

The Burger Court Opinion Writing Database

*Detroit & Toledo Shore Line Railroad Co.
v. United Transportation Union*
396 U.S. 142 (1969)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University

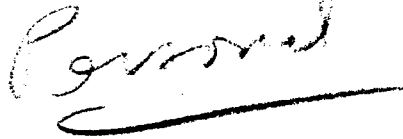


Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

December 4, 1969

No. 29 - Detroit and Toledo Shore Line RR Co.
v. United Transportation Union

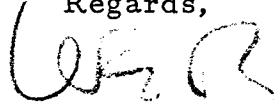


John:-

I do not fully agree but you came very close to expressing my view. I share with 98% of the Bench and 99.9% of the Bar the distaste for fragmentation of positions and the resulting confusion. Two opinions are quite enough in this case!

Please show me joining you.

Regards,



W. E. B.

Mr. Justice Harlan

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

December 4, 1969

Re: No. 29 - Detroit and Toledo Shore Line RR Co.
v. United Transportation Union

Dear John:

I join in your dissent.



W. E. B.

Mr. Justice Harlan

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

From: Black, J.

No. 29.—OCTOBER TERM, 1969

Circulated: 11/20/69

Recirculated: _____

The Detroit and Toledo Shore }
Line Railroad Company, }
Petitioner, }
v. }
United Transportation Union. } On Writ of Certiorari
to the United States
Court of Appeals for
the Sixth Circuit.

[November —, 1969]

MR. JUSTICE BLACK delivered the opinion of the Court.

This case raises a question concerning the extent to which the Railway Labor Act of 1926¹ imposes an obligation upon the parties to a railroad labor dispute to maintain the status quo while the "purposely long and drawn out"² procedures of the Act are exhausted. Petitioner, a railroad, contends that the status quo which the Act requires be maintained consists only of the working conditions specifically covered in the parties' existing collective agreement. Respondent, a railroad brotherhood, contends that what must be preserved as the status quo are the actual, objective working conditions out of which the dispute arose, irrespective of whether these conditions are covered in an existing collective agreement. For the reasons stated below, we think that only the union's position is consistent with the language and purposes of the Railway Labor Act.

The facts involved in this case are these: The main line of the Detroit and Toledo Shore Line (Shore Line), petitioner's railroad, runs from Lang Yard in Toledo, Ohio, 50 miles north to Dearoad Yard near Detroit, Michigan. For many years prior to 1961, Lang Yard was the

¹ 44 Stat. 577, as amended, 45 U. S. C. § 151 *et seq.*
² *Railway Clerks v. Florida E. C. R. Co.*, 384 U. S. 238, 246 (1966).

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortes
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

From: Black, J.

No. 29.—OCTOBER TERM, 1969

Circulated:

Recirculated: 11/20/69

The Detroit and Toledo Shore
Line Railroad Company,
Petitioner,
v.
United Transportation Union.

On Writ of Certiorari
to the United States
Court of Appeals for
the Sixth Circuit.

[November —, 1969]

MR. JUSTICE BLACK delivered the opinion of the Court.

This case raises a question concerning the extent to which the Railway Labor Act of 1926¹ imposes an obligation upon the parties to a railroad labor dispute to maintain the status quo while the "purposely long and drawn out"² procedures of the Act are exhausted. Petitioner, a railroad, contends that the status quo which the Act requires be maintained consists only of the working conditions specifically covered in the parties' existing collective agreement. Respondent, a railroad brotherhood, contends that what must be preserved as the status quo are the actual, objective working conditions out of which the dispute arose, irrespective of whether these conditions are covered in an existing collective agreement. For the reasons stated below, we think that only the union's position is consistent with the language and purposes of the Railway Labor Act.

The facts involved in this case are these: The main line of the Detroit and Toledo Shore Line (Shore Line), petitioner's railroad, runs from Lang Yard in Toledo, Ohio, 50 miles north to Dearoad Yard near Detroit, Michigan. For many years prior to 1961, Lang Yard was the

¹ 44 Stat. 577, as amended, 45 U. S. C. § 151 *et seq.*
² *Railway Clerks v. Florida E. C. R. Co.*, 384 U. S. 238, 246 (1966).

December 4, 1969

MEMORANDUM FOR THE CONFERENCE

Following the suggestion in my Brother
Stewart's memorandum circulated on Tuesday
of this week, there shall be change noted on page 11
of the attached draft of my opinion in No. 29,
Detroit and Toledo Shore Line RR Co. v. United
Transportation Union.

Very truly,
Sincerely,
Respectfully,
Yours,
Very truly,
Sincerely,
Respectfully,
Yours,

- Mr. Tolson
- Mr. DeLoach
- Mr. Mohr
- Mr. Bishop
- Mr. Casper
- Mr. Callahan
- Mr. Conrad
- Mr. Felt
- Mr. Gale
- Mr. Rosen
- Mr. Sullivan
- Mr. Tavel
- Mr. Trotter
- Tele. Room
- Miss Holmes
- Miss Gandy

p. 12

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

No. 29.—OCTOBER TERM, 1969

From: Black, J.

Circulated: _____

DEC 4 1969

The Detroit and Toledo Shore
Line Railroad Company,
Petitioner,
v.
United Transportation Union.

On Writ of Certiorari
to the United States
Court of Appeals for
the Sixth Circuit.

[December —, 1969]

MR. JUSTICE BLACK delivered the opinion of the Court.

This case raises a question concerning the extent to which the Railway Labor Act of 1926¹ imposes an obligation upon the parties to a railroad labor dispute to maintain the status quo while the "purposely long and drawn out"² procedures of the Act are exhausted. Petitioner, a railroad, contends that the status quo which the Act requires be maintained consists only of the working conditions specifically covered in the parties' existing collective agreement. Respondent, a railroad brotherhood, contends that what must be preserved as the status quo are the actual, objective working conditions out of which the dispute arose, irrespective of whether these conditions are covered in an existing collective agreement. For the reasons stated below, we think that only the union's position is consistent with the language and purposes of the Railway Labor Act.

The facts involved in this case are these: The main line of the Detroit and Toledo Shore Line (Shore Line), petitioner's railroad, runs from Lang Yard in Toledo, Ohio, 50 miles north to Dearoad Yard near Detroit, Michigan. For many years prior to 1961, Lang Yard was the

¹ 44 Stat. 577, as amended, 45 U. S. C. § 151 *et seq.*

² *Railway Clerks v. Florida E. C. R. Co.*, 384 U. S. 238, 246 (1966).

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

15

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

From: Black, J.

No. 29.—OCTOBER TERM, 1969

Circulated: 11/20/69

Recirculated:

The Detroit and Toledo Shore
Line Railroad Company,
Petitioner,
v.
United Transportation Union. } On Writ of Certiorari
to the United States
Court of Appeals for
the Sixth Circuit.

James
WW

[November —, 1969]

MR. JUSTICE BLACK delivered the opinion of the Court.
This case raises a question concerning the extent to which the Railway Labor Act of 1926¹ imposes an obligation upon the parties to a railroad labor dispute to maintain the status quo while the "purposely long and drawn out"² procedures of the Act are exhausted. Petitioner, a railroad, contends that the status quo which the Act requires be maintained consists only of the working conditions specifically covered in the parties' existing collective agreement. Respondent, a railroad brotherhood, contends that what must be preserved as the status quo are the actual, objective working conditions out of which the dispute arose, irrespective of whether these conditions are covered in an existing collective agreement. For the reasons stated below, we think that only the union's position is consistent with the language and purposes of the Railway Labor Act.
The facts involved in this case are these: The main line of the Detroit and Toledo Shore Line (Shore Line), petitioner's railroad, runs from Lang Yard in Toledo, Ohio, 50 miles north to Dearoad Yard near Detroit, Michigan. For many years prior to 1961, Lang Yard was the

¹ 44 Stat. 577, as amended, 45 U. S. C. § 151 *et seq.*
² *Railway Clerks v. Florida E. C. R. Co.*, 384 U. S. 238, 246 (1966).

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT MANUSCRIPT DIVISION

November 28, 1969

**Re: No. 29 - Detroit and Toledo Shore Line
R. R. Co. v. United Transportation Union**

Dear Hugo:

As one of those whose Conference vote was to reverse this case, I am persuaded by your opinion that affirmation is the proper result. I intend to join your opinion with a short separate concurrence that I expect to circulate some time next week.

Sincerely,

J. M. B.

Mr. Justice Black

CC: The Conference



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN M. HARLAN


December 2, 1969

Re: No. 29 - Detroit and Toledo Shore Line
R. R. Co. v. United Transportation Union

Dear Hugo:

I thought I should let you know that my further work on this case has brought me out to what basically amounts to a dissent rather than a concurrence in your opinion, as envisaged in my letter to you of November 28. My opinion, which is not long, is now at the printer and I hope to be able to circulate it before the end of the day or the first thing tomorrow morning.

Sincerely,


J. M. H.

Mr. Justice Black

CC: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

OFFICE OF THE CLERK OF THE SUPREME COURT

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
✓ Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

No. 29.—OCTOBER TERM, 1969

From: Harlan, J.

Circulated: DEC 2 1969

Recirculated: _____

The Detroit and Toledo Shore
Line Railroad Company,
Petitioner,
v.
United Transportation Union.

On Writ of Certiorari
to the United States
Court of Appeals for
the Sixth Circuit.

[December —, 1969]

MR. JUSTICE HARLAN, concurring in part and dissenting in part.

I fully agree that the application of § 6 should not be restricted to only those terms of employment that the parties have seen fit to embody in a written agreement. Section 6 may properly, in some circumstances, be extended to "freeze" *de facto* conditions of employment. I cannot, however, accept what appears to be the majority's test for determining when a § 6 freeze is appropriate.¹ Any work practice is, in the words of the majority, an "actual, objective working condition." But the practice of today may not be the accepted condition of yesterday, but rather a temporary expedient in which neither party acquiesces. I find it difficult to think that Congress intended that either party, by serving a § 6 notice, should be able to shackle his adversary and tie him to a condition that has been historically and consistently controverted.

Rather, what persuades me to countenance the extension of § 6 beyond the terms of a written collective bargaining agreement is the fact, observed by the Court, that "when a condition is satisfactorily tolerable to both

¹ The majority first announces a test looking to "actual, objective working conditions," *ante*, p. 11. This is later qualified by a durational requirement, but no general principle of decision is set forth.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

P. 1

SUPREME COURT OF THE UNITED STATES

Justice Harlan, J.

No. 29.—OCTOBER TERM, 1969

Circulated: DEC 4 1969

Recirculated: _____

The Detroit and Toledo Shore }
Line Railroad Company, }
Petitioner, }
v. }
United Transportation Union. }

On Writ of Certiorari
to the United States
Court of Appeals for
the Sixth Circuit.

[December —, 1969]

MR. JUSTICE HARLAN, with whom THE CHIEF JUSTICE joins, concurring in part and dissenting in part.

I fully agree that the application of § 6 should not be restricted to only those terms of employment that the parties have seen fit to embody in a written agreement. Section 6 may properly, in some circumstances, be extended to "freeze" *de facto* conditions of employment. I cannot, however, accept what appears to be the majority's test for determining when a § 6 freeze is appropriate.¹ Any work practice is, in the words of the majority, an "actual, objective working condition." But the practice of today may not be the accepted condition of yesterday, but rather a temporary expedient in which neither party acquiesces. I find it difficult to think that Congress intended that either party, by serving a § 6 notice, should be able to shackle his adversary and tie him to a condition that has been historically and consistently controverted.

Rather, what persuades me to countenance the extension of § 6 beyond the terms of a written collective bargaining agreement is the fact, observed by the Court, that "when a condition is satisfactorily tolerable to both

¹ The majority first announces a test looking to "actual, objective working conditions," *ante*, p. 11. This is later qualified by a durational requirement, but no general principle of decision is set forth.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. November 24, 1969

RE: No. 29 - Detroit & Toledo Shore Line
R. Co. v. United Transportation Union

Dear Hugo:

I agree with your opinion in the above
case.

Sincerely,


W.J.B. Jr.

Mr. Justice Black

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

November 25, 1969

No. 29, Shore Line v. Transportation Union

Dear Hugo,

Although I tentatively voted the other way at the Conference, the analysis contained in your opinion has persuaded me that your position is probably correct. I would be willing to join your opinion, if you would be receptive to two additions, along the following lines:

At page 2, in line 5:

" . . . at various points to the north, assuming the costs of transportation and overtime for the crew members."

At page 12, in line 1:

" . . . covered in an existing agreement. Thus, the mere fact that the collective agreement before us does not expressly prohibit outlying assignments would not have barred the railroad from ordering the assignments that gave rise to the present dispute if, apart from the agreement, such assignments had occurred in the past and had been acquiesced in by the union as a working condition. Here, however, the dispute . . ."

Sincerely yours,

Mr. Justice Black

P.S.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

December 2, 1969

No. 29 - Detroit and Toledo Shore Line
v. United Transportation Union

Dear Hugo,

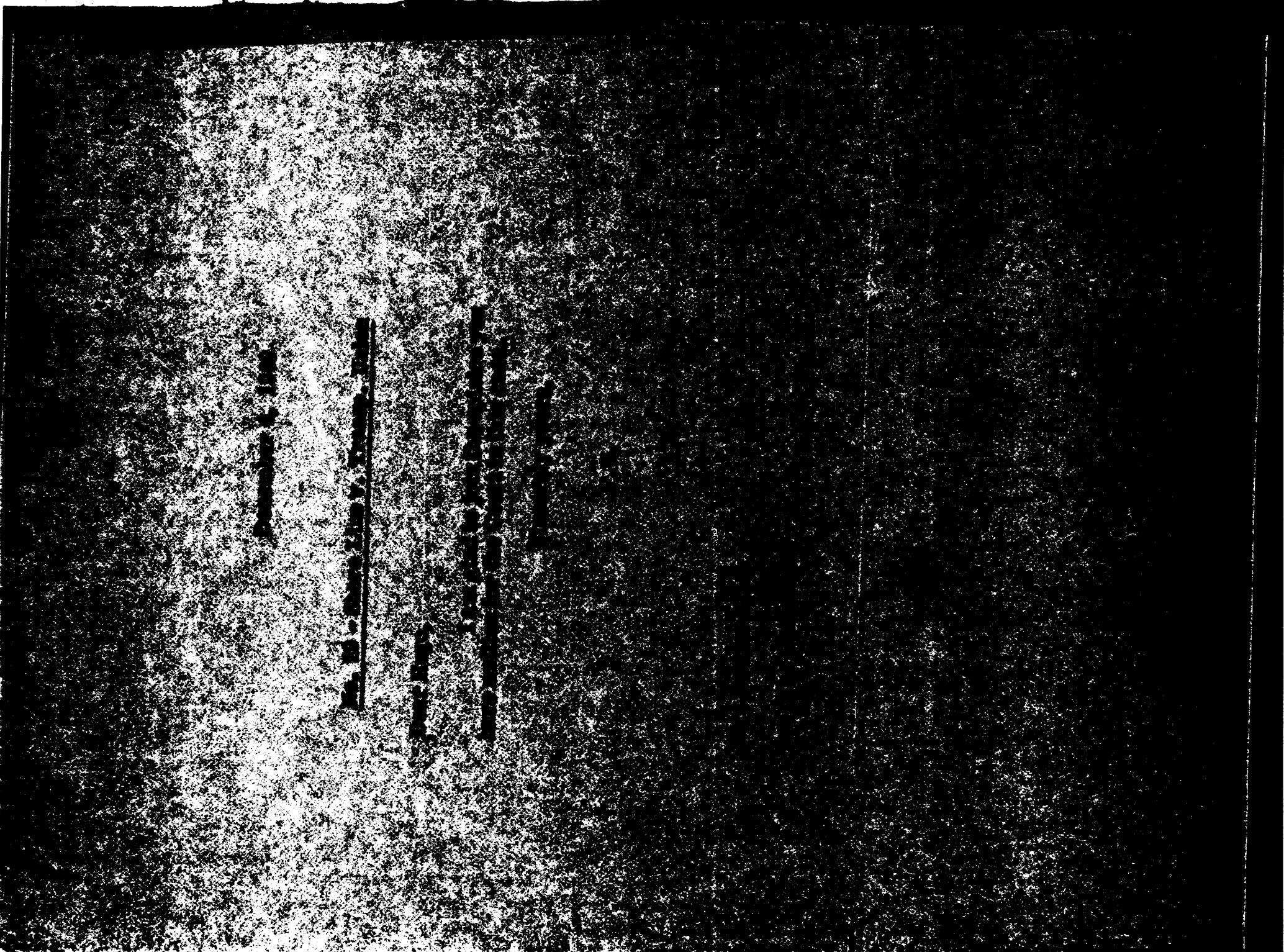
At the risk of seeming unreasonably stubborn, I am still unwilling to join your opinion so long as it contains the view expressed in the phrase "over a long period of time" in the 6th line on page 12. Perhaps I had better wait to see John Harlan's separate opinion.

Sincerely yours,

P.S.)
/

Mr. Justice Black

Copies to the Conference



November 22, 1959

Re: No. 29 - The Detroit and Toledo
Shore Line Rd Co. v. United
Transportation Union

Dear Hugo:

Please join me.

Sincerely,

B.R.V.

Mr. Justice Black

U.S. Supreme Court



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 3, 1969

No. 29 - Detroit and Toledo Shore Line RR Co.
v. United Transportation Union

Dear Hugo:

Please join me.

Sincerely,



T.M.

Mr. Justice Black

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS