JONES TRUCK LINES v. UNITED STATES

146 F. Supp. 697 (1956) | Cited 0 times | W.D. Arkansas | December 12, 1956

By this action the plaintiff, Jones Truck Lines, Inc. —hereinafter called Jones — asks this specially constitutedthree-judge Court to enjoin enforcement of, and to set aside,an order of the Interstate Commerce Commission, dated March 13,1956, requiring Jones to cease conducting motor carrieroperations in areas in Arkansas found in that order to bebeyond the scope of its certificate of convenience andnecessity.

Though jurisdictional and procedural questions are raised, thebasic dispute is over what area is embraced in an irregularroute operating authority in Arkansas, purchased by Jones(along with other operating rights) from Chief Express, Inc.,with Commission approval, and covered in a new certificate, No.MC-111231 (Sub. No. 5), issued to Jones on October 4, 1951,which described the area as follows:

"Between points in Arkansas on and east of U.S. Highways 63and 67 * * *."

These highways cross Arkansas somewhat in the form of an "X".Highway 63 enters Arkansas, from the north, at theMissouri-Arkansas border near the Arkansas town of MammothSprings, and runs, thence, southeasterly, through Hoxie, to theMississippi River. Highway 67 enters Arkansas, from the north,at the Missouri-Arkansas border near the Arkansas town ofCorning, and runs, thence, southwesterly, through Hoxie, toTexarkana, Arkansas. These highways, thus, cross at Hoxie.

Soon after the issuance of the questioned certificate, Jonespublished tariffs applicable to, and began operating in, andhas ever since operated in, not only the east quadrant, butalso in the north and south quadrants, of the "X".

On December 15, 1952, slightly more than one year after theissuance of the questioned certificate, the District Directorof the Commission's Bureau of Motor Carriers (one Hagarty)stationed in Little Rock, wrote Jones, saying it appeared thatJones was erroneously interpreting the area description in thecertificate "as embracing a larger area than that intended",and that "the area involved embraces only that portion ofArkansas on and east of U.S. Highway 63 from the MississippiRiver to its junction with U.S. Highway 67, and on and east of U.S. Highway 67 to theArkansas-Missouri state line", and the letter requested Jonesto confine its future activities to that area. Jones did notreply to that letter, but, in a later conference with aCommission representative, it disagreed with the interpretationof the area embraced by the certificate as set forth in thatletter, and admitted it was conducting operations in the northand south quadrants of the "X", but claimed the right to do sounder the language of the certificate and asserted it wouldcontinue to serve that area.

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On March 24, 1955, the Commission, Division 5, entered an orderinstituting a formal investigation into the matter. The orderrecited that on October 4, 1951, in MC-111231, Sub. 5, acertificate was issued to Jones authorizing, in part,operations "over irregular routes between points and places inArkansas on and east of U.S. Highways 63 and 67", and recitedfurther that "there is reason to believe" that Jones had beenoperating to and from named towns in the south quadrant of the"X", which said certificate did not authorize it to serve, inviolation of Section 206(a)(1) of the Interstate Commerce Act,and it ordered an investigation, under Sections 204(a) and212(a) of the Act, into the practices of Jones, and furtherordered Jones to appear for hearing at a time and place to belater fixed, and it further ordered the Commission's Bureau ofInquiry and Compliance — hereafter called the Bureau — to givetimely notice to Jones, prior to the proposed hearing, of "theparticular operations alleged to have been performed inviolation of Section 206(a)(1) of said Act."

That order was timely served upon Jones, and, on April 15,1955, counsel for the Bureau wrote Jones, referring to theCommission's order of March 24, 1955, instituting theinvestigation, and attaching an exhibit, listing 21 shipmentstransported by Jones to or from towns located in the southquadrant of the "X" referred to, and saying that the exhibitwould be offered in evidence at the hearing, and sayingfurther, "In addition, it will be contended that your companyhas no authority, under Sub. 5 above, to serve any portion ofthe territory in Arkansas lying east of Highway 67 and south ofHighway 63, and lying west of Highway 67 and north of Highway63."

To correct the error of reference to Section 204(a) in theoriginal order — when Section 204(c) was intended — and todisclose the source of Jones' full operating authority, theCommission, on May 12, 1955, entered an amended order ofinvestigation, reciting that certificates of public convenienceand necessity issued to Jones in Docket numbered MC-111231, andSubs. 1, 3, 5, 7, 8, 9, 15, 18 and 21 thereto, authorizedoperations over regular and irregular routes between points andareas in Illinois, Missouri, Kansas, Arkansas, Oklahoma, Texasand Tennessee, and reciting that on October 4, 1951, inMC-111231, Sub. 5, a certificate was issued to Jonesauthorizing, in part, operations over "irregular routes betweenpoints and places in Arkansas on and east of U.S. Highways 63and 67, on the one hand, and, on the other, points to whichservice is authorized in connection with the regular routesdescribed in said certificate", and reciting that there isreason to believe that Jones, in transporting commodities underthe various certificates issued to it, or by variouscombinations of its operating authority, had been servingpoints in Arkansas, in the south quadrant of the "X", notauthorized to be served under Certificate MC-111231, Sub. 5, inviolation of Section 206(a)(1) of the Act, and ordering thatan investigation be instituted, under Sections 204(c) and212(a) of the Act, into Jones practices, and referring thematter to Joint Board No. 91 (consisting of representatives ofthe states of Missouri and Arkansas) for hearing at Little Rockon June 20, 1955.

A copy of that amended order was timely served on Jones, and onMay 19, 1955, the Commission issued and served on Jones anamended notice of hearing, reciting that the hearing to be heldat Little Rock on June 20, 1955, "will beupon matters covered by the amended order of the Commission,Division 5, entered May 12, 1955."

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On June 3, 1955, the Commission, Division 5, entered an ordervacating so much of the order of May 12, 1955 as referred thismatter to Joint Board 91 for hearing, and ordered that thematter be referred to Examiner Cantrell for hearing at LittleRock on June 20, 1955. That order was duly served upon Jones.

Before, and again at the time of, the hearing before ExaminerCantrell at Little Rock, on June 20, 1955, Jones objected bothto the timeliness and the sufficiency of the notice of hearing,and also objected to the holding of the hearing before aCommission examiner, contending that the matter was oneproperly to be heard by a joint board. These objections wereoverruled, and the hearing proceeded before Examiner Cantrellat the place and on the date stated, at which the Bureauoffered, and, over objection of Jones, the Examiner received inevidence, the original certificate, creating this irregularroute operating authority, issued by the Commission to RighterTrucking Company on April 27, 1942, and all subsequentcertificates issued by the Commission to transferees of thisoperating authority.

Examiner Cantrell filed his proposed report on October 10,1955, finding and concluding that Jones' Sub. 5 certificate, inunambiguous terms, embraced only "points in Arkansas on andeast of U.S. Highway 63 from the Mississippi River to Hoxieand on and east of U.S. Highway 67 from Hoxie to theArkansas-Missouri state line", and that Jones was knowingly andwillfully operating outside that area, under that certificate,in violation of Section 206(a)(1) of the Act, and should beordered to desist therefrom, and he recommended that theCommission so find and order.

Exceptions were timely filed by Jones to the Examiner'sproposed report, and on March 13, 1956, the Commission,Division 1, filed its report overruling Jones' exceptions, andfinding and concluding that "If the term `highways' plural isgiven full meaning then the only points authorized to be servedare those on and east of both such highways", and that, inthis view, the language in the Sub. 5 certificate would not beambiguous, but if such is not the correct functionalinterpretation, then the language of the Sub. 5 certificate isambiguous "and resort to its antecedents and extraneous matteris therefore permissible and required in order properly toconstrue respondent's certificate." The Commission thenproceeded to examine the antecedent certificates and held thatthey were competent and material, and that consideration ofthem made it certain that Jones' Sub. 5 certificate "authorizesservice only between points in Arkansas on and east of a linebeginning at the Arkansas-Missouri state line and extendingalong U.S. Highway 67 to Hoxie, Arkansas, thence along U.S.Highway 63 to the Mississippi River", and that Jones has been,and is, engaged in the conduct of operations beyond the areascope of said certificate in violation of Section 206(a) of theAct, and the Commission, on that day, entered an orderrequiring Jones to cease and desist from so doing.

Jones timely filed a petition for rehearing, and to vacate saidorder, which was overruled, and soon afterward this suit wasfiled, asking us to permanently enjoin, and to set aside, theCommission's order. The parties were fully heard by us upon therecord as made before the Commission and upon briefs and inoral argument at Fort Smith, Arkansas on October 29, 1956.

At the threshold, Jones raises a jurisdictional question. Itcontends that the Commission's order referring this matter forhearing to a Commission examiner was void because Section205(a) of the Interstate Commerce Act, Section 305(a), Title 49U.S.C.A., vested jurisdiction in, and required the hearing tobe held by, a joint board. That sub-section requires that "whenoperations of motor carriers * * * conducted or proposed * *involve not more than three States * * *" the Commission shallrefer to a joint board for appropriateproceedings "any of the following matters." The section thenproceeds to specify the matters that must be so referred to ajoint board. Jones claims this proceeding falls within thespecification, there set forth, of an "application for * * *the suspension, change, or revocation of such certificates,permits, or licenses."

We do not agree. We think this proceeding was one to interpretthe area description contained in the Sub. 5 certificate and todetermine the area of the operating rights granted thereby, andthat it was not a proceeding for "the suspension, change, orrevocation" thereof; and, thus, this was a "matter notspecifically mentioned above" (in this subsection) and, hence,fell within the language of the first proviso of saidsubsection, saying "The Commission, in its discretion, may alsorefer to a joint board any investigation * * * proceeding orother matter not specifically mentioned above which may ariseunder this chapter", and that, therefore, the Commission had adiscretion to refer this matter for hearing either to anexaminer or to a joint board.

It is true the Commission's order, initiating theinvestigation, made reference to Section 212(a) of the Act,Section 312(a), Title 49 U.S.C.A., but that reference was meresurplusage as the order here was not, and could not have been,in any way predicated thereon.

But, even if this had been a proceeding for "the suspension,change, or revocation" of the certificate, still it is shownand even admitted, here, that the motor carrier "operations * ** conducted" by Jones extended into, and, thus, "involved",more than three states, namely Illinois, Missouri, Kansas,Arkansas, Oklahoma, Texas and Tennessee — a total of sevenstates, and, hence, — even in that case — the Commission wouldhave had a discretion to refer the matter either to an examineror to a joint board.

Jones next complains that it was not timely advised of thehearing, and was not timely and adequately advised of the legalauthority and jurisdiction under which the hearing would beheld and of the matters of fact and law asserted, within themeaning of, and as required by, Section 5(a) of theAdministrative Procedure Act, Section 1004(a), Title 5 U.S.C.A.The facts, in these respects, have been fully set forth, and itwould serve no useful purpose to recount them here. We thinkthat they show that Jones was given timely notice of the time,place and nature of the hearing, and of the legal authority andjurisdiction under which it would be held, and of the mattersof fact and law asserted, in due conformity with the provisionsof the Administrative Procedure Act referred to, and that thereis no merit in this assignment.

Now to the merits. Jones contends that the questioned languagein the Sub. 5 certificate is

grammatically clear andunambiguous, and, being so, that there is no room forconstruction, and that its rights thereunder must be determinedsolely from the recitals of the certificate, and that theCommission erred in receiving and considering the originalcertificate, creating this irregular route operating authority,and the subsequent certificates issued to purchasers andtransferees thereof.

It observes that the town of Hoxie is the only point on bothHighways 63 and 67. It then emphasizes the word "points", asindicating that more than one point was to be served, and, fromthis premise, it argues that the questioned language mustnecessarily be held to authorize service of points on eitherHighway 63 or 67. It then argues that inasmuch as the word"points" modifies and controls the phrase "east of" exactly asit modifies and controls the word "on", it follows, undergrammatical rules of parallel construction, that the phrase"east of" means "points east of Highway 63 and points east ofHighway 67", and that, therefore, the questioned language givesit the right to operate in the north and south quadrants of the"X", as well as in the east one.

Grammatically, the questioned language may not be ambiguous,but functionally it is. For the questioned language has nodefinite meaning until it is compared with a map showing thelocation of these highways. And when that comparison is madethe ambiguities at once appear.

The questioned language being functionally ambiguous, and Joneshaving acquired this outstanding operating right by purchase,and, hence, could acquire from its assignor only what itsassignor had, the original certificate issued by theCommission, creating this irregular route operating authority,and all subsequent certificates issued to purchasers andtransferees thereof, were admissible and competent evidence tobe considered in resolving the ambiguities in the areadescription in the Sub. 5 certificate in question.

When we look to the original certificate issued by theCommission, creating this irregular route operating authority,we see that it was issued to Righter Trucking Co., Inc. innumber MC-75281, on April 27, 1942, and described the areaauthorized to be served as those points and places —

"In that part of Arkansas on and east of a line beginning at the Arkansas-Missouri state line and extending along U.S. Highway 67 to Hoxie, Ark., thence along U.S. Highway 63 to the Mississippi River * * *."

Afterward, on October 2, 1944, the Commission issued acorrected certificate to Righter (cancelling the one of April27, 1942) describing this irregular route operating authorityprecisely as originally. In number MC-F2413, Frisco Transp. Co.— Purchase — Righter Trucking Co., Inc., 50 M.C.C. 95, theCommission approved the sale of certain part of Righter'soperating authority to The Frisco Transportation Co., but theauthority here under consideration was retained by Righter.Afterward, on March 17, 1948, the Commission issued a newcertificate to Righter for that part of its operating authority(received under number MC-75281) which it had retained, andtherein, for the first time, injected the questioned areadescription involved in this case.[1] Afterward, withCommission approval

(in number MC-FC-27723), Righter sold andtransferred these operating rights to Degraw and Murphy,partners, doing business as Chief Express, and the Commissionissued to them, on September 5, 1950, under number MC-109888, anew certificate, again using the area description herequestioned.[2] Afterward, with Commission approval (innumber MC-FC-52588), Degraw and Murphy transferred theseoperating rights to their corporate successor, Chief Express,Inc., and on April 24, 1951, the Commission issued to it, undernumber MC-109888, a new certificate covering these rights underthe same description,[3] and thereafter, Chief Express,Inc., with Commission approval (in MC-F-4912) sold andtransferred this operating authority to the plaintiff, JonesTruck Lines, Inc., and, on October 4, 1951, the Commissionissued to it anew certificate No. MC-111231, Sub. 5.[4]

This reference to the original certificate issued by theCommission, creating this irregular route operating authority,and to the mesne conveyances resulting in its acquisition byJones, clears up the functional ambiguity in the areadescription in Jones' Sub. 5 certificate, and shows that it wasintended to cover, and does cover, only those points and placesin Arkansas on and east of a line beginning at theArkansas-Missouri state line and extending along U.S. Highway67 to Hoxie, Arkansas, thence along U.S. Highway 63 to theMississippi River, as correctly interpreted and found by theCommission.

Jones argues that the legends on the several certificates,showing the source of the transferred and reissued operatingrights, are not the action of the Commission, but of one of itsclerks, and should be ignored. We think that is a matter of nomoment, for, regardless of who placed those legends on thosecertificates, they are present, and the notice they give isderived from their terms and it is unimportant who placed themthere.

Jones further argues that an examination of the antecedentcertificates covering this operating authority shows a changein the description by the Commission, and that some purposemust be ascribed to that change. Whatever the purpose, if therewas one, it only injected an ambiguity into the description andit did not expand — if, indeed, it could have expanded — theareas of the grant.

Lastly, Jones argues — in connection with its argument that thequestioned language in its Sub. 5 certificate is not ambiguousand authorizes operations in the north and south quadrants ofthe "X" — that even if the change from the original to thepresent description was a mere error, the Commission ispowerless to correct the error except upon a finding of willfulviolation under Section 212(a) of the Interstate Commerce Act,Section 312(a), Title 49 U.S.C.A., under the holding in WatsonBros. Transportation Co. v. United States, D.C., 132 F. Supp. 905,affirmed by the Supreme Court, 350 U.S. 927, 76 S.Ct. 302.As earlier pointed out, this is an action to interpret the areadescription contained in the Sub. 5 certificate and todetermine the area coverage granted thereby, and is not aproceeding to suspend, change or revoke that certificate, and,therefore, Section 212(a) of the Act, though referred to in theorder initiating the investigation, is not involved, and allthe Watson case can be said to require in such circumstances,is that, to correct an error, the Commission must accordprocedural due

process and give notice and an opportunity to beheard. Both were accorded here. We do not think the Watson casehas any application to the present one.

Our conclusion is that plaintiff has shown no basis upon whichwe might lawfully enjoin or vacate the Commission's order ofMarch 13, 1956, and, therefore, plaintiff's complaint to enjoinand to vacate said order of the Commission must be, and it ishereby, denied and dismissed. It is so ordered.

1. That certificate bore a legend reading "This certificateconstitutes (1) the remaining portion of the operating rightspreviously granted the above-named carrier under Docket No.MC-75281, portion of the rights having been purchased by FriscoTransportation Co., a corporation, Docket No. MC-89913, pursuantto MC-F2413, supra, the remaining rights modified in conformitywith the later decision; and (2) also embraces the operatingrights previously granted the above-named carrier under DocketNo. MC-75281, Sub. 2."

2. That certificate bore the following legend: "Thiscertificate embraces that portion of the operating rights grantedin certificate No. MC-75281 acquired by the above-named carrierpursuant to MC-FC-27723 (assigned MC-10988)".

3. That certificate bore the following legend: "Thiscertificate embraces the operating rights granted in certificateNo. MC-109888, issued September 5, 1950, acquired by theabove-named carrier pursuant to MC-FC-52588."

4. That certificate contains the following legend: "Thiscertificate embraces that portion of the operating rights incertificate No. MC-109888, purchased by the above-named carrierpursuant to MC-F-4912, and assigned number MC-111231, Sub. 5."