

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

S)))))))))Q
No. 92-4768
S)))))))))Q

GREYHOUND LINES, INC.,

Petitioner,

versus

INTERSTATE COMMERCE COMMISSION AND
UNITED STATES OF AMERICA,

Respondents.

S)))))))))Q
Petition for Review of an Order of the
Interstate Commerce Commission
(MC-F-18505)
S)))))))))Q
(March 14, 1994)

Before JOHNSON, GARWOOD and JOLLY, Circuit Judges.*

PER CURIAM:

Petitioner Greyhound Lines, Inc. (Greyhound) petitions this Court for review of the July 24, 1992, order of respondent Interstate Commerce Commission (ICC) ordering Greyhound to allow intervenor-respondent Bremerton-Tacoma Stages, Inc., d.b.a. Cascade Trailways (Cascade), to remain as Greyhound's tenant in three of

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Greyhound's terminals until August 15, 1992, provided that Cascade pay Greyhound the increased rental Greyhound had previously demanded as a condition of extending the Cascade leases. Cascade had been a tenant at these terminals since 1987, and on July 2 and 16, 1992, had petitioned the ICC to reopen its June 1988 proceeding in which it had approved Greyhound's acquisition of certain assets of Trailways Lines, Inc., asserting that Greyhound's threatened actions concerning the leases was anti-competitive. In its July 24, 1992, order, which Greyhound challenges here, the ICC found that it could not determine from the limited record before it whether or to what extent Greyhound's actions complained of by Cascade were anti-competitive, but determined that Cascade had shown sufficient good cause to warrant the granting of provisional relief. The July 24, 1992, order thus preserved Cascade's access to the terminals for some twenty-one days while the ICC investigated the matter more fully, but during this period required Cascade to pay Greyhound the rental that Greyhound had demanded for such continued access.

On August 14, 1992, the ICC, after investigating, held that Greyhound was not acting anti-competitively, that it was not required to afford Cascade permanent access to the facilities, that Greyhound was free to terminate the agreements under which Cascade had been afforded access, and that the terms Greyhound had offered Cascade for renewed access were not improper. Cascade petitioned the ICC for reconsideration, and the ICC denied that request on March 4, 1993. So far as we are aware, no appeal has been taken by

Cascade from the March 4, 1993, order.

We dismiss Greyhound's petition for review as moot. The order here under review is that of July 24, 1992. That order is in substance like a temporary injunction pending trial on the merits. The merits were determined in Greyhound's favor by the August 14, 1992, and March 4, 1993, orders of the ICC. The July 24, 1992, order has long ceased to have any force or effect. Greyhound received the full rental it had been willing to accept for the space in the terminals for the brief twenty-one days that the July 24, 1992, order was effective. Judgment in favor of Greyhound that the July 24, 1992, order was improper would not afford Greyhound any relief. We do not view this as a "capable-of-repetition-yet-evading-review" situation, because review in other cases will not be evaded in the event that the ICC ultimately rules against Greyhound or forces it to allow continued temporary access on terms it was unwilling to extend. Nor is there any indication of the likelihood of future similar disputes between Cascade and Greyhound.

Accordingly, the petition for review is

DISMISSED AS MOOT.