Michigan Law Review

Volume 39 | Issue 1

1940

CARRIERS - INTERSTATE COMMERCE - STOCKYARD A COMMON CARRIER

John L. Rubsam
University of Michigan Law School

CARRIERS — INTERSTATE COMMERCE — STOCKYARD A COMMON CARRIER — The Union Stock Yard and Transit Company of Chicago performed the services of loading and unloading livestock at its stockyards in Chicago. It neither owned nor controlled any railroad directly or indirectly, but restricted its transportation service to the loading and unloading of livestock as specified in its tariff. It owned the platforms and chutes which were the necessary and only means of loading and unloading at its yard, to and from which the livestock was shipped interstate by rail. For this service it charged the railroads the scheduled rates. Appellant contended that, having divested itself of all control and participation in the operation of its railroad, it was no longer within the jurisdiction of the commission over "common carriers by railroad" conferred by the Interstate Commerce Act, but was subject to regulation only by the secretary

of agriculture under the Packers and Stockyards Act of 1921.[1] *Held*, that the services of loading and unloading livestock rendered appellant a common carrier and subject to the Interstate Commerce Act.[2] *Union Stock Yard & Transit Co. of Chicago v. United States*, 308 U. S. 213, 60 S. Ct. 193 (1939).

Under the Packers and Stockyards Act of 1921 the rates and charges for stockyard services are required to be reasonable and the secretary of agriculture is given authority to regulate such rates.[3] In the instant case appellant contended that the services could be more conveniently and advantageously regulated by the one administrative agency and that it was the purpose of the Packers and Stockyards Act to place this regulation in the hands of the secretary of agriculture. It contended further that the Interstate Commerce Act applies only to common carriers and that the services performed by appellant are not those of a carrier under said act. The Packers and Stockyards Act makes an exception to the authority of the secretary which reads as follows: "Nothing in this Act shall affect the power or jurisdiction of the Interstate Commerce Commission, nor confer upon the Secretary concurrent power or jurisdiction over any matter within the power or jurisdiction of such Commission." [4] On the other hand, the Interstate Commerce Act provides that the term railroad shall include "all the road in use by any common carrier operating a railroad . . . and . . . all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of . . . persons or property . . . including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property." [5] Appellant argued that it was merely the agent of the railroad and that, as in the case of *Ellis v. Interstate Commerce Commission*,[6] it merely furnished a service for the railroad and as such was not a "carrier railroad," within the meaning of the act; that to be a common carrier there must be *control* of the transportation facilities, a holding out to the public as a carrier of property, and receiving of compensation for the facilities furnished directly from the shipper. It has long been held that transportation ordinarily includes loading and unloading.[7] In *United States v. People of State of Cali-*

[1] 42 Stat. L. 159 (1921), 7 U. S. C. (1934), §§ 181-229.

[2] 24 Stat. L. 379 (1887), as amended by 41 Stat. L. 474 (1920), 49 U. S. C. (1934), §§ 1-27.

[3] 42 Stat. L. 164-165 (1921), 7 U. S. C. (1934), §§ 206, 210. By U. S. C., § 201, stockyard services are defined as "services of facilities furnished at a stockyard in connection with the receiving, buying or selling . . . marketing, feeding, watering, holding, delivery, shipment, weighing, or handling, in commerce, of livestock."

[4] 42 Stat. L. 169 (1921), 7 U. S. C. (1934), § 226.

[5] Interstate Commerce Act, 41 Stat. L. 474 (1920), 49 U. S. C. (1934), § 1 (3).

[6] 237 U. S. 434, 35 S. Ct. 645 (1915). See also United States ex rel. Chicago, New York & Boston Refrigerator Co. v. Interstate Commerce Commission, 265 U. S. 292, 44 S. Ct. 558 (1923). In this case the court held that the plaintiff, whose business consisted in leasing its refrigeration cars to railroads, was not a common carrier because (1) the plaintiff did not control or use the facilities necessary for performing carriage, (2) or hold itself out to perform carriage by publishing rates therefor, or (3) receive compensation from shippers whose goods move in its cars.

[7] Atchison, Topeka & Santa Fe Ry. v. United States, 295 U. S. 193, 55 S. Ct. 748 (1935); Covington Stock-Yards Co. v. Keith, 139 U. S. 128, 11 S. Ct. 461

fornia,[8] the Court, speaking through Justice Stone in holding that the state of California was a common carrier in connection with its operation of a railroad, stated this test as to common carriers: "Whether a transportation agency is a common carrier depends not upon its corporate character or declared purposes, but upon what it does." And in *Adams v. Mills* [9] Justice Brandeis said for the court: "The conclusion rests upon the findings that the stockyards are, in effect, terminals of the line-haul carriers; and that the service of unloading the livestock there is a part of transportation. That the yards are, in effect, terminals of the railroad is clear." Section 15 (5) of the Interstate Commerce Act provides in part as follows: "Transportation wholly by railroad of ordinary livestock in carload lots destined to or received at public stockyards shall include all necessary service of unloading . . . without extra charge therefor to the shipper. . . ." [10] In adopting this section, Congress made express that which before 1920 had only been implied; namely, that unloading is a part of interstate transportation and subject to the jurisdiction of the commission. A directly analogous service to the one here in question is that performed by an independent switching company. In *Adams v. Mills*, an independent switching company was held to be an agent of the line-haul carriers, which is in effect the nature of appellant's status in its unloading function.[11] The company is performing an indispensable service which is an integral part of transportation. The purpose of the amendment to the Interstate Commerce Act in 1920 was undoubtedly to bring under a single rail charge all the services that are involved in the transportation of livestock up to and including the loading and unloading and to bring about the complete subjection of the transportation charge to the commission's authority. In the light of this section it is submitted that the manifest purpose of Congress is clearly indicated and that the Packers Act did not create jurisdiction in the secretary of agriculture over their services.

John L. Rubsam

(1891); Erie R. R. v. Shuart, 250 U. S. 465, 39 S. Ct. 519 (1919); 2 HUTCHINSON, CARRIERS, 3d ed., § 510 (1906).

[8] 297 U. S. 175 at 181, 56 S. Ct. 421 (1936).

[9] 286 U. S. 397 at 409, 52 S. Ct. 589 (1932).

[10] 41 Stat. L. 486 (1920), 49 U. S. C. (1934), § 15 (5).

[11] See also United States v. Brooklyn Eastern District Terminal, 249 U. S. 296, 39 S. Ct. 283 (1919), and annotation in 38 A. L. R. 1147 (1925).