

CIVIL AERONAUTICS BOARD ET AL. v. AMERICAN
AIR TRANSPORT, INC. ET AL.

CERTIFICATE FROM THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT.

No. 126. Certificate dismissed October 20, 1952.

A certificate of the Court of Appeals certifying to this Court, under 28 U. S. C. § 1254 (3), questions concerning the validity of a regulation of the Civil Aeronautics Board is dismissed on the authority of cases cited in the opinion; and an application of the Board for an order requiring the Court of Appeals to send up the entire record, thus bringing up "the entire matter in controversy" for decision, is denied. Pp. 4-5.

The United States District Court for the District of Columbia enjoined enforcement of a regulation of the Civil Aeronautics Board unless and until plaintiffs were afforded "a full and fair evidentiary hearing with respect thereto." See 98 F. Supp. 660. On appeal to the United States Court of Appeals for the District of Columbia Circuit, three judges were unable to agree on a disposition of the case and certified to this Court questions concerning the validity of the regulation. The Civil Aeronautics Board applied to this Court under Rule 37 (2) of the Rules of this Court for an order requiring the Court of Appeals to send up the entire record. *Certificate dismissed and order denied*, pp. 4-5.

Solicitor General Perlman and Emory T. Nunneley, Jr.
for the Civil Aeronautics Board.

PER CURIAM.

The certificate is dismissed. *Labor Board v. White Swan Co.*, 313 U. S. 23 (1941); *Lowden v. Northwestern National Bank & Trust Co.*, 298 U. S. 160 (1936); *White*

v. Johnson, 282 U. S. 367 (1931); *United States v. Union Pacific R. Co.*, 168 U. S. 505 (1897).

The Civil Aeronautics Board has applied to this Court for an order requiring the Court of Appeals to send up the entire record. To grant such an application would bring "the entire matter in controversy" before the Court for decision. 28 U. S. C. § 1254 (3).

Since the certificate must be dismissed, the Court should not exercise its discretionary power to bring up "the entire matter in controversy" for review. See *Cleveland-Cliffs Iron Co. v. Arctic Iron Co.*, 248 U. S. 178 (1918). Perhaps the Court of Appeals may now wish to hear this case *en banc* to resolve the deadlock indicated in the certificate and give full review to the entire case. This Court does not normally review orders of administrative agencies in the first instance; and the Court does not desire to take any action at this time which might foreclose the possibility of such review in the Court of Appeals.

For these reasons the Board's application is denied.

MR. JUSTICE DOUGLAS dissents.