SUPREME COURT OF LOUISIANA

Texas & P. Ry. Co. v. Consolidated Companies, Inc.

156 So. 215 (La. 1934) · Decided May 21, 1934

SUMMARY

The Louisiana Supreme Court considered whether a shipper's change to the routing of a freight shipment was effective when the original bill of lading was not surrendered or amended as required by a carrier's tariff. The court held that the lower courts correctly rejected the railroad's claim for an undercharge because the tariff's use of "should" was directory rather than mandatory, and affirmed the judgment for the defendant.

CASE DETAILS

COURT	Supreme Court of Louisiana
WRITING FOR THE COURT	Brunot
JURISDICTION	Louisiana
DECIDED	May 21, 1934
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiff sought to recover an alleged freight undercharge. After judgment for the defendant on an agreed statement of facts, the Court of Appeal, First Circuit, affirmed. The Louisiana Supreme Court granted certiorari or a writ of review and affirmed.
STANDARD OF REVIEW	Review on certiorari or writ of review for error in the judgment under review.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Texas & P. Ry. Co. v. Consolidated Companies, Inc.

TOPICS

commercial litigation · contracts · contract interpretation · appellate procedure

PRACTICE AREAS

commercial litigation · transportation law · contract and tariff interpretation · appellate procedure

QUESTIONS PRESENTED

1. Whether a shipper's change of routing was effective even though the original bill of lading was not surrendered for endorsement or exchange and no bond or other security was provided.
2. Whether the tariff provision stating that the original bill of lading 'should' be surrendered or that substitute security should be given imposed a mandatory prerequisite to a change of routing.

HOLDINGS

1. The tariff's use of the word 'should' was directory rather than mandatory; therefore, failure to surrender the original bill of lading or provide a bond or other security did not necessarily invalidate the change of routing.
2. The plaintiff was not entitled to recover the claimed $100.74 undercharge, and the judgment rejecting the demand was affirmed.

KEY QUOTATIONS

> *"it is the duty of the carrier to follow the routing instructions given it by the shipper; otherwise it is liable as for a conversion."* (156 So. at 216)

> *"The word 'should' in the rule which the plaintiff invokes is directory."* (156 So. at 217)

FACTUAL BACKGROUND

Consolidated Companies purchased 400 bags of beans shipped from Michigan to Louisiana. Before the shipment left the initial carrier's yards, the consignor instructed the carrier to change the route from one using the Texas Pacific Railway to one using the Southern Pacific, and the carrier acknowledged and documented the change in its transit freight waybill. The shipment nevertheless traveled over the original route, and Consolidated paid the lower freight rate applicable to the changed route; Texas Pacific sought the $100.74 difference between that payment and the higher rate applicable to the route actually taken.

PROCEDURAL HISTORY

The trial court rejected Texas & Pacific Railway Company's demand for $100.74 and dismissed the suit. The Court of Appeal, First Circuit, affirmed and denied rehearing. The Supreme Court of Louisiana granted the plaintiff's application for certiorari or writ of review and reviewed the record.

DISPOSITION

affirmed

CASES CITED

- Wiggins Ferry Co. v. Chicago Ry. Co., 128 Mo. 224, 27 S.W. 568, 30 S.W. 430
- Swindler v. Texas Pacific Railway Co., 5 La. App. 641
- La. Ry. Navigation Co. v. Holly, 127 La. 615, 53 So. 882, 883