of Massachusetts

PLACED ON FILE

DEPARTMENT OF PUBLIC UTILITIES

Fredrick H. Burke Clerk

July 31, 1953

D.P.U. 10593

Petition of the Board of Trustees of the Metropolitan Transit Authority for approval of proposed changes of rates of fare and charges for service to become effective at 4:30 A.M. on Sunday, July 19, 1953, as fixed by vote of said Board on July 3, 1953.

APPEARANCES: Willis B. Downey, Esq., Gen. Counsel) for Trustees of
 William J. Fitzsimmons, Esq.) Metropolitan
 Edward M. Gadsby, Esq., for the Department.) Transit Authority.
 John F. Collins, Esq.,)
 Mario Umata, Esq.,) for certain members
 Louis H. Glaser, Esq.,) of the General Court.
 Harry Colton, Esq.,)
 Arthur J. Gross, Esq., 146 Massachusetts Ave., Boston.

This is a petition of the Board of Trustees of the Metropolitan Transit Authority requesting this Department to approve modifications in the existing rates of fare and charges for service furnished or operated by the Authority, to become effective at 4:30 A.M. on Sunday, July 19, 1953, a copy of which is attached to the petition.

Section 11 of Chapter 544 of the Acts of 1947 requires the Trustees of the Authority, subject to the approval of the Department, to fix from time to time such rates of fare and charges for service furnished or operated as in their judgment are best adapted to insure sufficient income to meet the cost of service as defined in said section 11. It appears that acting in accordance with this statutory requirement the Trustees have fixed rates of fare and charges for

service as set forth in the vote annexed to the petition.

A public hearing was held in this matter at the State House, Boston, on July 17, 1953 and continued on July 20 and 21. We find that proper notice of the hearing was duly mailed by the Department to all parties of interest including all members of the General Court the interests of the districts represented by whom were affected by the proposed increase in fares. At this hearing the Trustees presented evidence that the operating expenses of the Metropolitan Transit Authority for the year ended December 31, 1952, including amounts for depreciation, obsolescence and losses, amounted to \$41,896,705.63 and that other deductions properly to be included in arriving at the cost of service as defined in said section 11 amounted to \$6,151,473.40; that total income, including non-operating income, amounted to \$39,042,962.61; that the resulting loss before other credits for the year was \$9,005,216.42 and that the loss for the year after giving effect to certain non-recurring credits amounted to \$7,829,044.64. There was further evidence that the cost of service as defined in the statute for the five months ended May 31, 1953, was \$19,792,990.58; that the total income for the period amounted to \$16,017,407.53 and that the resulting net loss from operations amounted to \$3,775,583.05 as compared with a similar loss for the same period in 1952 of \$3,646,328.77. We cannot find upon the evidence that the cost of service as so reported was not actually incurred.

The Trustees propose to increase the existing 15 cent fare for system-wide travel to 20 cents, to increase the existing 10 cent local fare to 15 cents and to increase the existing fare for pupils

tickets from 5 cents to 7½ cents. The fare of 5 cents for children under the age of fifteen established by statute will, of course, remain unchanged. After applying an estimated loss in patronage due to increased fares, the amount of which decrease was arrived at by the application of a formula based on statistics of the experience of a number of transit systems, it was estimated that the Authority would have a total revenue on an annual basis of \$42,842,000 under the proposed increased fares. This estimate takes into consideration a so-called economic loss in riding of the same percentage as has been experienced in the recent past. By this is meant a loss in patronage not induced by the fare increases but by economic and social factors beyond the control of the Authority. It was also testified that the dilution in revenues caused by rider resistance to the increased fares amounting to about 11 percent was a factor in estimating the revenue resulting from the proposed fare increase. It was estimated that the future cost of service on an annual basis, using existing conditions and known factors will be \$45,770,000 which would still exceed the estimated income of the Authority under the new rate schedule by \$2,981,000. It was brought out that if the economic loss in riding is not sustained, the net loss under the proposed fares would be \$1,026,000. This does not reflect any prospective reductions in operating expenses which the Trustees testified might possibly be realized nor does it take into account any steps which might be taken in an effort to attract additional patronage and thereby increase its revenues. We find that to conclude that the economic loss in riding may not develop indicates an

optimism that we do not share in view of the fact that the quarterly reports for the current year from other street railways operating in this State and on file in the Department show that passenger traffic continues to decline at about the rate forecast for future operations of this system.

The Department of Public Utilities is a creature of the Legislature and is endowed only with those powers which the Legislature has specifically granted and such powers as can be reasonably implied therefrom. The Legislature specifically granted the Trustees the power to fix rates of fare that will insure sufficient income to meet the cost of service. At the same time, it imposed a duty on this Department to approve or disapprove the action of the Trustees. It did not grant the Department the numerous plenary powers which it has over the rates and service of other common carriers as are provided for in section 14, chapter 159 of the General Laws. We do not have the power to qualify our approval in any way if the evidence is compelling and justifies our sanction of the rates, nor to impose any schedule other than that submitted for our consideration. We believe that if any duty was imposed upon the Department by the Legislature it is to make certain that the rates of fare and charges for service as fixed by the Trustees will insure sufficient income to arrive at the financial results spelled out in the statute.

In their exhibit number five the Trustees show that under existing conditions and known factors there is expected to be an annual deficit of \$2,981,000 operating under the proposed fares. They attempted to show that this deficiency might possibly be eliminated if the economic loss in riding does not eventuate and additional reductions

in operating expenses result which they state further study will make possible. We fail to see in view of the testimony of their own expert witness, Mr. Simpson, how the former contingency can develop. We have expressed our own opinion in this respect hereinabove. Concerning the prospect of additional reductions in operating expenses the Authority has not submitted for our consideration in making a determination of this matter any details as to the economies contemplated and which we believe must be before us in order that we may find that such a forecast can reasonably be expected to be fulfilled. It is apparent to us that the Trustees have failed, when they proceeded to fix the rates of fare and charges, to comply with the statutory requirement wherein the revenue to be derived from the same will insure sufficient income to meet the cost of service. In two prior cases (D.P.U. 8723 - D.P.U. 8895) where the Authority petitioned for approval by the Department of rates of fare and charges fixed by its Trustees it was clearly shown that the revenues received through the application of said fares would be such as to insure sufficient income to meet the cost of service. If such was the situation in the present proceeding we believe that we would be compelled to vote to approve the fares before us.

We do not think that the financial problems confronting the Metropolitan Transit Authority can be solved by attempting to acquire the needed revenues through increased fares. In this proceeding a witness for the Authority testified that the number of riders that will patronize the system if the fares are increased will be about equal to the number accommodated in 1903. It seems entirely illogical to believe that fares from such patronage can

be so fixed as to support a system set up to accomodate at least twice the number as was the case in 1946. This observation appears to be borne out by the recent experience of the Eastern Massachusetts Street Railway Company when an increase of 2½ cents in its basic fares was approved by the Department. By this action the minimum fare was increased to 15 cents. This change was expected to increase the revenues of the Company by over \$500,000. Within the recent past it was reported to the Department that the increase did not materialize and that the revenues accruing to the Company at the present time are approximately identical with what they were prior to the increase. Such a situation seems to indicate that the law of diminishing returns had set in. We are inclined to share the view expressed in a statement submitted at the hearing by His Honor John B. Hynes, Mayor of Boston, acting on behalf of the Metropolitan Transit Authority Advisory Board, an agency created by the Legislature to advise said Trustees upon request and to express their views, among other things, relative to fixing rates, in which statement it appears that said Advisory Board believes some form of subsidization is necessary as a cure for the financial ills now besetting the Metropolitan Transit Authority.

Counsel representing certain members of the General Court requested certain rulings of law. We grant all of the rulings so submitted.

Accordingly, after notice, public hearing and consideration by the Department, it is

ORDERED: That the modifications of the rates of fare and charges for service furnished or ordered by the Metropolitan Transit Authority fixed by the Board of Trustees of said Authority, as set forth in the petition of said Trustees dated and filed on July 6, 1953 be and the same are hereby disapproved.

By order of the Department,

(signed) JAMES M. CUSHING

Secretary.

A true copy
Attest:

Secretary

James M. Cushing

Commissioner Ford, concurring:

In my opinion, the evidence produced in support of this petition for reasons hereinafter stated, is insufficient, as a matter of law, to warrant approval of this petition and it should therefore be denied.

The Metropolitan Transit Authority was established by Statutes 1947, chapter 544. Section 11 of said statute, so far as is pertinent to the present petition, provides that,

"The trustees, subject to the approval of the department, shall from time to time fix such rates of fare and charges for service furnished or operated as in their judgment are best adapted to insure sufficient income to meet the cost of service....."

Purporting to act in accordance with said statute, the

the trustees of the Authority filed the present petition.

It is a canon of interpretation that statutory words are to be construed according to their natural import in common and approved usage. Duggan v. Bay State St. Ry. Co., 230 Mass. 370 at 374.

The language of the statute in question seems to me, plain, clear and unequivocal.

Reduced to its simplest terms, section 11 requires the trustees to set fares which will meet the cost of service. This is the test and the standard by which the petition must be judged.

The present statute is not permissive. It is mandatory. It is obligatory. It establishes a duty upon the trustees to set fares sufficient to meet the cost of service. This duty is not fulfilled, nor this standard met, by a petition for a fare increase, which if granted, will not meet the cost of service. Yet, their own witnesses testified that the requested fare increase is not sufficient to meet the cost of service. Their own witnesses testified that, even if this fare increase were granted, the Authority would still operate at a deficit of 2.9 millions of dollars.

The contradiction in this position seems obvious. As Chief Justice Rugg once stated, "This is not a doubtful question. It requires no discussion of legal principles. No process of reasoning is necessary to convince the intelligence. It is not open to debate." It is self-evident that one does not equal two. It is equally self-evident that a fare increase which falls almost three million dollars short of meeting the cost of service is not a fare increase sufficient

to meet the cost of service.

The fallacy in the position of the trustees may be demonstrated as follows. Assuming the present petition is granted, the trustees, to comply with their statutory duty, would be obliged to petition once more for another increase to offset the deficit of 2.9 millions of dollars. If a second petition is immediately necessary upon the granting of the first, it seems clear that the first petition is not sufficient.

I feel, therefore, that as a matter of law, the present petition must be denied.

In conclusion, I feel I should indicate what I deem to be the function of the Department in this matter. The statute provides that the present petition is "subject to the approval of the department." These words have been judicially construed. Approval implies the exercise of sound judgment, practical sagacity, wise discretion and final, direct, affirmative sanction. Approval is not a ministerial function. The approval of the department is not automatic upon the demonstration by the trustees that the Authority is operating at a deficit. Their burden is to show that the fare increase sought will offset that deficit. This to my mind is their duty. The Department's duty is to exercise sound judgment to determine whether the present petition meets that test.

The trustees admit that it does not. I feel, therefore, that as a matter of law the petition must be denied.

Commissioners Brackman and Whouley, dissenting:

We favor approval of the rates of fare submitted by the Trustees. We believe that the majority, has taken an illogical and, we believe, illegal course in arriving at what we think is a decision.

We are not here concerned with the social or economic factors to which so much reference was made in the hearings before us, and as to which it is perfectly possible to have an honest difference of opinion. As the majority itself points out, the only power that the General Court has entrusted to us is to approve or disapprove the rates of fare for the Metropolitan Transit Authority, which may, from time to time, be established by its Trustees.

The majority of the Commission says that the Trustees have not complied with the statute in setting these fares. We think they are in error in so construing the statute. The Trustees have submitted a schedule of fares which they have stated on the record to be in their judgment best adapted to insure sufficient income to meet the cost of service. There is no evidence that any other schedule could be proposed which would more nearly meet the estimated cost of service. This schedule of fares, and this one alone, is before us for consideration.

The statute does not permit us to substitute our judgment for that of the Trustees as to what constitutes a proper fare schedule. It seems to us a travesty on logic to conclude that because the Trustees did not ask for a fare of 22 cents or some other unspecified higher rate, which might possibly cover all of the presently estimated costs, we must compel them to continue to operate at rates of fare which are admittedly running the System in the red at the rate of \$9,000,000 a year.

The majority is insisting that the Trustees estimate to a last child how many people will use the M.T.A. in the coming year, to estimate to a last penny what their expenses will be in furnishing such service, and to divide with mathematical exactitude such expenses by such number of patrons and arrive at an exact resulting fare per person. This process seems to us to be too absurd to merit serious argument. Would the proposed schedule be unlawful if estimated to produce \$10 in excess of the estimated cost of service? This Department has dealt with estimates for many years, and we should by this time know that an estimate is, at best, an informed guess and is subject to change from time to time as conditions change. There are no such unusual circumstances in the case of the M.T.A. as were stated to have been present in the Eastern Massachusetts case, and there is absolutely no basis in the record for disbelieving the testimony of the expert introduced by the Trustees, nor were the quarterly returns of other carriers quoted by the majority introduced in evidence, if they are competent in these proceedings and mean anything.

It is clearly established that the estimates of the Trustees do not take into account the effect of future economies or efforts to halt the present rate of decline in patronage. We know, or should know, that no human being can foresee with any accuracy what economies or other measures the new Trustees may adopt or what will be their aggregate dollar effect. They have already saved the System the substantial expense of maintaining a large number of unnecessary employees. They have presented us with an honest estimate of results under present conditions. They could very easily have allowed for a margin of error ample to meet the objectives stated in the prevailing opinion. This was obviously the course adopted in the previous appearance of the former Trustees before us, when the subsequent actual results

differed widely from the estimates then submitted to us. We think that the majority is being unreasonable and illogical in its approach and so legalistic as substantially to nullify the plain intent of the General Court, that the riders on the M.T.A. should pay its expenses as nearly as possible.

It may well be that the solution of the M.T.A. problem does not lie solely in increased fares. The new Trustees have had but a few months within which to consider this involved and intricate problem. They are, we believe, obeying implicitly the existing statutory mandate in presenting these rates of fare at this time and we cannot find that their judgment is arbitrary or mistaken, which findings we believe are necessary if we are to substitute our judgment for theirs. No such findings are made by the majority.

In order to comply with the suggestions of the Advisory Board, the applicable statute must be amended by the General Court. It is not our province to criticize the existing law, but only to administer it as it exists. We do not believe that the majority has any right on this record and on the evidence before us to come to the conclusion which it has reached in the instant order.



FREDERICK H. BURKE
CITY CLERK

ALBERT T. DOYLE
ASSISTANT CITY CLERK

City of Cambridge
Massachusetts

Office of the City Clerk

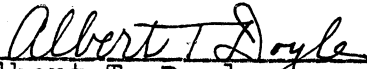
August 3, 1953.

To the Honorable, the City Council,
Cambridge, Massachusetts.

Gentlemen:-

I am transmitting herewith copy of decision of the Department of Public Utilities, Commonwealth of Massachusetts, relative to the petition of the Board of Trustees of the Metropolitan Transit Authority for approval of proposed changes of rates of fare and charges for service to become effective at 4:30 A.M. on Sunday, July 19, 1953, as fixed by vote of said Board on July 3, 1953.

Respectfully yours,



Albert T. Doyle,
Assistant City Clerk.

Communication from the Assistant City Clerk transmitting copy of decision of the Department of Public Utilities, Commonwealth of Massachusetts, relative to the petition of the Board of Trustees of the Metropolitan Transit Authority for approval of proposed changes of rates of fare and charges for service to become effective at 4:30 A.M. on Sunday, July 19, 1953, as fixed by vote of said Board on July 3, 1953.

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In City Council

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Frederick H. Burken Clerk