

REHNQUIST, C. J., concurring

SUPREME COURT OF THE UNITED STATES

No. 97-679

AMERICAN TELEPHONE AND TELEGRAPH COM-
PANY, PETITIONER v. CENTRAL OFFICE
TELEPHONE, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[June 15, 1998]

CHIEF JUSTICE REHNQUIST, concurring.

The Court concludes that respondent's tortious interference claim is "wholly derivative of the contract claim" and therefore barred by the filed rate doctrine. The Court accepts the Magistrate Judge's finding to that effect, *ante*, at 12, and I agree: the acts of tortious interference asserted against AT&T amount to no more than an intentional refusal to provide services to respondent in an amount or manner contrary to the filed tariff.

I write separately to note that this finding is necessary to the conclusion that respondent's state-law tort claim may not proceed. As the majority correctly states, the filed-rate doctrine exists to protect the "antidiscriminatory policy which lies at 'the heart of the common-carrier section of the Communications Act.'" *Ante*, at 8. Central to that antidiscriminatory policy is the notion that all purchasers of services covered by the tariff will pay the same rate. The filed-rate doctrine furthers this policy by disallowing suits brought to enforce agreements to provide services on terms different from those listed in the tariff. This ensures that the tariff governs the terms by which the common carrier provides those services to its customers.

It is crucial to note, however, that this is all the tariff governs. In order for the filed-rate doctrine to serve its purpose, therefore, it need pre-empt only those suits that seek to alter the terms and conditions provided for in the tariff. This is how the doctrine has been applied in the past. In *Chicago & Alton R. Co. v. Kirby*, 225 U. S. 155 (1912), for example, respondent entered into a contract with petitioner to ship horses from Springfield, Illinois to New York City via a special fast train. The tariff that the petitioner had filed “did not provide for an expedited service, nor for transportation by any particular train.” *Id.*, at 163. The Court ruled that respondent’s suit to enforce the special arrangement could not proceed:

“An advantage accorded by special agreement which affects the value of the service to the shipper and its cost to the carrier should be published in the tariffs, and for a breach of such a contract, relief will be denied, because its allowance without such publication is a violation of the act. It is also illegal because it is an undue advantage in that it is not one open to all others in the same situation.” *Id.*, at 165.

In *Keogh v. Chicago & Northwestern R. Co.*, 260 U. S. 156, 163 (1922), the question was not whether a separate contract could be enforced, but rather whether petitioner could bring an antitrust complaint challenging the rate that respondents had filed in their tariff. The Court ruled that he could not:

“The legal rights of shipper as against carrier *in respect to a rate* are measured by the published tariff. Unless and until suspended or set aside, this rate is made, for all purposes, the legal rate, as between carrier and shipper. *The rights as defined by the tariff* cannot be varied or enlarged by either contract or tort of the carrier.” *Id.*, at 163 (emphasis added).

In this case respondent’s contract claim seeks to enforce

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side arrangements that it made with petitioner. Respondent contends that petitioner promised to provide it with services on terms different from those listed in the tariff. As the above cases make clear, the filed rate doctrine bars such a claim. Respondent's tort claim is entirely derivative of its contractual claim, and the Court is therefore correct in concluding that the doctrine also bars the tort claim.

The tariff does not govern, however, the entirety of the relationship between the common carrier and its customers. For example, it does not affect whatever duties state law might impose on petitioner to refrain from intentionally interfering with respondent's relationships with its customers by means other than failing to honor unenforceable side agreements, or to refrain from engaging in slander or libel, or to satisfy other contractual obligations. The filed rate doctrine's purpose is to ensure that the filed rates are the exclusive source of the terms and conditions by which the common carrier provides to its customers the services covered by the tariff. It does not serve as a shield against all actions based in state law. It is with this understanding that I join the Court's opinion.