

Keogh Vs. Chicago and Northwestern Ry. Co.

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Court : US Supreme Court

Decided On : Nov-13-1922

Appeal No. : 260 U.S. 156

Appellant : Keogh

Respondent : Chicago and Northwestern Ry. Co.

Judgement :

Keogh v. Chicago & Northwestern Ry. Co. - 260 U.S. 156 (1922)

U.S. Supreme Court Keogh v. Chicago & Northwestern Ry. Co., 260 U.S. 156 (1922)

Keogh v. Chicago & Northwestern Railway Company

No. 51

Argued October 12, 1922

Decided November 13, 1922

260 U.S. 156

ERROR TO THE CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

SYLLABUS

1. Approval of rates as reasonable and nondiscriminatory by the Interstate Commerce Commission fixes their character as such in relation to a shipper who took part in the proceedings. P. [260 U. S. 161](#) .

2. A combination of carriers to fix rates may be illegal and subject to proceedings by the government under the Anti-Trust Act even though the rates are reasonable and nondiscriminatory, and, it seems, even though they have been approved by the Interstate Commerce Commission. P. [260 U. S. 161](#) .

3. But a private shipper cannot recover damages from the carriers in such a case, under 7 of the Anti-Trust Act, upon the ground that he lost the benefit of rates still lower which, but for the conspiracy, he would have enjoyed, because:

(a) The fact that a rate results from a conspiracy in violation of the Anti-Trust Act does not render it necessarily illegal, and, as the legality of rates is determined by the Act to Regulate Commerce, and the shipper who suffers from illegal (unreasonable or discriminatory) rates has his remedy in damages under that act, it seems that Congress did not intend to provide him a further remedy for such illegal rates under 7 of the Anti-Trust Act, and *a fortiori* none where the rates fixed by the conspiracy were found legal by the Commission. P. [260 U. S. 162](#) .

(b) The right of action given by 7 of the Anti-Trust Act to one "injured in his business or property" implies violation of a legal right, but the legal right of a shipper respecting a carrier's rates is measured by the published tariff, and, to enforce a departure from this through a recovery under 7 would be in effect to give the shipper an illegal preference. P. [260 U. S. 163](#) .

(c) Recovery would depend upon the plaintiff's proving that lower rates which, but for the conspiracy, the carriers would have maintained would have been nondiscriminatory -- a question which generically must first be submitted to the Interstate Commerce Commission, yet which, specifically, is not within its cognizance, because hypothetical. P. [260 U. S. 163](#) .

(d) The damages, if any, resulting to the shipper from the establishment of the higher rates could not be proved by facts from which their existence and amount were logically and legally inferable, but are purely speculative. P. [260 U. S. 164](#) .

271 F. 444, affirmed.

Error to a judgment of the circuit court of appeals affirming a judgment of the district court for defendant railroad companies and individuals in an action brought by Keogh under 7 of the Anti-Trust Act to recover damages alleged to have resulted from a combination to fix railroad rates in restraint of interstate commerce.

MR. JUSTICE BRANDEIS delivered the opinion of the court.

This action, under 7 of the Anti-Trust Act of July 2, 1890, c. 647, 26 Stat. 209, was brought by Keogh in the Federal District Court for Northern Illinois, Eastern Division, in November, 1914. Eight railroad companies and twelve individuals were made defendants. The case was heard upon demurrer to a special plea; the demurrer was overruled; judgment was entered for defendants, plaintiff electing to stand upon his demurrer, and this judgment was affirmed by the Circuit Court of Appeals for the Seventh Circuit. 271 F. 444. The case is here on writ of error.

The cause of action set forth was this: Keogh is a manufacturer of excelsior and flax tow at St. Paul, Minnesota. The defendant corporations are interstate carriers engaged in transporting freight from St. Paul to points in other states. Prior to September 1, 1912, these carriers formed an association known as the Western

Trunk Line Committee. The individual defendants are officers and agents of the carriers, and represent them in that committee. It is a function of the committee to secure agreement in respect to freight rates among the constituent railroad

companies, which would otherwise be competing carriers. By means of such agreement, competition as to interstate rates from St. Paul on excelsior and tow was eliminated, uniform rates were established, and interstate commerce was restrained. The uniform rates so established were arbitrary and unreasonable; they were higher than those theretofore charged, and they were higher than the rates would have been if competition had not been thus eliminated. Through this agreement for uniform rates, Keogh was damaged. The declaration contains a schedule of the amounts paid by him in excess of those which would have been paid under rates prevailing before September 1, 1912, and which, but for the conspiracy, would have remained in effect. He claims damages to the extent of this difference in rates. He also alleges as an item of damages that the increase in freight rates lessened the value of his St. Paul factory through loss of profits.

Defendants set up the fact that every rate complained of had been duly filed by the several carriers with the Interstate Commerce Commission; that, upon such filing, the rates had been suspended for investigation, upon complaint of Keogh, pursuant to the Act to Regulate Commerce of February 4, 1887, c. 104, 15, 24 Stat. 379, 384, as amended; that, after extensive hearings, in which Keogh participated, the rates were approved by the Commission, and that they were not made effective until after they had been so approved. The character of the proceedings before the Commission was more fully shown by reference to *Keogh v. Chicago, Burlington & Quincy R. Co.*, 24 I.C.C. 606; also *Rates*

Excelsior and Flax Tow from St. Paul, Minn., 26 I.C.C. 689; *Rates*

Page 260 U. S. 161

on *Excelsior and Flax Tow from St. Paul, Minn.*, 29 I.C.C. 640; *Morris, Johnson, Brown, Manufacturing Co. v. Illinois Central R. Co.*, 30 I.C.C. 443; *The Excelsior and Flax Tow Cases*, 36 I.C.C. 349.

The case is presented on these pleadings. Whether there is a cause of action under 7 of the Anti-Trust Act is the sole question for decision. Keogh contends that his rights are not limited to the protection against unreasonably high or

discriminatory rates afforded him by the Act to Regulate Commerce; that, under the Anti-Trust Act, he was entitled to the benefit of competitive rates, that the elimination of competition caused the increase in his rates, and that, as he has been damaged thereby, he is entitled to recover. The instrument by which Keogh is alleged to have been damaged are rates approved by the Commission. It is, however, conceivable that, but for the action of the Western Trunk Line Committee, one or more of these railroads would have maintained lower rates. Rates somewhat lower might also have been reasonable. Moreover, railroads had often, in the fierce struggle for business, established unremunerative rates. Since the case arose prior to Transportation Act of February 28, 1920, c. 91, 418, 41 Stat. 474, 485, the carriers were at liberty to establish or maintain even unreasonably low rates, provided they were not discriminatory. Compare *Interstate Commerce Commission v. Baltimore & Ohio R. Co.*, [145 U. S. 263](#) , [145 U. S. 277](#) ; *Skinner & Eddy Corp. v. United States*, [249 U. S. 557](#) , [249 U. S. 565](#) .

All the rates fixed were reasonable and nondiscriminatory. That was settled by the proceedings before the Commission. *Los Angeles Switching Case*, [234 U. S. 294](#) . But, under the Anti-Trust Act, a combination of carriers to fix reasonable and nondiscriminatory rates may be illegal, and, if so, the government may have redress by criminal proceedings under 3 by injunction

Page 260 U. S. 162

under 4, and by forfeiture under 6. That was settled by *United States v. Trans-Missouri Freight Association*, [166 U. S. 290](#) , and *United States v. Joint Traffic Association*, [171 U. S. 505](#) . The fact that these rates had been approved by the Commission would not, it seems, bar proceedings by the government. It does not, however, follow that Keogh, a private shipper, may recover damages under 7 because he lost the benefit of rates still lower which, but for the conspiracy, he would have enjoyed. There are several reasons why he cannot.

A rate is not necessarily illegal because it is the result of a conspiracy in restraint of trade in violation of the Anti-Trust Act. What rates are legal is determined by the

Act to Regulate Commerce. Under 8 of the latter act, the exaction of any illegal rate makes the carrier liable to the "persons injured thereby for the full amount of damages sustained in consequence of any such violation," together with a reasonable attorney's fee. Sections 9 and 16 provide for the recovery of such damages either by complaint before the Commission or by an action in a federal court. If the conspiracy here complained of had resulted in rates which the Commission found to be illegal because unreasonably high or discriminatory, the full amount of the damages sustained, whatever their nature, would have been recoverable in such proceedings. *Louisville & Nashville R. Co. v. Ohio Valley Tie Co.*, [242 U. S. 288](#) . Can it be that Congress intended to provide the shipper, from whom illegal rates have been exacted, with an additional remedy under the Anti-Trust Act? See *Meeker v. Lehigh Valley R. Co.*, 162 F. 354. And if no remedy under the Anti-Trust Law is given where the injury results from the fixing of rates which are illegal, because too high or discriminatory, may it be assumed that Congress intended to give such a remedy where, as here, the rates complained of have been found by the Commission to be legal and while in force had to be collected by the carrier?

Page 260 U. S. 163

Section 7 of the Anti-Trust Act gives a right of action to one who has been "injured in his business or property." Injury implies violation of a legal right. The legal rights of shipper as against carrier in respect to a rate are measured by the published tariff. Unless and until suspended or set aside, this rate is made, for all purposes, the legal rate, as between carrier and shipper. The rights as defined by the tariff cannot be varied or enlarged by either contract or tort of the carrier. *Texas & Pacific R. Co. v. Mugg*, [202 U. S. 242](#) ; *Louisville & Nashville R. Co. v. Maxwell*, [237 U. S. 94](#) ; *Atchison, Topeka & Santa Fe Ry. Co. v. Robinson*, [233 U. S. 173](#) ; *Dayton Iron Co. v. Cincinnati, New Orleans & Texas Pacific Ry. Co.*, [239 U. S. 446](#) ; *Erie R. Co. v. Stone*, [244 U. S. 332](#) . And they are not affected by the tort of a third party. Compare *Pittsburgh, Cincinnati, Chicago & St. Louis Ry. Co. v. Fink*, [250 U. S. 577](#) . This stringent rule prevails because otherwise the paramount purpose of Congress -- prevention of unjust discrimination --

might be defeated. If a shipper could recover under 7 of the Anti-Trust Act for damages resulting from the exaction of a rate higher than that which would otherwise have prevailed, the amount recovered might, like a rebate, operate to give him a preference over his trade competitors. It is no answer to say that each of these might bring a similar action under 7. Uniform treatment would not result, even if all sued, unless the highly improbable happened and the several juries and courts gave to each the same measure of relief. *Compare Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.*, [204 U. S. 426](#) , [204 U. S. 440](#) .

The character of the issues involved raises another obstacle to the maintenance of the action. The burden resting upon the plaintiff would not be satisfied by proving that some carrier would, but for the illegal conspiracy, have maintained a rate lower than that published. It would be necessary for the plaintiff to prove also that

Page 260 U. S. 164

the hypothetical lower rate would have conformed to the requirements of the Act to Regulate Commerce. For, unless the lower rate was one which the carrier could have maintained legally, the changing of it could not conceivably give a cause of action. To be legal, a rate must be nondiscriminatory. And the proceedings before the Commission in this controversy illustrate how readily claims of unjust discrimination arise. See *Morris-Johnson-Brown Manufacturing Co. v. Illinois Central Railroad Co.*, 30 I.C.C. 443. For this reason, it is possible that no lower rate from St. Paul on tow and excelsior could have been legally maintained without reconstituting the whole rate structure for many articles moving in an important section of the country. But it is the Commission which must determine whether a rate is discriminatory, at least in the first instance. See *Abilene case, supra*; *Great Northern Ry. Co. v. Merchants' Electric Elevator Co.*, [259 U. S. 285](#) . It has been suggested that this requirement does not necessarily bar an action involving that issue, for a court might suspend its proceeding until the question of discrimination had been determined by the Commission. But here the difficulty presented could not be overcome by such a practice. The powers conferred upon the Commission are broad. It may investigate and decide whether a rate has been, whether it is, or whether it would be, discriminatory. But by no conceivable proceeding could the

question whether a hypothetical lower rate would under conceivable conditions have been discriminatory, be submitted to the Commission for determination. And that hypothetical question is one with which plaintiff would necessarily be confronted at a trial.

Finally, not only does the injury complained of rest on hypothesis (*compare International Harvester Co. v. Kentucky*, [234 U. S. 216](#) , [234 U. S. 222](#) -224); but the damages alleged are purely speculative. Under 7 of the Anti-Trust Act, as under 8 of the Act to Regulate Commerce ([230 U. S. S. 165](#) *R. Co. v. International Coal Mining Co.*, [230 U. S. 184](#)), recovery cannot be had unless it is shown, that, as a result of defendants' acts, damages in some amount susceptible of expression in figures resulted. These damages must be proved by facts from which their existence is logically and legally inferable. They cannot be supplied by conjecture. * To make proof of such facts would be impossible in the case before us. It is not like those cases where a shipper recovers from the carrier the amount by which its exaction exceeded the legal rate. *Southern Pacific Co. v. Darnell-Taenzar Co.*, [245 U. S. 531](#) . Here, the instrument by which the damage is alleged to have been inflicted is the legal rate, which, while in effect, had to be collected from all shippers. Exaction of this higher legal rate may not have injured Keogh at all, for a lower rate might not have benefited him. Every competitor was entitled to be put -- and we must presume would have been put -- on a parity with him. And for every article competing with excelsior and tow, like adjustment of the rate must have been made. Under these circumstances, no court or jury could say that, if the rate had been lower, Keogh would have enjoyed the difference between the rates or that any other advantage would have accrued to him. The benefit might have gone to his customers, or conceivably, to the ultimate consumer.

Affirmed.

* *Compare Central Coal & Coke Co. v. Hartman*, 111 F. 96; *Motion Picture Patents Co. v. Eclair Film Co.*, 208 F. 416; *Locker v. American Tobacco Co.*, 218 F. 447; *American Sea Green Slate Co. v. O'Halloran*, 229 F. 77, 79; *Noyes v. Parsons*, 245 F. 689.

