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LIABILITY OF CONSIGNORS AND CONSIGNEES OF
INTERSTATE SHIPMENTS FOR UNPAID
FREIGHT CHARGES

By EDGAR WATKINS*

A DECIDED weight of authority would allow the carrier to recover from the consignor any unpaid freight charges remaining due after goods have been delivered, and no charge, or a charge less than that called for by the lawful tariffs, has been collected.¹ In the courts which follow this general rule, it is immaterial whether the unpaid charges result from a partial prepayment by the consignor or the collection of less than the amount required by the tariffs from the consignee. Several courts refuse to allow the consignor to be held liable unless an effort has been made to collect unpaid charges from the consignee.² The theory underlying such initial and permanent liability on the part of the consignor is well expressed in a recent decision of the Interstate Commerce Commission in which it is said:³

"The consignor, being the one with whom contract of transportation is made, is originally liable for the carrier charges, and unless it is specifically exempted by the provisions of the bill of lading, or unless the goods are received or transported under such circumstances as would clearly indicate an exemption for him, the carrier is entitled to look to the consignor for charges."

Having concluded that the consignor is liable in every case for the unpaid freight charges unless specially exempted, the next question to be considered is whether or not and under what circumstances the consignee is liable for any or all unpaid freight charges on interstate shipments. First of all, it will be necessary to consider certain provisions of the Interstate Commerce Act, bearing in mind that the purpose of this act, as frequently declared in the decisions of the United States Supreme Court, was to provide one rate for all shipments of like character and to make

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¹Baltimore, etc., Ry. v. New Albany Box and Basket Co., (1911) 48 Ind. App. 647, 94 N. E. 906; Georgia R. R. v. Creety (1909) 5 Ga. App. 424, 63 S. E. 528; 2 Michie, Carriers sec. 1547, note 3.

²Yazoo etc., R. Co. v. Zemurray, (1917) 238 Fed. 789; King v. Van Slack, (1916) 193 Mich. 105, 159 N. W. 157.

³In the Matter of Bills of Lading, (1919) 52 I. C. C. 671, 721.

the rate charged for the transportation of goods in interstate commerce the rate duly filed with the commission. In this way discrimination is avoided and all shipments receive like treatment which it is the main purpose of the act to secure.

Turning our attention to the act itself, we find that section 6 which is now and has been in operation with modifications since 1887 provides:

"Nor shall the carrier charge, or demand, or collect, or receive a greater or less or different compensation for such transportation of passengers or property or for any service in connection therewith, between the points named in such tariffs, than the rates, fares and charges mentioned or specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares and charges so specified, nor extend to any shipper or person any privilege or facilities in the transportation of passengers or property except as are specified in such tariffs."⁴

This section is mandatory upon the carrier requiring it to collect the charges called for in the published tariffs but does not name the party or parties from whom the charges are due or collectible, that is, the consignor or consignee, thus creating no new liability and imposing no additional burden upon them apart from their common law liability.

In the Transportation Act 1920 a new provision added to section 3 of the previous act reads:⁵

"From and after July 1, 1920, no carrier by railroad subject to the provisions of this act shall deliver or relinquish possession at destination of the freight transported by it until all tariff rates and charges thereon have been paid, except under such rules and regulations as the commission may from time to time prescribe to assure prompt payment of all such rates and charges and to prevent unjust discrimination. . . ."

While this new section does not enlarge the legal liability of the parties who would ordinarily be liable for the unpaid freight charges but simply places an affirmative duty on the carrier, nevertheless in its actual operation it does result in the consignee being compelled either to pay the charges due before receiving the goods or to execute a bond or establish credit relations with the carrier sufficiently ample to guarantee payment of freight charges on his entire business, both of which arrangements must be made under the terms and conditions imposed by the Interstate Com-

⁴31 Stat. at L. 587, Chap. 3591; Comp. Stat. 1913, sec. 8597.

⁵Interstate Commerce Act, sec. 3, par. 2.

merce Commission.⁶ This section goes a long way toward eliminating the issue as to whether or not the consignor or consignee shall pay the freight charges, since most consignees either pay the freight or obligate themselves so to do before they receive the goods. The position of the occasional shipper or consignee who has no credit relations with the carrier and who receives the freight, paying the charges demanded at the time of delivery, is, of course, the same as it was before this amendment. While the section does not specifically enlarge the obligation of the consignee, it would seem, when considering the effects of its operation, that the Congress must have thought the consignee liable for unpaid freight charges, and so thinking have provided a practical arrangement whereby when goods are erroneously delivered by the carrier to the consignee before the latter has paid all the freight charges which the carrier at the time thinks are due, the carrier can in most cases unquestionably hold the consignee liable for the balance of the proper charge.

Although the Interstate Commerce Commission realizes that someone must pay the lawful tariff charges, it has in a conference ruling⁷ clearly explained that it will not attempt to determine in any case whether the consignee or consignor is legally liable for undercharges, asserting that such a question can only be determined by a court having jurisdiction and upon all the facts in each case. Hence it is to decisions of the various courts interpreting the applicable statutes, above quoted, in connection with the common law that we must turn to find out under what, if any, circumstances the consignee is liable for unpaid freight charges.

The scope and meaning of section 6 above quoted was considered by the United States Supreme Court in a decision which gives light upon the subject under discussion, the question at issue being whether the plaintiff could recover under the statute of the state of Texas imposing a penalty upon the carrier for failure to deliver goods on tender of the rate named in the bill of lading when such rate was not the lawful tariff rate, or whether the state statute must yield to section 6 which prescribes that the published tariff rates are the lawful charges. It was held that the published tariffs governed and that the plaintiff could not recover.⁸

⁶Ex Parte 73, (1920) 57 I. C. C. 591.

⁷Conference Ruling 314.

⁸The Gulf, etc., Ry. Co. v. Hefley & Lewis, (1895) 158 U. S. 98, 39 L. Ed. 910, 15 S. C. R. 802.

In a similar case in Alabama, the plaintiff failed to recover, the court relying upon the decision above quoted and saying:⁹

"The clear effect of the decision was to declare that one who has obtained from a common carrier transportation of goods from one state to another at a rate specified in the bill of lading less than the published schedule rate filed with and approved by the Interstate Commerce Commission and in force at the time, whether or not he knew that the rate obtained was less than the schedule rate, is not entitled to recover the goods or damages for their detention upon a tender of payment of the amount of charges named in the bill of lading or of any sum less than the schedule charges; in other words, that whatever may be the rate agreed upon, the carrier's lien on the goods is by force of the act of Congress for the amount fixed by the published schedule of rates and charges and this lien can be discharged by the payment or tender of payment of such amount. Such is now the supreme law and by it this and the courts of all other states are bound."

Whatever doubt may have previously existed in the minds of counsel as to the effect of section 6 upon the subject of our discussion, the question of the liability of the consignee for unpaid freight charges was definitely decided in a recent United States Supreme Court decision, the facts of which were that goods were shipped from Los Angeles, California, consigned to defendant at Dayton, Ohio, \$15.00 being paid by defendant upon receipt of the goods, while under the tariffs on file the proper charges were \$30.00; defendant had no knowledge of the tariff rates and had made no agreement with the consignor to pay the freight. This suit was to collect the undercharge of \$15.00. In holding defendant liable for such charges the court said:¹⁰

"Examination shows some conflict of authority as to the liability at common law of the consignee to pay freight charges under the circumstances here shown. The weight of authority seems to be that the consignee is prima facie liable for the payment of the freight charges when he accepts the goods from the carrier. However this may be, in our view the question must be decided upon consideration of the applicable provisions of the statutes of the United States regulating interstate commerce."

And in discussing the effect of section 6 of the Interstate Commerce Act, the court said:

"It was therefore unlawful for the carrier, upon delivering merchandise consigned to Fink, to depart from the tariff rates filed. The statute made it unlawful for the carrier to receive

⁹Texas, etc., Ry. Co. v. Mugg & Dryden, (1906) 202 U. S. 242, 50 L. Ed. 1013, 26 S. C. R. 628.

¹⁰Pittsburgh, etc., Ry. Co. v. Fink, (1919) 250 U. S. 577, 580, 63 L. Ed. 1151, 40 S. C. R. 27.

compensation less than the sum fixed by the tariff rates duly filed. Fink, as well as the carrier, must be presumed to know the law and to have understood that the rate charged could lawfully be one when fixed by the tariff. When the carrier turned over the goods to Fink upon a mistaken understanding of the rate legally chargeable, both it and the consignee undoubtedly acted upon the belief that the charges collected were those authorized by law. Under such circumstances, consistently with the provisions of the Interstate Commerce Act, the consignee was only entitled to the merchandise when he paid for the transportation thereof the amount specified as required by the statute. For the legal charges the carrier had a lien upon the goods and this lien could be discharged and the consignee become entitled to the goods only upon tender of payment of this rate. *Texas & Pacific Co. v. Mugg*, 202 U. S. 242. The transaction, in the light of the act, amounted to an assumption on the part of Fink to pay the only legal rate the carrier had the right to charge or the consignee the right to pay."

In some cases where the consignee has based his selling price upon the cost of the goods to him, including freight charges, and the carrier later presents its bill for undercharges on the shipment, considerable hardship is apt to result to the consignee. This point was considered by the Supreme Court in the above decision and at page 582 of the opinion it is said:

"This may be in the present as well as some other cases a hardship upon the consignee due to the fact that he paid all that was demanded when the freight was delivered, but instances of individual hardship cannot change the policy which Congress has embodied in the statute in order to secure uniformity in charges for transportation. *Louisville & Nashville R. R. Co. v. Maxwell*, 237 U. S. 94. In that case the rule herein stated was enforced as against a passenger who had purchased a ticket from an agent of the company at less than the published rate. The opinion in that case reviewed the previous decisions of this court from which we find no occasion to depart."

While no remedy exists to mitigate the hardships which accompany the collection of undercharges made after the consignee has sold the goods, basing his price upon the supposition that the freight charges already collected were the full charges, the occurrence of such hardships may in a measure be prevented if the shipper makes a written request upon the carrier for a written statement of the rate or charge applicable to a described shipment, such as is authorized by the Interstate Commerce Act,¹¹ because the act prescribes a penalty of \$250.00 should the carrier refuse to

¹¹Interstate Commerce Act, sec. 6, par. 11.

furnish the rate or misstate the rate to the shipper's damage. While this penalty accrues in favor of the United States and can only be collected by it, still, it is believed that the carriers will exercise more care in correctly quoting rates and charges for which a written request is made if an error in so doing may in each instance subject them to the penalty described. At any rate, since this is the only protection available to the shipper, he has all to gain and nothing to lose by making use of it.

In several earlier cases the principle of estoppel has been brought into play to prevent the carrier from recovering undercharges from the consignee after the delivery of the goods and collection of what at that time the carrier mistakenly supposed to be the lawful tariff charges.¹² The later and better reasoned cases refuse to admit that the principle of estoppel is applicable in such matters. In a recent New York case¹³ the court said:

"The defendant therefore became bound to pay to the plaintiff the charges—not those charges as erroneously or illegally computed by the plaintiff or himself, but the lawful and correct charges. If the amount of them were subject to the determination of the plaintiff it might, of course, remit them in part or perhaps estop itself from collecting the balance. We have no concern here in regard to such hypothesis. The one and only lawful and correct freight rate was that set forth in the schedule or tariff file in the office of the Interstate Commerce Commission and duly published and posted. The United States statutes known as the Interstate Commerce Act made that rate arbitrary, immutable by agreement, mistake or artifice of the parties, and not to be deviated from. The consignee, consignor and carrier were alike charged with full knowledge of it and its inescapable force, and it was the rate which defendant agreed to pay in accepting the goods.

"The record does not present the question of estoppel on the part of the plaintiff which could not by its act, intentionally or unintentionally, release the defendant or itself from the compulsory direction of the statutes."

To the same effect is a recent Massachusetts case in which the court said:¹⁴

"Estoppel against the collection of a rate fixed by rigid law cannot be predicated upon a statement or representation which at most can be of no higher binding force than an express contract to the same effect honestly made by both parties would be. Such

¹²Central Railroad of New Jersey v. MacCartney, (1902) 68 N. J. Law 165, 52 Atl. 575; Hutchinson, Carriers, 3rd Ed. sec. 807.

¹³Pennsylvania R. Co. v. Titus, (1915) 216 N. Y. 17, 109 N. E. 857.

¹⁴New York, etc., R. Co. v. York & Whitney, (1913) 215 Mass. 36, 40, 102 N. E. 366.

a contract would be of no avail in any aspect because contrary to law. Estoppel cannot rest on an illegal contract. . . . The rate when published became established by law. It can be varied only by law and not by act of the parties. The regulation by Congress of interstate commerce rates takes the subject out of the realm of ordinary contracts in some respects and places it upon the rigidity of a quasi statutory enactment. The public policy thus declared supersedes the ordinary doctrine of estoppel so far as that would interfere with the accomplishment of the dominant purpose of the act. It does not permit that inequality of rates to arise indirectly through the application of estoppel which it was the aim of the act to suppress directly."

And the Supreme Court of the United States has unequivocally held that the principle of estoppel cannot be invoked against the right to collect the legal rate. In *Texas & Pac. Ry. Co. v. Leatherwood* it has said:¹⁵

"That a carrier cannot be prevented by estoppel or otherwise from taking advantage of the lawful rate properly filed under the Interstate Commerce Act is well settled. A carrier has, for instance, been permitted to collect the legal rate, although it had quoted a lower rate, and the shipper was ignorant of the fact that it was not the legal rate."

And in the case of *Pittsburg, Cincinnati, etc., Ry. Co. v. Fink* it is said:¹⁶

"Estoppel could not become the means of successfully avoiding the requirements of the act as to equal rates in violation of the provisions of the statute."

To the same effect is a recent Wisconsin case.¹⁷

The opinion of the United States Supreme Court in *Pittsburg, Cincinnati, etc., Ry. Co. v. Fink* was confirmed by a more recent decision handed down on May 16, 1921, by the same court, the facts of which were that the carrier sued to collect alleged undercharges on cars of melons consigned to defendant moving under straight bills of lading, none of which came into the possession of the consignee, defendant, and of whose issuance or terms defendant knew nothing. Defendant accepted the cars and paid all the charges claimed to be due, and later refused to pay the alleged undercharges. The court said:¹⁸

"We think that the doctrine announced in *Pittsburg, Cincinnati, Chicago & St. Louis Ry. v. Fink*, 250 U. S. 577, is controll-

¹⁵ (1919) 250 U. S. 479, 481, 63 L. Ed. 1151, 40 S. C. R. 27.

¹⁶ (1919) 250 U. S. 577, 583, 63 L. Ed. 1154, 40 S. C. R. 28.

¹⁷ *Chicago, etc., Ry. Co. v. J. I. Case Plow Co.*, (1921) 173 Wis. 237, 180 N. W. 846.

¹⁸ *New York Central, etc., R. Co. v. York & Whitney Co.*, (1921) 256 U. S. 406, 65 L. Ed. 1016, 41 S. C. R. 509.

ing and that the liability of York and Whitney was a question of law. The transaction between the parties amounted to an assumption by the consignee to pay the only lawful rate it had a right to pay or the carrier a right to charge. The consignee could not escape the liability imposed by law through any contract with the carrier."

Since under the decisions of the highest courts both the consignor and the consignee are equally liable for any unpaid freight charges, it would seem that the carrier may proceed against either or both to collect such charges, and if a suit against one of these parties is not sufficient that another suit may be instituted against the other party liable. Having rights against two parties, it would seem that all the methods of procedure to enforce such rights would follow as a natural consequence and that the enforcement of one right would not militate against the enforcement of the other right against a different party nor operate as an election limiting the carrier to its action against one party, although there is a decision to the contrary.¹⁹ An order-notify consignee who has received the goods is treated in all respects as an ordinary consignee, being liable for the freight charges.²⁰

The contract that the consignor and consignee may enter into between themselves will not alter their individual and several liability for all unpaid freight charges. For instance, if the contract between the consignor and consignee called for shipment f. o. b. destination and only a part or no part of the freight is paid and the goods are delivered to the consignee, it is clear that in line with the decisions above quoted the consignee would be liable for the unpaid freight charges, either on the ground that the carrier having given up its lien the consignee was impliedly bound to make good any charges due, or on the ground that the lawful rate must be paid and cannot be avoided by contracts of any description;²¹ nor can the lawful rate be avoided by the use of sham devices. For instance, undercharges may be collected on the basis of the lawfully established interstate through rate on shipments that have been first billed to an intermediate point and then rebilled to the intended destination, this plan having been originated for the sole purpose of getting the traffic through to the interstate destination at the rates applicable to and from the intermediate point, the sum

¹⁹Yazoo, etc., R. Co. v. Zemurray, (1917) 238 Fed. 789.

²⁰Wabash Ry. Co. v. Bloomgarden, (1920) 212 Mich. 410, 180 N. W. 443.

²¹Note 15 and Baltimore, etc., R. Co. v. New Albany Box & Basket Co., (1911) 48 Ind. App. 647, 94 N. E. 906.

of which was materially less than the through rate for the through service.²²

Prior to the Transportation Act 1920 the carriers could bring suits for undercharges within the period allowed by the statutes of limitation in the state in which the action was brought. In the Transportation Act this subject is brought within the field of federal control, it being provided that actions for undercharge must be brought "within three years from the time the cause of action accrues and not thereafter."²³ It is a general rule of law that acts of limitation will be construed to operate prospectively only unless the contrary intention clearly appears.²⁴ The provision above quoted dating the running of the statute "from the time the cause of action accrues" does not show an intention of Congress to make the limitation period in which the carriers must begin their actions for charges retroactive. In line with the principles announced by the United States Supreme Court in an earlier case it is thought that all claims which were not barred by the respective state statutes of limitation on February 28, 1920, may be sued upon by the carriers for a period of three years after March 1, 1920.²⁵ The laws of the forum would determine in each case whether or not any particular claim was alive. These laws remain in full effect for that purpose, simply being superseded by the federal statute as to the time within which actions may be brought on live claims existing on and arising after March 1, 1920.

²²Kanatex Refining Co. v. Atchison, etc., Ry. Co., (1915) 34 I. C. C. 271.

²³Interstate Commerce Act, sec. 16, par. 3.

²⁴25 Cyc. 994.

²⁵Sohn v. Waterson, (1873) 17 Wall. (U.S.) 596, 21 L. Ed. 731.