Missouri Pacific R. Co. Vs. Boone

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Court : US Supreme Court

Decided On : Mar-22-1926

Appeal No. : 270 U.S. 466

Appellant : Missouri Pacific R. Co.

Respondent : Boone

Judgement :

Missouri Pacific R. Co. v. Boone - 270 U.S. 466 (1926)
U.S. Supreme Court Missouri Pacific R. Co. v. Boone, 270 U.S. 466 (1926)

Missouri Pacific Railroad Company v. Boone

No. 203

Argued January 29, 1926

Decided March 22, 1926

270 U.S. 466

CERTIORARI TO THE ST. LOUIS COURT OF APPEALS

OF THE STATE OF MISSOURI

SYLLABUS

1. A construction of a statute which makes its constitutionality doubtful is to be avoided if possible. P. 270 U. S. 471 .

2. Section 208(a) of the Transportation Act, 1920, provided (1) that all rates, fares and charges, and all classifications, regulations and practices in any wise changing, affecting, or determining any part or the aggregate of rates, fares or charges, or the value of the service rendered which, on February 29, 1920, were in effect on lines of carriers subject to the Interstate Commerce Act, should continue in force until "thereafter" changed by state or federal authority, or pursuant to authority of law; (2) that, prior to September 1, 1920, no such rate, fare, or charge should be reduced, and no regulation, etc., should be changed in such manner as to reduce any such rate, etc., unless such reduction or change were approved by the Interstate Commerce Commission.

HELD

(1) That a provision in a baggage tariff filed by the Director General of Railroads during federal control limiting liability for misdelivery of baggage is within the purview of this section. P. 270 U. S. 468 .

(2) The primary purpose of the second clause was, by safeguarding rates, to protect the United States from liability on its six months' guaranty of a "standard return" to carriers when released from federal control. P. 270 U. S. 472 .

(3) The purpose of the first clause was to remove doubts as to what tariffs were to be applicable after termination of federal control by declaring that the existing tariffs, largely initiated by the Director General, should be deemed operative except insofar as changed after February 29, 1920, pursuant to law. Pp. 270 U. S. 472 , 270 U. S. 475 .

(4) Where a tariff of the Director General limiting liability for misdelivery of baggage had suspended the operation of a state statute making the carrier liable for the full value, the effect of the first clause of 208(a) was that the statute became again

applicable, without reenactment, after February 29, 1920, so that the damages recoverable by an intrastate passenger for the loss

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of trunk after September 1, 1920, were governed by the state statute. P. 270 U. S. 476 .

263 S.W. (Mo.) 495 affirmed.

Certiorari to a judgment of the St. Louis Court of Appeals affirming a judgment against the railroad for the full value of baggage which it failed to deliver to Boone, an intrastate passenger.

MR. JUSTICE BRANDEIS delivered the opinion of the Court.

In 1922, Byrd J. Boone, a passenger on an intrastate journey in Missouri over the Missouri Pacific Railroad, checked a trunk which she took with her. It arrived safely at its destination, but was not delivered to her, because a thief obtained possession through the device of changing checks. She brought this suit against the carrier in a court of the state, and claimed that, under 9941 of the Revised Statutes of Missouri of 1919, she was entitled to the full value. This law, first enacted in 1855, Mo.Rev.Stat. c. 39, 45, had never been suspended or repealed by any law of the state. The defendant relied upon a baggage tariff which limited liability to $100 unless a greater value was declared and extra payment made. This tariff, applicable to both intrastate and interstate traffic, had been duly filed by the Director General of Railroads pursuant to the Federal Control Act of March 21, 1918, c. 25, 10, 40 Stat. 451, 456, and was in force on the termination of federal control, February 29, 1920. The defendant contended that, by virtue of

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208(a) of Transportation Act Feb. 28, 1920, c. 91, 41 Stat. 456, 464, this limitation had remained in force as applied to intrastate commerce, because the provision for unlimited liability contained in 9941 of the Missouri Revised Statutes had not been reenacted after the termination of federal control.

Section 208(a) provides:

"All rates, fares, and charges, and all classifications, regulations, and practices, in any wise changing, affecting, or determining, any part or the aggregate of rates, fares, or charges, or the value of the service rendered, which on February 29, 1920, are in effect on the lines of carriers subject to the Interstate Commerce Act shall continue in force and effect until thereafter changed by state or federal authority, respectively, or pursuant to authority of law; but, prior to September 1, 1920, no such rate, fare, or charge shall be reduced, and no such classification, regulation, or practice shall be changed in such manner as to reduce, any such rate, fare, or charge unless such reduction or change is approved by the Commission."

The trial court entered judgment for $1,000 and interest. The judgment was affirmed by the St. Louis Court of Appeals, the highest court of the state in which a decision in the suit could be had. 263 S.W. 495. The court held that, under the law of Missouri, misdelivery of the trunk was a conversion which rendered the carrier liable for its full value, and that the state law governed, because the journey was intrastate. This Court granted a writ of certiorari. 266 U.S. 600. Under the federal law, misdelivery is not deemed a conversion depriving a carrier of the benefit of the provision limiting liability. *American Railway Express Co. v. Levee,* 263 U. S. 19 . The sole question for decision is the construction and effect to be given 208(a).

The provision in the baggage tariff limiting liability is within the purview of that section. There was no

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legislation by the state on the subject after the termination of federal control. The state had confessedly power to restore the full statutory liability as applied to intrastate commerce unless the Interstate Commerce Commission should, for the purpose of preventing discrimination against interstate commerce, issue an order under Transportation Act 1920 to the contrary. *See Wisconsin Railroad*

Commission v. Chicago, Burlington & Quincy R. Co., 257 U. S. 563 ; *New York v. United States,* 257 U. S. 591 . There was no such order. *Compare Chicago, Milwaukee & St. Paul Ry. Co. v. Public Utilities Commission,* 242 U. S. 333 . The precise question is whether the state provision, which had been suspended by the filing of the tariffs of the Director General, became operative on September 1, 1920, without reenactment, or whether affirmative action by the state after February 29, 1920, was necessary to restore the full liability theretofore created by its statute and which it had not repealed. The analogy of state insolvent laws suspended by the enactment of a bankruptcy act, and again becoming operative upon its repeal, was relied upon. *See Tua v. Carriere,* 117 U. S. 201 ; *Butler v. Goreley,* 146 U. S. 303 .

Most of the rates, fares, and charges in effect on February 29, 1920, had been established without suspending any provision of any statute or the order of any regulatory body. They related to matters with which, both before and after federal control, carriers were, in the main, at liberty to deal in their discretion, without first securing the consent of either the federal or the state commission. For, despite the enlarging sphere of regulation, the field in which the carrier may exercise initiative and discretion was and is still a wide one. [Footnote 1] The existing right of the

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carriers to initiate rates was transferred by the second paragraph of 10 of the Federal Control Act to the Director General, with three modifications. [Footnote 2] The Interstate Commerce Commission for the time was made the regulatory body in respect to intrastate, as well as interstate, rates. The power of suspending tariffs involving increases (which had been first conferred upon the Commission by Act of June 18, 1910, c. 309, 12, 36 Stat. 539, 552) was denied to it in respect to such as were filed by the Director General. And the power to fix the date when the new tariffs should take effect was vested in the Director General, instead of being fixed (as provided by 6 of the Interstate Commerce Act) at not less than 30 days subject to the discretion of the Commission. It was by virtue of the ordinary corporate power of carriers to establish rates so transferred to the Director General that the rates, fares, charges, classifications, regulations, and practices

referred to in the first clause of 208(a) had, in the main, been established. [Footnote 3]

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In support of the judgment below, it is contended that the section would be unconstitutional if construed as providing that the Missouri statute, although applicable only to intrastate commerce, should not become operative unless and until reenacted. The argument is this: if so construed, the Act of Congress would, in effect, repeal all such state laws affecting intrastate commerce existing at the termination of federal control, while granting to the states permission to legislate on the subject thereafter or recognizing their power to do so. The prohibition of reductions of intrastate rates during the six months' period of guaranteed return was a proper exercise of power incident to federal operation and control during the war. Congress could, under that power, also make reasonable provision to ensure workable tariffs on the restoration of the railroads to their owners. But a repeal by Congress of all such existing state laws, affecting intrastate commerce, coupled with permission to enact new ones, would not be an appropriate means to that end, nor could such legislation be sustained under the commerce clause. Regulation by a state of intrastate rates is not a function exercised by permission of the federal government, *In re Rahrer,* 140 U. S. 545 , 140 U. S. 564 , or because of its inaction. The power of Congress over intrastate rates conferred by the commerce clause is limited to action reasonably necessary for the protection of interstate commerce. *Wisconsin Railroad Commission v. Chicago, Burlington & Quincy R. Co.,* 257 U. S. 563 . No necessity is here shown. Such is the argument. The section, if so construed, would at least raise a grave and doubtful

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constitutional question. Under the settled practice, a construction which does so will not be adopted where some other is open to us. *United States v. Delaware & Hudson Co.,* 213 U. S. 366 , 213 U. S. 408 ; *Federal Trade Commission v. American Tobacco Co.,* 264 U. S. 298 , 264 U. S. 307 . An examination of the

section in the light of the then existing federal and state law will make clear that another and reasonable construction is open to us, and that it should prevail.

Section 208(a) contains two clauses. Each was to take effect immediately. Each dealt with rates, fares, charges, classifications, regulations and practices. But, in purpose, character, and scope, the two clauses differ widely. The primary purpose of the second clause was to protect the United States from liability on its guaranty to the carriers of the standard return. It sought to do so by prohibiting any reduction of rates, fares, or charges without the consent of the Interstate Commerce Commission. The prohibition applied alike to intrastate and to interstate rates. It extended to reductions made by the carriers, as well as to those made by the states. But the prohibition was limited to reductions. Increases might be made. The prohibition was confined to the first six months after the surrender of the railroads to their owners, because the government guaranty was limited to that period.

The first clause of 208(a) is legislation permanent in character. It relates alike to changes which increase rates and to those which reduce. It contains no prohibition. It explains. Its purpose was not to conserve revenues, but to remove doubts and avoid confusion. A clarifying provision was needed. Comprehensive changes in the rates, fares, charges, classifications, regulations, and practices had been made by the Director General by filing the same with the Interstate Commerce Commission pursuant to power conferred by 10 of the Federal Control

Act. It was important that carriers and the public should know whether, and to what extent, these changed rates, fares, charges, classifications, regulations, and practices would continue in force after the return of the railroads to their owners. This information the first clause supplied by specifying what tariffs were applicable. To facilitate the conduct of business by this means was an appropriate exercise of the power of Congress. To have undertaken to do so by means of abrogating all rates, fares, and charges established by the several states in respect to intrastate commerce, and all classifications and regulations affecting them, would not have

been. It is not lightly to be assumed that Congress would have resorted to means so extraordinary for securing workable tariffs.

It is suggested that, although the primary purpose of the first clause of 208(a) was to facilitate the conduct of business, Congress intended thereby also to protect the carrier's revenues, and that a requirement of an affirmative exercise of state power after termination of federal control would, by presenting an obstacle to change make reductions of rates by the states difficult, and thus result in protecting the carrier's revenues. That Congress did not devise the first clause as a means of so protecting revenues appears from the character of the provision there made. The clause applies equally whether the rate made by the Director General was a reduction or an increase of the rate in effect before federal control. The clause left the several states free to proceed at once to establish reductions, and to make them effective upon the expiration of the government's guaranty. Whether a particular state could avail itself of that liberty would thus depend wholly upon its own Constitution, legislation, and practice. If, at the time Transportation Act 1920 was enacted, the legislature either happened to be in session or could be promptly convened, the state might, by a single statute,

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have restored, as of September 1, 1920, its rates, fares, and charges and all classifications, regulations, and practices affecting them no matter what change the Director General had made. In those states where the ratemaking power was vested in a regulatory body in continuous session, a like result could have been attained through a single order. On the other hand, in those states where the local law did not permit such prompt action by the ratemaking authority, the restoration of rates by state action would necessarily have been deferred. It is not to be assumed that Congress intended to adopt a means of protection which would have been indirect, fortuitous, and largely futile, and which would obviously have produced such inequalities among the states, when direct, certain, and better means of protection were available.

Moreover, there was no purpose in Congress to maintain in force, after the expiration of the six months' guaranty period, either the interstate or the intrastate rates which had been established by the Director General. It was recognized when Transportation Act 1920 was enacted that these were not high enough to yield to the carriers adequate revenues. Means of increasing them were specifically provided by those sections of Transportation Act 1922 which prescribe the essentials of a fair return and empower the Commission, upon notice to the states and with their cooperation, to prevent discrimination against interstate commerce resulting from unduly low intrastate rates, fares, and charges. *See* 415, 416, and 422. Proceedings were in contemplation by means of which it was proposed to establish largely increased rates on the expiration of the government's guaranty, September 1, 1920. The order for such general increase made by Ex parte 74, Increased Rates, 1920, 58 I.C.C. 220, on July 29, 1920, followed extensive hearings in which commissions representing the states participated.

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Proceedings were instituted in the states before September 1, 1920, to secure corresponding increases of the intrastate rates. And further proceedings were had before the federal commission to remove obstacles to increases of the intrastate rates which existed in same of the states. [Footnote 4] The six months' prohibition of reductions provided for by the second clause of 208(a) afforded carriers and the Interstate Commerce Commission ample opportunity to take such action as might be deemed advisable for carrying out the new policy established by Transportation Act 1920.

When the first clause of 208(a) is examined in the light of these facts, the construction to be given it becomes clear. In order to remove doubts as to what tariffs were to be applicable after the termination of federal control, Congress declared that the existing tariffs, largely initiated by the Director General, should be deemed operative except so far as changed thereafter -- that is, after February 29, 1920 -- pursuant to law. Such modification of intrastate tariffs might result from action of the carriers taken on their own initiative. It might result from orders of the Interstate Commerce Commission. It might result from the making either of new

state laws or of new orders of a state commission acting under old laws still in force and again becoming operative. Or such modification might result from the mere cessation of the suspension, which had been effected through federal control, of statutes or orders theretofore in force and still unaffected by any

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action of the authority which made them. In any of these cases, the change would be effected "thereafter" -- that is, after the termination of federal control. The statute of Missouri enforced by its courts was in effect in 1922. The judgment is

Affirmed.

[Footnote 1]

Even under Transportation Act 1920, the power inheres in the carriers to initiate increases or decreases of rates, fares, and charges, subject, of course, to the control of the appropriate regulatory body. Increases or decreases of interstate rates may, without action by the Interstate Commerce Commission, become operative after 30 days' notice by the simple act of filing, unless the Commission suspends them. *See* Interstate Commerce Act, 6(3) and 15(7). The power of the carrier to initiate intrastate rates, fares, and charges is even broader in many states. *See* William E. McCurdy, "The Power of a Public Utility to Fix its Rates and Charges in the Absence of Regulatory Legislation," 38 Harv.Law Rev. 202.

[Footnote 2]

Compare Willamette Valley Lumbermen's Assn. v. Southern Pacific Co., 51 I.C.C. 250; Johnston v. Atchison, Topeka & Santa Fe Ry. Co., 51 I.C.C. 356, 361; California Canneries Co. v. Southern Pacific Co., 51 I.C.C. 500; Natchez Chamber of Commerce v. Louisiana & Arkansas Ry. Co., 52 I.C.C. 105, 130; Public Service Commission of Washington v. Alabama & Vicksburg Ry. Co., 53 I.C.C. 1; Illinois Coal Traffic Bureau v. Director General, 56 I.C.C. 426, 431; Utilities Development Corp. v. Pittsburgh, Cincinnati, Chicago & St. Louis Ry. Co. et al., 56 I.C.C. 694; American Wholesale Lumber Assn. v. Director General, 66 I.C.C. 393, 396;

Alabama Co. v. Director General, 78 I.C.C. 561.

[Footnote 3]

See General Order No. 28, issued May 25, 1918, U.S. Railroad Administration Bulletin No. 4 (Revised), p. 285; reduced tariff rates on building materials, April 11, 1919, Supplement to Bulletin, p. 25. "The rates were made by filing the tariffs with the commission. The orders were directions of the Director General to his officials." *Compare Atlantic Coast Line Ry. Co. v. Railroad Commission of Georgia,* 281 F. 321, 325; Anaconda Copper Mining Co. v. Director General, 57 I.C.C. 723, 726; Lehigh Valley Coal Co. v. Director General, 69 I.C.C. 535, 539.

[Footnote 4]

See Annual Report of the Interstate Commerce Commission, December 1, 1920, pp. 6-10; Rates, Fares, and Charges of New York Central R. Co., 59 I.C.C. 290; Intrastate Rates within Illinois, 59 I.C.C. 350; Wisconsin Passenger Fares, 59 I.C.C. 391; *Wisconsin Railroad Commission v. Chicago, Burlington & Quincy R. Co.,* 257 U. S. 563 ; *New York v. United States,* 257 U. S. 591 ; In re Steam Railroads, P.U.R.1920F, 7; In re Northern P. Ry. Co., P.U.R.1920F, 11; In re Railroads, P.U.R.1920F, 17; In re Railroads, P.U.R.1920F, 33; In re Freight Rates of Carriers, P.U.R.1921A, 399.