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CARRIERS — MOTOR CARRIER ACT — CONTRACT CARRIER PERMITS UNDER THE "GRANDFATHER CLAUSE"—The Rosenblum Truck Lines and Manhattan Truck Lines applied to the Interstate Commerce Commission for contract carrier permits under the so-called "grandfather clause" of the Motor Carrier Act of 1935.[1] Prior to July 1, 1935, the applicants hauled only for common carriers by motor vehicle and, in each case, principally for a single common carrier. The freight so handled was always solicited by a common carrier and accumulated at its terminal. The applicants carried only the overflow freight, employing their own insurance and paying their own operating and maintenance costs. The Interstate Commerce Commission's finding that the applicants' equipment was operated under the direction and control of the common carriers[2] was held to be unsupported by the evidence in the lower court.[3] *Held*, applicants are not entitled to permits because they are not contract carriers within the meaning of the act. *United States v. N. E. Rosenblum Truck Lines*, 315 U. S. 50, 62 S. Ct. 445 (1942).[4]

It is clear that an owner who merely leased his trucks and equipment to a carrier and operated completely under the control of such carrier before July 1, 1935, is not entitled to a permit to operate as a contract carrier under the "grandfather" clause of the Interstate Commerce Act.[5] If the operator actually

[1] 49 Stat. L. 552, § 209(a) (1935), as amended, 49 U. S. C. (1940), § 309(a): "if any such carrier . . . was in bona fide operation as a contract carrier by motor vehicle on July 1, 1935 . . . the Commission shall issue such permit, without further proceedings. . . ."

[2] This finding was held to bring the application within the principle of the owner-operator cases, such as Dixon Contract Carrier Application, 21 M. C. C. 617 (1940). Rosenblum Truck Lines Contract Carrier Application, 24 M. C. C. 121 (1940).

[3] The district court held that the permit should be granted because there was no evidence to support the finding that the applicant was under the control and direction of the common carrier. Rosenblum Truck Lines v. United States, (D. C. Mo. 1941) 36 F. Supp. 467.

[4] A similar case was decided upon the reasoning of the principal case on the same day, Lubetich v. United States, 315 U. S. 57, 62 S. Ct. 449 (1942).

[5] "If the vehicles of the owner-operators, while being used by applicant, were operated under its direction and control, and under its responsibility to the general

made contracts with the public and transported goods in interstate commerce prior to this date, it is equally clear that the Interstate Commerce Commission must issue a permit without further investigation.[6] However, the status of a carrier who does not make contracts with individual shippers but who transports the goods in interstate commerce for other carriers was not settled until the decision by the Supreme Court in the principal case.[7] Though the decisions of the Interstate Commerce Commission and the district court were in disagreement because of contrary views as to whether the applicant was in actual control of his trucks during these shipments,[8] the Supreme Court based its decision on whether the applicant had made the contracts with the individual shippers.[9] The statute itself refutes any contention that the ruling should depend on whether applicants made contracts with the individual shipper since it provides that brokers who make contracts need only procure licenses, while the carrier who actually engages in transportation must obtain a permit to operate in interstate commerce.[10] Further, the statute then provided that if a carrier transports freight under special agreements "directly or by a lease or any other arrangement" for compensation, it is a contract carrier.[11] From these two statutory provisions it seems that the Supreme Court was incorrect in basing its decision on whether the applicant made the contract with the individual shipper. In deciding the principal case the Court reasoned that since the purpose of the act is to provide a more efficient and economical system of transportation, Congress did not intend to grant multiple "grandfather" rights on the basis of a single trans-

public as well as to the shipper, then its operations . . . [were those of] a common carrier by motor vehicle." Dixie Ohio Express Co. Common Carrier Application, 17 M. C. C. 735 at 740 (1939). The owner-operator is not entitled to a permit since he does not operate as a carrier. Dixon Contract Carrier Application, 21 M. C. C. 617 (1940); Smythe Contract Carrier Application, 22 M. C. C. 726 (1940).

[6] This operation would clearly fall within the language of the statute set out in note 1, supra.

[7] Principal case, 315 U. S. 50 at 56.

[8] If the applicant was not in control of his trucks during the shipments, he would not be operating as a carrier. Dixon Contract Carrier Application, 21 M. C. C. 617 (1940); Smythe Contract Carrier Application, 22 M. C. C. 746 (1940).

[9] The Interstate Commerce Commission held that the applicant was under the direction and control of the common carrier. Rosenblum Truck Lines Contract Carrier Application, 24 M. C. C. 121 (1940). "Because of our views as to the proper construction of the Act, we need not determine whether substantial evidence supports the conclusion of the Commission." Principal case, 315 U. S. 50 at 53.

[10] 49 Stat. L. 544, § 203(18) (1935), 49 U. S. C. (1940), § 303 (18); 49 Stat. L. 554, § 211 (a) (1935), 49 U. S. C. (1940), § 311 (a). Section 303(18) defines a broker as one who "as principal or agent, sells or offers for sale any transportation subject to this chapter."

[11] "The term 'contract carrier by motor vehicle' means any person . . . who . . . under special and individual contracts or agreements, and whether directly or by lease or any other arrangement, transports passengers or property. . . ." 49 Stat. L. 544, § 203a (15) (1935), 49 U. S. C. (Supp. 1939), § 305(a)(15). The provision relating to leases has been deleted by 54 Stat. L. 920 (1940), 49 U. S. C. (1940), § 303(a) (15).

portation system.[12] Unless it can be said that a single transportation system operated by one company is more efficient and economical to operate than several smaller companies, the applicant in the principal case who was actually transporting goods by trucks under his control should be considered the real contract carrier even though the contracts were made with the individual shipper by the carrier. With reference to goods carried by the applicant, the carrier was acting more nearly as a broker, if we are to follow other decisions of the Court which place emphasis on whether the party actually transported the goods in determining his status as a carrier.[13] No multiple rights would be created since the carrier was not operating on these particular routes before July 1, 1935, and therefore could not operate on them without obtaining a certificate from the commission. If some limit should be placed on the scope of the statute, it seems that ample opportunity is afforded by the statute itself,[14] since certificates granted under the "grandfather clause" permit operation only within the area in which the contract carrier was operating before July 1, 1935, limit the service to carriage of types of goods which he was transporting on that date, and restrict him to dealing solely with the general class of shippers with which he was then contracting.[15]

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[12] Such multiple permits would have to be granted if both the applicants and the common carrier who made the contracts were held to fall under the "grandfather clause." The Court avoided this result, by denying a permit to applicants and awarding a permit to the common carrier on the ground that multiple permits are not permitted when only one transportation service is rendered through the collaboration of applicants and the common carrier. Principal case, 315 U. S. 50 at 54.

[13] In interpreting other statutes, the Court has given a broader meaning to the term "carrier" then it did in the principal case. In United States v. Brooklyn Eastern Terminal, 249 U. S. 296, 39 S. Ct. 283 (1918), it was held that the terminal was a carrier though not organized or held out as such and though it did not file tariffs or undertake to transport property for all who applied, but merely carried freight as agent for certain railroads with which it made special contracts. The case arose under the Federal Hours of Service Act. See also United States v. California, 297 U. S. 175, 56 S. Ct. 421 (1936).

[14] A permit issued under the grandfather clause to a contract carrier may appropriately embody restrictions as to the class of shippers which the carrier may serve, and in addition restrict it to the carriage of certain goods within a specified territory. Keystone Transportation Co. Contract Carrier Application, 19 M. C. C. 475 (1939).

[15] The decision of the Supreme Court may be justified, however, if the view is adopted that Congress intentionally made the provisions of the statute broad so that the Interstate Commerce Commission could interpret the statute more freely, and that such an interpretation should not be disturbed by the courts unless it is clearly against the intent of the Congress.