

MANILA RAILROAD COMPANY, APPLICANT AND APPELLEE, VS. M. P. TRANCO, INC., OPPONENT AND APPELLANT.

G.R. No. 39217. December 20, 1933

Ponente: HULL, J.

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HULL, J.:

This is an appeal by the M. P. Tranco, Inc., from an order of the Public Service Commission entered on January 24, 1933, which is the basis of G. R. No. 39181,[1] in which the Manila Railroad Company was the appellant, and which was decided by this court in a decision promulgated this day.

The first assignment of error in the present appeal relates to the power of the Public Service Commission under paragraph (h) of section 15 of Act No. 3108 to grant ex parte, without notice and without the taking of any evidence, a change in rates. It is to be noted that the Legislature has fixed a thirty-day period as the normal period before a proposed change of rates takes effect. The commission has absolute power to suspend the change for a period not exceeding three months, but a true reading of the law would indicate that the commission should have some facts to change the period of thirty days fixed by the Legislature. But as the period of thirty days has long since been passed, the first assignment of error really has become academic.

The second, third, and fourth assignments of error assert that the old freight rates between Bauang and the mines on fuel oil were not too high and that therefore the commission erred in ordering into effect the rates that it thought were fair, just, and reasonable.

The main question in the case was the cost of hauling fuel oil in tank trucks from Bauang to the mines, and the commission was not limited to a choice of putting into effect either the old rates or the proposed new rates. On the evidence as a whole, the commission was convinced that the old rates were too high and the proposed new rates were too low, and it was not necessary, nor would it serve any useful purpose, having arrived at that conclusion, to start another proceeding to enable it to put into effect what the evidence had already convinced it was fair and just.

There can be no dispute that there is evidence of record from which reasoning men could arrive at the conclusion that the rates adopted by the Public Service Commission are fair. The evidence is insufficient to convince us that the rates are not remunerative.

The fifth assignment of error reads:

"The commission erred in not holding that the practice of the Manila Railroad Company and the Benguet Automobile Line in reducing rates by adopting so-called thru or joint rates, without making any corresponding reduction in the railroad rate between Manila and Bauang, constitutes unfair, inequitable and illegal competition with the appellant herein and other operators in the Benguet district."

This matter was not touched upon in the decision of the Public Service Commission. It did, however, deny the application for the joint rate in question. It knew that the question was going to arise in other matters, and its

discretion in declining to reject the proposed rates on one ground when it had already rejected them on another, can hardly be made the basis of a valid assignment of error.

Notwithstanding that the Public Service Commission held that the proposed rates of the Manila Railroad Company were not proper, it directed that they remain in force pending this appeal. Under the Public Service Act, the Public Service Commission is given full discretion in such matters, and its action thereon is not subject to review unless its action is so arbitrary as to constitute abuse of discretion. Under the circumstances of this case and both parties objecting to the rates that the commission set as fair, the commission was not without reason for its action.

The order appealed from is affirmed, with costs against appellant. So ordered.

Malcolm, Villa-Real, Imperial, and Diaz, JJ., concur.

[1]Page 158, ante.

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