

# The Burger Court Opinion Writing Database

*Bowman Transportation, Inc. v.  
Arkansas-Best Freight System, Inc.*  
419 U.S. 281 (1974)

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



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

CHAMBERS OF  
THE CHIEF JUSTICE

December 20, 1974

PERSONAL

Re: 73-1055 - Bowman v. Arkansas-Best et.  
73-1069 - Johnson Motor Lines v. Ark. - Best  
73-1070 - Red Ball Motor Freight v. Ark. - Best  
73-1071 - Lorch-Westway Corp. v. Ark. etc.  
73-1072 - U. S. v. Arkansas-Best Freight

Dear Bill:

What was troubling me in these cases was the treatment of the standard problem, and I wonder if you would be willing to add, at the point where you treat the Overton cases, 401 U. S., at 416, what Hugo said in the following terms:

Although this inquiry into the facts is to be searching and careful, the ultimate standard of review is a narrow one. The court is not empowered to substitute its judgment for that of the agency."

(A)

This is on page 4 of your opinion and if you adopted it, it would be added to the quote which precedes your citation of the Overton case on the 5th line, first full paragraph, page 4.

Regards,

W. B. D.

Mr. Justice Douglas

W. B. Douglas Dec 74

To : The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 73-1055, 73-1069, 73-1070, 73-1071, AND 73-1072

Circulate: 12-10

Recirculate: \_\_\_\_\_

Bowman Transportation, Inc.,  
Appellant,

73-1055 v.

Arkansas-Best Freight System,  
Inc., et al.

Johnson Motor Lines, Inc.,  
Appellant,

73-1069 v.

Arkansas-Best Freight System,  
Inc., et al.

Red Ball Motor Freight, Inc.,  
Appellant,

73-1070 v.

Arkansas-Best Freight System,  
Inc., et al.

Lorch-Westway Corporation  
et al., Appellants,

73-1071 v.

Arkansas-Best Freight System,  
Inc., et al.

United States and Interstate  
Commerce Commission,  
Appellants,

73-1072 v.

Arkansas-Best Freight System,  
Inc., et al.

On Appeals from the  
United States Dis-  
trict Court for the  
Western District of  
Arkansas.

[December —, 1974]

*stylistic changes*

To : The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Black  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Alice D.

## 3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

Nos. 73-1055, 73-1069, 73-1070, 73-1071, AND 73-1072

From: *Department J.*

Circulate: *12-13*

Recirculate: *12-13*

Bowman Transportation, Inc.,  
Appellant,

73-1055 *v.*

Arkansas-Best Freight System,  
Inc., et al.

Johnson Motor Lines, Inc.,  
Appellant,

73-1069 *v.*

Arkansas-Best Freight System,  
Inc., et al.

Red Ball Motor Freight, Inc.,  
Appellant,

73-1070 *v.*

Arkansas-Best Freight System,  
Inc., et al.

Lorch-Westway Corporation  
et al., Appellants,

73-1071 *v.*

Arkansas-Best Freight System,  
Inc., et al.

United States and Interstate  
Commerce Commission,  
Appellants,

73-1072 *v.*

Arkansas-Best Freight System,  
Inc., et al.

On Appeals from the  
United States Dis-  
trict Court for the  
Western District of  
Arkansas.

[December —, 1974]

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

February 19, 1975

MEMORANDUM TO THE CONFERENCE

RE: BOWMAN TRANSPORTATION, INC. v. ARKANSAS-BEST FREIGHT SYSTEM, INC.

No. 73-1055, 73-1069, 73-1070, 73-1071, and 73-1072.

A petition for rehearing of these cases, in which I wrote for the Court, has been filed. Petitioners contend that the opinion should have permitted "substantial evidence" objections to the ICC's "conclusions" to remain open in the district court. In my view the petition should be denied for the following reasons:

1. Petitioners conceded that the Commission's "findings" were supported by substantial evidence, and the Court held that the ICC's "conclusions" were the product of a reasoned decision. There remain no "substantial evidence" challenges to be made to conclusions the Commission has derived, by a reasoned process, from findings themselves supported by substantial evidence. Conclusions so reached are supported by substantial evidence in the way the Administrative Procedure Act, 5 USC § 706, requires.
2. As a practical matter, the opinion disposed of the objections petitioners now seek to raise. Petitioners would simply assert again, this time under the rubric of the "substantial evidence" requirement, the same arguments we rejected when we held that the Commission had not acted arbitrarily.

At oral argument, counsel for petitioners contended that the evidence supporting the Commission's order was insubstantial because of the contrary evidence, overwhelming in his view, that petitioners had presented. (Tr. 27-30) The contrary evidence, however, was overwhelming only to one who thought the Commission had arbitrarily discounted it. Once we held that the Commission had acted rationally in treating petitioners' presentations as it did, the argument that the supporting evidence was insubstantial necessarily collapsed.

William O. Douglas

Supreme Court of the United States  
Washington, D. C. 20542

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

December 11, 1974

RE: Nos. 73-1055, 73-1069, 73-1070, 73-1071 and 73-1072  
Bowman Transportation, et al. v. Arkansas-Best Freight, etc.

Dear Bill:

I agree.

Sincerely,

*Bill*

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

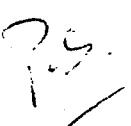
December 16, 1974

73-1055, etc., Bowman Transp., Inc.  
v. Arkansas-Best Freight System, Inc.

Dear Bill,

I am glad to join your opinion  
for the Court in these cases.

Sincerely yours,

  
Mr. Justice Douglas

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20542

CHAMBERS OF  
JUSTICE BYRON R. WHITE

December 12, 1974

Re: Nos. 73-1055, 73-1069, 73-1070, 73-1071 &  
73-1072, Bowman Transportation Inc.  
v. Arkansas-Best Freight System Inc.

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Douglas

Copies to Conference

Supreme Court of the United States  
Washington, D. C. 20542

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 12, 1974

Re: Nos. 73-1055, 73-1069, 73-1070, 73-1071 and 73-1072 --  
Bowman Transportation, Inc. v. Arkansas-Best Freight  
System, Inc., etc.

Dear Bill:

Please join me in your opinion in this case.

Sincerely,



T. M.

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 12, 1974

Re: Nos. 73-1055, 73-1069, 73-1070, 73-1072 - Bowman,  
Red Ball, Lorch, U. S. v. Arkansas Best-Freight

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 16, 1974

No. 73-1055, Bowman v. Arkansas Best-Freight

Dear Bill:

Please join me.

Sincerely,

*L. E. C.*

Mr. Justice Douglas

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

December 12, 1974

Re: No. 73-1055, et al. Bowman Transportation v.  
Arkansas-Best Freight System

Dear Bill:

There are a couple of things in the first full paragraph on page 3 of your Bowman opinion that I thought could possibly be confusing to a reader. In the sentence now reading:

"The District Court properly concluded that, although an agency's finding may be supported by substantial evidence, it may nonetheless reflect arbitrary and capricious action based on the definition of 'substantial evidence given in Universal Camera Corp. v. NLRB, 340 U.S. 474."

I would think that the general citation to Universal Camera would stand for the substantial evidence proposition, rather than the arbitrary and capricious proposition, and that therefore the citation, if I am right, would be more appropriate at the end of the clause dealing with substantial evidence than at the end of the sentence.

The last sentence of the same paragraph, stating that the judgment of the District Court is reversed with directions to enforce the Commission's orders, does not entirely square, I think, with the "bottom line" on page 18, in which the

W.M. Doyle Oc. 74

judgment of the District Court is reversed and the cause remanded for consideration of the conformity of Bowman's certificate to its original application. Am I wrong in thinking that this sentence ought to track the final disposition?

Sincerely,



Mr. Justice Douglas

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

December 12, 1974

Re: Nos. 73-1055, et al. Bowman Transportation v.  
Arkansas-Best Freight System

Dear Bill:

Please join me.

Sincerely,

WW

Mr. Justice Douglas

Copies to the Conference