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Interstate Commerce - Air Travel Associated Ground Transportation Service - Extension of Covered Activities

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Houston International Limousine Service conducted ground transportation service under a franchise agreement issued by the City of Houston, Texas, to its owner, Hayden. The franchise, granted upon the basis of competitive bidding, provided ground transportation service to airline passengers arriving and departing at Houston International Airport. Although the airport, located eleven miles from downtown Houston, was served by other modes of transportation, Limousine Service alone operated under the city's franchise, which provided that the limousines were to be used exclusively for public airport ground transportation services. With the exception of a disputed amount of charter service,[1] passengers of the airlines were the Limousine Service's sole source of business.

Several former employees of Limousine Service brought an action against that company in the United States District Court for the Southern District of Texas to recover unpaid minimum wages and overtime compensation under the amended Fair Labor Standards Act of 1938.[2] Since this act applies to activities solely in interstate commerce the issue was whether the employees were engaged in such "commerce." The district court found that the employees were engaged in "commerce"—within the meaning of the Act—and held against Limousine Service. Limousine Service appealed, claiming that at no time did its employees' activities constitute "commerce" as defined by the Act. *Held, affirmed*: An airport limousine service operating under an exclusive city franchise and deriving virtually all of its business under the grant of such franchise and from interstate air carriers, is engaged in "commerce" as defined by the Fair Labor Standards Act. *Hayden v. Bowen*, 404 F.2d 682 (5th Cir. 1968), *cert. denied*, 395 U.S. 933 (1969).

I. Commerce — Its Source and Scope

The Fair Labor Standards Act states: " 'Commerce' means trade, commerce, transportation, transmission, or communication among the several states or between any state and any place outside thereof."[3] Therefore, it is the employee's activity in relation to "commerce" rather than his activity with regard to his employer's business that determines whether such activity comes within the boundaries of the Act.

[1] The Houston International Airport Limousine Service did engage in some charter service—as for weddings, sight seeing tours, etc.—but the testimony of both parties to the action nevertheless failed to establish whether this was frequent or isolated activity, and the court apparently determined that it was unimportant.

[2] 29 U.S.C. §§ 201-19 (1964).

[3] 29 U.S.C. § 203(b) (1964).

It is firmly established that the federal power to regulate interstate commerce is paramount to state regulatory power.[4] Also, intrastate movement can become such an integral part of interstate commerce that it is governed by federal, rather than state authority. This determination is made by considering the essential character of the activity. For example, in the Federal Employer's Liability Act[5] the determining factor is whether or not the injured employee was engaged in interstate commerce, not whether the source of his injury was so engaged. Likewise in the Fair Labor Standards Act, the employee's work correctly frames the covered activity.[6]

It has been noted that whether or not an activity is interstate commerce should depend upon practical, rather than technical consideration.[7] Therefore, interstate commerce must be established by considering the complete activity, its purpose and method of accomplishment, in light of the "commonly accepted sense of the transportation concept."[8] Furthermore, factors which tend to determine the beginning and end of an interstate shipment of goods may not necessarily be used to determine the beginning and end of a person's interstate journey.[9]

A carrier need not cross state lines to be considered an interstate carrier, and is considered interstate in character as long as its cargo — be it goods or persons — has arrived from or is bound for, another state.[10] Many times this proposition leads to a question of intent. It seems most certain that when a shipper places his goods on board a transportation facility, intending their ultimate destination to be another state, the shipper's intent with regard to the ultimate destination would cause the interstate journey to begin,[11] even though the initial facility may travel only across town. Thus, the original intent of the shipper is controlling.[12]

When persons are the subject of carriage, however, the question of intent becomes more complicated. It seems more difficult to say that when one leaves home, bound for an airport to catch an airplane for an interstate journey, his intent is so manifested that his interstate journey should begin upon pulling away from his driveway. While the intention of a person is certainly important with regard as to whether transportation is interstate or intrastate,[13] such intention alone has been said not to be the controlling factor in arriving at such determination.[14] Since once a person has started an interstate journey, the character of the journey does not change until the destination is reached or his intent is changed,[15] the courts have looked

[4] Gibbons v. Ogden, 6 U.S. (9 Wheat.) 1 (1824).
[5] 45 U.S.C.A. § 51 *et seq* (1908).
[6] Under this chapter of the Act, the test to determine whether an employee is "engaged in commerce" is not whether his activities affect or even indirectly relate to interstate commerce, but whether they are actually in such commerce or so closely related to the movement of such commerce as to be a part of it. 29 U.S.C. § 203 (1964).
[7] Mitchell v. C. W. Vollmer & Co., 349 U.S. 427, 429 (1954).
[8] United States v. Capital Transit Co., 325 U.S. 357, 363 (1945).
[9] United States v. Yellow Cab Co., 332 U.S. 218, 229 (1947).
[10] The Daniel Ball, 77 U.S. (10 Wall.) 557 (1871).
[11] Champlain Realty Co. v. Brattleboro, 260 U.S. 366 (1922).
[12] Carpenter & Mardian, *When Is Commerce Interstate?* 22 S.Cal.L.Rev. 406 (1949).
[13] New York, N. H. & H. R. Co. v. Nothnagle, 346 U.S. 128 (1952).
[14] New York C. R. Co. v. Mohney, 252 U.S. 152 (1919).
[15] United States v. Yellow Cab Co., 332 U.S. 218 (1947).

beyond the difficult question of intent in order to formulate other distinctions upon which to base the character of the journey.

In *United States v. Yellow Cab Co.*,[16] the United States Supreme Court noted that many people begin and end interstate journeys by using taxicabs for transportation to and from their homes to the railroad station. The Court found that such transportation was "intermingled with the admittedly local operations"[17] of the taxicabs and that there was no contractual agreement with the railroads.[18] Thus, the Court held that the taxicab service was too unrelated to interstate commerce to be a part of interstate commerce — the relationship was only "casual and incidental."[19] The Court narrowed its holding to the particular facts before it, however, and made it clear that the outer limits of any interstate journey must depend upon the journey's own practical considerations.[20]

United States v. Capital Transit Co.,[21] although decided prior to the *Yellow Cab* decision, illustrates practical considerations to be examined when determining the limits of the transportation concept. Capital Transit Company operated two bus lines, one in Washington, D.C., and another from the District of Columbia bus terminal to various government offices in Virginia. There were three other bus lines covering the route to Virginia, and after boarding a Capital Transit bus in Washington, D.C., residents who worked in Virginia could continue on a Capital Transit bus or switch to one of the other bus lines at the District terminal to reach their Virginia destination. Capital Transit accorded the privilege of transfer to those residents who took its buses to Virginia, but denied it to the patrons of the other lines. In sustaining the Interstate Commerce Commission's jurisdiction to fix the fare between Washington, D.C., and Virginia, the Supreme Court held:

> Their interstate journey to work actually began at the time they boarded a Transit bus or streetcar near their home, and actually ended when they alighted from the Virginia going bus at their place of work. On returning from work their interstate journey actually began when they boarded a bus near their work and actually ended when they alighted from a Transit streetcar or bus near their home. True, their interstate trip was broken at the District terminal of the Virginia buses, when they stepped from one vehicle to another. But in the commonly accepted sense of the transportation concept, their entire trip was interstate.[22]

In a subsequent Capital Transit case,[23] decided after *Yellow Cab*, the Court held that its decision in *Yellow Cab* did not conflict with its prior holding that Transit was involved in a continuous stream of interstate transportation.

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[16] 332 U.S. 218 (1947).
[17] *Id.* at 228.
[18] *Id.* at 229.
[19] *Id.* at 231.
[20] *Id.* at 232; *See* Swift & Co. v. United States, 196 U.S. 375 (1904).
[21] 325 U.S. 357 (1945).
[22] *Id.* at 359.
[23] United States v. Capital Transit Co., 338 U.S. 286 (1949).

The Court of Appeals for the Ninth Circuit, in a 1957 decision, offered several factors to be considered in determining whether certain transportation should be covered by the Fair Labor Standards Act. In *Mateo v. Auto Rental Company*,[24] the appellate court, although holding that Auto Rental was not involved in interstate commerce, suggested that the most important factor to be considered when deciding if an activity is a part of interstate commerce, was the nature and extent of the work, together with the structure and operations of the company. Another factor was the competitive situation of the company, and further, its relationship with those companies clearly engaged in interstate commerce. While the geographical location of the city's terminal was also considered relevant, the *Mateo* court did not mention the location of such terminal. The court did find, however, that Auto Rental was not favored by any agreement, was engaged in stiff competition, and used its limousines for many and varied purposes.

In *Airlines Transportation, Inc. v. Tobin*,[25] the defendant, a limousine service, argued that its service was not completely necessary for the completion of an interstate journey since other means of ground transportation were available. In essence, the company maintained that interstate journeys begin and end at the airport and any preliminary or subsequent travel between the airport and the cities is a local activity. Reviewing the facts of the *Tobin* case, the court found that: The limousine service was under contract with three airlines to furnish transportation between the airport and points designated by the airline companies; the airport was located approximately fifteen miles from each of the cities served; the vehicles were specified as to type to be used by the airlines; such vehicles were to be used solely for the contracted service; and there was close cooperation between the airlines and the defendant with regard to schedules and related activities. Deciding that it is not important whether the service is a connecting link as in *Yellow Cab*, or is the initial or final segment of travel as in *Tobin*, the court reasoned that the *Tobin* situation was closely related to the phase of *Yellow Cab* dealing with the transporting of passengers between the railroad stations within Chicago. Thus, the court stated, "that it is the common understanding that a traveler, intending to make an interstate journey by air, begins the interstate movement when he enters the limousine to be carried to the airport."[26]

Finally, whether or not a company's movement exceeds a small intrastate area seems to make no difference in adjudging an activity as "commerce", for in *Caserta v. Home Lines Agency, Inc.*,[27] the circuit court held:

> Persons are "engaged in commerce" not just when they sail ships, run locomotives or pilot airplanes but also when they perform tasks essential to the conduct of a transportation system and not so remotely connected with it as local in nature.[28]

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[24] 240 F.2d 831 (9th Cir. 1957).
[25] 198 F.2d 249 (4th Cir. 1952).
[26] *Id.* at 251.
[27] 273 F.2d 943 (2nd Cir. 1959).
[28] *Id.* at 945.

Thus, the true measure of the character of one's work appears to depend upon its relationship to an instrumentality or facility of interstate commerce; that is, to qualify one's work as "commerce", it must be so vitally related as to become a part of such "commerce" itself.

It must be stressed that each case must be viewed according to its own peculiar situation;[29] there is no single concept of interstate commerce which affords such importance as to be applied in every case.[30] The courts have been careful to point out that in every situation each portion of a journey must be viewed in relation to the whole journey in order to determine whether that portion is an integral step in interstate movement.[31] The crucial question concerns the continuity of transit and can be determined by reviewing the following factors: The intent of the passenger; the control he retains regarding his journey, such as the power to change his destination; the agency effecting the transit; and the purpose and occasion of any interruptions.[32]

II. HAYDEN v. BOWEN

The decision of the court of appeals in *Hayden* began with the often repeated statement that the Fair Labor Standards Act is given a liberal interpretation in the Fifth Circuit.[33] It was established that, in order to be covered under the Act, the employee's work must be directly and vitally related to the functioning of an interstate facility so as to become a part of that facility.[34]

Operating under the franchise agreement with the City of Houston, Limousine Service was subject to regulations imposed by the city. The agreement provided that Limousine Service would comply with the following regulations: Provide specified types of vehicles for continuous use twenty-four hours a day, seven days a week; serve all incoming and outgoing flights; space its service so that no more than one hour would elapse between an aircraft's scheduled arrival at the airport and the delivery of its passengers at the pick-up points in the city or between the passenger's departure from the pick-up points and their departure by airplane from the airport; adhere to designated pick up points; and, charge fares fixed by the city. Because of these provisions, the court found Limousine Service's operations to be so closely connected with interstate airlines operation out of Houston as to be a part of such commerce.[35]

Whether and when a company's operations fall into the category of

[29] United States v. Yellow Cab Co., 332 U.S. 218 (1947).

[30] McLeod v. Threlkeld, 319 U.S. 491 (1943).

[31] *See* Stafford v. Wallace, 258 U.S. 495 (1921).

[32] Binderup v. Pathe Exch., 263 U.S. 291 (1923).

[33] *See* Mitchell v. Empire Gas Eng'r. Co., 256 F.2d 781, 784 (5th Cir. 1958), where the court said, "The broad construction given 'commerce' by a growing accumulation of cases has brought within the Act's reach a varied assortment of employees."

[34] *See also* Mitchell v. C. W. Vollmer & Co., 349 U.S. 427 (1954).

[35] With respect to passenger travel, *see* Sprout v. South Bend, 277 U.S. 163 (1928); Washington, B. & A. E. R. R. v. Waller, 289 F. 598 (D.C. Cir. 1923); Norfolk & W. R. Co. v. Pennsylvania, 136 U.S. 114 (1889). *Contra.* Gulf Co. & S. F. R. R. v. Texas, 204 U.S. 403 (1907); Bracht v. San Antonio & A. P. R. R., 254 U.S. 489 (1921); Pennsylvania R. R. v. P. V. C. of Ohio, 298 U.S. 170 (1936).

commerce are to be determined by each fact situation. Although it appears impossible to establish definite guidelines, Limousine Service's activities offer several scales upon which to balance the operations. Limousine Service was under a definite and exclusive contractual obligation to the City of Houston to provide all needed ground transportation services related to the predominantly interstate air travel in and out of the Houston airport. With few exceptions, virtually all of Limousine Service's business arose from the airport traffic.[36] In addition, the fact of close coordination with the airlines serving Houston—concerning schedule changes and airline mail handling, among other activities—discloses that the limousine service was much more than casually or incidentally related to interstate transportation.[37] However, the court failed to distinguish *Hayden* from a 1903 case where the exclusiveness factor was just as prevalent, yet the operation was held to constitute intrastate rather than interstate commerce.[38] Moreover, he court found no distinction between the instant case and *Tobin* which, unlike *Hayden*, involved a contract with the airlines.[39] It is true that the franchise agreement with the city in *Hayden* obligated the defendant to furnish much the same type of service as did the airline contracts in *Tobin*. In *Hayden*, however, Limousine Service was accountable only to the City of Houston, whereas the limousine service in *Tobin* was responsible to the airlines for any default. This distinction could be reconciled as follows: A contractual arrangement that benefits a third party which is engaged in interstate commerce ties the performing party so close to the third party as to make the performing party a part of interstate commerce.

It is important to note that the court apparently reached its decision by using the *Capital Transit* "commonly accepted sense of the transportation concept" idea.[40] When considering the character of actions as prior or subsequent to interstate flights, it is important to note the close coordination between the limousine service with the airlines preceded the passengers' intent. However, the *Hayden* court apparently did not consider the important question of the passengers' intent. This leads to the assumption that the practical difficulties of determining intent renders it unacceptable as a "commerce" determining standard when dealing with transportation of persons. Yet, in the absence of considering intent, can the true measure of an interstate flight be determined?

III. Conclusion

Hayden will have a substantial effect in liberalizing the decision making process of the courts, by offering more ground upon which to extend the

[36] Hayden v. Bowen, 404 F.2d 682, 684, n.7 (5th Cir. 1968) as follows: "Hayden testified during the trial as follows: 'Q. Isn't the essential nature of your business to get those passengers in and out of that airport?

'A. And we do.

'Q. That's the essential nature of your business?

'A. Yes.' "

[37] *See* United States v. Yellow Cab Co., 332 U.S. 218 (1947).

[38] Pennsylvania R. Co. v. Knight, 192 U.S. 21 (1903).

[39] *U.S. Const.* art. I, Sec. 8.

[40] *See* Swift and Co. v. United States, 196 U.S. 375 (1905); North American Co. v. S.E.C., 327 U.S. 686 (1945), for the practical concept of the normal, accepted course of business.

definition of interstate commerce to a greater number of activities. Therefore, more coverage under the Fair Labor Standards Act, as well as the numerous other acts regulated through the commerce power of the United States Constitution will be allowed. The decision allows the beginning and end of an interstate journey to be determined by the character and type of service of the carrier in question. Nevertheless, the court seems to have placed some limitations on the carrier—that there must be some type of special arrangement for the transportation involved prior or subsequent to the interstate journey in order for it to be "commerce". The question here is whether the arrangement must be made by one of the two major parties — the passenger or the interstate carrier. *Hayden* seems to hold that factor irrelevant; only the beneficiary of the arrangement, the passenger, is to be considered.

The *Hayden* court ignored the relationship between the interstate traveler, individually or through his interstate carrier, and the local carrier. Thus, that problem still remains. However, is it practical to draw a definite line when many people travel throughout the country, on business or pleasure, in increasing numbers today? Must one's intent be communicated to a carrier in order to make a determination of interstate commerce? Although it may be argued that Congress has now been given even greater power to regulate under the commerce clause, such a decision as the *Hayden* case is justified when the practical considerations are calculated. The initiation or the fulfilling of an interstate journey conducted by an intrastate carrier is probably just as important to the passenger as the actual interstate trip itself.

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