

MANILA RAILROAD COMPANY, APPLICANT AND APPELLEE, VS. A. L. AMMEN TRANSPORTATION CO., INC., OPPONENT AND APPELLANT.*G. R. No 24555. March 16, 1926*

Ponente: MALCOLM, J.

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This is a petition originally brought to review an order of the Public Utility Commission concerning four cases. Counsel for the opponent state that they are agreeable to the dismissal of the appeal in case No. 4794, while counsel for the applicant impliedly concedes in the beginning of his brief that case No. 5416 has been superseded by case No. 6226. It is, therefore, only cases Nos. 6226 and 6280 which are now properly before us for consideration.

There need be no discussion as to any material fact since the Assistant Public Utility Commissioner practically makes his own the statement of facts presented by counsel for the opponent. Nor need there be any dispute as to the applicable legal provisions. It is only on the deductions which should be made from the facts and the law that the parties differ. The case has been especially well briefed by counsel. Frankly speaking, however, it must be conceded at the outset that it is an extremely close case.

The applicant is the Manila Railroad Company, a corporation owning and operating a railway system on the Island of Luzon. It is subsidized and controlled by the Philippine Government. Among its differeni lines is what is known as the Legaspi Division, extending from Tabaco in the Province of Albay to Pamplona in the Province of Camarines Sur, a distance of 139.5 kilometers. This di vision is at present isolated and separated from the rest of the system of the company. Temporary connection is now established and has been in operation since 1922 by automobile trucks from Pamplona to Pasacao, and by a steamer owned and operated by the railroad company from Pasacao to Aloneros. The opponent is the A. L. Ammen Transportation Co., Inc., a private corporation. It is engaged in the business of transportation of freight and passengers by automobile trucks in the Bicol region, comprised of the Provinces of Camarines Sur, Albay and Sorsogon. From Tabaco, Albay, to Naga, Camarines Sur, the railroad line more or less parallels the provincial road over which the transportation company operates its trucks: This is a distance of 120 kilometers by the provincial road but is somewhat less by the railroad.

The A. L. Ammen Transportation Co., Inc., originated back in 1903 with a steamer which navigated the Bicol River. In 1910, the company through Mr. A. L. Ammen established a truck line between the towns of Naga and Iriga. This line has gradually been extended to all parts of the Bicol region until the company, which was incorporated in 1914, operates seventy-three auto trucks. Many of these are on roads which the Manila Railroad Company's line does not parallel, and are more or less contributory to the railroad.

The Manila Railroad Company began construction of the Legaspi Division in 1913 and operation was begun in 1915. After that, construction work was suspended on account of the war. In 1922, a temporary connection was established with Manila.

Prior to February 1, 1925, the passenger rate of the Manila Railroad Company on its Legaspi Division was 2.2

centavos per kilometer for third-class passengers. The passenger rate of the A. L. Ammen Transportation Co., Inc., was then and presumably still is two centavos per kilometer for its one class of service. Due to the fact that the railroad line is somewhat shorter than the provincial road, the two rates prior to February 1, 1925, were almost exactly equal.

The Manila Railroad Company has been operating its Legaspi Division at a loss. With the exception of the years 1918 and 1923, there was an actual operating loss, and at all times there has been a loss on the investment. This is because the bonded cost of construction of the Legaspi Division is over six million pesos drawing interest. It is estimated by the parties that before February 1, 1925, the transportation company carried three passengers to the railroad's one. Under the circumstances outlined above, the Manila Railroad Company in cases Nos. 6226 and 6280 applied to the Public Utility Commission for authority to make reductions in its rates on its Legaspi Division. The application in case No. 6226 was as follows:

"January 13, 1925.—The Honorable, The Public Utility Commission, Manila, P. I.—Sirs: Pursuant to the provisions of subsection (h) of section 15 of Act No. 3108, application is hereby made to establish rates of P0.032 for first class and P0.015 for third class per kilometer on round trip tickets based on current distance tables between stations in the Legaspi Division. The above mentioned rates. are a reduction of 20 per cent on first class and 32 per cent on third class one way kilometric rates now in effect.

"Reduction is made to meet competition on the Legaspi Division where the public highway run parallel to the rail- road and is based on average cost of transport to the public.

"With your approval, it is desired to put these rates in effect on February 1, 1925.—Very respectfully, (Sgd.) M. D. ROYER, Traffic Manager"

The application in case No. 6280 was as follows:

"January 19, 1925.—The Honorable, the Public Utility Commission, Manila, P. I.—Sirs: Pursuant to the provisions of subsection (h) of section 15 of Act No. 3108, application is hereby made to reduce the kilometric passenger rate, third class, now in effect in Legaspi Division of this Company from P0.022 to P0.0176. This reduction is equivalent to 20 per cent.

"With your approval, we desire to put this rate in effect on February 1, 1925.—Very respectfully, (Sgd.) M. D. Royer, Traffic Manager."

The rates proposed by the Manila Railroad Company became automatically effective on February 1, 1925, by order of the Public Utility Commission of January 14, 1925. Against the applications, the A. L. Ammen Transportation Co., Inc., entered opposition on the ground that the proposed rates were discriminatory and were unjust and unreasonable. The order of Assistant Commissioner Del Rosario overruled the opposition of the A. L. Ammen Transportation Co., Inc., and approved the applications of the Manila Railroad Company in the four cases. It is from this order that the opponent has appealed, assigning three errors which stress the same points made in its opposition.

The Public Utility Commission is granted the power, after hearing upon notice by order in writing, to fix just and reasonable rates for public utilities. The burden of proof that the said increase, reduction, change, or alteration is just and reasonable is upon the public utility making the same. No public utility is permitted to make, impose, or exact any unjust or unreasonable, unjustly discriminatory, or unduly preferential rate. The Supreme Court is given jurisdiction to review the order of the Commission, fixing a just and reasonable rate, and to modify or set aside such order only when it clearly appears that there was no evidence before the Commission to support reasonably such order or that the same was without the jurisdiction of the Commission. The power of the court as a reviewing authority is confined to determining if the rate is just and reasonable. (Act No. 3108, sees. 14, 15, 16, and 35.)

Mr. Justice Brewer while sitting on the Circuit Court of the United States in the case of Chicago & North-western R. Co. vs. Dey ([1888], 1 L. R. Ar, 744), said:

"Again; it is said that it cannot be determined in advance what the effect of the reduction of rates will be. Oftentimes it increases business; and who can say that it will not in the present case so increase the volume of business as to make it remunerative, even more so than at present? But speculations as to the future are not guides for judicial actions; courts determine rights upon existing facts.

Of course, there is always a possibility of the future; good crops may increase transportation business, poor crops reduce; high or low rates may likewise affect; but the only fair judicial test is to apply the rates to the business that has been done in the past, and see whether upon that basis such rates will be remunerative, or compel the transaction of business at a loss."

This rule having to do with the impropriety of testing a rate by speculations as to future business has been followed and adopted by various courts. It should be adopted in this jurisdiction. It is good law.

There is one existing fact which is conceded by all. The rate of the Manila Railroad Company on its other lines is 2.5 centavos per kilometer per person third class. The rate of the railroad company on its Legaspi Division, before February 1, 1925, was 2.2 centavos per kilometer per person third class. The rates here in controversy for the Legaspi Division are 1.5 and 1.76 centavos per kilometer per person third class. The applicant vigorously contends that these facts show discrimination between localities—between the Provinces of Albay and Camarines on the one hand and from Tayabas north to La Union on the other.

We see little force in this argument. Heretofore the Manila Railroad Company has charged less on its Legaspi Division than on its main road. For all practical purposes, the Legaspi Division, except that it is under the same management as the other lines of the Manila Railroad Company, is a separate entity. It is not even in reality a feeder for the principal line. Under these conditions, we see nothing wrong in permitting of the continuation of the practice of fixing a rate separate and apart for the Legaspi Division, until such time as this division shall be connected up with the rest of the railroad.

There is one other factor which is known but which is not emphasized by either the applicant or the opponent. This is the fact that a third party, the public, is vitally interested in these proceedings. The duty which the court owes to the public is not less than that which it owes to the carriers. Incontestably it would be for the good of the public to have both the Manila Railroad Company and the A. L. Ammen Transportation Co., Inc., continue operations in the Bicol region giving the best service possible at the smallest living rate.

The purpose of the Manila Railroad Company in lowering its rates was to meet competition in the Legaspi Division where the public highway runs parallel to the railroad. This is a legitimate purpose. It is a rule which needs no citation of authority to support it, that a carrier may make such rates as are necessary to meet competition. Competition is a very important factor in determining the reasonableness of rates. But what the opponent objects to is not competition but cut-throat competition. It claims that with the new rates in force the railroad company will lose money and the transportation company will be driven out of business. It says that this will be in effect the taking of its property without due process of law, constituting confiscation.

When we enter on this field of controversy, we depart from our rule relative to existing facts and are forced to speculate more or less as to the future. We do know, however, that on the Legaspi Division the Manila Railroad Company only operates two trains a day each way—one in the morning and one in the afternoon—and one of these trains is in reality a freight train with a passenger coach attached. We know also that while the public road on which the motor trucks operate parallels the railroad, the railroad does not serve two large municipalities on the way, Guinobatan and Nabua. Nor do we need any particular proof to demonstrate that the service offered by the

transportation company with its trucks is more convenient for passengers on account of its frequency, the more ample space being provided for luggage, and of the trucks many times passing by the residences of the would-be passengers, than is the meager and infrequent service of the railroad.

Previous to this, it is evident that the Manila Railroad Company has lost money on its Legaspi Division and that the A. L. Ammen Transportation Co., Inc., has made money. If we were to attempt to prophesy, we would say that even with the new rates in force, the Manila Railroad Company will not prove to be a profit-making enterprise on its Legaspi Division, and the A. L. Ammen Transportation Co., Inc., will not have its business killed. The lower rates of the railroad company will undoubtedly stimulate to a certain extent its passenger traffic, but will likely not take away so much of the business of the transportation company as to make it unprofitable. Even though the railroad company gains additional passengers, other passengers will still continue to use the motor trucks because of their greater convenience.

There is one further actual point which, if proved, would have been of great assistance in determining the case but which is not in the record. The new rates became effective on February 1, 1925. More than a year has elapsed since then. A supplemental showing could have been made by the transportation company if in point of fact the new rates were making the operation of its trucks on the road paralleling the railroad unprofitable. Moreover, if such a condition exists or should arise, it would be eminently proper for the transportation company to ask the Public Utility Commission to so raise the rates of the railroad company as to permit the transportation company to meet the competition of the railroad.

We fail to see why the fact that the Manila Railroad Company is government owned changes its status as to rates. It should not be the purpose of the government to throttle private business. It should rather be the purpose of the government to encourage private enterprise. Nevertheless, the Manila Railroad Company has a right to exist just as much now when it is under government control as it had when it was privately owned.

In 1916, the Public Utility Commission had an application of the Manila Railroad Company before it for permission to establish special rates. In the decision then promulgated, consideration was given to some of the points now in controversy. It was said:

"There is in this case no dispute as to the facts. The Manila Railroad Company is at present unable to pay its operating expenses in the operation of its lines in the Provinces of Albay and Ambos Camarines, due to the fact, in large part, that the Company is not meeting the very extensive automobile competition made by the protesting Company and other automobile lines. The comparative table submitted by the protesting Company discloses clearly that the Railroad Company under existing rates is not securing its fair share of the traffic. It is clear that the traffic will not move by the railroad when it can secure the more adaptable automobile service at cheaper rates.

"The argument that the Railroad Company is practically a subsidized concern is in a sense well founded. The government does guarantee interest at the rate of 4 per cent on a large portion of the actual investment by the Manila Railroad Company in the line in question, but this guaranty is in the form of a guaranty to bondholders of the interest on bonds issued for construction purposes. Payments made by the government under this guaranty become an indebtedness of the Railroad Company to the government, secured by lien on the Company's lines subordinate only to the first mortgage securing the principal on said bonds. Moreover, as is very forcibly pointed out by the Railroad Company, the protesting Company and other automobile lines are not required to furnish their own roadbed. Their roadbed is furnished and maintained by the government without any direct contribution from them for the purpose. On the question of government assistance, it would seem that the Manila Railroad Company has the better of the argument.

"However, we do not believe that the assistance furnished by the government to the Railroad Company affects

in any way the right of the Company to make such charges with certain limitations as will enable it to meet competition. The right to meet competition has often been passed upon by the Interstate Commerce Commission, and it has constantly been held that common carriers by rail may voluntarily make under the force of controlling competition reductions in rates which they may not be compelled to make. A recent decision of the Interstate Commerce Act (32 I. C. C, 611) lays down the principle that the carrier by rail should be permitted to compete against carriers by water operating through the Panama Canal, so long as it may secure a substantial share of the traffic at rates which clearly cover the out-of-pocket cost. {See also *Loch Lyn Construction Co. vs. B. & O. R. R. Co.*, 17 I. C. C, 396, 399; *Oregon & Washington Lumber Mfgs. Ass'n. vs. U. P. R. R. Co.*, 14 I. C. Co 14; *Rainey & Rogers vs. St. L. & S. F. R. R. Co.*, 18 I. C. C, 88, 89; *Consumers Ice Co. vs. A. T. & S. F. Ry. Co.*, 18 I. C. C, 277, 278; *Corporation Commission of N. C. vs. N. & W. Ry. Co.*, 19 I. C. C, 303, 309; *Bainbridge Board of Trade vs. L. H. & St. L. Ry. Co.*, 15 I. C. C, 586, 594; *Columbia Grocery Co. vs. L. & N. R. R. Co.*, 18 I. C. C, 502, 507; *Darling & Co. vs. B. & O. R. R. Co.*, 15 I. C. C, 79, 87; *Chamber of Commerce, Ashburn, Ga., vs. G. S. & F. Ry. Co.*, 23 I. C. C, 140, 149.)

"We hold that the assistance that the Railroad Company is receiving at the hands of the government in the form of a guaranty by the government of the interest on the bonds issued for purposes of construction does not vary in the slightest the right of the Company to secure its fair share of the traffic by meeting competition, so long as the rates charged are clearly sufficient to cover the out- of-pocket cost of moving the traffic. We are of the opinion that the proposed reduction in rates will result in a decided increase in operating revenue on this section and will relieve the Railroad Company to a considerable extent against its present operating losses in the territory in question.

"The Railroad Company is therefore permitted to put into effect at once the proposed reduction in passenger rates."

The opponent objects strenuously to the out-of-pocket rule stressed in the above-cited decision, but the application of the principle is permitted under extraordinary conditions and circumstances justifying it. (See 10 C. J., pp. 420, 424, 475; *Interstate Commerce Commission vs. Southern Ry. Co.* [1900], 105 Fed., 703; *Texas & Pacific Railway Company vs. Interstate Commerce Commission* [1896], 162 U. S., 197.)

As intimated in the beginning, this is an extremely close case. Following careful consideration, however, we cannot fairly say that there is present unjust, undue, or unreasonable discrimination or that the rates approved for the Manila Railroad Company on its Legaspi Division are unjust and unreasonable. Nor can we fairly say that it is clearly shown that there was no evidence before the Assistant Commissioner to support reasonably his order or that the same was without the jurisdiction of the Commission, which is the limit of our jurisdiction. Accordingly, it becomes our duty to acquiesce in the action taken by the Public Utility Commission.

Agreeable to the foregoing, the order of the Public Utility Commission brought here on review is affirmed, with costs against the appellant.

Avanceña, C. J., Street, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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