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RAILROADS - ABANDONMENT - POWER OF INTERSTATE COMMERCE COMMISSION TO AUTHORIZE ABANDONMENT SUBJECT TO CONDITIONS FOR PROTECTION OF EMPLOYEES

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RAILROADS — ABANDONMENT — POWER OF INTERSTATE COMMERCE COMMISSION TO AUTHORIZE ABANDONMENT SUBJECT TO CONDITIONS FOR PROTECTION OF EMPLOYEES — The railroad applied to the Interstate Commerce Commission for permission to carry out a general program of rearrangement involving the abandonment of certain lines. The union appeared, and contended that if the commission were to grant the order, it should incorporate conditions for the benefit of employees who would be displaced or otherwise prejudiced by the abandonment. The commission permitted the abandonment, but held that it was without authority to impose any conditions for the protection of employees.[1] The federal district court [2] held that the commission had

[1] Pacific Electric Ry. Abandonment, 242 I. C. C. 9 at 23 (1940).

[2] Railway Labor Executives Assn. v. United States, (D. C. D. C. 1941) 38 F. Supp. 818.

authority to impose the requested conditions; on appeal, *held*, it is within the power of the commission in abandonment proceedings to impose conditions for the protection of employees. *Interstate Commerce Commission v. Railway Labor Executives Association*, 315 U. S. 373, 62 S. Ct. 717 (1942).

Section 1 (18)[3] of the Interstate Commerce Act forbids a carrier by rail to abandon all or any portion of a line or the operation thereof unless and until there shall have first been obtained from the commission a certificate that the present or future public convenience and necessity permit such abandoment. Section 1 (20)[4] authorizes the commission to issue the certificate and to attach thereto such terms and conditions as in its judgment the public convenience and necessity may require. The commission had long held [5] that this latter section did not authorize it to impose any conditions for the protection of employees in abandonment proceedings. With respect to consolidations, however, the commission's authority to impose conditions for the protection of employees had been sanctioned by the Supreme Court in *United States v. Lowden*.[6] Although there was no specific authorization to impose such conditions in either the abandonment [7] or consolidation [8] section, the language of the consolidation section was considerably broader in that it authorized the commission to issue the order upon such terms and conditions as it might find to be just and reasonable. Thus, the holding that the consolidation section permitted the attachment of conditions for the protection of employees would not be binding precedent as to the abandonment section, but it would seem that the spirit and reasoning of that holding is equally applicable and binding here. Justice Black, speaking for the court in the principal case, points out that the purpose of the Transportation Act of 1920 was to provide the public with an efficient and nationally integrated railroad system; that the *Lowden* case recognized that displacing

[3] 49 U. S. C. (1940), § 1 (18). [4] 49 U. S. C. (1940), § 1 (20).

[5] Chicago G. W. R. R. Trackage, 207 I. C. C. 315 at 320 (1935); followed in Delaware River Ferry Abandonment, 212 I. C. C. 580 (1936); Colorado & Southern Ry. Abandonment, 217 I. C. C. 366 at 381 (1936); Pooling of Ore Traffic, 219 I. C. C. 285 at 294 (1936); Chicago, R. I. & P. Ry. Abandonment, 230 I. C. C. 341 at 347 (1938); Copper River & N. W. Ry. Abandonment, 233 I. C. C. 109 at 113 (1939); Gulf, Texas, & W. Ry. Abandonment, 233 I. C. C. 321 at 331 (1939); Quincy, Omaha, & K. C. R. R. Abandonment, 233 I. C. C. 471 at 485 (1939); Chicago, Springfield, & St. Louis Ry. Receiver Abandonment, 236 I. C. C. 765 at 772 (1940); Tonopah & Tidewater R. R. Abandonment, 240 I. C. C. 145 at 150 (1940); Chicago, M., St. P. & P. R. R. Abandonment, 240 I. C. C. 183 (1940).

[6] 308 U. S. 225, 60 S. Ct. 248 (1939), noted 39 MICH. L. REV. 337 (1940).

[7] 49 U. S. C. (1940), § 1 (20).

[8] "If after such hearing the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed consolidation, merger, purchase, lease, operating contract, or acquisition of control will be in harmony with and in furtherance of the plan for the consolidation of railway properties established pursuant to paragraph (3), and will promote the public interest, it may enter an order approving and authorizing such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon the terms and conditions and with the modifications so found to be just and reasonable." 48 Stat. L. 217 (1933), 49 U. S. C. (1935), § 5(4). The section was rewritten in the Transportation Act of 1940; 54 Stat. L. 905, 49 U. S. C. (1940), § 5(2)(f).

labor without protection might be prejudicial to the orderly and efficient operation of the national railroad system; and that only by excluding considerations of national policy may the imposition of conditions for the protection of employees be excluded from the scope of public convenience and necessity. That is, the public convenience and necessity may well require the attachment of such conditions, for they tend to prevent interruption of the service by labor disputes and to promote the efficiency of the service by fair treatment of the workers.[9] The railroad, however, argued that Congress had ratified the commission's construction [10] of section 1 (20), because it had not amended that section when it amended the act in 1940 although the annual report of the commission to Congress in 1935 [11] had specifically asked for further statutory provisions for the protection of employees from undue financial loss as a condition of abandonment. The court, however, pointed out that Congress with good reason could have concluded that the principle of the *Lowden* case decided in 1939 was equally applicable to abandonments.[12]

The railway further argued that its contention was strengthened because the consolidation section [13] had beeen amended whereas the abandonment section had not. The court, however, declared that this amendment merely made conditions for the protection of workers mandatory rather than discretionary as construed under section 5 (4) of the old statute by the *Lowden* case. Apparently, the court's declaration is based on the fact that mandatory provisions would not be feasible for abandonment since the abandonment might be of an entire system, and employee protection would be an impossible burden.

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[9] "The now extensive history of legislation regulating the relations of railroad employees and employers plainly evidences the awareness of Congress that just and reasonable treatment of railroad employees is not only an essential aid to the maintenance of a service uninterrupted by labor disputes, but that it promotes efficiency, which suffers through loss of employee morale when the demands of justice are ignored." Justice (now Chief Justice) Stone in United States v. Lowden, 308 U. S. 225 at 235, 60 S. Ct. 248 (1939).

[10] Chicago, G. W. R. R. Trackage, 207 I. C. C. 315 at 320 (1935), and cases following that decision set out in note 5 above.

[11] 49 I. C. C. ANNUAL REPORT 37 (1935).

[12] The Lowden case was decided December 4, 1939. In Chicago, Springfield, & St. Louis Ry. Receiver Abandonment, 236 I. C. C. 765 at 772 (1940), decided February 21, 1940, the Lowden case was argued as support for the propostion that conditions for the protection of employees could be attached to abandonment orders, and denied by the commission. The amendment to section 5(4) is dated September 18, 1940.

[13] See note 8, supra.