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Commonwealth of Pennsylvania v. Interstate Commerce Commission: Commerce - Carrier Rates - Joint Filing of International Through Rates

COMMERCE — CARRIER RATES — THE ICC HAS JURISDICTION TO ACCEPT FOR FILING JOINT INTERNATIONAL THROUGH RATES VOLUNTARILY ESTABLISHED BY DOMESTIC RAIL, MOTOR, AND WATER CARRIERS WITH OCEAN CARRIERS. *Commonwealth of Pennsylvania v. Interstate Commerce Commission,* 561 F.2d 278 (D.C. Cir. 1977)

Petitioner, Commonwealth of Pennsylvania,[1] sought judicial review[2] in the United States Court of Appeals for the District of Columbia of the final decision of the Interstate Commerce Commission [hereinafter the ICC or the Commission] in *Ex Parte* 261.[3] In Ex Parte 261 the ICC promulgated rules which require the filing of international joint through rates voluntarily established between ocean carriers and domestic rail, motor and water carriers. The rules also require carriers to state separately the domestic and ocean portion of the joint rate, with the ICC limiting its substantive regulation to the domestic portion.

Petitioner sought to have the ICC's decision set aside on two grounds: first, that the ICC lacks jurisdiction to accept international joint through rates for filing; and second, that in accepting such rates for filing, the ICC cannot limit its substantive regulation to the domestic portion. The court, rejecting petitioners arguments, affirmed the ICC's decision in *Ex Parte* 261.[4]

A joint through rate is a single charge agreed to by the participating carriers as the rate that will apply on the through movement of cargo over the lines of the participating carriers. Each carrier then receives an agreed upon share of the joint rate. In contrast, proportional rates are rates published by individual carriers and apply only to the movement of cargo over that carrier's line. While both joint through rates and proportional

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1. Joining in petitioner's brief as intervenors were the State of Texas, Delaware River Port Authority, City of Philadelphia, Philadelphia Port Corp., Port of Philadelphia Marine Terminal Association, Philadelphia Marine Trade Assoc., and Philadelphia District Counsel, International Longshoremen's Assoc. Respondents, the ICC and the United States of America, were joined by intervenors the Federal Maritime Commission, Pacific Westbound Conference, The Japan/Korea-Atlantic and Gulf Freight Conference and IML Freight, Inc.

2. The petition was filed pursuant to 28 U.S.C. § 2341(3)(A).

3. 351 ICC 490 (1976).

4. 561 F.2d 278 (D.C. Cir. 1977).

rates are usually lower than "local rates,"[5] joint through rates offer the further advantage of simplifying routing, documentation and the calculation and billing of charges. Furthermore, some joint through rates, such as joint rail/ocean through rates, are commonly lower than the corresponding proportional rates. Consequently carriers which establish joint rail/ocean through rates have the potential of creating new markets and changing existing patterns of international transportation which had been established based upon the higher proportional rate. Petitioner, Commonwealth of Pennsylvania and the City of Philadelphia, contended that the establishment of joint through rates replacing the proportional rates would divert business from the Philadelphia area causing economic injury to the various ports.

Historically, the ICC had not accepted international joint through rates for filing. This policy was adopted by the ICC in its 1908 decision, *Cosmopolitan Shipping Co. v. Hamburg-American Packet Co.*[6] The Commission based its decision on the fact that since ocean carriers were unregulated, inland domestic carriers should not be permitted to file joint through rates with ocean carriers, and that the Interstate Commerce Commission Act[7] [hereinafter the Act] conferred ICC jurisdiction only over commerce flowing to adjacent countries. Despite the enactment of the Shipping Act of 1916[8] bringing ocean carriers under the regulation of Federal Maritime Commission and the 1920 amendment to the Act[9] which extended ICC jurisdiction to commerce flowing to nonadjacent countries, the ICC continued its policy of not accepting international joint through rates for filing.

In 1969, however, the ICC, in light of the growth of containerization in international trade, reviewed its policy concerning joint through rates. The ICC initially proposed the rules later adopted in *Ex Parte* 261 in its report of July 31, 1969.[10] Cited as the purpose of the proposed rules was the encouragement of more economical and integrated transportation services

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5. A local rate is that rate charged by a carrier for cargo moving solely over the carrier's own line. A proportional rate is similar to a local rate except that the cargo moves over the lines of several carriers under a through route arrangement.

6. 13 ICC 266 (1908).

7. Act of Feb. 4, 1887, ch. 104, 24 Stat. 379.

8. 46 U.S.C. § 801 *et seq.* (1970).

9. Act of June 29, 1906, ch. 3591, 34 Stat. 584.

10. 337 ICC 627 (1970).

between the United States and foreign countries and the facilitation of through transportation by intermodal carriers.[11]

The Court of Appeals for the District of Columbia considered each carrier system (i.e., rail/ocean, motor/ocean and domestic water/ocean) separately in determining that the ICC had jurisdiction to require the filing of voluntarily established joint through rates.

In the case of rail/ocean carriers the court held that jurisdiction to regulate joint through routes was conferred on the ICC by sections 1(1)[12] and 1(2)[13] of the Act. Those sections confer jurisdiction on the ICC over transportation moving partly by railroad and partly by water between the United States and foreign countries under an arrangement for continuous shipment. The court held that since joint through rates are such an integral part of joint through routes,[14] sections 1(1) and 1(2) must also confer jurisdiction on the ICC to require the filing of joint through rates voluntarily established by rail/ocean carriers.

Similarly, looking jointly at section 302(a)[15] of the Act which confers jurisdiction on the ICC over transportation by motor carriers engaged in interstate and foreign commerce, section 303(11)[16] extending this jurisdiction to transportation moving partly by motor carrier and partly by water, and section 316(c)[17] permitting motor carriers to establish joint through rates, the court held that the ICC was vested with jurisdiction to require the filing of joint through rates voluntarily established by motor/ocean carriers.

The court also held that while the Act did not expressly permit domestic water carriers to establish joint through rates with water carriers involved in foreign commerce, section 302(i)[18] and section 904[19] of the Act were sufficient to permit the ICC to allow the voluntary establishment of such through rates and to require that

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11. *Id.*
12. 49 U.S.C. § 1(1) (1970).
13. *Id.* § 1(2).
14. A joint through route consists of an arrangement for the through movement of cargo over the lines of several carriers and a joint through rate applicable to such movement.
15. 49 U.S.C. § 302(a) (1970).
16. *Id.* § 303(11).
17. *Id.* § 316(c).
18. *Id.* § 302(i).
19. *Id.* § 904.

such rates once established be filed. Section 302(i) subjects water carriers to ICC jurisdiction while engaged in the domestic leg of foreign commerce, and section 904 confers broad powers on the ICC to make such rules as may be necessary to carry out the provisions of the Act.

The court rejected petitioners' contention that the ICC cannot limit its substantive regulation to the domestic portion of the joint through rate,[20] holding that under section 1(1)[21] of the Act ICC jurisdiction extends only "insofar as such transportation takes place within the United States." It is in light of this limitation that the ICC, pursuant to section 904(6)[22] of the Act, requires a separate statement of the domestic and ocean portions of the joint through rate, a separate statement being necessary to the proper exercise of the ICC's jurisdiction over domestic transportation.

In summary, the United States Court of Appeals for the District of Columbia held the rules adopted in *Ex Parte* 261 which require the filing with the ICC of voluntarily established international joint through rates with a separate statement of the domestic and the ocean portions of such rate to be a justifiable change in policy within the statutory authority vested in the Commission by the Act.

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20. The ICC originally claimed to have jurisdiction to regulate both the domestic and ocean portion of the joint through rate. 346 ICC 688 (1974). However, the ICC announced that it would limit its substantive regulation to the domestic portion, leaving substantive regulation of the ocean portion to the Federal Maritime Commission. 351 ICC 490 (1976). Petitioner contended that this was an unlawful settlement in that it leaves the ocean portion of the joint rate free from ICC regulation.

21. 49 U.S.C. § 1(1) (1970).

22. *Id.* § 904(6).