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Lake Cargo Controversy

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LAKE CARGO CONTROVERSY.—In previous issues of this Quarterly we have published articles summarizing the history and progress of the dispute between the coal producing fields of West Virginia and those of Pennsylvania and Ohio.[1] The last issue contained a summary of the proceeding before the Commission, known as Investigation and Suspension Docket No. 2967, wherein it was decided that the southern carriers had failed to justify their proposed 20c per ton reduction in Lake-Cargo rates. Following this decision, the producers of the southern fields applied to the statutory court[2] for an injunction against the enforcement of the above order cancelling the proposed rates.[3] The court reviewed the past decisions of the Interstate Commerce Commission and handed down a decision awarding the injunctive relief asked.

The court admitted that it could not interfere with a decision of the Commission if substantially supported in the evidence, if it was a proceeding within the authority of the Commission, if there was no error in the application of rules of law, and if there was no irregularity in the proceedings. The weight assigned to the evidence nor the wisdom of the decision cannot be questioned in a court of law or equity. The court did, however, hold that there were several errors in the decision complained of which justify it in awarding relief in this instance, as follows:

1. *The Commission exceeded its powers by basing the decision, in part at least, upon industrial conditions, and in attempting to regulate economic conditions thereby.*[4] The commission has the power to prescribe minimum rates where the rates proposed are unreasonable *per se,* or so low as to cast a burden on other traffic. It also has the power where needed to prevent rate wars, or to protect a particular carrier in reasonable earnings. The commission is not given power to regulate industry or economic conditions by the Hoch-Smith Resolution for, so far as this resolution is concerned, the effect is only to authorize the commission to remove undue burdens or advantages imposed by unjustly discriminatory or preferential rates. Since the rate from the southern

[1] 34 W. VA. LAW QUAR., 202 and 272.
[2] Composed of Northcott and Parker, Circuit Judges, and McClintic, District Judge.
[3] Anchor Coal Co. *et al., v.* United States of America, *et al.,* Interstate Commerce Commission, *et al.,* interveners, 25 F. (2d) 462 (1928).
[4] The Commission strenuously denies any such basis for its decision.

fields is higher than the rate from the Pennsylvania and Ohio fields no such burden or advantage can be found. Congress did not intend to make the commission the arbiter of industrial destiny by this resolution.

In cancelling the rates proposed by the southern carriers the commission gave as a reason that the carriers failed to justify them under this resolution. It is held that the carrier had no such duty, as the rate could not be made to depend on the condition of the whole industry as a test of its propriety.

2. *The commission erred in that it proceeded on an erroneous theory of law in holding that the burden was on the southern carriers to justify a reduction of the rates by a comparison of the proposed rates with the lower maximum rates prescribed for the competing fields.*

The error is not as to the procedure before the commission but because the failure to meet the burden meant adverse action by the commission. The carrier still has the right to initiate rates. The statute under which the above ruling was made placed the burden of justification on the carrier *where the proposed rates are higher,* not where they are lower. The statute is quoted.

> "At any hearing involving a rate, * * * * * increased * * * *, the burden of proof to show that the increased rate, * * *, is just and reasonable shall be on the carrier."[5]

The section quoted seems to express a legislative policy favoring low rates, also since increased rates are specifically mentioned, decreased rates would seem to be excluded by intention. Further, while increased rates generally result in higher cost to the public lowered rates are generally of great public value. Hence the court thinks the burden should properly be on those opposing the reduction to prove it unreasonable. The interests of the consumer are to be considered in every case of this kind. The court further says that as a matter of logic a decrease in rates might be condemned by comparison with minimum rates from the competing district—not with maximum rates. All previous comparisons are said to have been between the maximum rate proposed and the maximum rate from the

[5] Section 15, paragraph 7, TRANSPORTATION ACT of 1920.

competing district.

3. *It is held to be error in that the commission proceeded on an erroneous theory of law in holding that the carrier must justify the proposed rate decrease under Section* 15 (*a*) (2) *of the Transportation Act of* 1920.

This section provides for the commission placing the carriers in territories or rate groups and adjusting group rates so the average net return shall be fair and reasonable for all. This section denies the right of the carrier to earn more than a net six per centum, and affirms the right to earn that much, if possible. Congress intended that the commission should approximate the desired result as nearly as possible. The court held that the section does not require the total net return to be used as evidence to fix a particular rate, citing *Interstate Commerce Commission* v. *Union Pacific Company*.[6] It follows that the carrier need not justify reduced rates proposed with reference to every existing rate within the same rate group. The burden of proof in such a case would be impossible. It is held that if the reduction can be shown by the commission to (1) impair earnings of the proposing carrier, (2) unduly burden other traffic, or (3) lead to a rate war, then the commission may forbid it in the exercise of the minimum rate power, citing *United States* v. *Illinois Central Railroad Company*.[7] In the absence of such a showing, it is held that no power exists under Section 15 (a) (2) to declare the proposed rate void.

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[6] 222 U. S. 541, 32 S. Ct. 108, 56 L. ed. 308 (1912).
[7] 263 U. S. 515, 524, 44 S. Ct. 189, 193, 68 L. ed. 417 (1924).