

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Germantown Cab Company, :
Petitioner :
v. : No. 461 C.D. 2012
Philadelphia Parking Authority, : Argued: October 16, 2012
Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
JUDGE LEADBETTER**

FILED: January 22, 2013

Germantown Cab Company (Germantown) petitions for review of an order of the Philadelphia Parking Authority (Authority), Taxicab and Limousine Division (TLD), finding that Germantown operated outside of its authorized territory in violation of Section 5714(d)(2) of what is commonly known as the Parking Authorities Law (Law or Act 94), 53 Pa. C.S. § 5714(d)(2), and imposing a \$500 penalty.¹ We affirm.

Germantown is a partial-rights cab company that is authorized “to provide common carrier call or demand transportation of persons for compensation

¹ Section 5714(d)(2) was amended by the Act of July 5, 2012, P.L. 1022 (Act 119). Those amendments are not at issue here.

on a non-citywide basis” 52 Pa. Code § 1011.2. In other words, it is authorized to provide taxi service only within a limited territory in Philadelphia.² While conducting a routine inspection in April 2010 at 30th Street Station in Philadelphia, a TLD inspector observed a Germantown cab drop off a passenger. The driver acknowledged that he picked up a hail at 4055 Ridge Avenue, Philadelphia, and that the trip terminated at 30th Street Station. Having concluded that the driver operated outside of the company’s authorized territory, the TLD inspector issued the driver a citation. Germantown appealed and the matter was assigned to an Authority hearing officer for a hearing and decision.

After a January 2012 hearing, the hearing officer concluded that TLD established that Germantown violated Section 5714(d)(2) of Act 94 by operating outside its territory. The hearing officer relied upon the testimony of Authority witness William Schmid, who oversees enforcement in the Department of TLD, and a map. Mr. Schmid testified as to what the map depicts: “[U]sing the tariff, these borderlines show the border in the City of Philadelphia of Germantown Cab as an annex that happened years ago for their authority as it was in 2006 when it was transferred to us.” January 19, 2012 Hearing, Notes of Testimony (N.T.) at 37; Reproduced Record (R.R.) at 56. Specifically with regard to the cab trip at issue, Mr. Schmid pointed to both locations, origin and termination, as being outside of the company’s boundary lines. *Id.* at 37-38; R.R. at 56-57. The hearing

² Prior to 2005, the Public Utility Commission (PUC) issued a certificate of public convenience (CPC) to Germantown to operate a taxi service in Montgomery County and a small territory in Philadelphia. Authority’s Decision at 1-2. Taxicab companies operating under such CPCs do not have medallions from the Authority and, therefore, have limited authority to operate within the City of Philadelphia. *Sawink, Inc. v. Phila. Parking Auth.*, 34 A.3d 926, 927 (Pa. Cmwlth.), *aff’d without op.*, ___ Pa. ___, ___ A.3d ___ (No. 2 EAP 2012, filed December 17, 2012).

officer admitted the map into evidence and subsequently found in his decision that, “[t]he boundary issue had been previously litigated in several similar matters which culminated in an Order and Opinion issued by Honorable Joseph C. Bruno, Hearing Officer, on June 20, 2006.” Authority’s Decision at 2. Germantown’s timely petition for review to this Court followed.

Germantown first argues that the Authority has no jurisdiction over it and, therefore, no authority to impose fines, penalties or other sanctions. We disagree. Section 5714(d)(2) of Act 94, in effect at the time of the 2010 citation, provided as follows:

Carriers currently authorized to provide service to designated areas within cities of the first class on a non-citywide basis shall retain their authorization *through the authority*. The authority shall not grant additional rights to new or existing carriers to serve designated areas within cities of the first class on a non-citywide basis. [Emphasis added.]

Where, as here, the language of a statute is free from ambiguity, any further deliberation as to its meaning is unwarranted. *Dee-Dee Cab, Inc. v. Pa. Pub. Util. Comm’n*, 817 A.2d 593, 598 (Pa. Cmwlth. 2003). In addition, our Supreme Court has noted that in 2004 the legislature transferred a portion of the responsibility to regulate regional taxicab and limousine services from the PUC to the Authority pursuant to Act 94. *Germantown Cab Co. v. Phila. Parking Auth.*, ___ Pa. ___, ___, 36 A.3d 105, 107 (2012). Accordingly, we reject Germantown’s argument that Section 5714(d)(2) of Act 94 did not empower the Authority to regulate partial-rights taxicabs in Philadelphia at the time of the citation.³

³ In 2012, the legislature amended Section 5714(d)(2) of the Law via Act 119 thereby adding more detail to the provision specifying that partial-rights cab companies were subject to **(Footnote continued on next page...)**

Having resolved the issue of jurisdiction in the Authority's favor, we turn to Germantown's argument that the Authority erred in finding it liable for violating Section 5714(d)(2) of Act 94 because the provision neither defines an offense nor imposes any legal obligations or limitations on a cab company with regard to the provision of service under its certificate of public convenience.⁴ In that regard, Germantown maintains that the provision is merely a statement as to the ongoing validity of the Authority's power and not a restriction on the manner of the company's operations. We reject Germantown's position.

(continued...)

the Authority's exclusive jurisdiction, orders and regulations. Section 5714(d)(2), as amended by Act 119, now provides:

Carriers authorized by the authority to provide taxicab service to designated areas within cities of the first class on a non-citywide basis pursuant to section 5711(c)(2.1) (relating to power of authority to issue certificates of public convenience) shall retain their authorization in those areas of a city of the first class subject to the exclusive jurisdiction of the authority and orders and regulations of the authority issued under this chapter [Taxicabs and Limousines in First Class Cities]. The authority shall not grant additional rights to new or existing carriers to serve designated areas within cities of the first class on a non-citywide basis. [Emphasis added].

This addition, however, does not vitiate the clear language of Section 5714(d)(2) that was in effect when this matter was litigated.

⁴ At the hearing, Germantown never raised an issue that the Authority could not proceed with its prosecution of Citation No. 08693, issued to Germantown for operating outside its territory, due to any insufficiency of Section 5714(d)(2) of Act 94. To the contrary, counsel for Germantown acknowledged that the issue before the hearing officer was whether the taxi had operated outside its operating territory in violation of Section 5714(d)(2). N.T. at 7-8, 30-31; R.R. at 26-27, 49-50. Nonetheless, we will address the issue because Pennsylvania Rule of Appellate Procedure 1551(a)(1) provides that "[n]o question shall be heard or considered by the court which was not raised before the government unit except: (1) Questions involving the validity of a statute."

As noted above, Section 5714(d)(2) of Act 94 provided that, “[c]arriers currently authorized to provide service to designated areas within cities of the first class on a non-citywide basis shall retain their authorization through the authority.” A plain reading of the provision dictates that, when a carrier authorized to provide service only to designated areas within Philadelphia provides service outside of those designated areas, it violates Section 5714(d)(2) of Act 94. As the Authority maintains, one would have to look at the documentation authorizing such service for that particular partial-rights carrier in order to determine whether it provided service outside of its territory. That takes us to Germantown’s third issue, whether substantial evidence supports the Authority’s findings that Germantown exceeded the boundaries of its operating territory.

Germantown contends that the Authority’s decision was not based upon substantial evidence because the TLD failed to present admissible evidence of the boundaries of the company’s operating territory. Specifically, Germantown contends that the Authority improperly relied upon the findings of a prior adjudication involving the enforcement of regulations later found to be invalid and unenforceable in *Germantown Cab Co.*, ___ Pa. at ___, 36 A.3d at 120. We reject Germantown’s position.

The prior adjudication, *The Philadelphia Parking Authority v. Germantown Cab Co.*,⁵ was a June 2006 consolidated appeal resolving numerous citations issued to Germantown for allegedly operating outside its territory. *See* Authority Exhibit 9; R.R. at 157-64. In determining that Germantown was operating outside its territory, the hearing officer in that 2006 case relied upon a

⁵ The Authority docket numbers were as follows: 05-12-53 through 05-12-59 and 06-01-23. Authority Exhibit 9; R.R. at 158.

PUC order and map, the same ones that the Authority relied upon in the instant case. *See* Authority Exhibits 7 and 8; R.R. at 154-56.

Counsel for Germantown in the case before us objected to the relevancy of the map on the ground that it originated in an order from the PUC regarding the application of Penn Cab Company, Germantown's predecessor.⁶ N.T. at 39-40, 45; R.R. at 58-59, 64. He did not object, however, either to the accuracy of the map or on the ground that the 2006 decision concerned regulations that were later found to be invalid and unenforceable. Accordingly, counsel waived his right to raise either of the latter two objections on appeal.⁷ Pa. R.A.P. 1551. In any event, we conclude that the hearing officer's reliance on the map and the 2006 case was appropriate.

⁶ It is clear from the 2006 decision that the same Mr. Gabbay who testified at the hearing in the instant case as vice president and general manager of Germantown previously testified before the Authority that "Germantown Cab Co. purchased rights from Penn Cab Co., of which Mr. Gabbay was President." June 20, 1996 Adjudication at 3; R.R. at 160. In fact, Mr. Gabbay characterized Germantown as Penn Cab Co.'s successor. *Id.*

⁷ With regard to an objection on the ground that the 2006 decision concerned regulations that were later found to be invalid and unenforceable, it would have been possible for counsel to make such an objection, given the fact that the hearing in the instant case took place on January 19, 2012, and this Court found the regulations to be invalid and unenforceable in an April 28, 2010 opinion and order. *See Germantown Cab Co. v. Phila. Parking Auth.*, 993 A.2d 933, 942-43 (Pa. Cmwlth. 2010), *aff'd*, ___ Pa. ___, 36 A.3d 105 (2012). In addition, it is noteworthy that counsel for Germantown was the same in both cases. In any event, the Authority remained empowered to initiate enforcement actions for direct violations of the Law or the PUC's regulations that were to remain in effect until replaced by the new regulations. *Germantown Cab Co.*, ___ Pa. at ___, 36 A.3d at 120.

The hearing officer accepted as credible Mr. Schmid's testimony as to Germantown's boundaries, based in part on the trail of documents depicting those boundaries. Accordingly, we affirm.

BONNIE BRIGANCE LEADBETTER,
Judge

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ORDER

AND NOW, this 22nd day of January, 2013, the order of the Philadelphia Parking Authority is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
Judge