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State Regulations Affecting Interstate Commerce

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NOTE AND COMMENT.

State Regulations Affecting Interstate Commerce.—The line between regulations of intrastate and interstate commerce is difficult to draw and hard to maintain. This is well illustrated in the recent case of St. Louis Southwestern Railway Company v. Arkansas, decided by the Supreme Court of the United States April 4, 1910, Advance Sheets, May 1, 1910, p. 476, 30 Sup. Ct. 426.

This was an action by the prosecuting attorney against the railway company to recover penalties for alleged violation of the rules of the railroad commission of Arkansas and certain statutory provisions, making it the duty of railroad companies to furnish shippers with cars upon proper demand, and subjecting them to a penalty for failure.

One Reinsch had made written demand of the company for cars to ship hay between places in the state from October 30, 1905 to January 20, 1906, and was furnished 51 less than he demanded. He complained to the railroad commission who found the company had violated the rule and the statute and directed the prosecuting attorney to sue for the penalty. The company defended on the ground that it was engaged in interstate shipments of freight over its lines in Arkansas, Illinois, Louisiana and Missouri, and by connect-
NOTE AND COMMENT

ing lines throughout the United States; that its equipment was ample for its freight traffic both state and interstate; that in anticipation of greater demand it had made an effort to buy 2000 more cars but had been unable to get them; and had therefore begun to construct shops of its own to build its cars; that at the time of the alleged default there was an extraordinary demand for cars for both interstate and local traffic upon its own and connecting lines; that it had equally distributed its cars to shippers along its line giving no preference to interstate over local shippers; and that "it would have been impossible to comply with the rule without discrimination against its interstate commerce shippers, and therefore obedience to the rule would have resulted in a direct burden upon interstate commerce," and the rule and statute were therefore in conflict with the Constitution of the United States conferring power to regulate commerce among the states upon Congress. This defense was insisted upon in various ways but overruled by the trial court, and a verdict of $1,350, with judgment thereon was rendered against the company. This was affirmed by the Supreme Court of the state, 85 Ark. 311, 107 S. W. 1180, 122 Am. St. Rep. 33.

The facts as stated in the opinion of the State Supreme Court were that 70 per cent of the freight traffic of the road originated on its own line; that it had 9517 freight cars; 3982 of these were in daily use upon its own line, and 5525 off its line, while only 2519 foreign cars were upon its line, with a daily balance of exchange of 1473 cars, and a daily shortage of about 650 cars; that the number of cars owned was larger than the average freight carrying road had, and sufficient to meet the demands of its own traffic, if its cars could be kept at home; and that "its failure to furnish cars was wholly due to an inability to regain its cars which were sent to other roads carrying freight from its own line." Also that the company was a member of the American Railway Association (as were 90 per cent of the railways of the United States) which makes rules for the interchange of cars; that such association is lawful, and a system of interchange of loaded cars, instead of reloading and reshipping, is essential to the public convenience and conforms to the policy of both Federal and state legislation, and that "for one railroad company to be an Ishmaelite among its associates would operate disastrously to its shippers"; but further that the rules made by the railway association for the return of cars,—a charge of 25 to 50 cents per day per car,—were totally inadequate to secure their prompt return in case of congested traffic, and that prior to 1905 the company had lost control of its cars, knowing that the rules of the association were insufficient to secure their return within a reasonable time.

The State Supreme Court therefore by Hill, C. J., ruled, that although it may be better for the company "to suffer these ills than to sail under a black flag and refuse to send its cars beyond its lines," yet until it "shows reasonable rules and regulations for the interchange of cars, it cannot avail itself of these rules of interchange as causing and excusing its default to the public, for the rules here shown have proved unreasonable and inefficient before this default occurred."

Mr. Justice White in reversing the decision of the state court says: The
company "was powerless, of its own motion, to change the rules thus gen-
ergy: prevailing, and therefore was necessarily either compelled to desist
from the interchange of cars with connecting carriers for the purpose of the
movement of interstate commerce, or to conduct such business with the

certainty of being subjected to the penalties which the state statute provided
for.*** It needs but statement to demonstrate that the ruling of the
court below involved necessarily the assertion of power in the state to abso-
lutely forbid the efficacious carrying on of interstate commerce, or, what is
equivalent thereto, to cause the right to efficiently conduct such commerce
to depend upon the willingness of the company to be subjected to enormous
pecuniary penalties as a condition of the exercise of the right.*** If the
rules of the railway association governing 90 per cent of the railroads and
a vast proportion of the interstate commerce of the country are inefficient
to secure just dealing as to cars moved by the carriers engaged in interstate
commerce, that fact affords no ground for conceding that such subject was
within the final cognizance of the court below, and could by it be made the
basis of prohibiting interstate commerce or unlawfully burdening the right
to carry it on. In the nature of things, as the rules and regulations of the
association concern matters of interstate commerce inherently within Fed-
eral control, the power to determine their sufficiency, we think was primarily
vested in the body upon whom Congress has conferred authority in that
regard." Chief Justice FULLER dissents.

Mr. Justice WHITE cites no authority for his ruling, and no reliance is
placed upon the rule that the subject has been regulated by Federal legisla-
tion, or by any rule of the Interstate Commerce Commission, nor upon the
rule that, because Congress has not acted upon the matter, it is to be as-
sumed that the subject is to be left free and untrammeled by any state reg-
ulations. Neither is there any finding of facts as to the proportion of inter-
state and intrastate traffic,—only that 70 per cent of the traffic originates on
its line, and 30 per cent off, but how much of either is interstate traffic is
not stated. The lower court ruled that the statute only imposed a penalty
for negligently failing to perform the common law duty to furnish cars
promptly upon demand, whether for state or interstate shipments, and the
known inadequacy of the association rules to enable the company to com-
ply with this duty was negligence. The association rules for return of cars
necessarily directly affected both state and interstate shipments. If they
were inadequate, and had been known to be so generally, does the supreme
court mean to hold that conformity to them would not be negligent, just
because 90 per cent of the roads are parties to them?

In Missouri P. R. Co. v. Larabee Flour Mills Co. (1909), 211 U. S. 612,
29 Sup. Ct. 214, Mr. Justice BREWER says: "The roads are engaged in both
interstate commerce and that within the state. In the former, they are sub-
ject to the regulation of Congress; in the latter, to that of the state; and to
enforce the proper relation between Congress and the state, the full control
of each over the commerce subject to its dominion must be preserved," and
Mr. Justice Moody, dissenting, says: "The commerce clause vests the power to
regulate interstate commerce exclusively in the Congress, and leaves the power
to regulate intrastate commerce exclusively in the states. Both powers being exclusive, neither can be directly exercised except by the government in which it is vested." If these statements are correct, and the same regulation had been made by Congress or the Interstate Commerce Commission as to an interstate shipment, and the company had pleaded that it would have been impossible to comply without discrimination against its state traffic, because its cars were negligently allowed to be away from home so that it could not adequately supply either its interstate or state shippers, would the Federal regulation have been held unconstitutional, as beyond the Federal power, because directly affecting state commerce, or would the company have been held liable because of its negligence, when the only case before the court was one of interstate commerce, and not state commerce? Or to put the matter in another way, is it possible that where a railway association makes ineffective rules relating to the return of cars to one of its members, which knows they are notoriously inadequate, and shippers, therefore cannot get cars promptly, the state cannot impose a penalty for not furnishing the cars to a state shipper, because that would directly affect interstate commerce, and the Federal government cannot impose a penalty for not furnishing cars to an interstate shipper, because that would directly affect state traffic? Such certainly cannot be the rule.

In Houston and T. C. R. Co. v. Mayes (1906), 201 U. S. 321, 26 Sup. Ct. 491, plaintiff sued to recover a penalty for failing to furnish him cars for an interstate shipment, contrary to a statutory provision penalizing the company for its failure to furnish cars within a specified time after demand, and making the duty an absolute one, admitting of no excuse whatever. This was held, Mr. Justice Brown, delivering the opinion (Chief Justice Fuller, Mr. Justice Harlan, and Mr. Justice McKenna, dissenting) "as applied to interstate commerce," to be unconstitutional. In McNeil v. Southern R. Co. (1906), 202 U. S. 543, 26 Sup. Ct. 722, a state railway commission ordered cars containing interstate shipments to be delivered beyond its right of way to a private siding. The suit was to enjoin the collection of the statutory penalties for violating the orders of the commission. This order the court by Mr. Justice White, held to be an unlawful interference with interstate commerce, whether considered as a general power to regulate carriers engaged in interstate commerce, or to make an order in a particular case.

On the other hand in the Larabee case supra the plaintiff brought mandamus to compel the railroad company to resume the transfer of cars loaded and unloaded from the line of a connecting carrier to his flour mill upon payment of the customary charges. Three-fifths of plaintiff's shipments were interstate, the defendant was a member of a car service association which regulated the interchange of cars; plaintiff refused to pay a demurrage charge on certain cars furnished by the defendant, because the delay was caused by it instead of by the plaintiff; the car service association demanded payment, and upon refusal directed the defendant to discontinue furnishing cars to plaintiff as before; it was found that the delay for which the demurrage charge was made was due to the fault of the company. There was
no state regulation involved,—only common law duties.' The defendant claimed that it was subject to the control of Congress only, since the shipments were partly or mostly interstate. The court, by Mr. Justice Brewer (Moody and White, dissenting) held that the state court could enforce the common law duty not to discriminate between shippers in such a case,—"at least until Congress or the Interstate Commerce Commission takes action, although both carriers are engaged in interstate commerce, and three-fifths of the output of the mill is shipped out of the state," and the mere delegation by Congress to the Interstate Commerce Commission of power over interstate commerce" is not equivalent to specific action by Congress in respect to the matter involved which prevents a state from making regulations conducive to the welfare and convenience of its citizens that may indirectly affect commerce." This case reviews the cases upholding state regulations. Compare also Atlantic C, L. R. Co. v. Mazursky (1910), 216 U. S. 122, 30 Sup. Ct. 378.

In Mississippi Railroad Commission v. Illinois Cent. R. Co. (1906), 203 U. S. 335, 27 Sup. Ct. 90, after reviewing the cases the court by Mr. Justice Peckham, says: "A state railroad commission, under a state statute, may order the stoppage of trains if the company does not otherwise furnish proper and adequate accommodation to a particular locality, and in such cases the order may embrace a through interstate train actually running, and compel it to stop at the locality named. In such case, in the absence of Congressional legislation covering the subject, there is no illegal or improper interference with the interstate commerce right"; but if reasonable accommodation is otherwise furnished, a regulation requiring interstate trains to stop would be void. See also Missouri P. R. Co. v. Kans. (1910), 216 U. S. 262, 30 Sup. Ct. 330.

In view of these decisions, it seems that the case under review ought to have passed upon the point of the negligence of the company, rather than held the statute (which made no absolute requirement as the state court held to furnish cars at all events, without reference to its effect upon interstate commerce) to be an unconstitutional and direct interference with interstate commerce. It seems fair under all the facts of the case to hold, contrary to what the lower court held, that the railroad company, considering its duties to both its state and interstate shippers was not negligent, and therefore not liable for any damages or penalty; and because the question of negligence in such cases of apportioning cars necessarily involves the relative duties to state and interstate shippers, and therefore raises a question under the federal law, the federal courts would have jurisdiction to determine whether there had been negligence or not, and if such court found there was negligence in the performance of the common law duty to a state shipper, then should not the state law imposing the penalty be upheld? H. L. W.