1967

Administrative Law: Final Examination (January 23, 1967)

William & Mary Law School

Repository Citation

https://scholarship.law.wm.edu/exams/146

Copyright © 1967 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.
https://scholarship.law.wm.edu/exams
1. Capt. Bly, a veteran of thirty five years' service with the U. S. Navy, is Commander of the Denbigh Naval Shipyard, and he has withdrawn recognition of an organization that represented civilian employees of the shipyard. He had sometime previously received this instruction from the Secretary of the Navy: "Members of Congress are very anxious to keep in touch with what is going on in their respective states and districts. Navy agencies shall keep them advised, if possible in advance, of any new action or curtailment of action which may affect them."

Capt. Bly reported his action to his superior, and furnished copies of his report to the Denbigh Congressional Delegation. In the report, Capt. Bly named F. Leader, the president of the organization, and Shifty Pootkiss, the business manager of the organization, and went on to say about them that "They exercise a predominant influence in the organizational activities; that the organization has given wide distribution to a newsletter or bulletin; that this bulletin has become more and more unfairly critical of the shipyard administration for the purpose of not only vielding the aims of the shipyard administration in the accomplishment of its mission, but also to further personal aims and self interests of the individuals in control of the labor organization; that these editorials have adversely affected the general morale of the employees of the shipyard, who are entitled to protection against such overt subversion by any labor group whose motives are unethical, uninhibited and lack the integrity of purpose that could reasonably be expected."

Capt. Bly's report was released to news media by members of Congress and by the Admiral commanding the Denbigh Naval District, the superior officer of Capt. Bly.

The labor union officers, Leader and Pootkiss, have brought an action against Capt. Bly for libel and slander, alleging he had circulated the statement, "maliciously, willfully, recklessly and falsely, and with malice aforesight", with the intent and the effect of injuring the plaintiffs, who were the officers of the employee organization and were those named in the report.

How should the Court rule on Capt. Bly's defense of immunity, and why?

2. In 1958, the FTC commenced action on a complaint against five drug manufacturers for price fixing and bid rigging in the manufacture and marketing of anti-biotics. The examiner held extensive hearings, and in early 1960 he filed his report recommending dismissal of the complaint against the drug manufacturers. During 1959 and 1960, Mr. King Pin, an attorney and large contributor to the winning candidates in the last election, served as counsel and staff director of the Anti-Trust and Monopoly Sub-Committee of the Senate Judiciary Committee and took an active and key part in an extensive investigation made by that sub-committee of the same matters that were before the FTC in the administrative proceedings. Mr. Pin's questions and comments as sub-committee counsel demonstrated that he had formed an opinion as to some things subsequently at issue before the FTC in this same matter, and Mr. Pin had prepared a 1960 letter which was signed by the chairman of the sub-committee, Senator Foghorn, in which it was stated, "I am confident that ultimately, the FTC will reverse the hearing examiner's decision."

In March of 1961, Mr. Pin was appointed chairman of the FTC and in 1962, the proposed order was before the Commission. Motions to disqualify Chairman Pin were timely made, but they were denied because it is the practice that,
"Disqualification is treated as a matter primarily for determination by the individual member concerned," and Chairman Pin declined to excuse himself stating that despite his participation in the hearing and the preparation of the sub-committee report, he had not prejudged any issues. The matter was then heard before the Commission, which reversed its hearing examiner and issued a broad order prohibiting price fixing and bid rigging between the five drug companies engaged in the manufacture and marketing of anti-biotics.

On judicial review, the Court is asked to set aside the order for Chairman Pin's failure to disqualify himself.

How should the Court rule, and why?

3. Farmer Brown has shipped ten carloads of wheat from his farm at Podunk, Iowa, to Willmar, Minnesota, naming Willmar as a designation in the original bill of lading, only because it is the place at which grain coming into the state by this route is inspected and graded under the laws of Minnesota and of The United States. Immediately after inspection, disposition orders were given by Brown to the Short-Haul Railroad, and the original bills of lading were surrendered in exchange for billing to Anoka, Minnesota.

The pertinent tariff rules were: Rule 10: "If a car is diverted, reconsigned or reforwarded on orders placed with the local freight agent or other designated officers after arrival of car at original destination or before placements were unloaded, a charge of $5.00 per car will be made if the car is diverted, reconsigned or reforwarded to a port outside the switching limits of original destination."

An exception to Rule 10 is: Rule 10 shall not apply to "grain, seed, grass, hay or straw held in cars on track for inspection and disposition orders incident thereto at billed destination or at point intermediate thereto."

Upon delivery of the cars to Anoka, the Short-Haul Railroad has assessed the $5.00 charge under Rule 10 as the disposition orders were a reconsignment.

Farmer Brown paid the additional assessment under protest and has brought an action in the appropriate Federal Court to recover the excess charges levied by the Short-Haul Railroad. The parties stipulate that the cars were placed in the switching yards at Willmar, Minnesota, for inspection; that the disposition orders required the movement of the cars to a town more than 100 miles from Willmar, which was well outside of the switching limits of the Willmar yards; that the rate charge of $5.00 per car for reconsignment is a fair and reasonable rate; and that the only matter in contention is whether the order for reconsignment after inspection was a disposition order incident to consignment.

The Short-Haul Railroad moves the court to invoke the doctrine of "primary jurisdiction" and require a resort to the ICC prior to judicial determination of the matter in controversy.

How should the court rule on the motion of Short-Haul Railroad and why?
4. Happy Charlie Covington, a 55-year old civilian seaman, employed by the Army Transportation Service on an LST, docked at Anchorage, Alaska, went ashore to a small establishment named "Virgin's Repose" operated by a retired entrepreneur from the San Francisco waterfront known as "Short Time". Happy spent an evening consuming Iceburgs, a drink concocted from potent liquors brewed by a local Eskimo tribe. At about 2:00 A.M. on Friday, 13 January, 1965, Happy Charlie kissed his hostess goodbye and, with a medium size bundle under his arm, approached the entrance to the dock for the purpose of going aboard his ship.

This entrance was guarded by a checkpoint, which consisted of a sentry shack with a guard on duty. When Happy Charlie approached the checkpoint, he was met by Pvt. Ivorydome, who was the military guard on duty. Ivorydome had completed basic military training and advanced training at the military police school where he had qualified as an expert with the pistol on the range. Pvt. Ivorydome had been instructed to let none of the members of the ship's crew go on the dock carrying intoxicating beverages. On the night in question, he had been given special orders to be on the alert for seamen approaching the dock with whisky as Happy Charlie had made numerous port calls in the Alaska area and his reputation was well known. Happy Charlie, with the package under his arm as he approached the guard hut, was stopped and questioned by Pvt. Ivorydome, and Happy told him the package contained laundry. Ivorydome told Happy Charlie it would be necessary to investigate the package and for him to see Happy Charlie's identification papers. At this point, the phone in the guard shack rang, and Ivorydome stepped inside and answered it. While so engaged, he looked out and saw Happy Charlie running toward his ship. Ivorydome immediately gave chase, calling upon Happy Charlie on three occasions to halt. When Ivorydome had closed the gap separating the two from 300 to 45 feet, he drew his revolver and fired two shots into the ground, again calling upon Happy Charlie to halt. Happy Charlie continued to run, and Ivorydome thereupon aimed his gun at Happy Charlie and fired two shots, both of which hit Happy Charlie, resulting in his instantaneous death. Ivorydome carried a night stick with him in addition to his revolver.

An action is brought by Happy's executors under the Federal Tort Claims Act for the death. At the conclusion of the trial of the matter, how should the Court rule on the Government's defense of sovereign immunity, and why?

5. Entertainment Unlimited, Inc. is engaged in, among other things, the sale and distribution of alcoholic beverages, and has conducted its business at premises in North City and in South City, towns separated by a distance of 150 miles, and licensed under two liquor licenses. On September 11, 1965, Entertainment Unlimited, Inc., and its president, Dudley Doright, pleaded guilty to an information in the U. S. District Court, charging in ten separate counts, sales of whisky from its establishment in North City for sums in excess of the ceiling prices promulgated by the FPA, a Federal administrative agency. Upon their pleas of guilty, the corporation and its president were jointly and severally sentenced to pay a fine of $20,000.00 and Doright, the president, was sentenced to six months in jail, the execution of this jail sentence being suspended.

The corporation on 1 December, 1965, made application for renewal of its license in South City for a five-year term, which application was acted upon by the Alcoholic Beverage Control Commission, and the license was reissued for a five-year period.

After renewal of the license, Entertainment Unlimited, Inc. remodeled their place of business in South City, imported a bevy of buxom waitresses and invested heavily in pasties for the waitresses to wear, the pasties
being in souvenir form, which could be plucked from the buxom belles and retained by the customers as sales incentive. Entertainment Unlimited, Inc. was doing a ripping business the first week it opened its doors at its recently remodeled South City location.

Commission

The ABC/nmv learns of the action against the licensee in North City, and after notice and hearing, has revoked the license of Entertainment Unlimited, Inc. in South City and in North City, pursuant to this provision of statute:

"A license may be revoked for any of the following causes:

Violation of any provision of the Alcohol Beverage Control Law."

Entertainment Unlimited, Inc. brings this action in the appropriate court for judicial review of the revocation of the license in South City, stipulating that the activity to which they had pleaded guilty in North City was a violation of the ABC Law and they do not contest the revocation of the North City license. Entertainment Unlimited, Inc. alleges that the granting of the South City license for a five-year term was exjudicata and the license may not now be revoked for a violation which occurred in a prior licensing period and prior to the issuance of the license now sought to be revoked.

How should the Court rule, and why?

6. The Federal Security Administrator, after hearing, has issued an order allowing the Vitamin B content of oleomargarine to be reinforced by synthetic as well as natural sources of Vitamin B, without indicating on the label the source of the reinforcing vitamin, but containing merely the designation, "Vitamin B added." Mrs. D. Bottom is president of the local Health Food Society, which organization is dedicated to the elimination of all synthetic food from human diets. (Incidentally, her husband is a dealer in fish oil, which is presently the primary source of Vitamin B for reinforcing oleomargarine.) Mrs. D. Bottom seeks judicial review in the appropriate court to set aside the order of the Administrator, asserting that the order is not supported by sufficient evidence to show that it will promote honesty and fair dealing in the interests of consumers of oleomargarine, and that she and the members of her family are consumers, and prospective consumers of oleomargarine and that the inclusion of any harmful ingredients therein which will make, or which may make, the oleomargarine unwholesome and detrimental to the health of a human being, will adversely affect and harm Mrs. D. Bottom and the members of her family.

The Government attorneys have filed motions to dismiss the action on the grounds that Mrs. D. Bottom lacks the standing necessary to challenge this order.

How should the Court rule, and why?