

NEVADA FATS AND THE GANG OF THREE: THE INTERSTATE COMMERCE COMMISSION UNDER THE CHAIRMANSHIP OF REESE H. TAYLOR, 1981-1985

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ABSTRACT

Just after the passage of the Staggers Rail Act and Motor Carrier Act of 1980, which largely deregulated the railroad and trucking industries respectively, Ronald Reagan, a free-market advocate, was elected President. He appointed Reese H. Taylor, as Chairman of the Interstate Commerce Commission. Taylor, who became known as "Nevada Fats", and who attempted to slow the deregulation of transportation, spent his tenure at the ICC at odds with the other Commissioners, notably the "Gang of Three".

BACKGROUND

The Interstate Commerce Commission (ICC) was established by the Act To Regulate Commerce of 1887. The primary mission of the ICC, initially, was to protect the public from monopoly practices of the railroads. Railroad abuses included rebates to large shippers and government officials, and discriminations against smaller shippers, especially those in communities that did not have competitive service. The railroads found many loopholes in the law. These were eventually closed by a series of legislative acts passed between 1903 and 1912.

Ironically, soon after the laws against railroad abuses were strengthened by increasing the ICC's powers, competition from the growing motor carrier industry, as well as overcapacity from many ill-advised small branch lines, had weakened the railroads' monopoly and financial positions. During the First World War the railroads were nationalized and run by the federal government under the United State Railroad Administration. After the War there was much controversy on whether or not the railroads were to remain publicly owned.

The decision to return the railroads to private ownership was accompanied by more regulations. These, however, were designed to help the railroads out of their financial problems, rather than to protect the public. The most notable provision of the Transportation Act of 1920, along these lines, was the one giving the ICC the power to regulate minimum as well as maximum rates, to, in effect, protect the railroads from themselves.

By 1935, the trucking industry had grown to the point where it was a significant force in the carriage of goods. Many people found truck driving an alternative to unemployment during the Depression. With drivers charging rates that did not fully cover costs, established companies, and the railroads, among others, requested that the trucking industry be regulated. This was accomplished with the Motor Carrier Act of 1935. Again, the solution to transportation problems was to increase regulation.

The Interstate Commerce Commission's powers increased again with the regulation of domestic water carriage in 1940. By the late 1970's, the ICC was among the most powerful and respected agencies in Washington. Its reports were models of English, and were imitated widely by others. Almost alone among Washington's establishment, it never had a major scandal. But its power was about to erode.

The Deregulation Movement

Beginning in the late 1950's transport economists started calling for the deregulation of transportation on the grounds that it was inefficient and led to artificially high rates. The ICC was, itself, termed the cartel for the industry and a captive of those it was supposed to be regulating. Eventually members of Congress and various presidents joined the movement for deregulation. However, nothing substantial was ever enacted. The Commission, itself, as could be expected, resisted any erosion of its powers, and any opportunities to lessen regulation were ignored or thwarted. The Railroad Revitalization and Regulatory Reform (4R) Act, for example, although passed largely to address the problems of the northeastern railroads, contained provisions to lessen controls on some rail rates unless it was found that the railroads had "market dominance" of the traffic in question. The ICC, given the charge to define market dominance, did so, in such a way, that practically all shipments by rail were deemed market dominant.

The Carter Administration

The ICC, in a reversal of philosophy, began administratively deregulating transportation in 1978. It began by exempting certain rail traffic (predominantly fresh produce) from rate regulation, and allowing the railroads to negotiate contract rates with their customers. Under the 1887 Act, all rail rates had to be published and adhered to, and the railroads, unlike other modes, had been forbidden to use contract rates. These changes were accomplished under a provision of the 4R Act which allowed the exemption of any rail traffic from regulation, if the Commission deemed that continued regulation served little or no useful public purpose and was a burden on persons or commerce (U.S. Congress 1976). In addition to outright exempting traffic, the Commission instituted expedited procedures for rail abandonment and mergers, and simplified rate tariffs and tariff filings. There was no similar act that allowed lessened regulation for motor carriers. However, the Commission did relax its standards for entry and greatly increased competition in this way.

The administrative lessening of regulation by the agency responsible for that regulation is probably unique in history. Organizations very rarely, if ever, voluntarily relinquish their powers. In this case, President Jimmy Carter had appointed people to the ICC who were sympathetic to deregulation, and he then instructed them to actively consider ways to accomplish it (Stone 1993).

Among Carter's greatest achievements as president were the passage of the transportation deregulation acts. Air transportation was deregulated first, with air freight in 1977 and passenger service in 1978. The Motor Carrier Act and Staggers Rail Act were both passed in 1980 (U.S. Congress 1980a, 1980b). Some pundits have suggested that these pieces of legislation were necessary to catch up with the reality of the situation.

THE REAGAN PRESIDENCY

The events described above took place under a President who was supposedly a Liberal Democrat. With the election of Ronald Reagan in 1980, national policies were to take a sharp turn to the right. Reagan espoused the free-market solution to economic problems, and transportation was no exception. The ICC continued to lessen regulation in several ways.

Some changes were mandated by the Staggers and Motor Carrier Acts, but others were the result of ICC deregulatory actions. Many rates, including nearly two-thirds of rail rates, were freed from maximum rate regulation. In addition, the railroads were allowed to reduce rates more easily to meet competition. Motor common carriers were allowed to negotiate contract rates as the railroads had since 1978. The procedure for changing rates was simplified and the notice period was shortened. Anti-trust exemptions for both railroads and motor carriers, because of the new rate-making freedom, were lessened (U. S. Congress, 1980a, 1980b; Interstate Commerce Commission 1982).

Abandonment and merger procedures were simplified and provisions for expediting decisions were implemented. Some of the self-imposed deadlines were even shorter than those mandated by the Staggers Act (Interstate Commerce Commission 1982, 1983). These particular issues, especially abandonment, tend to be more important for railroads than for motor carriers. If a motor carrier abandons a route, another carrier can easily provide service over it, or a new company can be certified to provide the service. But if a rail line is abandoned, the track is likely to be pulled up and service will probably never be resumed.

Trailer on flatcar (TOFC or Piggyback) traffic was deregulated in a series of Commission decisions from 1981 to 1984 (Interstate Commerce Commission-1982, 1983, 1985). In an independent action, the ICC (1984), in late 1982, allowed rail ownership of competing carriers in other modes for the first time since it was outlawed by the Panama Canal Act of 1912. Earlier in 1982, the Commission (1983) voted to deregulate those trackage rights not part of a merger. Trackage rights allow one railroad to run its trains on another railroad's tracks. The rates charged for this privilege had been regulated by the ICC because competitors, in effect, combining facilities, could be considered an anti-trust violation. In 1984 the ICC (1985) deregulated most boxcar traffic.

From these events one could infer that the Commission continued the deregulatory philosophy pretty much unchanged from the Carter years. However, while the general results of the decisions were similar, the process was very rocky.

The Make-Up of the Commission

On election day 1980, there were six sitting ICC Commissioners. These were: Chairman Darius W. Gaskins, who, along with his immediate predecessor, Daniel A. O'Neal, Jr., had guided the administrative deregulation of the Carter Administration; fellow Democrats Marcus Alexis and Reginald E. Gilliam; and Republicans Robert C. Gresham, Charles L. Clapp, and Thomas A. Trantum (Interstate Commerce Commission 1982). Shortly after the inauguration of Ronald Reagan, on February 1, 1981, Chairman Gaskins resigned, and Marcus Alexis, the Vice-Chairman was appointed Chairman. [Gaskins would have been replaced as Chairman with the election of the new President, but he had the option of remaining on the Commission to serve out the remainder of his term.] However, a new Chairman would be forthcoming very shortly. Reese H. Taylor was nominated by President Reagan on May 5, confirmed by the Senate on June 16, and sworn into office on June 25 (Interstate Commerce Commission 1982).

Taylor's appointment was controversial. Drew Lewis, the Secretary of Transportation, had supported former Consolidated Rail Corporation (Conrail) general counsel, and fellow Pennsylvanian, John F. DePodesta. Lewis favored appointing a railroader because he saw Conrail as the most difficult problem facing his Department. He felt that it was vital to have an ICC Chairman who knew the Northeast and the problems of mergers and track abandonment, in order to help Conrail become profitable and return the railroad to the private sector (Dorsey 1981).

On the other hand, Reagan's good friend, Senator Paul Laxalt, from Nevada was pushing for Reese Taylor. Taylor was a longtime Reagan backer, having been his campaign chairman in Nevada in both 1976 and 1980. He was also a former law partner of Laxalt, and William French Smith, Reagan's first Attorney General (Wilner 1993a). Upon assuming the Chairmanship, Taylor fired or dispersed the avowed deregulators on the staff and brought in Paul S. Dempsey who was strongly against the deregulation of transportation (Business Week 1981b). Dempsey, a professor of transportation law and Director of the Transportation Law Program at the University of Denver, had written (1980) that deregulation proposals used "arguments which defy logic or consistency." He termed Carter's decision to "pack the ICC with fervent deregulators" an "ominous threat to the existing regulatory structure." In another article, Dempsey (1981) had said that the ICC used too much latitude in implementing the Motor Carrier Act of 1980 and should be restricted in its implementation of deregulation.

Taylor's Philosophy

There is little doubt that Reese Taylor came into office with the intent to stop, or at least slow the deregulatory process. He was supported for the position by the American Trucking association and the Teamsters Union, both of which were distressed over the rush to deregulate the motor carrier industry and wanted an ICC Chairman with less zeal for deregulation (Business Week 1981a).

Five days after Taylor assumed the Chairmanship, Marcus Alexis resigned from the Commission. Thomas Trantum resigned a little over a month later, on July 31. Both Alexis and Trantum were economists and ardent deregulators who had voted consistently with Darius Gaskins when he was Chairman. Bennett Whitlock, President of the American Trucking Associations, said about the resignations that he was "Dee-lighted, Dee-lighted" (Recio 1981).

The situation, ironically, was that a conservative Republican President appointed a Chairman of the ICC who wanted to slow down or undo deregulation that had been started by a moderate Democrat. The most likely explanation is that personal contacts and political patronage and debts (to the Teamsters) overcame any commitment to the principle of reducing government and "getting it off the peoples' backs," about which Reagan spoke so often.

Due to the three resignations, there were only four Commissioners left by September 30, 1981. Jimmy Carter had been out of the White House less than a year and only one of his appointees, Gilliam, who was also the only Democrat, remained. [Clapp and Gresham had been appointed by Nixon (Interstate Commerce Commission 1982)]. Reagan had nominated two replacement Commissioners, Malcolm M.B. Sterrett and Frederic N. Andre, (Business Week 1981b) but their confirmations were held up in the Senate because they were Republicans and the Commission was already unbalanced in terms of party affiliation. Finally, Reagan appointed J. J. Simmons, a Democrat, and all three nominees were confirmed in the Spring of 1982. Heather J. Gradison, Reagan's fifth appointee, joined the Commission on June 18, 1982 (Interstate Commerce Commission 1983).

In the meantime, Charles L. Clapp and Robert Gresham had resigned from the ICC on March 19 and June 18, 1982, respectively. Therefore, as summer 1982 began, there were six Commissioners. Four were Republicans and two were Democrats. Five were Reagan appointees and the other Commissioner, Gilliam, had been appointed by Carter (Interstate Commerce Commission 1983).

In August 1982, legislation was passed reducing the authorized size of the ICC to seven commissioners as of January 1, 1983. It was to be further reduced to five commissioners on January 1, 1986. The rationale of downsizing was that with so much traffic now exempt, there was less for the Commission to do, and therefore it did not have to be as large as it had been. Any commissioners appointed from January 1, 1984 on would have terms of five, rather than the previous seven, years. After January 1, 1986, no more than three seats were to be filled by either political party (Interstate Commerce Commission 1983; Wilner 1993b).

Relationships Among the Commission Members

The ICC, as recounted previously, had, for the most part continued its policy of reducing regulation during the first years of the Reagan Administration. By the end of 1982, five of the six Commissioners were Reagan appointees. Given that most of the Commission's decisions continued the deregulation process, it would be easy to conclude that Reagan appointed commissioners who were in tune with his announced intentions to deregulate America's businesses. However, there was much friction on the Commission and many final votes were split decisions.

Ironically, it was Reagan's first appointee, Chairman Reese Taylor, who created the most controversy. One of Taylor's top priorities on assuming the Chairmanship was to slow the move toward motor carrier deregulation, as discussed above. Taylor wanted to stop the granting of nationwide operating

certificates. The railroads, while not directly affected, were fearful of similar actions for their mode of transportation. Taylor claimed that he was neither a regulator nor a deregulator but only wanted to follow the law, and cited the Interstate Commerce Act as his bible. He described himself as supporting deregulation but wanting to avoid chaos. His avowed intent was to follow the letter of the motor carrier and rail deregulation laws. Taylor criticized former Chairman Darius Gaskins and the Commission members for going beyond the laws. He pointed out that some ICC decisions were being overturned in the courts, and claimed that this was the result of Gaskins not paying attention to due process (Fahrenwald 1981). However, the connection between the Teamsters Union's support of Reagan in the 1980 election and Reagan's first appointee's attempt to slow down motor carrier deregulation (a Teamster priority) is the probable cause for Taylor's attitude. [The Teamsters Union was against deregulation because deregulated carriers were more likely to be non-union.] The fact that Taylor had differing attitudes toward deregulation, depending on the mode involved, makes him even more suspect.

Reese Taylor was not popular in Congress, either, because he was seen as less than enthusiastic about motor carrier deregulation. The Joint Economic Committee concluded that Taylor had abandoned the goal of a freely competitive trucking market and had moved to reverse the progress toward deregulation which had recently been made (Washington Post 1982). It was widely reported that the bill to reduce the number of Commissioners to five was aimed largely at getting rid of the Chairman, and this bill was drafted in the Republican-controlled Senate (Warner 1982). Under the terms of the law Taylor could not be reappointed when his term expired at the end of 1983, because the seat of Reginald Gilliam, a Democrat, was to be eliminated at the end of 1982 in the first reduction. If Taylor were reappointed, the result would be a Commission with four Republicans and only one Democrat (Simmons), a clear violation of the Interstate Commerce Act. Taylor, then, would have to be replaced with a Democrat or an Independent when his term expired, unless another Republican resigned in the meantime.

With the resignations of Reginald Gilliam and J. J. Simmons in February 1983, the Commission was reduced to four members, all Republicans, all Reagan appointees, and all, except for Reese Taylor, avid deregulators (Interstate Commerce Commission 1984). The Commission remained at this size throughout 1983 because the Republican-controlled Senate took no action on Reagan's nominees, Paul Lamboley, a Democrat, and Jane E. M. Holt, an Independent (Rail News Update 1983).

In the meantime, the four sitting Commissioners were making waves. Many of the ICC decisions eliminating various regulations were three to one votes with the three deregulators, Sterrett, Andre and Gradison, known as the "Gang of Three", overriding Chairman Reese Taylor, named by Commissioner Andre as "Nevada Fats" (Wilner 1993a). Taylor had gotten off to a bad start. As mentioned above, he had arrived at the Commission with the avowed purpose of stemming what Daniel O'Neal had started and Darius Gaskins had continued, by as Taylor put it, strictly enforcing the 1980 Acts. Moreover, he was difficult to get along with and unable to achieve consensus positions with the other Commissioners. By the summer of 1985, it had been over a year since the Commissioners had met. They were voting by memo, in violation of Commission regulations, which call for regular meetings on the first and third Tuesdays of the month. Meeting by memo may be efficient, but it isolated the Commissioners during deliberations. Although most ICC decisions during this period were to lessen regulation, there was no explicit plan -- which explains why some decisions came as surprises to observers of the Commission (Conte 1984; Kahn 1987).

In 1984, nominations and confirmations finally put the Commission at its full complement of seven members, as well as its legislatively mandated split of four Republicans and three Democrats, for the first time in years. Two appointments, including Reese Taylor's reappointment, were for a period of only two years to conform with the legislated downsizing of the Commission at the end of 1985 to five Commissioners (Interstate Commerce Commission 1986). On December 31, 1985, Reese Taylor's tenure at the ICC ended and he was replaced as Chairman by Heather Gradison.

CONCLUSIONS

The purpose of this paper has been to point out the unusual combination of appointments to the Interstate Commerce Commission in the first term of the Reagan Presidency. Reese Taylor's philosophy certainly did not fit that of Ronald Reagan concerning the regulation of business. A case could easily be made that Taylor's actions and votes were more in tune with the provisions of the Staggers and Motor Carrier Acts of 1980 than those of the fervent deregulators on the Commission at the time. In fact, notably on the issues of deregulation of boxcar traffic and export coal, the courts overturned the Commission's decisions, vindicating Taylor's negative votes. However, his views and personality were at odds with the other members of the Commission.

The other Commissioners were not blameless, however. Heather Gradison, after she became Chairman of the ICC, was considered very difficult to work with as she adopted a "me versus them" attitude, and the Commission continued to meet by memo. Frederic Andre was an embarrassment. He has been quoted as saying that bribes "are probably one of the clearest instances of the free market at work" (Kahn 1990; Wastler 1989). It was not until George Bush became President and appointed Edward Philbin as Chairman of the ICC to replace Heather Gradison, and Edward M. Emmett to replace Frederic Andre, that the Commissioners began to work together in harmony. Relations with Congress also improved after that.

Historians are just beginning to analyze Ronald Reagan's Presidency. Appointments to the Interstate Commerce Commission are a small part of any presidential administration and it is dangerous to generalize from such a base. However, his record on this is not a good one, no matter whether one favors deregulation of transportation or not. Appointing a Chairman whose personal philosophy differs greatly from that of the President makes little sense. Coupling this appointment with others who cannot get along either philosophically or personally is a good prescription for disaster and an indication that the party involved is not paying attention.

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