

The Burger Court Opinion Writing Database

Southern Pacific Transportation Co. v. Commercial Metals Co.

456 U.S. 336 (1982)

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

April 17, 1982

Re: No. 81-622 - Southern Pacific Transportation Co.
v. Commercial Metals Co.

Dear Harry:

I join.

Regards,

A handwritten signature in black ink, appearing to be "WEB", written in a cursive style.

Copies to 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 Wm. J. BRENNAN, JR.

April 16, 1982

RE: No. 81-622 Southern Pacific Transportation Co. v.
Commercial Metals Company

Dear Harry:

I agree.

Sincerely,



Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 22, 1982

Re: 81-622 - Southern Pacific Transportation Co.
v. Commercial Metals Co.

Dear Harry,

Please join me.

Sincerely yours,



Justice Blackmun

Copies to the Conference

cpm

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

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 16, 1982

Re: No. 81-622 - Southern Pacific Transportation
Co. v. Commerical Metals Co.

Dear Harry:

Please join me.

Sincerely,



T.M.

Justice Blackmun

cc: The Conference

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

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Blackmun**

Circulated: APR 14 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-622

**SOUTHERN PACIFIC TRANSPORTATION CO., PETI-
TIONER, v. COMMERCIAL METALS CO.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT**

[April —, 1982]

JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents the question whether a common carrier's violation of credit regulations issued by the Interstate Commerce Commission bars the carrier's collection of a lawful freight charge from a shipper-consignor who, under the terms of the shipment's bill of lading, is primarily liable for the charge.

I

Petitioner Southern Pacific Transportation Company (SP) is a common carrier by rail. Respondent Commercial Metals Company (Metals), a Delaware corporation with principal place of business in Dallas, Tex., is in the business of buying and selling steel goods. Petitioner instituted this action against respondent in the United States District Court for the Northern District of Texas to recover freight charges for three cars of steel cobble shipped by rail in 1974 from Detroit, Mich., to Alhambra, Cal.

Each of the three shipments was consigned by Metals to Penn Central Transportation Company, as initial carrier,¹

¹The shipments moved over the respective lines of the Penn Central, the St. Louis Southwestern Railway Company (an SP subsidiary), and the

HAB
Please join me
JW

STYLISTIC CHANGES
x pp. 4 and 7

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Blackmun**

Circulated: _____

Recirculated: APR 21 1982

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-622

SOUTHERN PACIFIC TRANSPORTATION CO., PETITIONER, v. COMMERCIAL METALS CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[April —, 1982]

JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents the question whether a common carrier's violation of credit regulations issued by the Interstate Commerce Commission bars the carrier's collection of a lawful freight charge from a shipper-consignor who, under the terms of the shipment's bill of lading, is primarily liable for the charge.

I

Petitioner Southern Pacific Transportation Company (SP) is a common carrier by rail. Respondent Commercial Metals Company (Metals), a Delaware corporation with principal place of business in Dallas, Tex., is in the business of buying and selling steel goods. Petitioner instituted this action against respondent in the United States District Court for the Northern District of Texas to recover freight charges for three cars of steel cobble shipped by rail in 1974 from Detroit, Mich., to Alhambra, Cal.

Each of the three shipments was consigned by Metals to Penn Central Transportation Company, as initial carrier,¹

¹The shipments moved over the respective lines of the Penn Central, the St. Louis Southwestern Railway Company (an SP subsidiary), and the SP. Pursuant to an interline agreement, SP has paid the other two carri-

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 27, 1982

Memorandum to the Conference

Re: Holdings for No. 81-622, Southern Pacific Transp. Co.
v. Commercial Metals Co.

There is one hold for this case. It is No. 81-1488, Carnation Co. v. Alaska Marine Trucking. I shall vote to deny certiorari.

Respondent Alaska Marine is a common carrier by motor. Carnation, a shipper-consignor, sells dairy products in the Pacific Northwest. Respondent instituted this action in the Superior Court of King County, Washington to recover more than \$91,000 in unpaid freight charges for dairy products shipped by Carnation to a consignee, Meadowmoor Dairy, in 1977 and 1978.

Each shipment was carried under a uniform straight bill of lading. As in Southern Pacific, Carnation, the consignor, failed to execute the nonrecourse clause. Carnation explains this failure on the ground that "its shipping personnel were not schooled in [the] significance" of the provision. Like the consignor in Southern Pacific, Carnation received cash in advance from Meadowmoor before each shipment.

From August 1977 onward, Meadowmoor was in serious financial difficulty and was a bad credit risk. Respondent, however, continued to send all freight bills to Meadowmoor and to extend it credit in violation of the applicable ICC credit regulations. In April 1978, after respondent notified petitioner of Meadowmoor's delinquency, petitioner began signing the nonrecourse provision.

Respondent unsuccessfully sought to collect the freight charges from Meadowmoor, which eventually filed for bankruptcy. Respondent then sued petitioner in Washington state court. The trial court held that petitioner's failure to sign the nonrecourse clause rendered it primarily liable for all unpaid freight charges. It further held that equitable principles were not applicable to prevent respondent from recovering the full amount of the freight charges from petitioner.

The Washington Court of Appeals affirmed on different grounds. It agreed with the trial court that respondent made out a prima facie case by proving that petitioner had failed to sign the nonrecourse provision. The appellate court went on to hold, however, that petitioner's use of an estoppel defense, based on respondent's negligent failure to collect the freight charges or to inform petitioner of the overdue account until it became seriously delinquent, did not contravene the antidiscriminatory purposes of the Interstate Commerce Act. Thus, it said, the trial court should have allowed petitioner to raise an estoppel defense. Nevertheless, the appellate court concluded that, on these facts, petitioner had failed to prove its defense, because it had not shown that it rightfully relied on respondent's negligent credit practices.

The ICC regulations governing motor and rail freight are substantially identical. The appellate court's finding of petitioner's prima facie liability is consistent with our opinion in Southern Pacific. Its suggestion that a shipper-consignor may invoke an equitable estoppel defense based on the carrier's violation of ICC credit regulations, however, is inconsistent with Southern Pacific.

In my view, there would be little point in GVR'ing in light of Southern Pacific, since the result would be precisely the same under the standards applied in Southern Pacific. Petitioner does not charge respondent with making a material misrepresentation; it claims only that respondent failed to observe the applicable ICC credit regulations. Nor is there any possibility of double payment, since no freight charges had been paid when respondent brought suit. Also, the appellate court here properly refused to apply a defense of equitable estoppel against the carrier because the shipper-consignor failed to prove any detrimental reliance on the carrier's actions. Finally, the consignor could have protected itself completely simply by signing the nonrecourse clause in the bills of lading. Since the result in this case would be the same after Southern Pacific, I have come to the conclusion that the petition should be denied.

H. G. S.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 15, 1982

81-622 Southern Pacific v. Commercial Metals

Dear Harry:

Please join me.

Sincerely,

Lewis

Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

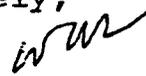
April 20, 1982

Re: No. 81-622 Southern Pacific Transportation Co.
v. Commercial Metals Company

Dear Harry:

Please join me.

Sincerely,



Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 15, 1982

Re: 81-622 - So. Pacific Trans. Co. v.
Commercial Metals Co.

Dear Harry:

Please join me.

Respectfully,



Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 15, 1982

No. 81-622 Southern Pacific Transportation Co.
v. Commercial Metals Co.

Dear Harry,

Please join me in your opinion.

Sincerely,

Sandra

Justice Blackmun

Copies to the Conference