No. MC-C-1564

SARAH KEYS v. CAROLINA COACH COMPANY

Decided November 7, 1955

Upon complaint, defendant found to be engaged in certain practices subjecting Negro passengers to unjust discrimination and unreasonable prejudice and disadvantage, in violation of section 216 (d) of the Interstate Commerce Act. Order entered requiring defendant to cease and desist from such practices.

Julius W. Robertson, *Dovey J. Roundtree*, and *Frank D. Reeves* for complainant.

Frank F. Roberson for defendant.

Report of the Commission

By the Commission:

Exceptions were filed by complainant to the order recommended by the examiner, and the defendant replied. The parties have been heard in oral argument. Our conclusions differ from those recommended.

By a complaint filed on September 1, 1953, Sarah Keys, of New York, N. Y., alleges that the Carolina Coach Company, a corporation, of Raleigh, N. C., a motor common carrier of passengers, has subjected her to unjust discrimination and undue and unreasonable prejudice and disadvantage, contrary to the provisions of the Interstate Commerce Act, in that on or about August 2, 1952, while a passenger on one of the defendant's buses, she was, at Roanoke Rapids, N. C., refused further passage and subjected by defendant's employees to false arrest and imprisonment solely because of her race and color. An order is sought requiring the defendant to cease and desist and refrain from the alleged acts of discrimination and prejudice. As filed, the complaint also included a request for monetary damages, but that portion of the complaint was dismissed by order entered February 24, 1954, because of our lack of power to award damages for violations of part II of the act.

The circumstances giving rise to the filing of the complaint are fairly clear. On August 1, 1952, complainant, a Negro, who was at that time a member of the Women's Army Corps stationed at Fort Dix, N. J., purchased a bus ticket from Safeway Trails, Inc., a motor common carrier of passengers, for transportation from Trenton, N. J., to Washington, N. C. A joint-line ticket was issued for transportation over the lines of three carriers, namely, Safeway Trails, Inc.,

from Trenton to Washington, D. C., Virginia Stage Lines, Inc., from Washington to Richmond, Va., and Carolina Coach Company, the defendant herein, from Richmond to Washington, N. C. All of the named carriers are members of the National Trailways Bus System. Complainant boarded the bus on August 1, at Trenton, and proceeded to Washington, D. C., where a change of vehicles was required. Upon leaving Washington, at approximately 7 p. m., she was occupying the fifth seat from the front of the bus, behind the driver, which position was about midway between the front and rear of the vehicle. The bus made scheduled stops at Richmond and certain other intermediate points, and arrived at Ronoake Rapids at approximately 12:20 a. m., on August 2, 1952. Complainant states that she occupied the same seat from Washington to Roanoke Rapids, but the driver of the bus states that upon arrival at the later point he noticed complainant in the third seat from the front on the opposite side of the bus. For the purpose of this proceeding, it appears to be unimportant whether, upon arrival at Roanoke Rapids, complainant was occupying the fifth seat from the front, behind the driver, or the third seat from the front, on the opposite side of the vehicle, because the subsequent events would have been substantially the same in either event.

At Roanoke Rapids there was a change of drivers, and the new driver boarded the bus for the purpose of collecting the tickets of passengers continuing on beyond that point. Upon noting that complainant was seated in the forward portion of the vehicle, the driver requested that she exchange seats with a white Marine who was seated in the rear of the vehicle, such request having been allegedly made in conformity with a company rule, hereinafter discussed, requiring that white persons be seated from the front and colored persons from the rear of the vehicle. Complainant refused to move, indicating that she preferred to remain where she was, whereupon the driver left the bus to confer with defendant's dispatcher at the terminal. Upon his return, the driver ordered all of the passengers of the bus, except complainant, to transfer to another bus, which was parked nearby, for the continuance of the journey. Although well aware that complainant had a ticket calling for transportation to Washington, N. C., and that the bus upon which she was seated was not scheduled to leave the terminal, the driver indicated that she should remain seated. Notwithstanding this, complainant followed the other passengers to the substituted bus, but was denied entry thereto at the door by the driver. There ensued an altercation which culminated in complainant's arrest and subsequent conviction on a charge of disorderly conduct. In the meantime, the driver departed from Roanoke Rapids with the substituted bus, without complainant.

The described change in buses at Roanoke Rapids was not due to any mechanical difficulty or other deficiency in the vehicle which might have rendered its continued use unsafe or otherwise impracticable. On the contrary, the record indicates that the determination to use another bus was occasioned entirely by complainant's refusal to change seats as requested by the driver, and that had she done so, she and the other passengers would have departed from Roanoke Rapids in the same vehicle in which she arrived at that point. The parties agree that the seat which the driver requested complainant to occupy was similar in all respects to the one which she was requested to vacate, except of course for the location in the vehicle.

As above indicated, the driver's action in requesting complainant to move to a different seat was allegedly taken pursuant to certain company rules which provide, insofar as particularly pertinent here:

(1) The company reserves full control and discretion as to the seating of passengers, reserves the right to change such seating at any time during a trip, and reserves the right to transfer passengers from one vehicle to another whenever necessary.

(2) White passengers will occupy space nearest the front of the bus, and colored passengers will occupy space nearest the rear of the bus.

The ticket sold to complainant contained a specific notation to the effect that the company reserves the right to seat all passengers, which notation is in accord with a tariff provision published by the National Motor Bus Traffic Association, in which all of the carriers participating in the through movement here concerned concur.

The basic question presented for our determination here is whether the admitted practice of defendant in segregating white and Negro interstate passengers in its buses violates the provisions of section 216 (d) of the act, which make it unlawful for any common carrier by motor vehicle "to subject any particular person * * * to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever." Complainant urges that the fact of segregation, standing alone, amounts to unjust discrimination and unreasonable prejudice against her and members of her race, and that such discrimination and prejudice work to the disadvantage of any Negro traveler. Defendant, on the other hand, relies upon the so-called separate-but-equal doctrine founded on *Plessy* v. *Ferguson*, 163 U. S. 537, which sanctions the separation of the races provided equal facilities are made available for white and Negro persons, and urges that the segregation of passengers in interstate buses, without any showing that the separate facilities offered are in any manner unequal, cannot be found to be a violation of the provisions of the act.

In a matter concurrently before us, No. 31423, *National Assn. for A. O. C. P.* v. *St. Louis-S. F. Ry. Co.*, 297 I. C. C. 335, hereinafter called the *Railway* case, which involves issues substantially similar to those here presented, we have discussed at length the history of segregation in the field of public transportation, and have concluded that the separate-but-equal doctrine is no longer acceptable as a basis for determining proceedings in which complainants invoke our authority to prevent violations of section 3 (1) of the act, which forbids rail carriers "to subject any particular person * * * to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." The provisions of section 216 (d) of the act, which are invoked by complainant herein, are substantially the same as those in section 3 (1), except that the former applies to motor carriers and the latter to rail carriers, and a similar conclusion is warranted here. For the reasons stated in the *Railway* case, we conclude that the assignment of seats in interstate buses, so designated as to imply the inherent inferiority of a traveler solely because of race or color, must be regarded as subjecting the traveler to unjust discrimination, and undue and unreasonable prejudice and disadvantage. In addition to the discrimination, prejudice, and disadvantage resulting from the mere fact of segregation, additional disadvantage to the passenger is always potentially present because the traveler is entitled to be free from the annoyances which inevitably accompany segregation and the variety and unevenness of methods of its enforcement. See the recent court cases cited in the *Railway* case.