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Administrative Law-Judicial Control-Injunctive Extension of the Rate Suspension Period Under the Interstate Commerce Act

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RECENT DECISIONS

ADMINISTRATIVE LAW—JUDICIAL CONTROL—INJUNCTIVE EXTENSION OF THE RATE SUSPENSION PERIOD UNDER THE INTERSTATE COMMERCE ACT—Plaintiffs, two interstate carriers and a municipal corporation, and defendants, four railroad companies, were parties to an investigation and suspension proceeding before the Interstate Commerce Commission.¹ Section 15(7) of the Interstate Commerce Act² allows the Commission to suspend the effectiveness of rate revisions proposed by carriers for seven months while it is deciding whether to approve them. If no decision is reached by the end of the suspension period, the proposed rates automatically become effective subject to a subsequent determination of their validity by the ICC. Expiration of the order suspending defendants' rate proposals was imminent when, in an unprecedented attempt to maintain the status quo pending a final Commission decision, the plaintiffs brought an original action in a federal district court seeking to enjoin the application of the disputed tariff schedules. The district court found, as a matter of fact, that, if the proposed reductions were to go into effect as required by the Interstate Commerce Act, there was grave danger that the plaintiffs would suffer irreparable harm. The court, however, denied injunctive relief on the ground that jurisdiction over rate suspensions is vested exclusively in the ICC by section 15(7) of the act.³ The Court of Appeals for the Fifth Circuit refused to grant plaintiffs' prayer for an injunction pending appeal, but did grant a continuance of its previously issued temporary restraining order.⁴ On application to Mr. Justice Black⁵ for an extension of the temporary restraining order until the Supreme Court could consider plaintiffs' petition for a writ of certiorari, *held*, application granted. Mr. Justice Black commented favorably on the plaintiffs' prospects of obtaining review by the Supreme Court, and pointed out that the Supreme Court has never interpreted section 15(7) as substantially destroying federal court jurisdiction to restrain conduct which inflicts irreparable damage. *Arrow Transp. Co. v. Southern Ry.*, 83 Sup. Ct. 1 (1962).

The Supreme Court has granted the plaintiffs' petition for certiorari,⁶ justifying Mr. Justice Black's favorable prediction and emphasizing the genuine importance of the question presented. The case is extremely significant for, although plaintiffs' action is unique, its position in challeng-

¹ Grain in Multiple Car Shipments—River Crossings to the South, I. & S. No. 7656 (1962).

² 41 Stat. 486 (1920), as amended 44 Stat. 1447 (1927), 49 U.S.C. § 15(7) (1958).

³ *Arrow Transp. Co. v. Southern Ry.*, Civil No. 10224, N.D. Ala., Aug. 2, 1962.

⁴ *Arrow Transp. Co. v. Southern Ry.*, 308 F.2d 181 (5th Cir. 1962).

⁵ Sitting in his capacity as Circuit Justice.

⁶ 371 U.S. 859 (1962). As a practical matter, this means plaintiffs have succeeded. It is very likely that the ICC will reach a decision in the rate proceeding and moot the question before the Supreme Court can consider it. Of course, the question remains, if the Commission decision is adverse to the plaintiffs, whether they would have the right to an injunction while the initial decision is being appealed.

ing a carrier's proposed rate reductions before the ICC is not. In recent years over ninety percent of the rate protests filed before the ICC have involved proposed reductions similar to those of the defendants in the principal case.⁷ While none of the opinions in the principal case clearly states the allegations of irreparable injury made by the plaintiffs, the injuries contemplated seem to be no different from those which would be suffered from the collection, under section 15(7), of most protested rates which may subsequently be found to be unreasonably and unlawfully low. The district court, in addition, indicated that, if the rates were to become effective, the plaintiffs would have no adequate legal remedy under section 8 of the act.⁸ If this is true in the principal case, it is unlikely that section 8 would provide an adequate remedy in most other rate reduction disputes. The relatively great importance of the rates involved in this case⁹ does not appear to be a valid reason for limiting the finding of section 8's inadequacy to this case alone. It seems apparent, then, if the Supreme Court holds in favor of district court jurisdiction, that application for similar injunctions will become an extremely popular tactic in the area of ICC rate regulation.

The key question, of course, is: Does the federal district court have the requisite jurisdiction to grant the plaintiffs' prayer for an injunction? Plaintiffs' action is an original one before the federal district court, and jurisdiction can be appropriately invoked under section 1331 of the *United States Code*¹⁰ as a general federal question or, more specifically, under section 1337 as a case arising under a federal act regulating commerce. It can also be demonstrated that federal equity powers would, in the absence of statutory limitations, provide equitable relief in the principal case. A survey of the utilization of federal injunctive powers in analogous areas reveals that a federal court can, when the situation warrants it, invoke its equity powers in order to preserve the status quo pending resolution of a trial court proceeding.¹¹ Federal court injunctions have also been granted to stay the execution of a lower court judgment pending review of that judgment upon appeal,¹² and, similarly, to stay the enforcement of administrative orders pending a review of the matter by a federal court.¹³ In addition, parties to proceedings before other federal

⁷ Murphy, *Problems in Transportation Rate Making*, 26 ICC PRAC. J. 1138, 1141 (1959).

⁸ *Arrow Transp. Co. v. Southern Ry.*, Civil No. 10224, N.D. Ala., Aug. 2, 1962.

⁹ *Traffic World*, Sept. 1, 1962, p. 92.

¹⁰ 28 U.S.C. § 1331 (1958). Compare 28 U.S.C. § 1336 (1958), which grants "jurisdiction . . . to . . . enjoin . . . any order of the Interstate Commerce Commission." This does not confer jurisdiction over the plaintiffs' original action.

¹¹ *United States v. UMW*, 330 U.S. 258, 290 (1947); *Continental Ill. Nat'l Bank & Trust Co. v. Chicago, R.I. & P. Ry.*, 294 U.S. 648, 675 (1935). See WALSH, *EQUITY* 297-98 (1930).

¹² *In re McKenzie*, 180 U.S. 536, 550 (1901); *In re Claasen*, 140 U.S. 200 (1891); *Scripps-Howard Radio, Inc. v. FCC*, 316 U.S. 4, 9 (1942) (dictum).

¹³ *Scripps-Howard Radio, Inc. v. FCC*, *supra* note 12.

agencies have received injunctive relief to postpone action by the parties until the agency can rule upon the questions in issue.¹⁴ Therefore, it would appear that, by analogy, the federal equity power would extend to granting the relief prayed for in the principal case.

It is widely recognized, however, that Congress has the power to control the original jurisdiction of the lower federal courts.¹⁵ Section 15(7) of the Interstate Commerce Act reads, in part: "If the proceeding has not been concluded . . . within the period of suspension, the proposed change of rate . . . shall go into effect at the end of such period. . . ." On its face, this language seems to settle the entire question, by expressly limiting the suspension period and contemplating no method of extension, unless, of course, the language can be construed to be inapplicable to the situation presented in the principal case.

The basic provision of section 15(7), the power to suspend proposed carrier rate schedules and to investigate their lawfulness, was first introduced into the act by the Mann-Elkins Act of 1910.¹⁶ The legislative history of this amendment specifically indicates that the statutorily-established suspension period was not considered to be open to extension. Placement of the power to suspend in the ICC was viewed as an extraordinary interference with the right of carriers to initiate their own rates,¹⁷ and members of Congress expressed grave concern over the constitutionality of any indefinite suspension period.¹⁸ Therefore, although other plans were considered,¹⁹ a definite suspension period was expressly incorporated into the statutory provisions. The logical conclusion, thus, appears to be that the same congressional policy which limited the ICC's power under section 15(7) would also preclude any injunctive extension of the statutory period by a federal court.²⁰ This conclusion is arguably weakened by the fact that the Mann-Elkins Act was passed in an era of rapidly rising carrier rates, and the problem of competitive rate reductions presented by the principal case was never really considered in the drafting of this section.²¹

¹⁴ *West India Fruit & S.S. Co. v. Seatrains Lines, Inc.*, 170 F.2d 775 (2d Cir. 1948) (leading case); *Pennsylvania Motor Truck Ass'n v. Port of Philadelphia Marine Terminal Ass'n*, 183 F. Supp. 910 (E.D. Pa. 1960); *Reeber v. Rossell*, 91 F. Supp. 108 (S.D.N.Y. 1950); *Isbrandtsen Co. v. United States*, 81 F. Supp. 544 (S.D.N.Y. 1948), *appeal dismissed*, 336 U.S. 941 (1949).

¹⁵ *E.g.*, *Yakus v. United States*, 321 U.S. 414 (1944); *Lockerty v. Phillips*, 319 U.S. 182 (1943). See generally Hart, *The Power of Congress To Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic*, 66 HARV. L. REV. 1362 (1953).

¹⁶ 36 Stat. 552. The original suspension period was set at 120 days. In 1927 the act was amended and the present seven-month period introduced. 44 Stat. 1448 (1927), 49 U.S.C. § 15(7) (1958).

¹⁷ See 1 SHARFMAN, *THE INTERSTATE COMMERCE COMMISSION* 52 (1931).

¹⁸ 45 CONG. REC. 3472 (1910) (remarks of Senator Elkins, co-sponsor of the bill).

¹⁹ A minority report of the Senate committee considering the suspension power recommended an indefinite period continuing until the Commission had made a final ruling. 45 CONG. REC. 2823 (1910).

²⁰ See generally Landis, *Statutes and the Sources of Law*, HARVARD LEGAL ESSAYS 213, 214-18 (1934).

²¹ Debate in the Senate on Senate Bill 6737, and in the House on the corresponding

In fact, it was strongly urged by a carrier in a 1911 ICC proceeding that the suspension power did not extend to proposed rate reductions.²² Subsequent amendments of section 15(7), however, were made by congressmen who realized and considered the problem of competitive rate reductions,²³ and who made no provision for the relief that plaintiff is claiming in the principal case.

Due to the fact that the jurisdictional question involved is one of first impression under the Interstate Commerce Act, the relevant case law is far less damaging to plaintiffs' position than the "plain meaning" interpretation of section 15(7). Prior to the passage of the Mann-Elkins Act a minority of lower federal courts issued injunctions to prevent the collection of newly published rates previous to an ICC decision as to their lawfulness.²⁴ These injunctions resulted in the type of indefinite suspension advocated by the plaintiffs; however, after the power to suspend and investigate was granted to the ICC, the courts unanimously construed it as an exclusive grant, and they refused to interfere with Commission decisions granting, refusing, or vacating suspensions.²⁵ However, the problem of federal court maintenance of the status quo until a Commission decision did not arise again until the present time. This was due to a railroad practice, just recently abandoned, of accepting voluntary extension of the suspension period,²⁶ and a general feeling among carriers and shippers that this sort of remedy was simply not available under the act.²⁷ The exclusiveness of ICC power and discretion over rate suspensions has recently been challenged by several federal court decisions enjoining the application of reduced rates after the Commission had ordered a vacation of their original suspension order.²⁸ While these decisions aid plaintiffs' position by clouding the limits of federal court jurisdiction in the area, the large majority of cases construing section 15(7) still support the

measure, H.R. 17536, was limited solely to the problem of unreasonable rate increases. See 45 CONG. REC. 3472, 5846 (1910); Hilton, *Barriers to Competitive Ratemaking*, 29 ICC PRAC. J. 1083 (1962).

²² Suspension of Reduced Rates on Packing-House Products, 21 I.C.C. 68, 70 (1911).

²³ 41 Stat. 486 (1920), amended by 44 Stat. 1447 (1927), amended by 54 Stat. 912 (1940), 49 U.S.C. § 15(7) (1958).

²⁴ *E.g.*, Northern Pac. Ry. v. Pacific Coast Lumber Mfrs. Ass'n, 165 Fed. 1 (9th Cir. 1908); Great No. Ry. v. Kalispell Lumber Co., 165 Fed. 25 (9th Cir. 1908). *Contra, e.g.*, Atlantic Coast Line R.R. v. Macon Grocery Co., 166 Fed. 206 (5th Cir. 1909). See Board of R.R. Comm'rs v. Great No. Ry., 281 U.S. 412, 429 (1930), where the Court stated that the weight of authority was against granting injunctive relief in these cases.

²⁵ Board of R.R. Comm'rs v. Great No. Ry., *supra* note 24; M. C. Kiser Co. v. Central of Ga. Ry., 239 Fed. 718 (5th Cir. 1917); Algoma Coal & Coke Co. v. United States, 11 F. Supp. 487 (E.D. Va. 1935).

²⁶ I SHARFMAN, *op. cit. supra* note 17, at 203.

²⁷ Brief for Appellant, p. 10, principal case, *petition for cert. granted*, 371 U.S. 859 (1962).

²⁸ Amarillo-Borger Express, Inc. v. United States, 138 F. Supp. 411 (N.D. Tex.), *prob. juris. noted*, 352 U.S. 817, *remanded for dismissal as moot*, 352 U.S. 1028 (1956). *Accord*, Long Island R.R. v. United States, 140 F. Supp. 411 (E.D.N.Y. 1956).

view that, for most purposes, the suspension power is held exclusively by the ICC.²⁹

Cases considering the utilization of federal injunctive powers to preserve the status quo during proceedings before other federal agencies generally hold that the courts lack the requisite jurisdiction to entertain such proceedings.³⁰ Yet, again in isolated cases, federal courts have recently exhibited a willingness to assume jurisdiction in areas previously thought to be reserved exclusively to administrative tribunals.³¹ These cases involved injunctions issued for the sole purpose of maintaining the status quo pending an administrative determination on the merits of complaints brought before the Federal Maritime Board. The injunctions issued relate, as they would in the principal case, to areas where the courts have no jurisdiction to make a decision on the merits of the issues involved. These cases, however, were not decided under an act which contains a suspension provision similar to section 15(7).

An argument based on the recent cases challenging the exclusiveness of ICC jurisdiction under section 15(7) and upon the somewhat analogous authority found in the FMB cases can be made to uphold federal district court jurisdiction in the principal case. On the other hand, the general case law and legislative history provide a much stronger basis for reaching the conclusion that federal courts do not have the requisite jurisdiction to entertain such an action. In order to allow a federal court to extend the suspension period as set out in section 15(7), the Supreme Court would have to go through a process akin to the judicial redrafting of a statute. While this may have beneficial results for plaintiffs, it could, as stated earlier, become a regular tactic in rate reduction disputes similar to that involved in the principal case. A new procedure, never envisioned by Congress, would thus be added to the field of rate regulation. The balance of interests achieved in the complex and complete scheme of regulation contemplated by Congress when it drafted the Interstate Commerce Act should seemingly not be upset by the addition of such judicially-created procedures.

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²⁹ *E.g.*, Board of R.R. Comm'rs v. Great No. Ry., 281 U.S. 412 (1929); Algoma Coal & Coke Co. v. United States, 11 F. Supp. 487 (E.D. Va. 1935).

³⁰ *E.g.*, Aircraft & Diesel Equip. Corp. v. Hirsch, 331 U.S. 752 (1947); Osmond v. Riverdale Manor, Inc., 199 F.2d 75 (4th Cir. 1952); Gates v. Woods, 169 F.2d 440 (4th Cir. 1948). It should be noted that these cases generally apply the doctrine of exhaustion of administrative remedies. For criticism of the haphazard use of this doctrine, see 3 DAVIS, ADMINISTRATIVE LAW § 20.04 (1958).

³¹ West India Fruit & S.S. Co. v. Seatrain Lines, Inc., 170 F.2d 775 (2d Cir. 1948) (effectiveness of proposed rate reductions enjoined pending agency decision); Pennsylvania Motor Truck Ass'n v. Port of Philadelphia Marine Terminal Ass'n, 183 F. Supp. 910 (E.D. Pa. 1960) (effectiveness of loading regulation enjoined to maintain status quo pending determination on the merits by an administrative agency).