

Per Curiam.

WILLIS SHAW FROZEN EXPRESS, INC., v.  
UNITED STATES ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF ARKANSAS.

No. 201. Argued April 23, 27, 1964.—Decided May 4, 1964.

The District Court affirmed an order of the Interstate Commerce Commission (ICC) granting appellant's common carrier application under the grandfather clause of the Transportation Act of 1958 to transport certain frozen seasonal agricultural products but substantially curtailing its prior operations. *Held*: The ICC should reconsider in light of the carrier's status and ability to perform, and the transportation characteristics and marketing pattern of the products. *United States v. Carolina Freight Carriers Corp.*, 315 U. S. 475, 482-489.

Reversed and remanded.

*A. Alvis Layne* argued the cause for appellant. With him on the brief was *John H. Joyce*.

*Stephen J. Pollak* argued the cause for the United States et al. With him on the brief were *Solicitor General Cox*, *Assistant Attorney General Orrick*, *Lionel Kestenbaum*, *Robert W. Ginnane* and *Fritz R. Kahn*.

PER CURIAM.

Appellant applied to the Interstate Commerce Commission under the grandfather clause of the Transportation Act of 1958, § 7 (c), 72 Stat. 573, 49 U. S. C. § 303 (b)(6), to transport as a common carrier over irregular routes frozen fruits, berries, and vegetables, and frozen seafoods and poultry when transported with such frozen fruits, berries, and vegetables. The Commission granted a certificate which substantially curtailed appellant's prior operations. 89 M. C. C. 377. The District Court affirmed without opinion.

We think *United States v. Carolina Freight Carriers Corp.*, 315 U. S. 475, requires reversal of the judgment and

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a remand to the Commission for reconsideration in light of appellant's status and performance as a common carrier, the transportation characteristics and marketing pattern of these seasonal agricultural products, and the demonstrated ability of appellant to perform the services. *Id.*, at 482-489.

*Reversed and remanded.*

MR. JUSTICE HARLAN, MR. JUSTICE STEWART and MR. JUSTICE WHITE dissent, agreeing with the three-judge District Court that the Commission correctly employed the statutory standards prescribed by Congress. "The precise delineation of the area or the specification of localities which may be serviced has been entrusted by the Congress to the Commission." *United States v. Carolina Freight Carriers Corp.*, 315 U. S. 475, 480. See also *Alton R. Co. v. United States*, 315 U. S. 15, 22-23.