

PANAY AUTOBUS COMPANY, PETITIONER AND APPELLANT, VS. PHILIPPINE RAILWAY CO., RESPONDENT AND APPELLEE.

G.R. No. 37869. February 17, 1933

Ponente: VICKERS, J.

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VICKERS, J.:

This is a petition of the Panay Autobus Company for the review of the decision of the Public Service Commission in case No. 31724.

On April 18, 1932, R. R. Hancock, vice-president and general manager of the Philippine Railway Co., filed with the Public Service Commission in case No. 31724 the following petition:

"We have the honor to request the authority of the Commission to alter the freight rates of the Philippine Railway Company on the Cebu and Panay Divisions whenever in our judgment we find it necessary in order to meet the competition of road trucks and auto busses.

"This is in line with the request contained in our letter of April 8th, wherein we asked to be allowed to alter our passenger rates at will.

"The Commission has no doubt been advised by its inspectors that freight, as well as passengers, is handled by road trucks and auto busses without regard to any regulation or law; they run up and down the highways and into our station grounds, bargaining for every piece of freight and every passenger.

"Their charges are based primarily on the railway rates. The trucks simply go to a shipper and ask what the railway charges, and then offer to haul the freight at a few centavos less per bulto or ton.

"As our rates are fixed, we have no chance to secure the freight. The Railway Company is placed at a great disadvantage in not being able to bid for the business, and consequently loses out whenever the road autos can charge a slightly lower rate.

"For the above reasons, we respectfully request that the rates at present in effect be considered the maximum, and that we may fix lower rates whenever in our opinion it will be to the advantage of the Railway Company to do so."

The petition was set for hearing on June 21, 1932, and the operators affected thereby were notified.

On May 28, 1932 the Cebu Autobus Company through its attorneys filed an opposition to said petition on the following grounds:

"1. That the Cebu Autobus Company holds a certificate of public convenience to operate an autobus service for the transportation of passengers and freight between all the principal points in the Province of Cebu.

"2. That the establishment of sliding rates is repugnant to the fundamental principles of Public Utility Regulations.

"3. That the granting of the above application will promote unnecessary and ruinous competition between the

operators.

"4. That the granting of sliding rates will promote discrimination with regard to its enforcement, that is to say, one shipper of cargoes may be charged the maximum rates, whereas another shipper is charged a much lower rate."

On April 23, 1932 the general manager of the Philippine Railway Co. filed with the Public Service Commission in case No. 31827:

Proposed Freight Classification No. 5, Panay Division,
Proposed Freight Tariff No. 8, Panay Division,
Revised Rules Governing Traffic, All Divisions,

providing for a reduction in the freight rates on many articles.

A hearing on the petition in case No. 31724 was held on June 21, 1932. At the hearing Attorney Alvear appeared for the Cebu Autobus Co., and maintained that the commission could not grant the applicant the permission which it requested. Upon ascertaining that the application of the Philippine Railway Co. related to the Panay Division, Attorney Alvear reserved the right to file an opposition on behalf of the Panay Autobus Co., the petitioner and appellant herein. The only witness presented was Hancock. He testified that the applicant wished to reduce its freight rates because of the reduction in market prices and the competition which the Philippine Railway had to contend with; that a flexible tariff would in his opinion increase the earnings of the Railway Company; that order No. 3 of the Public Service Commission fixing the maximum rates for steamers has proved very satisfactory; that it was not the intention of the Philippine Railway Co. to violate in any way section 16 of Act No. 3108, and that any reduction in freight rates would be applied to all kinds of cargo without discrimination; that it was not his intention to enforce the reduced rates on the Cebu Division; that the fixing of the rates was to be left entirely to the discretion of the officials of the Railway Company, who would apply the rates without discrimination and notify the commission; that the present maximum rate from Iloilo to Capiz is P15 a ton, and he wished to reduce it to P5 or P6.

The tariff schedule in case No. 31827 was submitted at the same hearing. On June 21, 1932 the commission rendered the following decision:

"Se trata de una peticion de reduccion de tarifas formulada por la Philippine Railway Co. en lo que concierne principalmente a la tarifa de carga en la Division de Panay.

"La propuesta tarifa reducida esta conocida por 'freight classification No. 5' donde se detallan la clase de articulos o mercancías que pueden ser trasportados y lo que se conoce por tarifa 'Freight No. 8' con indicacion en ambas tarifas 5 y 8 del propuesto cobro.

"En la vista comparecio el abogado Sr. Alvear formulando una importante cuestion de derecho, o sea, que la Comision no esta autorizada a aprobar lo pedido invocando al efecto el inciso (a) del articulo 16 de la Ley No. 3108, tal como esta enmendada. Sin embargo, nosotros resolveremos la cuestion bajo el inciso (h) del articulo 15 de la misma Ley citada.

"Mr. Hancock que declaro por la compañía peticionaria presto el siguiente testimonio:

" 'Es el deseo de la solicitante de reducir sus tarifas de carga por la reduccion de los precios en el mercado de los articulos y por la muy extensa competencia que tenemos con toda clase de transportaciones por tierra. Estamos convencidos de que una tarifa flexible podria aumentar los ingresos y sometemos que la orden No. 3 de la Comision de Servicios Publicos fija los tipos maximos 'para los vapores, y este sistema ha tenido un resultado muy satisfactorio, segun sabemos, y no es la intencion de la Philippine Railway Co. el infringir de

algun modo el art. 16 de la Ley No. 3108 y que cualquiera reduccion que nosotros hagamos en los precios de carga sera para todos y no sobre una determinada clase de mercancia, y nuestra tarifa para ese efecto se numerara y se clasificara, y nosotros daremos cuenta de esto a la Comision y al publico en general.'

"Como se trata en la propuesta tarifa No. 5 y No. 8 de una reduccion de la tarifa actual, y la razon fundamental que ha movido a la compa ia peticionaria al pedir la tarifa, es el fenomeno real de que el precio de los articulos ha bajado considerablemente, y como por otra parte la Cebu Autobus Co. no ha aportado prueba en contrario que desmienta los extremos cubiertos por la declaracion de Mr. Hancock, siendo la politica de la Comision, tal como lo hemos enunciado en recientes decisiones, el acceder a peticiones de reduccion de tarifas, recientemente el caso de la Central de Asturias contra Philippine Railway Co., Expedientes Nos. 27862 y 27893 en la Division de Cebu ha solicitado rebaja de tarifas y la Comision en Pleno ha resuelto acceder a la tarifa de pasajes; no habiendo motivos que desvirtuen la razonabilidad de la peticion decidimos por la presente aprobar la reduccion pedida con efectividad desde esta fecha.

"Tocante al punto legal suscitado por el abogado Alvear de que bajo la clausula (a) del art. 16 de la Ley No. 3108 no podemos actuar sobre la peticion, aparece muy claro en el inciso (h) del art. 15 de la misma que esta Comision, en materia de reduccion o aumento de tarifas o alteraciones en las mismas, esta autorizada, previa peticion en forma, a ver y determinar en que casos procede autorizarse el aumento o reduccion, cambio o alteracion justa y razonable de la tarifa que se propone poner en vigor; desde luego que tambien aparece claro en el inciso (h) del art. 15 de la Ley que el 'burden of proof descansa en la parte que solicita quien ha de demostrar que lo que pide en sentido de aumento o reduccion o cambio o alteracion es justo y razonable, pudiendose llegar a una conclusion definitiva, previa vista de la solicitud, y ello se ha hecho precisamente en el caso presente.

"Por tanto aprobamos la tarifa Freight Classification No. 5 Panay Division, y Freight Tariff No. 8 Panay Division con efectividad en la Panay Division, y desestimamos la contencion al efecto de que no tenemos autorizacion para resolver los meritos de la peticion tal como se contiene por el abogado Alvear.

"Esta decision entrara inmediatamente en vigor y quedara firme a los 30 dias de su notificacion a las partes."

On June 28, 1932 the Panay Autobus Company filed its opposition to the applications of the Philippine Railway Co. in cases Nos. 31724 and 31827 on the following grounds:

"That the opponent company operates a bus service in the Island of Panay with the right and privilege to transport passengers and freight at schedule of rates fixed by this Honorable Commission;

"That the petition for flexible rates could not be granted by this Honorable as it is against the fundamental principles of public utility regulation;

"That the granting of a flexible rate will work ruinous competition with other common carriers in the field"; and on the same date asked for a rehearing on the ground that the decision was contrary to law and the fundamental principles of public utility regulation. The motion for a rehearing was denied by the commission on July 20, 1932.

The appellant makes the following assignments of error:

"I. The commission erred in dictating the decision for the following reasons:

"(1) Because it did not find and declare that rates lower than the maximum rate are just and reasonable.

"(2) Because it delegated to appellee its powers and duties to fix and determine what are just and reasonable rates.

"(3) Because the authority granted to appellee is contrary to the fundamental rules of public utility regulation.

"II. The commission erred in denying the motion for rehearing."

As we have already stated, this petition for a review is confined to case No. 31724. The matter as presented to us by the records of the Public Service Commission is confusing. It does not clearly appear from the decision in question, which corresponds to cases Nos. 31724 and 31827, what was the holding of the commission as to the application of the Philippine Railway Co. in case No. 31724, requesting authority to alter its freight rates on the Cebu and Panay Divisions whenever in its judgment it should find it necessary in order to meet the competition of road trucks and autobuses; that the rates at present in effect be considered the maximum, and that the Philippine Railway Co. be authorized to fix lower rates whenever in its opinion it would be to its advantage to do so.

The commission overruled the objection of the attorney for the appellant, and apparently granted the application of the Philippine Railway Co.

In our opinion, the Public Service Commission was not authorized by law to delegate to the Philippine Railway Co. the power of altering its freight rates whenever it should find it necessary to do so in order to meet the competition of road trucks and autobuses, or to change its freight rates at will, or to regard its present rates as maximum rates, and to fix lower rates whenever in the opinion of the Philippine Railway Co. it would be to its advantage to do so.

The mere recital of the language of the application of the Philippine Railway Co. is enough to show that it is untenable. The Legislature has delegated to the Public Service Commission the power of fixing the rates of public services, but it has not authorized the Public Service Commission to delegate that power to a common carrier or other public service. The rates of public services like the Philippine Railway Co. have been approved or fixed by the Public Service Commission, and any change in such rates must be authorized or approved by the Public Service Commission after they have been shown to be just and reasonable. The public service may, of course, propose new rates, as the Philippine Railway Co. did in case No. 31827, but it cannot lawfully make said new rates effective without the approval of the Public Service Commission, and the Public Service Commission itself cannot authorize a public service to enforce new rates without the prior approval of said rates by the commission. The commission must approve new rates when they are submitted to it, if the evidence shows them to be just and reasonable, otherwise it must disapprove them. Clearly, the commission cannot determine in advance whether or not the new rates of the Philippine Railway Co. will be just and reasonable, because it does not know what those rates will be.

In the present case the Philippine Railway Co. in effect asked for permission to change its freight rates at will. It may change them every day or every hour, whenever it deems it necessary to do so in order to meet competition or whenever in its opinion it would be to its advantage. Such a procedure would create a most unsatisfactory state of affairs and largely defeat the purposes of the public service law.

The testimony of Hancock regarding order No. 3 of the Public Service Commission fixing the maximum rates for steamers is quoted in the decision. Said order finds its authority in Act No. 3418, which clearly has no application in the present case. It is provided in said act that the commission shall not exercise any control or supervision over vessels operated within the Philippine Islands, except with regard to the fixing of maximum passenger and freight rates. By this express provision of law the jurisdiction of the Public Service Commission over vessels is limited to the fixing of maximum passenger and freight rates. The owners of vessels engaged in the interisland trade do not reduce their rates because they have been authorized by the Public Service Commission to do so. They reduce their rates without regard to the Public Service Commission, because its jurisdiction is limited to the fixing of maximum rates.

Section 16 of the Public Service Law prohibits any public service from exacting any unjustly discriminatory rate,

but if the Philippine Railway Co. is to alter its rates whenever it may be necessary to meet the competition of road trucks and autobuses, or to reduce its rates whenever it would be to the advantage of the Railway Company to do so, it cannot prevent its rates from being discriminatory. It may charge one shipper P5 a ton from Iloilo to Capiz, but immediately thereafter in order to meet competition it may be obliged to give another shipper a rate of P4 a ton. It can scarcely be contended that such a rate would not be discriminatory. Under the order of the commission, there is no stability of rates. They may be varied at the will of the railroad officials, provided that they are not increased. The commission thereby gives up one of its most important functions, and leaves it to competition to fix, the rates.

If the conditions complained of by Hancock exist, and we do not doubt that they do, it is the duty of the Public Service Commission to correct them by enforcing the law and its orders as to those operators responsible therefor, not by delegating its powers to the Philippine Railway Co. and authorizing it to reduce its rates whenever necessary to meet such unlawful competition.

For the foregoing reasons, so much of the decision in question as grants the application of the Philippine Railway Co. in case No. 31724 to reduce its rates at will to meet competition is reversed, with the costs in favor of the appellant.

Villamor, Villa-Real, Hull, and Imperial, JJ., concur.

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