

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Boston Market Terminal Co., et al., U.S. District Court, D. Massachusetts, 1952-1953 Trade Cases ¶67,611, (Oct. 1, 1953)

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United States v. Boston Market Terminal Co., et al. *

1952-1953 Trade Cases ¶67,611. U.S. District Court, D. Massachusetts. Civil Action No. 6070. Dated October 8, 1951, as modified by Order dated October 1, 1953. Case No. 872 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Consent Decree—Modification—Deletion of Contingent Provision—Addition of Permissive Provision—Transportation and Sale of Fruits and Vegetables.—A consent decree was modified by the deletion of a provision which provided that during the period of time between the entry of the decree and the entry of a decree against a railroad, specified provisions of the decree shall not be deemed to enjoin certain practices. It was further provided that subsequent to such period of time, the specified provisions shall be in full force and effect provided the decree against the railroad prohibits a certain practice.

A newly added provision provided, in substance, that nothing contained in a specified section of the decree shall be deemed to (1) prohibit the terminal and receivers from adopting and enforcing such reasonable rules and regulations as are necessary for the orderly receipt, unloading, and handling of fruit and vegetable produce delivered by truck, or from making reasonable charges for the unloading and handling of such produce; or (2) require the terminal or receivers to receive such produce by truck in the event that such receipt becomes economically improvident. The procedure for determining when such receipt becomes economically improvident was set forth. Also, it was provided that nothing contained in the decree shall be deemed to prohibit the terminal and receivers from adopting and enforcing, where reasonably necessary in connection with a *bona fide* labor dispute, a rule or vote requiring the cessation of the receipt or delivery of produce by truck, during the continuance of such labor dispute.

For the plaintiff: H. G. Morison, Assistant Attorney General; Gerald J. McCarthy and Sigmund Timberg, Special Assistants to the Attorney General; William D. Kilgore, Jr. and Alfred M. Agress, Trial Attorneys; and George F. Garrity, United States Attorney.

On the modification of October 1, 1953: Stanley N. Barnes, Assistant Attorney General; Gerald J. McCarthy, Special Assistant to the Attorney General; Anthony Julian, United States Attorney; and Alfred M. Agress, Trial Attorney.

For the defendants: George Alpert for Boston Market Terminal Co., Boston Tomato Co., Inc., Chapin Bros., Inc., Colley Woods Co., Community Produce Co., E. H. Kingman Co., Eaton and Eustis Co., Kingman and Hearty, Inc., Lord and Spencer Co., S. Strock and Co., Samuel J. Shallow Co., Sands Furber and Co., Inc., Sawyer and Co., Inc., Sweeney Lynes and Co., Inc., W. H. Butler and Co., Inc., Winn Ricker and Co., Inc., Henry E. Dodge, Joseph A. Novelline, Andrew D'Arrigo, Anthony J. Dimare, Dominic F. Dimare, Harvey J. Gustin, J. Ernest Gustin, Joseph E. Almeder, John Scalia, Dennis J. Halloran, Ralph L. Gustin, William F. Coady, Francis J. Reardon, Phillip Strazzulla, Frank Strazzulla, and Dominic Strazzulla; Hubert C. Thompson for Louis Sharaf; I. J. Silverman for Mercantile Produce Co.; John L. Saltonstall, Jr., for S. Albertson Co., Inc.; Amos L. Taylor for York and Whitney Co.; and John Finelli for Peter P. Volante.

On the modification of October 1, 1953: George Alpert, Hubert C. Thompson, and Amos L. Taylor represented the same defendants as indicated in the above listing. Gerald T. O'Hara for S. Albertson Co., Inc. The order modifying the decree was signed for the Mercantile Produce Co. by its President, Anthony J. Sarno.

Modifying the consent decree entered in the U. S. District Court, District of Massachusetts, [1950-1951 Trade Cases ¶ 62,927](#).

Final Judgment

SWEENEY, District Judge: [*In full text*] Plaintiff, United States of America, having filed its Complaint herein on October 15, 1946, all the undersigned defendants having appeared and filed their answers to such Complaint denying the substantive allegations thereof, and said defendants and plaintiff by their attorneys having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of law or fact herein and without admission by any of said defendants in respect of any such issue:

Now, therefore, before any testimony has been taken herein and without trial or adjudication of any issue of fact or law herein and upon the consent of all the parties signatory hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

[*Sherman Antitrust Act*]

This Court has jurisdiction of the parties signatory to this Final Judgment and over the subject matter hereof. The complaint states a cause of action against the undersigned defendants under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," commonly known as the Sherman Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

- (A) "BMT" shall mean the defendant Boston Market Terminal Company;
- (B) "New Haven" shall mean the defendant, the New York, New Haven & Hartford Railroad Company;
- (C) "Defendant Receivers" shall mean those persons named in the Complaint herein as defendants and members of BMT;
- (D) "Terminal" shall mean the physical structure and facilities used, owned or leased by BMT for the purpose of unloading, displaying and selling fruit and vegetable produce;
- (E) "Receiver" shall mean any person to whom fruit or vegetable produce is forwarded for wholesale in private transactions;
- (F) "Wholesale" shall mean the sale of fruit and vegetable produce by receivers in quantities of not less than ten packages to jobbers or retailers for resale;
- (G) "Member" shall mean a receiver authorized to use the facilities of the Terminal;
- (H) "Final Judgment against New Haven" shall mean a judgment terminating this action against defendant New Haven, not subject to further review;
- (I) "Person" shall mean an individual, partnership, corporation, association or any other legal entity.

III

[*Applicability of Judgment*]

The provisions of this Final Judgment applicable to any undersigned defendant shall apply to such defendant, its successors and assigns, and to each of its officers, directors, agents, employees and to all other persons acting or claiming to act under, through or for such defendant.

IV

[*Restrictive Rules and Practices Prohibited*]

(A) Defendant BMT and defendant receivers are jointly and severally enjoined and restrained from adhering to, promulgating, adopting or enforcing any rule or regulation governing the use of the Terminal which is not in conformity with the terms of this Final Judgment;

(B) Defendant BMT and defendant receivers are jointly and severally enjoined and restrained from adhering to, promulgating, adopting or enforcing any rule or regulation governing the use of the Terminal or taking any action for the purpose or with the effect of:

(1) Requiring any member to consign or direct the shipment of any, some or all of the produce of such member to the Terminal or any other designated place or locality,

(2) Restraining in any manner the right of any member to engage in any type of business activity outside the Terminal, or to choose any place to engage therein,

(3) Requiring the payment by any member of any charge which is discriminatory in favor of one member against another.

[V]

[*Agreements With Third Persons Prohibited*]

(A) Defendant BMT and defendant receivers are jointly and severally enjoined and restrained from entering into, agreeing to or furthering any contract, agreement or understanding with any person not a member of the Terminal, or which does not do business at the Terminal, having the purpose or effect of regulating or fixing any of the rules, regulations or practices of members of the Terminal, except those required by governmental agency.

[VI]

[*Denial of Membership—Report to Attorney General*]

(A) Defendant BMT is hereby enjoined and restrained from refusing to admit as a member any person desiring to act as a receiver at the Terminal, except upon the ground that the applicant is not financially responsible or that the facilities of the Terminal are inadequate.

(B) Defendant BMT is hereby ordered and directed to make every reasonable effort and take whatever steps are reasonable or appropriate to maintain (if economically provident) space and facilities on property of the defendant New Haven adequate to accommodate additional members.

(C) In the event that the defendant BMT denies membership to any applicant upon the ground that the facilities of the Terminal are inadequate to accommodate additional members, defendant BMT shall notify the Attorney General, stating the basis therefor. If the Attorney General is not satisfied as to such denial of membership, he shall so notify defendant BMT and defendant BMT shall present a petition to this Court, and evidence in support thereof, to establish that:

(1) Existing space and facilities will not in view of seasonal variations permit efficient operation if the application is granted, and

(2) the defendant BMT has complied with the foregoing requirements of subsection (B) above,

the Attorney General shall have the right to be heard, and both parties shall abide by the determination of the court therein.

[VII]

[*Acting as Receiver or in Other Business Activity Prohibited*]

Defendant BMT is hereby enjoined and restrained from directly or indirectly acting as a receiver of fruit or vegetable produce, or engaging in any business activity other than that presently conducted by defendant

BMT in the operation and maintenance of the Terminal which is inconsistent with the provisions of this Final Judgment.

VIII

[Cancellation of Provision in Lease Contract]

Defendant BMT is ordered and directed to cancel forthwith paragraph 11 of the lease contract between BMT and New Haven, dated October 23, 1928, and defendant BMT is enjoined and restrained from entering into, performing, enforcing, adopting, adhering to, maintaining or furthering or claiming any rights under any contract, agreement, understanding, plan or program for the purpose of continuing or renewing said paragraph 11.

IX

[Transportation Restrictions and Other Practices Prohibited]

Defendant BMT and defendant receivers are jointly and severally enjoined and restrained from entering into, adhering to or claiming any rights under any contract, agreement or understanding with any person other than said defendants which has the purpose or effect of:

- (A) Restraining in any manner the right of any member to use any type of transportation in receiving, selling or shipping fruit or vegetable produce, except as to transportation of samples;
- (B) Giving any such person any control over or voice in the operations of BMT or its members while acting as receivers at the Terminal;
- (C) Permitting any such person to use any of the display or selling space or platform space of the Terminal for purposes other than as a receiver of fruit or vegetable produce;
- (D) Subjecting BMT or its members to any charge, directly or indirectly, for using or to refrain them from using any particular type of transportation to bring fruit and vegetable produce into the Terminal or to move it out of the Terminal, or requiring BMT or its members to order any particular routing in order to increase charges which may be made by such person. A routing required by a governmental agency is not construed to be in this subsection (D).

X

[Restrictions on Use of Terminal and Type of Transportation Prohibited]

- (A) Defendant BMT and defendant receivers are jointly and severally hereby enjoined and restrained from promulgating, adopting or enforcing any rule or regulation governing the use of the Terminal, or taking any action for the purpose or with the effect of restricting the right of any member to receive, sell, or ship fruit and vegetable produce by truck, wagon or any other type of conveyance;
- (B) Defendant receivers and each of them are hereby enjoined and restrained from entering into any contract, agreement, or understanding with any other defendant or any other person to use or refrain from using any specified type of transportation.

XI [*

- (A) Nothing in the foregoing provisions of Section X shall be deemed to:
 - (1) Prohibit defendant BMT and defendant receivers from adopting and enforcing such reasonable rules and regulations as are necessary for the orderly receipt, unloading and handling of fruit and vegetable produce delivered by truck, or from making reasonable charges for the unloading and handling of such fruit and vegetable produce;
 - (2) Require defendant BMT or defendant receivers to receive fruit and vegetable produce by truck in the event that such receipt becomes economically improvident, provided, however, in any such event

defendant BMT shall notify the Attorney General thereof. If the Attorney General is not satisfied that receipts by truck have become economically improvident he shall so notify the defendant BMT, and the defendant BMT shall present a petition to this Court and evidence in support thereof to establish that the business of receiving fruit and produce by truck has become economically improvident to it.

(B) Nothing in this Final Judgment shall be deemed to prohibit defendant BMT and defendant receivers from adopting and enforcing, where reasonably necessary in connection with a *bona fide* labor dispute, a rule or vote requiring the cessation of the receipt or delivery of fruit and vegetable produce by truck, during the continuance of such labor dispute.

XII

[*Visitation and Compliance*]

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice, upon written request of the Attorney General or an Assistant Attorney General, and on reasonable notice to the defendant made to its principal office, be permitted access during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant relating to any matters contained in this Judgment, and subject to the reasonable convenience of said defendant, and without restraint or interference from it, to interview officers or employees of the defendant, who may have counsel present, regarding any such matters, and, upon request, any defendant shall submit such reports as from time to time may be necessary to the enforcement of this Judgment. No information obtained by the means provided in this section XII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Judgment or as otherwise required by law.

XIII

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling any of the parties to this Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Judgment, for the modification or termination of any of the provisions thereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.

It is expressly understood, in addition to the foregoing, that the plaintiff may, upon reasonable notice, at any time after entry of this Final Judgment, apply to this Court for modifications of any of the terms herein to prevent any discrimination among members resulting, directly or indirectly, from ownership or use of capital stock of defendant BMT.

Footnotes

- * [* Order of Dismissal, dated October 1, 1953, William T. McCarthy, District Judge, provided as follows: "In accordance with Stipulation of Dismissal, the Complaint of the United States of America against the defendant New York, New Haven & Hartford Railroad Company in the above-entitled and numbered action is dismissed without prejudice."]
- * [* By an order dated October 1, 1953, William T. McCarthy, District Judge, Section XI was stricken in its entirety, and in place of the section, the above Section XI was inserted. It was further provided that the order shall in no wise affect any other provisions of the decree.]