

THE MANILA ELECTRIC RAILROAD AND LIGHT COMPANY, PETITIONER, VS. THE BOARD OF PUBLIC UTILITY COMMISSIONERS, RESPONDENT.

G.R. No. 10241. March 25, 1915

Ponente: MORELAND, J.

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MORELAND, J.:

This is a proceeding brought in this court under section 37 of Act No. 2307 to revoke an order of the Board of Public Utility Commissioners requiring the Manila Electric Railroad and Light Company to carry on its street cars, free of charge, secret service members of the police force of the city of Manila.

The city of Manila in the year 1903, by authority of Act No. 484, for a valuable consideration, and in and by virtue of its ordinance No. 44, granted to Charles M. Swift a franchise for the construction and maintenance of a street railway system for carrying passengers for hire in the city of Manila. Swift immediately assigned his interest in the franchise to the Manila Electric Railroad and Light Company which is now operating, and for more than nine years has operated, an electric street railway system in the city of Manila and its suburbs for the carriage of passengers for hire.

Among other things, the franchise, as set out in ordinance 44, contains the following provision: "Members of the police and fire departments of the city of Manila wearing official badges shall be entitled to ride free upon the cars of the grantee, subject to such reasonable and proper restrictions as may be imposed."

The company began to operate its street railway in April, 1905. At the outset it promulgated a rule that, in order that members of the police and fire departments of the city of Manila wearing official badges be permitted to enjoy free transportation on petitioner's cars, they must be wearing their badges visibly, so that the fact that the person enjoying free transportation was entitled thereto might be continuously apparent during the period of transportation. For nine years, the time intervening between the commencement of the operation by the company of its street railway system and the order of the Board of Public Utility Commissioners which is the subject of this proceeding, this rule was enforced and was acquiesced in by the city of Manila and by its police and fire departments without objection. In accordance with that rule policemen, whether uniformed or not, but wearing their badges exposed, were transported without charge, while those who carried their badges in their pockets or concealed them about their persons paid fares. The city of Manila, through its secret service bureau, during the period referred to, paid more than forty thousand pesos for the transportation of the secret service members of the police force on the company's cars.

In May, 1914, the chief of the secret service bureau sought to obtain a reversal of this long-established practice and accordingly made a petition to the Board of Public Utility Commissioners alleging that the street-car company, in requiring the badges of the secret service members of the police force to be worn visibly during the period of transportation, was imposing an unreasonable and unlawful restriction on the transportation of the members of the police department. Following a hearing on this petition, the Board of Public Utility

Commissioners made the order objected to, which is as follows:

"The Manila Electric Railroad and Light Company is, therefore, ordered to furnish free transportation to the members of the police department of the city of Manila, belonging to the secret service bureau thereof, wearing their official badges, whether openly or concealed about their clothing in such a way that said badges may be displayed to conductors or inspectors on the company's cars when required to do so for purposes of identification.

"This order shall take effect the first day of July, nineteen hundred and fourteen."

There seems to be little doubt—in fact, no one has raised any question in regard to it—that the rule, promulgated by the company, requiring secret service men who desired free transportation on the company's cars to wear their badges exposed during the period of transportation was and is a reasonable rule, proper to prevent frauds on the company and to enable it and its employees to determine the persons who are entitled to free transportation and adequately to check and verify the collection of fares. The only contention made by the city of Manila, which is really the entity carrying on this litigation, is that this rule, although not inherently unreasonable, is a violation of that provision of the ordinance incorporating the company's franchise which we have already quoted.

The company in this proceeding has raised many questions relative to the jurisdiction, authority, and power of the Board of Public Utility Commissioners. We have come to the conclusion, however, that we will rest our decision on what may be termed the merits of the controversy, that is, the construction of the clause in the company's charter already referred to; and our decision on that point being in favor of the company, it will be unnecessary to discuss any of the other questions raised by counsel for the company.

We are of the opinion that the construction given by the company to the wording of that clause of the franchise already referred to is the one to which we must adhere. We base this conclusion on two grounds:

In the first place, the history of the enactment of ordinance 44 and the amendments which were offered and made to the original draft thereof demonstrates to our satisfaction that it was not primarily the intention of the Legislature to require the company to carry free of charge all of the police force of the city of Manila under any and all circumstances. Ordinance 44 is a copy of Act No. 484 of the Philippine Commission. Turning to the minutes of the public sessions of the Commission from September 1, 1902, to September 1, 1903, which refer to the passage of that Act, we find that, when the bill for the franchise to the street-car company came to its final reading, the clause in question stood as follows: "Members of the police and fire department of the city of Manila shall be entitled to ride free upon the cars of the grantee, subject to such reasonable and proper restrictions as may be imposed." An amendment was then offered, at the suggestion of the company and adopted by the Commission, by which there was inserted after the word "Manila" the words "wearing official badges." It was evidently intended by the amendment to permit the company to exclude from the privilege of free transportation some members of the department, namely, those not wearing official badges. The question is, What is meant by "wearing official badges?" Must they be worn visibly or can they be worn or carried concealed?

In the second place, the franchise in question being a contract between the city of Manila and the street-car company, under which an extremely valuable consideration passed from the company to the city, the construction placed on the clause under consideration by the parties to that contract must exert a powerful influence in the determination of the question presented. It is admitted that for nine years, from the commencement of operation by the company till the order of the Board of Public Utility Commissioners, the parties to the contract construed the words "wearing official badges" to mean wearing them visibly during the period of transportation. The language of the clause being susceptible of construction, we do not believe that we are at liberty to adopt at this time a construction diametrically opposed to that which the parties have placed thereon for so long a time. (Jover

vs. Insular Government, 221 U. S., 623; art. 1282, Civil Code.)

The intention of the legislature as evidenced by the amendment (and the legislature was simply trying to set down what the parties interested had agreed on), together with the practical construction adopted by the parties and acted on for a long period of time, is sufficient to constrain us to accept the construction thus practically given and to overrule that adopted by the Board of Public Utility Commissioners. The question before us presenting simply one of law, our authority to deal with the subject matter completely and definitely is clear.

The order of the Board of Public Utility Commissioners is vacated, set aside, and annulled. So ordered.

Arellano, C. J., Torres, Johnson, Trent, and Araullo, JJ., concur.

CARSON, J., dissenting:

Reserving, with the consent of the court, my right to file a separate opinion at a later day, I dissent.

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