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Application of F.L.S.A. to Part Time Employees under Motor Carrier Act

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In summing up the *Dawson* case the Supreme Court gives what appears to be the real reason behind the decision. They say, "We are unable to see how the defendant or society will in any way be benefited by denying the plaintiff a divorce. There seems to be no possible hope of any reconciliation. The parties have now been separated for over ten years, either of which apparently with the acquiescence of the defendant. If the aim of the statute is, as has been held, to legally end a marriage which no longer exists in fact, then this, we think, is an appropriate case to carry that aim into effect."[19] This position is reminiscent of the view taken by the majority of courts who find the fault of the plaintiff no bar to the action.

Regardless of whether this decision is termed a misconstruction of the 1941 amendment or not, it places Wyoming in a hazy ground between the majority and the minority views. It no longer would seem necessary for the plaintiff to plead or prove he was not the cause of the separation. Thus in a non-contested case the question of whether the plaintiff was responsible for the separation will not arise, and Wyoming is no different than the state that opening permits either party to sue. Only where the defendant raises the issue and then sustains the burden of proof (which may be difficult in view of the *Jegendorf* case) will Wyoming bar the plaintiff from maintaining the action. Since so few divorces are contested, this would seem to place Wyoming with the majority.

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APPLICATION OF F.L.S.A. TO PART TIME EMPLOYEES UNDER MOTOR CARRIER ACT

Levinson, an employee whose chief duty was that of a foreman of loaders of freight for a trucking concern which carried freight in interstate commerce, brought action to recover overtime compensation, liquidated damages, and attorney fees under the provisions of the Fair Labor Standards Act of 1938. Recovery was allowed in the Municipal Court of Chicago. On appeal the Appelate Court of Illinois reversed the judgment.[1] The Supreme Court of Illinois affirmed[2] and the United States Supreme Court granted certiorari. *Held,* by a six to three decision, that where a substantial part of an employee's activities affected safety of operation he was subject to the Interstate Commerce Commission's jurisdiction and deprived of protection of the Fair Labor Standards Act. *Levinson v. Spector Motor Service,* 330 U. S. 649, 67 Sup. Ct. 931 (1947).

Section 207 of the Fair Labor Standards Act limits the work week at the normal rate of pay of all employees subject to its terms and provides for overtime compensation. Certain employees are excepted from its terms by Section 213 (b) (1)[3] including any employee with respect to whom the Interstate Commerce

19. 177 P. (2d) 200, 203 (Wyo. 1947).

1. Levinson v. Spector Motor Service, 323 Ill. App. 505, 56 N. E. (2d) 142 (1944).
2. Levinson v. Spector Motor Service, 389 Ill. 466, 59 N. E. (2d) 817 (1945).
3. 52 Stat. 1060, 29 U. S. C .A. Sec. 213 (b) (1).

Commission has power to establish qualification and maximum hours of service pursuant to provision of Section 204 of the Motor Carrier Act of 1935.[4]

The legislative history of the Motor Carrier Act of 1935 indicates that Congress intended one of the primary purposes of the act to be the promotion and enhancement of safety of operation of motor vehicles operated by carriers engaged in interstate commerce.[5] It was solely to this end that Congress empowered the Interstate Commerce Commission to prescribe qualifications and maximum hours of service for employees of motor carriers. It has been held that the commission has no jurisdiction to regulate the qualifications or hours of service of others.[6] Accordingly, the exemption provided by Section 213 (b) (1) of the Fair Labor Standards Act with respect to those employees as to whom the Commission has power to prescribe qualifications and maximum hours of service was enacted upon the assumption that the Commission's power was limited to "safety employees".[7]

Levinson was an employee of a motor carrier and his chief duty was the supervision of loaders of the trucks bound for interstate commerce. His services may have affected the safety of operation but to what extent is open to debate. In *Richardson v. James Gibbons Company*[8] the Commission's power was upheld as to an employee who testified that he was employed 25% of the time as a truck driver and 75% of the time as a distribution-operator of liquid asphalt. His work was accepted as affecting safety of operations although 75% of his time was spent on other duties. This conclusion recognizes that an employee, who is engaged in a class of work that affects safety of operations, is not necessarily engaged during every hour of every day in activities that directly affect safety of operations but during only that part of the time while he is driving.

The majority opinion, in the present case, gave much weight to the fact that the Commission had decided that it had jurisdiction of loaders.[9] It rested its decision upon a literal reading of the statute and upon the need to give full effect to the safety program to which Congress had attached primary importance. The court was of the opinion that the character of the activities rather than the proportion of either the employee's time or of his activities determines he actual need for the Commission's power to establish reasonable requirements.

The dissent took the position that the problem centered around the exemption section which they concede, "read literally . . . would exempt all employees who do any work affecting safety operations". But they counter, "rigidly literal application of a statute may be ruinous to achieving its purpose". The court has many times said that all construction is the ascertainment of meaning and literalness may strangle meaning.[10] It has also been said that if the giving words of a

4. 49 Stat. 543, 49 U. S. C. A. Sec. 301 (Supp. 1946).
5. Preamble, Motor Carrier Act, 49 Stat. 543, 49 U. S. C. A. Sec. 302 (a) (Supp. 1946). The Dill Bill, S 3171, 73 Cong., 2nd Session and S 1629, 74 Cong., 1st Session was finally enacted as the Motor Carrier Act of 1935 and it authorized the commission to investigate the need of Federal regulation . . . of the qualifications and maximum hours of service of employees of motor carriers. . . .
6. United States v. American Trucking Association Inc., 310 U. S. 534, 60 Sup. Ct. 1059, 80 L. Ed. 1345 (1940).
7. Overnight Motor Transportation Co. v. Missel, 316 U. S. 572, 582, 62 Sup. Ct. 1216, 1222 (1942).
8. 319 U. S. 44, 63 Sup. Ct. 917, 87 L. Ed. 1244 (1943).
9. March 4, 1941, 28 M. C. C. 125 Ex parte Nos. MC-2, 3.

statute their natural significance fails to carry out the intent of Congress the court then must look to the reason of the enactment so their purpose will not fail.[11]

The general purposes of the Fair Labor Standards Act and of the Motor Carrier Act are not necessarily conflicting. With the adoption of the Motor Carrier Act the national government undertook the regulation of interstate motor transportation to secure the benefits of an efficient system. Safety through establishment of maximum hours for drivers was an important consideration.[12] The Fair Labor Standards Act was designed to extend the frontiers of social progress by insuring to all able-bodied working men and women a fair day's pay for a fair day's work.[13] It contains certain exempting provisions which are to be narrowly construed in the light of and in order to accomplish the same statutory purpose.[14] It has been stated that the legislative intent in enacting the exemption section was to free operators of motor vehicles from regulation by two agencies of the hours of drivers upon the understanding that the Interstate Commerce Commission had already acted upon maximum hours for drivers.[15] In the *Overnight Case*[16] the court said that by exempting the drivers of motors from the maximum hours limitation of the Fair Labor Standards Act, Congress evidently relied upon the Motor Carrier provisions to work out satisfactory adjustment for employees charged with the safety of operations in a business requiring fluctuating hours of employment, without the burden of additional pay for overtime. This bears out the fact that Congress did not have in mind such an expansive and destructive exemption as the majority opinion would produce. Its principal concern was with drivers and not, as in the instant case, with employees whose duties only partially involve safety and then quite indirectly.

It is apparent that the majority opinion has only the words of the statute to support it. The court seems to be dealing with a borderline case outside the original contemplation of Congress, and its decision does damage to the general congressional policies of the Fair Labor Standards Act. It would seem the practical effect of this decision will enable employers to abuse the Court's interpretation. Non-safety employees may be assigned small portions of their total service to safety operations and thereby become exempt from overtime compensation.

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10. Utah Junk v. Porter, 328 U. S. 39, 44, 66 Sup. Ct. 889, 892 (1946); Markham v. Cabell, 326 U. S. 404, 409, 66 Sup. Ct. 193, 195 (1945); Church of the Holy Trinity v. United States, 143 U. S. 457, 12 Sup. Ct. 511, 36 L. Ed. 226 (1892).
11. Takao Ozawa v. United States, 260 U. S. 178, 194, 43 Sup. Ct. 65, 67 (1922); Ulysses S. G. White v. United States, 191 U. S. 545, 24 Sup. Ct. 171, 172 (1903); In United States v. Whitridge, 197 U. S. 135, 143, 25 Sup. Ct. 406, 408 (1905), Justice Holmes said, "the general purpose is a more important aid to the meaning than any rule which grammar or formal logic may lay down."
12. Maurer v. Hamilton, 309 U. S. 598, 605, 60 Sup. Ct. 726, 730 (1940).
13. A. H. Phillips Inc. v. Walling, 324 U. S. 490, 493, 65 Sup. Ct. 807, 808, 89 L. Ed. 1095 (1945), 157 A. L. R. 876. Message of the President to Congress May 24, 1934.
14. Tennessee Coal v. Muscoda Local, 321 U. S. 590, 597, 64 Sup. Ct. 698, 702, 88 L. Ed. 949 (1944).
15. Southland Co. v. Bayley, 319 U. S. 44, 48, 63 Sup. Ct. 917, 919, 87 L. Ed. 1244 (1943).
16. 316 U. S. 572, 62 Sup. Ct. 1216, 86 L. Ed. 1682 (1942).