Creation of Carrier-Passenger Relationship

W. Reese Hitchens
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The duties of a common carrier to a passenger are much greater than those owed to the public in general. Because of this fact, it is often important to determine just when and how the carrier-passenger relationship is created. The relationship is founded on contract, either express or implied in fact. In this contract, there are two essentials: (a) The undertaking of the person to travel as a passenger, and (b) The acceptance by the carrier of that person as a passenger.

The failure to distinguish between the creation of the relationship and the duties and obligations arising in connection with the relationship, has led some courts into the error of holding that the duties of a carrier to a passenger are founded on contract. If the court means an express

1Moore: Carriers, (2d ed.), volume 2, page 922, states the idea as follows: “The status is a contract relationship which commences when the passenger has put himself at a proper time and place into the care of the carrier with a bona fide intention of being transported, and the carrier has expressly or impliedly received and accepted him as a passenger.” See also Dobie: Bailments and Carriers, page 537; Geiger v. Pittsburgh Ry. Co., 247 Pa. 287; Bricker v. Phila., etc. Ry. Co. 132 Pa. 1; Pennsylvania Railroad Co. v. Price, 96 Pa. 256; Blair v. Philadelphia Rapid Transit Co., 36 Pa. Superior Ct. 319.


3See Todd, Admx. v. Louisville & Nashville R. R. Co., 274 Ill. 201, 113 N. E. 95, L. R. A. 1916 F, 543, where the Illinois court seems to infer that the duties spring from the contract creating the relationship.
contract, it is clearly erroneous. However, it is possible that the statement has reference to the so-called "contracts implied in law". If this is their idea, their error lies in the fact that they are adhering to an early theory of quasi-contracts. In fact, the duties of a common carrier toward a passenger are imposed by law irrespective of any promise or agreement. It is not necessary to employ the fiction of a promise. The duties are in the nature of quasi-contractual obligations arising by virtue of the carrier's calling.

As a general rule, the responsibility of a carrier toward a person as a passenger commences upon the acceptance by the carrier. This acceptance may be (a) an express acceptance of the individual by present assent, or (b) an acceptance, in advance, of any one complying with the carrier's offer. Hence, a person desiring transportation

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4 Delaware, L. & W. R. Co. v. Trautwein, 52 N. J. L. 169, 7 L. R. A. 435; Carroll v. Railroad, 58 N. Y. 126, 17 Am. Rep. 221; Fetter on Carriers of Passengers, section 220. Dean Roscoe Pound, in an article in 25 Harvard Law Review, states the proposition thus: "One who is engaged in a public calling, in addition to the general negative duties resting upon all men, is subject to certain affirmative duties imposed directly by law".

5 Between the years 1673 and 1705, the courts resorted to the fiction of a promise "implied in law" in order to enforce quasi-contractual obligations, the remedy being an action of general assumpsit. At first, the fictitious promise was a necessary element in the declaration of the plaintiff, but naturally enough, proof was not required, since the whole thing was fiction. Today, the courts no longer resort to the fiction, but frankly state that the obligation is imposed directly by law. In brief, we have: First—The relationship created by a contract, express or implied in fact; Second—When the relationship has been established, the law imposes certain specific duties upon the carrier correlative to certain rights existing in the passenger.

6 See Note 1; Thus, a person climbing on the rear bumper of a crowded summer street car and riding thereon is not a passenger unless the evidence in the case shows an acceptance of him as such. Coyne v. Pittsburgh Ry. Co., 239 Pa. 17. The language of the Court in Pitcher v. People's St. Ry., 154 Pa. 560 is: "The Company was entitled to some knowledge of his intention to assume the relation of passenger before being charged with the duty of taking care of him as a passenger."
may become a passenger in either of two ways: (a) by securing the express acceptance of himself as a passenger, or (b) by complying exactly with the terms and conditions of the carrier's offer or "holding out". In either case, the real criterion is acceptance by the carrier. In this connection, it is necessary to distinguish between the case where the plaintiff is suing the carrier as a passenger and the case where he sues as a non-passenger. If a carrier refuses to accept a person as a passenger, that person does not become a passenger. The carrier has merely violated his right to become a passenger—not his right as a passenger. In such a case, the plaintiff's only remedy is an action for damages for wrongful refusal.

With this preliminary discussion in view, we may examine certain classes of cases in which the existence of the carrier-passenger relation has been brought into question.

Payment of Fare

The fact that a person purchases a ticket does not necessarily mean that he is liable for the payment of fare at any definite time. He may ride on that day, or he may redeem the ticket without riding at all. Hence the mere purchase of a ticket does not make one a passenger. It is true that in some cases, the courts have emphasized the fact that a ticket was purchased. However, this is true because in those cases, the purchase was some evidence of a bona fide intent to become a passenger.

Contrary to a popular belief, neither the possession of a ticket nor the payment of fare are absolute essentials to

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the creation of the relationship. Thus, one who rides with the full expectation of paying his way is a passenger. Getting on the carrier's vehicle amounts to an implied tender of fare. The delay of the conductor in collecting does not prevent such person from being a passenger. In other words, a person thus situated is a passenger from the time he enters the vehicle—not from the moment he pays his fare.

**Waiting at Station for a Train**

The relation may arise before any actual transportation. A person intending to ride, in a vehicle before it starts, is a passenger. A person in a waiting room or on the platform, awaiting the arrival of his train is a passenger. But a person on the public street, intending to "catch" a train, is not a passenger merely because of his intent.

**Boarding a Moving Train**

When a train starts away from the station or platform from which it has received passengers, it thereby withdraws the implied offer to persons to become passengers.

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9"The possession of a ticket is not an absolute essential . . . . ; it is merely one element to be considered . . . .", 18 Fed. 221; See also 12 L. R. A. 823, 46 L. R. A. (N.S.) 142, McGill v. Rowland, 3 Pa. 451; Ham v. Del., etc., Canal Co., 142 Pa., 617; Pennsylvania Railroad Co. v. Price, 96 Pa. 256. These authorities do hold, however, that non-payment of fare is a good cause for rescission of the contract of passage.


13Railway v. Smith, 86 Fed. 292: "He (the plaintiff) did nothing to notify any officer or agent of defendant company that he was even a prospective passenger."

Any one attempting to board the train while moving is not a passenger. However, it often happens that a person is successful in getting on the train. Then the question arises as to when that person becomes entitled to the protection of a passenger. The Massachusetts view is that he becomes a passenger when he has passed the danger and has placed himself in the proper place for the carriage of passengers—the seat. Pennsylvania, on the other hand, holds that he becomes a passenger as soon as he reaches the platform in safety. In Sharrer v. Paxson, 171 Pa. 26, plaintiff had attempted to get on a moving train and had reached the platform, when the carrier's servant pushed him off. It was held that plaintiff was a passenger and entitled to the same protection accorded to any other passenger. In Pennsylvania Railroad Co. v. Reed, 60 Fed. 694, a servant of the carrier, while aiding plaintiff to board a moving train, acted negligently so as to injure plaintiff. The carrier was held liable for the injury.

**Boarding Trolley or Omnibus**

The early view was that the relationship began when a person with intent of riding put his foot on the step or his hand on the rail of the vehicle. However, this view has not been followed so closely within recent years. When a car stops and its doors are opened, that amounts to an implied consent to take persons as passengers. The same is true where a carrier stops in response to a signal by the person wishing to ride. Some cases hold that a person intending to board a bus or trolley becomes a passenger

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17See Merrill v. Eastern Railroad, 139 Mass. 238, 1 N. E. 548.

the minute the vehicle slackens its speed in response to a
signal. Other courts say that the relation does not arise
until he actually reaches the vehicle.

Stealing a Ride

One who enters a vehicle without the knowledge or
consent of the carrier, and with the intent to ride to his
destination free of charge, is not entitled to the protection
given to a passenger. He is a trespasser and rides at his
own risk. The same rule applies to a person who, when
his fare is demanded, refuses to pay and remains on the
vehicle by force or threats. Also, any fraud or deceit on
the part of the person riding prevents him from becoming
entitled to the position of a passenger. However, if the
person has boarded the vehicle under a bona fide mistake,
the carrier cannot treat him as a trespasser. Thus, where
plaintiff entered a train and sought transportation on a
limited ticket one hour after the time limit, the court held
that the carrier had overstepped its authority when it
ejected him as a trespasser.

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16 Chicago St. Ry. v. Williams, 140 Ill. 275, 29 N. E. 672; Finkeldy
v. Omnibus Cable Co., 114 Cal. 28, 45 Pac. 996.
20 See 2 L. R. A. 167. This necessarily follows from the fact that
the knowledge or consent of the carrier is an essential to the
establishment of the relationship. See 25 L. R. A. 700.
21 Toledo, etc. & W. RR. v. Beggs, 85 Ill. 80.
a train by fraud, stealth, without the payment of fare, takes upon
himself all the risks of the ride, and if injured by an accident hap-
pening to the train, not due wanton recklessness or wilfullness of
the company, he cannot recover.” For other examples, see Fitzmaurice
23 Arnold v. Pennsylvania Railroad, 115 Pa. 135. The court states
that the plaintiff is not conclusively presumed to be a trespasser, but
should be given an opportunity to show that his act was the result of
an innocent mistake. In this case, plaintiff, after being told by the
conductor of his mistake, offered to pay his fare, under protest. The
conductor refused this offer and ejected the plaintiff at the first stop.
Riding as Employee of Carrier

An employee riding as a part of his work is not a passenger. But if he rides to and from his work, or if his wages are reduced proportionately because he rides, then he is given the same protection accorded to any other passenger.

Riding as Employee of Company Other Than Carrier

In the absence of any statute, such persons are not usually considered as passengers. Pennsylvania courts have held that postal clerks, servants of sleeping car companies, and news agents are not passengers. Insofar as suits for injuries or wrongful death are concerned, the matter is regulated in Pennsylvania by statute. The Act of April 4, 1868, P.L. 58 provides that when any person shall sustain personal injuries or loss of life while lawfully engaged or employed on or about the roads, works, depots, and premises of a railroad company, or in or about any train or car therein or thereon, of which company such person is not an employee, the right of action and recovery in all such cases against the company shall be only as would exist if such person were an employee.

Riding in Place not Intended for Passengers

A person riding in a place not intended for passengers does not thereby accept the carrier's invitation. For in-

26Martin v. Pennsylvania Railroad, 195 Pa. 499; Pennsylvania Railroad v. Price, 96 Pa. 256 (see 113 U. S. 218). The weight of authority on this point is contra to the Pennsylvania holding; See 10 Corpus Juris 1053 and cases cited therein.
stance, one riding on the engine cab, in a mail car, or a bag-

gage car, is not a passenger. Nor does a person be-

come a passenger by riding on a freight train. In this
class of cases, the fact that the employees of the carrier
have knowledge that the person is riding in an unsuitable
place does not make that person a passenger. However,
if the carrier has permitted persons to ride in such places,
or if the person can show a custom, then the carrier will be
held to the same responsibility as it owes to a passenger
in the customary places. In O'Donnell v. Allegheny Rail-
road Company, 59 Pa. 239, the lower court charged the jury
to the effect that the baggage car was an improper place
for a passenger, if there without the consent or knowledge
of the carrier, and to be there was sufficient to establish
contributory negligence. The Supreme Court held this
charge erroneous because there was evidence in the case
showing a custom of the railroad to permit plaintiff to ride
in the baggage car for a period of over two months.

In connection with this subject, it is well to note a dis-
tinction between (a) persons already passengers who go
into a place not provided for them, and (b) persons intend-
ing to become passengers who go into the wrong place.
In the former, the person does not thereby lose his char-
acter as a passenger. The only effect may be to render
him guilty of contributory negligence so as to prevent his
recovery for any injury sustained. In the latter case, the
person never becomes a passenger. Of course, if the
person is riding in an unsuitable place by the direction of

30Riding on engine cab—Waterbury v. N. Y., etc. Railroad, 17
Pa. 1.
31But see Creed v. Pennsylvania Railroad, 86 Pa. 139, where the
carrier had permitted persons to ride on freight train as passengers.
32See cases cited in Note 30.
33O'Donnell v. Allegheny Valley Railroad Company, 59 Pa. 239;
822.
the employee of the carrier, he is a passenger. In *Mittleman v. Philadelphia Transit Company*, 221 Pa. 485, plaintiff was riding on the platform of a crowded car by the express direction of the conductor. The court held that he was a passenger.

**Children Riding Free**

Most railroads permit children under a certain age to ride at half fare, and some to ride free of charge. These are passengers and entitled to the same protection and care as those who have paid full fare. If a child accepts the invitation of an employee of the carrier to ride free, he becomes a passenger. Upon principle, however, it is difficult to justify the decisions so holding. Of course, if the employee had the authority to give free rides, then the cases would seem sound. But no one would contend that an employee of a common carrier acts within the scope of his actual or apparent authority when he invites people to ride without paying.

**Miscellaneous Cases**

It is impossible to consider all of the various situations that arise in connection with this question. However, there are a few other cases worth considering. Thus, one who rides on a “drover’s pass” is a passenger. As implied in the section of this article on “Payment of Fare”, a person riding gratuitously, or upon a pass, is accorded the same protection as that given any other passenger. Most of the cases hold that a person riding as the guest of an em-

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87See Rowdin v. Pennsylvania Railroad, 208 Pa. 263. A “drover’s pass” is a pass whereby the shipper of livestock is transported in accordance with the contract of shipment, or by arrangement with the company, over the lines of a railroad, for the purpose of feeding, watering, or otherwise caring for the livestock which he accompanies. See Grand Trunk R. R. Co. v. Stevens, 95 U. S. 665.

88See 25 L. R. A. 491, and cases cited on “Payment of Fare”.
ployee is not a passenger, basing their decision on the rather logical argument that whatever relationship exists, is between the employee and the person.\(^3\)

Carlisle, Pa. \hspace{1cm} W. REESE HITCHENS

\(^3\)See Waterbury v. New York, etc. R.R., 17 Fed. 671; Condran v. Chicago, etc. Ry., 67 Fed. 522; Janny v. Great Northern Ry., 65 N.W. 458. But see Wilkes v. B. R. & P. Ry. Co., 216 Pa. 355, where a person riding on the engine with the permission of carrier's employee was held to be a passenger.

For further information on this subject, in general, see 10 Corpus Juris, Sections 1037-1046 and 1053-1062; 4 Ruling Case Law, Sections 470-486 and 489-498; 19 Harvard Law Review 250.