

The Burger Court Opinion Writing Database

ICC v. Oregon Pacific Industries, Inc.
420 U.S. 184 (1975)

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

January 8, 1975

Re: 73-1210 - ICC v. Oregon Pacific Industries

Dear Bill:

I join you in the opinion circulated December 26, 1974.

Regards,

W.S.

Mr. Justice Douglas

Copies to the Conference

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 J.

No. 73-1210

Circulate: 12/26/74

Recirculate: _____

Interstate Commerce Commission, Appellant,
v.
Oregon Pacific Industries, Inc., et al. } On Appeal from the United States District Court for the District of Oregon.

[January —, 1975]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is an appeal from a judgment of a three-judge District Court, 28 U. S. C. § 1253, which held invalid an order of the Interstate Commerce Commission promulgating a car service order¹ under § 1 (15) of the Interstate Commerce Act, 49 U. S. C. § 1 (15),² see 365 F. Supp. 609.

¹ This Service Order by its original terms was to expire July 31, 1973, unless otherwise modified or changed by the Commission. It was, however, made effective "until further order of the Commission" 39 Fed. Reg. 13971.

The Solicitor General without citation of any authority expressed his view that the District Court's decision was correct and moved that its judgment be affirmed. The Western Railroad Traffic Association has filed an *amicus* brief taking the opposed view.

² Section 1 (15) provides:

"Whenever the Commission is of opinion that shortage of equipment, congestion of traffic, or other emergency requiring immediate action exists in any section of the country, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleading by the interested carrier or carriers, and with or without notice, hearing, or the making or

STYLISTIC CHANGES THROUGHOUT.

SERIAL 7

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1210

From: Douglas, J.

Interstate Commerce Commission, Appellant,
v.
Oregon Pacific Industries, Inc., et al.

On Appeal from the United States District Court for the District of Oregon.

Circulate:

Recirculate:

1-31

[February —, 1975]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is an appeal from a judgment of a three-judge District Court, 28 U. S. C. § 1253, which held invalid an order of the Interstate Commerce Commission promulgating a car service order¹ under § 1 (15) of the Interstate Commerce Act, 49 U. S. C. § 1 (15).² Oregon

¹ This Service Order by its original terms was to expire July 31, 1973, unless otherwise modified or changed by the Commission. An amendment, however, made it effective "until further order of the Commission." 39 Fed. Reg. 13971 (1974). The same amendment suspended the Service Order effective April 15, 1974.

The Solicitor General without citation of any authority expressed his view that the District Court's decision was correct and moved that its judgment be affirmed. The Western Railroad Traffic Association has filed an *amicus* brief taking the opposing view.

² Section 1 (15) provides:

"Whenever the Commission is of opinion that shortage of equipment, congestion of traffic, or other emergency requiring immediate action exists in any section of the country, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleading by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine:

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

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1210

circulate: J.

Recirculate: 2-10

Interstate Commerce Commission, Appellant,
 v.
 Oregon Pacific Industries, Inc., et al. } On Appeal from the United States District Court for the District of Oregon.

[February —, 1975]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is an appeal from a judgment of a three-judge District Court, 28 U. S. C. § 1253, which held invalid an order of the Interstate Commerce Commission promulgating a car service order¹ under § 1 (15) of the Interstate Commerce Act, 49 U. S. C. § 1 (15).² *Oregon*

¹ This Service Order by its original terms was to expire July 31, 1973, unless otherwise modified or changed by the Commission. 38 Fed. Reg. 12606. The Commission twice extended the deadline, 38 Fed. Reg. 19831, 31681, and on April 11, 1974, made it effective "until further order of the Commission," 39 Fed. Reg. 13971, on each occasion having found "good cause" for the extension. The April 11 amendment also suspended the Service Order indefinitely, effective April 15, 1974.

The Solicitor General without citation of any authority expressed his view that the District Court's decision was correct and moved that its judgment be affirmed. The Western Railroad Traffic Association has filed an *amicus* brief taking the opposing view.

² Section 1 (15) provides:

"Whenever the Commission is of opinion that shortage of equipment, congestion of traffic, or other emergency requiring immediate action exists in any section of the country, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, if it so orders,

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

145 - *smash here*

ax 24

Mr. Justice Douglas; J.

Circulate: _____

Recirculate: _____

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1210

Interstate Commerce Commission, Appellant,
v.
Oregon Pacific Industries, Inc., et al. } On Appeal from the United
States District Court for
the District of Oregon.

[February —, 1975]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is an appeal from a judgment of a three-judge District Court, 28 U. S. C. § 1253, which held invalid an order of the Interstate Commerce Commission promulgating a car service order¹ under § 1 (15) of the Interstate Commerce Act, 49 U. S. C. § 1 (15).² *Oregon*

¹ This Service Order by its original terms was to expire July 31, 1973, unless otherwise modified or changed by the Commission. 38 Fed. Reg. 12606. The Commission twice extended the deadline, 38 Fed. Reg. 19831, 31681, and on April 11, 1974, made it effective "until further order of the Commission," 39 Fed. Reg. 13971, on each occasion having found "good cause" for the extension. The April 11 amendment also suspended the Service Order indefinitely, effective April 15, 1974.

The Solicitor General without citation of any authority expressed his view that the District Court's decision was correct and moved that its judgment be affirmed. The Western Railroad Traffic Association has filed an *amicus* brief taking the opposing view.

² Section 1 (15) provides:

"Whenever the Commission is of opinion that shortage of equipment, congestion of traffic, or other emergency requiring immediate action exists in any section of the country, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, if it so orders,

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 30, 1974

RE: No. 73-1210 ICC v. Oregon Pacific Industries

Dear Bill:

I was the other way but will acquiesce.

Sincerely,

Bill

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 30, 1974

No. 73-1210, ICC v. Ore. Pacific Industries

Dear Bill,

I am glad to join your opinion for the Court in this case.

Sincerely yours,

P.S.

Mr. Justice Douglas

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 6, 1975

Re: No. 73-1210 - Interstate Commerce Commission
v. Oregon Pacific Industries,
Inc.

Dear Bill:

I acquiesce.

Sincerely,



Mr. Justice Douglas

Copies to Conference

✓ ✓
Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 27, 1974

Re: 73-1210 -- Interstate Commerce Commission v.
Oregon Pacific Industries, Inc., et al.

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. 20543CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 6, 1975

Re: No. 73-1210 - ICC v. Oregon Pacific Industries

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.

January 21, 1975

No. 73-1210 ICC v. Oregon

MEMORANDUM TO THE CONFERENCE:

I am circulating herewith a concurring opinion along the lines which I mentioned at the Conference.

If circulating a concurrence creates any problem in view of Bill's absence, or unduly delays bringing down the case, I will withdraw it. I view the concurring opinion as desirable but certainly not essential.

Lewis
L.F.P., Jr.

ss

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

No. 73-1210

Circulated: JAN 21 1975

Recirculated:

Interstate Commerce Commission, Appellant,
v.
Oregon Pacific Industries, Inc., et al.

On Appeal from the United States District Court for the District of Oregon.

[January —, 1975]

MR. JUSTICE POWELL, concurring.

I am in agreement with the Court's opinion that the Interstate Commerce Commission had the power under § 1 (15) summarily to take the action which is the subject of this litigation. I believe, however, that in addition to reversing the judgment of the Court of Appeals, we should direct that the case be remanded for a prompt proceeding under § 1 (14) of the Act.

The Commission entered Service Order 1334 on May 3, 1973, without notice, hearing or an opportunity by interested parties to submit evidence or grounds of objection. The Commission found, as it must under § 1 (15), that:

"... An emergency exists requiring immediate action to promote car service in the interest of the public and commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest..."

The Commission's counsel stated at oral argument that while the car shortage problem has a long history, the present order was in response to a particularly sharp but temporary increase in the severity of the problem. Counsel acknowledged, however, that this temporary

Changes 1, 2

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

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

From: Powell, J.

Circulated:

Interstate Commerce Com-
mission, Appellant,
v.

Oregon Pacific Industries,
Inc., et al.

On Appeal from the United
States District Court for
the District of Oregon.

Recirculated JAN 27 1975

[January —, 1975]

MR. JUSTICE POWELL, concurring.

I am in agreement with the Court's opinion that the Interstate Commerce Commission had the power under § 1 (15) summarily to take the action which is the subject of this litigation. I believe, however, that in addition to reversing the judgment of the District Court, we should direct that the case be remanded for a prompt proceeding under § 1 (14) of the Act.

The Commission entered Service Order 1334 on May 3, 1973, without notice, hearing or an opportunity by interested parties to submit evidence or grounds of objection. The Commission found, as it must under § 1 (15), that:

“. . . An emergency exists requiring immediate action to promote car service in the interest of the public and commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest . . .”

The Commission's counsel stated at oral argument that while the car shortage problem has a long history, the present order was in response to a particularly sharp but temporary increase in the severity of the problem. Counsel acknowledged, however, that this temporary

© Wm. Doyle
07/74

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 4, 1975

No. 73-1210 ICC v. Oregon Pacific
Industries, Inc.

Dear Bill:

I write to confirm that I join your opinion for the Court, and file a concurrence only to address the point which you did not think it necessary to reach.

Sincerely,



Mr. Justice Douglas

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

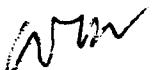
December 27, 1974

Re: No. 73-1210 - ICC v. Oregon Pacific

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Douglas

Copies to the Conference