Buffalo Law Review

Volume 10 | Number 1 Article 115

10-1-1960

Miscellaneous—Deviation by Carrier From Tariffs Filed With Interstate Commerce Commission

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and not to general neighborhood conditions; (3) if the variance is authorized, the essential character of the locality will not be altered.[22]

In the case of *Forrest v. Evershed*,[23] property owners in an exclusively residential zone petitioned for an order setting aside the determination of the zoning board whereby the intervenors were granted a variance to erect a two story medical building on a vacant lot. The board gave this authorization on the basis of the lot-owner's assertion that they had tried to sell this property but were unable to do so because a synagogue (a permissive use) was located on the adjacent lot, and no one wanted to build a house next to a public building. Both the Supreme Court and the Appellate Division affirmed.[24]

The Court of Appeals reversed, holding that the owners failed to introduce sufficient evidence to support their assertion. In pointing out some of the deficiencies, the Court found that no diligent, bona fide effort to sell the property had been proven. Secondly, the owners did not show that each and every use permitted by the ordinance would fail to produce a reasonable return. In addition, losses must be demonstrated by some "dollars and cents" proof. And fourthly, neither did the evidence sustain the fact that the plight of the owners was due to any unique circumstances. Since the only evidence of the owners was an assertion that they could not dispose of the property for a reasonable return, the Court reversed.

In view of this failure to establish the first two of the elements required for the granting of a variance, the Court found it unnecessary to discuss the third.

MISCELLANEOUS

Deviation by Carrier from Tariffs Filed with Interstate Commerce Commission

An interstate common carrier may not charge or receive a rate different from that specified in its currently effective tariff, filing of which is required under the Interstate Commerce Act.[1] Any agreement between the interstate carrier and a shipper to limit the carrier's liability upon an interstate shipment to a valuation stated in the bill of lading, will not relieve the carrier of its common law obligation to pay the actual value in case of loss by its negligence if its tariff schedules provide but one rate applicable to the shipment.[2] Thus any provision in a bill of lading inconsistent with the tariff classifications or schedules is void. These tariffs have the force of a statute and are absolutely binding upon all persons who are parties to a contract of interstate transporta-

22. Id. at 76, 24 N.E.2d 853.
23. 7 N.Y.2d 256, 196 N.Y.S.2d 958 (1959).
24. 8 A.D.2d 753, 185 N.Y.S.2d 572 (4th Dep't 1959).

1. 49 U.S.C. § 1 et seq.
2. Union Pacific Railroad Co. v. Burke, 226 N.Y. 543, 124 N.E. 122 (1919), aff'd 255 U.S. 317 (1921).

tion. The duly filed tariffs of an interstate shipper serve as constructive notice to all persons with whom the carrier contracts.[3]

The recent case of *W.R. Grace & Co. v. Railway Express Agency, Inc.*[4] was an action by a shipper against a carrier to recover for loss of a shipment of crude platinum. The Court of Appeals held, in a five to two decision, that the shipper could recover the loss actually sustained rather than the fifty dollar declared value. Here the carrier's agent knew that he was accepting a shipment of platinum but did not know its true value. A fifty dollar value was declared by the shipper to the carrier's truck driver because the shipper carried its own insurance and wanted to take advantage of the lower rates charged by the carrier on goods shipped under its "merchandise" tariff classification.

The carrier's tariff classification required that precious metals such as platinum be received and carried under a "money classification" and the rates at "gold coin rates" were considerably higher than that charged for goods shipped under the "merchandise classification." The Court held that since the defendant carrier's tariffs did not allow a choice of rates for goods of the "money classification," its attempt to limit its liability to the declared value, as contained in its receipt, was ineffectual. Because the carrier knew it was accepting a shipment of platinum it was bound, under its tariffs, to charge the full rate for a precious metal.

The arguments of defendants based on the express receipt's stated value, their lack of knowledge of the actual value of the shipment, and the shipper's statement that it was covered by outside insurance are answered by the Court's reference to its decision in *New York & Honduras Rosario Mining Co. v. Riddle Airlines*.[5] There, under facts similar to those in the present case, the Court held that the carrier could not limit its liability to the shipper if, in so attempting, it deviated from express terms of the tariff. In the *Riddle* case

3. 49 U.S.C. § 2:
Special Rates and Rebates Prohibited. If any common carrier . . . shall directly or indirectly, by any special rate . . . charge, . . . from any person . . . a greater or less compensation for any service rendered . . . than it charges . . . from any other person . . . for . . . a like . . . service in the transportation of a like kind of traffic under . . . similar circumstances . . . such . . . carrier shall be guilty of unjust discrimination. . . .

49 U.S.C. § 3(1):
It shall be unlawful for any common carrier subject to the provisions of this chapter to make . . . any . . . unreasonable preference . . . to any particular person . . . in any respect whatsoever;

49 U.S.C. § 20(11):
. . . no contract . . . shall exempt such . . . carrier . . . from the liability imposed. . . . Provided, however, that the provisions hereof respecting liability for full actual loss, . . . notwithstanding any limitation of liability . . . or release as to value, and declaring any such limitation to be . . . void shall not apply . . . second to property . . . received for transportation concerning which the carrier shall have writing . . . the released value. . . .

4. 8 N.Y.2d 103, 202 N.Y.S.2d 281 (1960).

5. 3 A.D.2d 457, 162 N.Y.S.2d 314 (1st Dep't 1957), aff'd 4 N.Y.2d 755, 172 N.Y.S.2d 168 (1957).

the Court answered the same objections interposed by the defendants in the present case by referring to the public policy evidenced by the Interstate Commerce Act.

The majority of the Court was of the opinion that even though the carrier in the *Riddle* case may have known the value of the shipment, while here it did not, it was immaterial since it deviated from the tariff in accepting the shipment in a different classification.

"It matters not that the real party in interest is the plaintiff's insurance carrier and that a reduced tariff was sought with the knowledge and consent of the insurer. It cannot be argued that the shipper was given just what it bargained for, because in order to maintain uniform rates and restrain the abuses and discriminations that might otherwise flourish, the statute has prescribed the framework within which the shipper may make his bargain. There cannot be an estoppel that would work against the shipper because of the supervening public policy above enunciated and individual indignation must yield to it."[6]

PRACTICAL CONSTRUCTION OF STATUTE BY COUNTY CLERK CONTROLLING

In *Lockport Union-Sun and Journal v. Preisch*,[7] petitioner, a newspaper, brought an action to compel defendant, the clerk of the Board of Supervisors of Niagara County, to post in a conspicuous place and to publish in petitioner's newspaper a complete and detailed list of all tax exempt and partially exempt real property located within the City of Lockport.

For fifty years, until 1954, the clerk of the Board of Supervisors of Niagara County has published in petitioner's newspaper a detailed list of the tax exempt and partially exempt real property in Lockport.[8] In 1955, however, defendant submitted to petitioner a summary statement listing tax exempt categories such as Fraternal, Church, Veteran, etc. by groups. A subtotal was given for each individual group and the total listed of all tax exempt real property. This change in policy was not due to any statutory changes but rather to a new interpretation of the words "tabulated statement" by the State Board of Equalization and Assessments.

6. Id. at 463, 162 N.Y.S.2d 320.
7. 8 N.Y.2d 54, 201 N.Y.S.2d 505 (1960).
8. N.Y. Real Property Tax Law § 496:
1. It shall be the duty of the assessors of each city . . . to furnish to the clerks of the boards of supervisors of their respective counties . . . a complete list of all property situated within their respective assessing units exempt or partially exempt from taxation. 2. It shall be the duty of the clerk of the board of supervisors . . . to transmit such completed lists . . . to the state board . . . and the state board shall . . . cause to be published in their annual report to the legislature, a *complete tabulated statement* . . . of all real property . . . in the state which is exempt or partially exempt from taxation. 3. . . . the various clerks of the boards of supervisors . . . shall prepare a *tabulated statement* of the returns received and shall post a copy thereof in a conspicuous place, and in all cities of the state cause a copy thereof to be published in the official paper . . . of such city . . . (emphasis supplied).