

The Burger Court Opinion Writing Database

Square D Co. v. Niagara Frontier Tariff Bureau, Inc.

476 U.S. 409 (1986)

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

May 21, 1986

85-21 - Square D. Company v. Niagara Frontier

Dear John:

I join.

Regards,

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

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 11, 1986

No. 85-21

Square D Company
v. Niagara Frontier

Dear Thurgood and Lewis,

We three are in dissent in the
above. Would you, Lewis, take it on?

Sincerely,



Justice Marshall

Justice Powell

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 13, 1986

No. 85-21

Square D v. Niagara Frontier
Tariff Bureau

Dear John,

Although I voted to reverse at
Conference, after reading your opinion I
have decided to vote to affirm. Please
join me.

Sincerely,

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 14, 1986

85-21 -

Square D Company and Big D Building Supply
Corp. v. Niagara Frontier Tariff Bureau, Inc.

Dear John,

My vote to reverse was a shaky one, and
I now join your circulating draft.

Sincerely yours,



Justice Stevens

MAILED 65 50
Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 12, 1986

Re: No. 85-21-Square D Company and Big D Building
Supply Corp. v. Niagara Frontier
Tariff Bureau, Inc.

Dear John:

I await the dissent.

Sincerely,


T.M.

Justice Stevens

cc: The Conference

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

From: **Justice Marshall**

Circulated: **MAY 15 1986**

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-21

**SQUARE D COMPANY AND BIG D BUILDING SUPPLY
CORP., PETITIONERS *v.* NIAGARA FRONTIER
TARIFF BUREAU, INC., ET AL.**

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

[May —, 1986]

JUSTICE MARSHALL, dissenting.

In his opinion for the Court of Appeals, Judge Friendly cogently and comprehensively explained why the reasoning of *Keogh v. Chicago & N. W. Ry.*, 260 U. S. 156 (1922), has been rendered obsolete by subsequent developments in the law. He demonstrated that *Keogh* should be overruled, and I am persuaded by his analysis. I therefore dissent.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 16, 1986

Re: No. 85-21, Square D Co. and Big D Building Supply
Corp. v. Niagara Frontier Tariff Bureau, Inc.

Dear John:

Please join me.

Sincerely,



Justice Stevens

cc: The Conference

D

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 14, 1986

85-21 Square D. Company v. Niagara

Dear John:

At Conference my vote tentatively was to reverse.
Your excellent opinion has persuaded me to the contrary.
Please join me.

Sincerely,

Lewis

Justice Stevens

lfp/ss

cc: The Conference



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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 13, 1986

Re: No. 85-21 Square D Company v. Niagara Frontier
Tariff Bureau

Dear John,

Please join me.

Sincerely,



Justice Stevens

cc: The Conference

U.S. DEPT. OF JUSTICE

To: The Chief Justice

Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'ConnorFrom: **Justice Stevens**Circulated: **MAY 12 1986**

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-21

SQUARE D COMPANY AND BIG D BUILDING SUPPLY
CORP., PETITIONERS *v.* NIAGARA FRONTIER
TARIFF BUREAU, INC., ET AL.ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[May —, 1986]

JUSTICE STEVENS delivered the opinion for the Court.

Petitioners have alleged that rates filed with the Interstate Commerce Commission by respondent motor carriers during the years 1966 through 1981 were fixed pursuant to an agreement forbidden by the Sherman Act, 15 U. S. C. § 1, et seq. The question presented is whether the carriers are subject to treble-damages liability in a private antitrust action if the allegation is true.

The question requires us to give careful consideration to the way in which Congress has accommodated the sometimes conflicting policies of the antitrust laws and the Interstate Commerce Act, 49 U. S. C. § 10101, et seq. Our analysis of the question will include three components: (1) the sufficiency of the complaint allegations in light of the bare language of the relevant statutes; (2) the impact of the Court's decision of an analogous question in 1922 in *Keogh v. Chicago & Northwestern Railway Co.*, 260 U. S. 156; and (3) the extent to which the rule of the *Keogh* case remains part of our law today.

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Two class action complaints making parallel allegations against the same six defendants were filed in the United States District Court for the District of Columbia and then

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 27, 1986

MEMORANDUM TO THE CONFERENCE

HOLD for 85-21, Square D, et al v. Niagra
Frontier Tariff

85-112, Little Crow Milling Co., et al v.
B & O RR, et al.

Shippers of wheat filed a treble-damages action against various railroads for activities unauthorized by their approved shipping agreement. The DC and CA7 granted summary judgment on the ground that Keogh v. Chicago & Northwestern Railway Co., 260 U.S. 156 (1922) barred the claim. The shippers raise three arguments: (1) Keogh is no longer good law; (2) the Railroad Revitalization and Regulatory Reform Act of 1976 rendered Keogh inapplicable in the railroad context; and (3) the conduct challenged here was specifically found by the ICC to be illegal.

Our opinion in Square D rejects the first argument. On the second argument, it is true that Square D did not involve a railroad situation, and thus did not discuss the "4R Act," but CA7's discussion is reasonable, and the issue does not seem to me to warrant review.

On the third question, petitioners contend that the CA7 opinion in Little Crow conflicts with the CA2 opinion in Square D. They argue that, in their case, the ICC specifically found the rates to be illegal, and that Judge Friendly's Square D opinion suggested that Keogh did not bar treble-damages recovery for rates found by the ICC to be impermissible. See 760 F.2d 1347, 1364. However, the issue is far more complex than petitioners' statement of it suggests. Although the rates varied over a several year period

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


CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 12, 1986

No. 85-21 Square D Company and Big D Building
Supply Corp. v. Niagara Frontier
Tariff Bureau, Inc.

Dear John,

Please join me.

Sincerely,

Sandra

Justice Stevens

Copies to the Conference

MAY 13 10 35

JUSTICE W. V. O'CONNOR