Title: Henderson v. U.S.

Source: ***American Decades Primary Sources***. Ed. Cynthia Rose. Vol. 6: *1950-1959*. Detroit: Gale, 2004. p273-276.

Document Type: Case overview

Henderson v. U.S.

Supreme Court decision

By: Harold Burton

Date: June 5, 1950

Source: Burton, Harold. *Henderson v. United States*, 339 U.S. 816. Available online at http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=339&invol=816; website home page: http://www.findlaw.com (accessed March 3, 2003).

About the Author: Harold Burton (1888–1964), a native of Boston, received his law degree from Harvard. He later moved to Ohio and became mayor of Cleveland. He served as senator from Ohio from 1941 to 1945. Even though he was a Republican, he was appointed to the Supreme Court by President Harry S. Truman (a Democrat). He retired in 1958 for health reasons.

Introduction

When slavery was abolished by the Thirteenth Amendment, racial discrimination did not end with it. After the Civil War (1861–1865) and the ensuing Reconstruction Era (when the defeated Southern states reorganized without slavery but with a federal mandate for equal rights for all citizens), Southern whites regained power and imposed a system of segregation throughout the South with Jim Crow laws. Schools, courtrooms, theaters, and railroads were all segregated. The U.S. Supreme Court put its stamp of approval upon this practice in 1896 in *Plessy v. Ferguson,* which allowed separate facilities as long as they were equal. The equality requirement, however, was not regularly met.

In most railroad cars in the early part of the twentieth century, there were no dining facilities for African Americans. In the 1930s and 1940s, public pressure forced the railroads to provide some dining facilities, and the carriers set up one or two curtained-off tables for African Americans—the only place they were allowed to eat, regardless of how many needed to be served. Very often "white" tables sat empty while African Americans went hungry, as their dining tables were occupied throughout the dinner hours. On May 17, 1942, Elmer Henderson, an African

American first-class passenger on the Southern Railroad, was denied dining car service because white passengers were using the tables set aside for serving African American passengers. There was a seat available at those tables, but Henderson was offered dinner at his Pullman seat and declined service in the dining car. Henderson hired an attorney and challenged the Interstate Commerce Commission for its approval of railroad segregation policies. The case was taken to the Supreme Court and was notable because the solicitor general of the United States took the unique step of appearing before the Supreme Court to argue against "separate but equal" segregation policies.

Significance

At stake in the *Henderson* case was not only the violation of the Interstate Commerce Act, which prohibits undue racial discrimination on railroads, but also the Supreme Court's ruling in *Plessy v. Ferguson,* which held that "separate but equal" segregation policies were constitutional. The Supreme Court in *Henderson* ruled in favor of African American railroad passengers, holding that the seating practice in dining cars violated the *Interstate Commerce Act.* The Court did not rule in this case on the constitutionality issue. This followed a decision four years earlier in which a Virginia law requiring segregation on interstate bus routes was held to be unconstitutional. In *Mitchell v. U.S.* (1941) the Court ruled that the ICC was in violation of the act when a Pullman seat was denied to a first-class African American passenger, although seats were available, because the seats reserved for African American passengers were occupied. The Interstate Commerce Commission followed up these court rulings by ordering, in 1955, the desegregation of interstate buses and trains and bus and train facilities. These orders, though, were not always enforced, and President Dwight D. Eisenhower's administration (served 1953–1961) did not give a high priority to the promotion of civil rights.

In the early 1960s, sit-ins and freedom rides drew attention to the continuing segregation in the South, and President John F. Kennedy (served 1961–1963) sent federal marshals to escort the freedom riders. Kennedy proposed civil rights legislation, which, after his assassination, became the *Civil Rights Act of 1964.* Massive civil rights protests, led by Martin Luther King Jr. and others, kept attention on the issue as well. The 1964 act mandated desegregation in all public accommodations and went a long way toward desegregating the South.

Primary Source: Henderson v. U.S. [excerpt]

SYNOPSIS: Justice Harold Burton surveys the Southern Railway Company's practices in segregating its dining cars. He holds that the Supreme Court does Page 274 | Top of Article have jurisdiction over this matter. It is unconstitutional to deny Henderson a seat in the dining car because he is an African American.

Mr. Justice Burton delivered the opinion of the Court.

The question here is whether the rules and practices of the Southern Railway Company, which divide each dining car so as to allot ten tables exclusively to white passengers and one table exclusively to Negro passengers, and which call for a curtain or partition between that table and the others, violate 3 (1) of the Interstate Commerce Act. That section makes it unlawful for a

railroad in interstate commerce "to subject any particular person … to any undue or unreasonable prejudice or disadvantage in any respect whatsoever …" We hold that those rules and practices do violate the Act.

This issue grows out of an incident which occurred May 17, 1942. On that date the appellant, Elmer W. Henderson, a Negro passenger, was traveling on a first class ticket on the Southern Railway from Washington, DC, to Atlanta, Georgia, en route to Birmingham, Alabama, in the course of his duties as an employee of the United States. The train left Washington at 2 p.m. At about 5:30 p.m., while the train was in Virginia, the first call to dinner was announced and he went promptly to the dining car. In accordance with the practice then in effect, the two end tables nearest the kitchen were conditionally reserved for Negroes. At each meal those tables were to be reserved initially for Negroes and, when occupied by Negroes, curtains were to be drawn between them and the rest of the car. If the other tables were occupied before any Negro passengers presented themselves at the diner then those two tables also were to be available for white passengers, and Negroes were not to be seated at them while in use by white passengers. When the appellant reached the diner, the end tables in question were partly occupied by white passengers but at least one seat at them was unoccupied. The dining-car steward declined to seat the appellant in the dining car but offered to serve him, without additional charge, at his Pullman seat. The appellant declined that offer and the steward agreed to send him word when space was available. No word was sent and the appellant was not served, although he twice returned to the diner before it was detached at 9 p.m.

In October, 1942, the appellant filed a complaint with the Interstate Commerce Commission alleging especially that the foregoing conduct violated 3 (1) [Image Omitted: adps_0001_0006_0_img1317.jpg]
Supreme Court Justice Harold Burton. © BETTMANN/CORBIS. REPRODUCED BY PERMISSION.

View PDF
of the Interstate Commerce Act. Division 2 of the Commission found that he had been subjected to undue and unreasonable prejudice and disadvantage, but that the occurrence was a casual incident brought about by the bad judgment of an employee. The Commission declined to enter an order as to future practices.… A three-judge United States District Court for the District of Maryland, however, held that the railroad's general practice, as evidenced by its instructions of August 6, 1942, was in violation of 3 (1). Accordingly, on February 18, 1946, it remanded the case for further proceedings.… Effective March 1, 1946, the company announced its modified rules which are now in effect. They provide for the reservation of ten tables, of four seats each, exclusively and unconditionally for white passengers and one table, of four seats, exclusively and unconditionally for Negro passengers. Between this table and the others a curtain is drawn during each meal.

On remand, the full Commission, with two members dissenting and one not participating, found that the modified rules do not violate the Interstate Commerce Act and that no order for the future was necessary.… The appellant promptly instituted the present proceeding before the District Court, constituted of the same three members as before, seeking to have the Commission's order set aside and a cease and desist order issued.… With one

member dissenting, the court sustained the modified rules on the ground that the accommodations are adequate to serve the average number of Negro passengers and are "proportionately fair." … The case is here on direct appeal.… In this Court, the United States filed a brief and argued orally in support of the appellant.

It is clear that appellant has standing to bring these proceedings. He is an aggrieved party, free to travel again on the Southern Railway. Having been subjected to practices of the railroad which the Commission and the court below found to violate the Interstate Commerce Act, he may challenge the railroad's current regulations on the ground that they permit the recurrence of comparable violations.…

The material language in 3 (1) of the Interstate Commerce Act has been in that statute since its adoption in 1887.… From the beginning, the Interstate Commerce Commission has recognized the application of that language to discriminations between white and Negro passengers.… That section recently was so applied in Mitchell v. United States, supra.

The decision of this case is largely controlled by that in the Mitchell case. There a Negro passenger holding a first-class ticket was denied a Pullman seat, although such a seat was unoccupied and would have been available to him if he had been white. The railroad rules had allotted a limited amount of Pullman space, consisting of compartments and drawing rooms, to Negro passengers and, because that space was occupied, the complainant was excluded from the Pullman car and required to ride in a second-class coach. This Court held that the passenger thereby had been subjected to an unreasonable disadvantage in violation of 3 (1).

The similarity between that case and this is inescapable. The appellant here was denied a seat in the dining car although at least one seat was vacant and would have been available to him, under the existing rules, if he had been white. The issue before us, as in the Mitchellcase, is whether the railroad's current rules and practices cause passengers to be subjected to undue or unreasonable prejudice or disadvantage in violation of 3 (1). We find that they do.

The right to be free from unreasonable discriminations belongs, under 3 (1), to each particular person. Where a dining car is available to passengers holding tickets entitling them to use it, each such passenger is equally entitled to its facilities in accordance with reasonable regulations. The denial of dining service to any such passenger by the rules before us subjects him to a prohibited disadvantage. Under the rules, only four Negro passengers may be served at one time and then only at the table reserved for Negroes. Other Negroes who present themselves are compelled to await a vacancy at that table, although there may be many vacancies elsewhere in the diner. The railroad thus refuses to extend to those passengers the use of its existing and unoccupied facilities. The rules impose a like deprivation upon white passengers whenever more than 40 of them seek to be served at the same time and the table reserved for Negroes is vacant.

We need not multiply instances in which these rules sanction unreasonable discriminations. The curtains, partitions and signs emphasize the artificiality of a difference in treatment which serves only to call attention to a racial classification of passengers holding identical tickets and using the same public dining facility.… They violate 3 (1).

Our attention has been directed to nothing which removes these racial allocations from the statutory condemnation of "undue or unreasonable prejudice or disadvantage.…" It is argued that the limited demand for dining-car facilities by Negro passengers justifies the regulations. But it is no answer to the particular passenger who is denied service at an unoccupied place in a dining car that, on the average, persons like him are served. As was pointed out in Mitchell v. United States, …"the comparative volume of traffic cannot justify the denial of a fundamental right of equality of treatment, a right specifically safeguarded by the provisions of the Interstate Commerce Act." …

That the regulations may impose on white passengers, in proportion to their numbers, disadvantages similar to those imposed on Negro passengers is not an answer to the requirements of 3 (1). Discriminations that operate to the disadvantage of two groups are not the less to be condemned because their impact is broader than if only one were affected.…

Since 3 (1) of the Interstate Commerce Act invalidates the rules and practices before us, we do not reach the constitutional or other issues suggested.

The judgment of the District Court is reversed and the cause is remanded to that court with directions to set aside the order of the Interstate Page 276 | Top of Article Commerce Commission which dismissed the original complaint and to remand the case to that Commission for further proceedings in conformity with this opinion.

It is so ordered.

Mr. Justice Douglas concurs in the result.

Mr. Justice Clark took no part in the consideration or decision of this case.

Further Resources

BOOKS

Berry, Mary Frances. *Stability, Security, and Continuity: Mr. Justice Burton and Decision-making in the Supreme Court, 1945–1958.* Westport, Conn.: Greenwood Press, 1978.

Urofsky, Melvin I. *Division and Discord: The Supreme Court Under Stone and Vinson, 1941–1953.* Columbia: University of South Carolina Press, 1997.

PERIODICALS

Atkinson, David N. "American Constitutionalism Under Stress: Mr. Justice Burton's Response to National Security Issues." *Houston Law Review* 9, no.1, September 1971, 271–288.

Forrester, Ray. "Mr. Justice Burton and the Supreme Court." *Tulane Law Review* 20, no.1, October 1945, 1–21.

Levy, Claudia. "Elmer Henderson Dies: Integrated Rail Cars." *Washington Post*, July 18, 2001, B-7.

Stout, David. "Elmer Henderson Dies: Father of Major Case." *New York Times*, July 18, 2001.

WEBSITES

"Arguments Before the Court." Reprinted from *The United States Law Week* 18, no. 39, April 11, 1950, 3277. Available online at http://www.law.du.edu/russell/lh/sweatt/uslw/uslw41150.html ; website home page: http://www.law.du.edu (accessed March 4, 2004).

"Racial Justice." American Civil Liberties Union of Florida. Available online at http://www.aclufl.org/body_11.html ; website home page: http://www.aclufl.org (accessed March 4, 2003).

Source Citation

"Henderson v. U.S." *American Decades Primary Sources*. Ed. Cynthia Rose. Vol. 6: 1950-1959. Detroit: Gale, 2004. 273-276. *Gale Virtual Reference Library*. Web. 24 Aug. 2010.

Document URL
http://go.galegroup.com/ps/i.do?&id=GALE%7CCX3490201117&v=2.1&u=txshracd2543&it=r&p=GVRL&sw=w

Gale Document Number: GALE|CX3490201117