

DECISIONS OF

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From this and other provisions of respondent's tariff it is patent that the tariff does not and is not intended to provide for service or contain rates other than for space heating of premises.

If we were convinced, from the record, that respondent had violated its tariff provisions by furnishing service contrary to its terms, either intentionally or through negligence, it would be appropriate for us to dispose of this controversy on that basis. The burden was on complainants to demonstrate such violation by respondent. Our careful study of the record makes us hold that complainants have not met this burden. Accordingly, we find that complainants have not established a cause of action cognizable by this Commission. We do not adjudicate pecuniary disputes over the cost or value of, or the charge for, steam unless it is established that the steam was "furnished" within the intendment of the Public Utility Law, knowingly or negligently, in violation of the utility's tariff provisions or rates. In the circumstances, it is clear that the Court of Common Pleas in which this dispute is now being adjudicated is the proper forum to decide the controversy, since complainants have not established that respondent has violated its tariff or furnished service contrary to its provisions; THEREFORE,

IT IS ORDERED: That the instant complaint be and is hereby dismissed.

Commissioner Dorris voted in the negative.

APPLICATION OF ERIE-LACKAWANNA RAILROAD CO.

APPLICATION DOCKET No. 91135

Service Discontinuance—Railroad Companies—Stations—Agency Status—Factors Considered

After considering the volume and nature of business transacted at one of its stations, the proximity and accessibility of other stations, the ratio of cost of maintaining the station agency to revenues received from the station, the inconvenience to the public resulting from the removal of the agent, and the nature of the service remaining or to be substituted, the Commission found that the cost of maintaining the agency was not unreasonably proportional to the benefit received by, and the convenience of the public as a whole, and that the ultimate actual savings resulting from the removal of the agent would be exceeded by the losses in revenue that would occur upon removal of the agency, and accordingly, refused to permit the railroad company to change the agency status of the station.

Warren, Hill, Henkelman and McMenamin by *Cody H. Brooks* for
Erie-Lackawanna Railroad Company.

Davis, Pritchard and Cassebaum by *James F. Pritchard* for
Stephens-Jackson Slate Company, et al.

Brandon, Shearer and Flaherty by *Stephen A. Glickman* for Supradur Manufacturing Company.

BY THE COMMISSION, *January 11, 1965*:

This matter is before the Commission upon application of Erie-Lackawanna Railroad Company for approval of a change in the status of its station in the Borough of Pen Argyl, Northampton County, from that of an agency freight station to that of a non-agency carload only freight station. Protests against approval of the application were received from Supradur Manufacturing Corporation, John Alfredo & Sons, Inc., Anthony Dally & Sons, Inc., David Stoddard & Sons, Inc., Albion Slate Company, Stephens-Jackson Company, R. C. Cramer Lumber Co., and The Order of Railroad Telegraphers.

At the hearing held in Easton on June 9, 1964, one witness testified for the applicant and five witnesses appeared in protest. Applicant submitted six exhibits which were admitted into the record.

Pen Argyl is located on applicant's B & P Branch, Scranton Division, six miles by rail or four miles by highway west of applicant's agency station at Bangor and two rail or three highway miles east of its nonagency station at Windgap. The agent is presently on duty from 10 a.m. to 2 p.m. and 3 p.m. to 7 p.m. daily, except Saturdays, Sundays, and holidays.

The agent's duties at Pen Argyl consist of weigh and freight billing, accounting, car demurrage, and other work incidental to this agency. He is the governing agent for two satellite operations, namely, Delabole and Windgap.

Carload freight is presently handled by a local freight operating five times weekly between Portland and Nazareth. Less-than-carload freight is limited by tariff dated December 20, 1963, which provides that interstate l-c-l shipments of 8,000 pounds minimum can be shipped and only if the customer does his own loading or unloading. There has been no less-than-carload intrastate freight handled at Pen Argyl since this date.

A recapitulation of applicant's exhibits detailing freight operations and revenues derived therefrom follows:

Year	Carload		Revenue	L-C-L		Revenue	Gross Revenue	Applicant's Share 40% *
	In	Out		In	Out			
1960	91	100	\$ 97,789	573	4,812	\$69,657	\$167,446	\$ 66,978
1961	170	147	165,822	375	3,656	60,913	226,725	90,690
1962	386	345	362,480	264	2,278	52,204	414,684	165,874
1963 (10 mos.)	315	408	384,869	120	993	29,221	414,090	165,796

* According to applicant's testimony

The operating expenses at Pen Argyl including wages and out-of-pocket expenses but excluding transportation, supervision and accounting costs, are summarized as follows:

Wage & Fringe	Expenses Out-of-Pocket	Total
\$6,659	\$709	\$7,368

In the event the application is approved applicant proposes to place Pen Argyl station under the jurisdiction of the Bangor station located four miles by improved highway to the east.

No change in the frequency of carload freight traffic is involved. Approval of the application would eliminate the handling of all intrastate 1-c-1 freight at this station and allow interstate 1-c-1 as covered by the aforesaid tariff.

Applicant's witness testified in connection with the particular exhibits prepared by him or a member of his staff and further testified that the elimination of the personal services of this agent would cause no inconvenience to the shippers in the Pen Argyl area.

Each of the four user protestants testified as to his concern over the adverse effect that the removal of the personal services of the agent would have upon his business and the inconvenience of traveling the additional distance to Bangor. The remaining witness, a nonuser of applicant's service, testified to his concern over the possibility that a breach of safety regulations might occur upon removal of the agent who presently issues and receives train orders.

Careful examination of the record reveals that by using the 40 per cent figure which applicant alleges as its share of the gross revenue, this station produces a better than average financial return to the carrier regardless of applicant's self-imposed ban on interstate 1-c-1. According to applicant's own figures the overall revenue picture at Pen Argyl appears to have improved rather than deteriorated since 1960 and it is not unreasonable to assume that the personal service of the agent has contributed materially to this favorable picture. It is also obvious that the ratio of cost of maintaining the station agency to revenues received from the station (approximately 1.50 per cent in 1963) is not high considering the services rendered at this location.

We have given careful consideration to all pertinent factors which should enter into a just and reasonable determination of this matter; namely, the volume and the nature of the business transacted at the station, the proximity and accessibility of other stations, the ratio of cost of maintaining the station agency to revenues received from the station, the inconvenience to the public

resulting from removal of the agent, and the nature of the service remaining or to be substituted, and we are of the opinion that the removal of the agent at this location would unduly inconvenience the public. The cost of maintaining this agency is not unreasonably proportional to the benefit received by, and the convenience of the public as a whole. Furthermore, we are convinced that ultimately the actual savings resulting from the removal of this agent would be exceeded by the losses in revenue that would occur upon removal of the agency.

Accordingly, after full consideration of the matters and things involved, we find and determine that approval of the instant application is neither necessary nor proper for the service, accommodation, convenience, or safety of the public; **THEREFORE,**

IT IS ORDERED: That approval of the prayer of the application of Erie-Lackawanna Railroad Company docketed at A. 91135 seeking a change in the status of its station in the Borough of Pen Argyl, Northampton County, from that of an agency freight station to that of a nonagency carload only freight station, be and is hereby denied.

APPLICATION OF PENNSYLVANIA RAILROAD COMPANY

APPLICATION DOCKET No. 91401

Service Discontinuance—Railroad Companies—Passenger Trains—Public Convenience and Necessity—Factors Considered

The factors prescribed by the courts to be considered in determining the existence or nonexistence of public convenience and necessity in abandonment of service by a carrier are (1) the extent of the carrier's loss on the particular branch or portion of the service, (2) the use of the service by the public and the prospects as to future use, (3) a balancing of the carrier's loss with the inconvenience and hardship to the public upon discontinuance of such service, and (4) the availability and adequacy of service to be substituted.

Service Discontinuance—Railroad Companies—Passenger Trains—Freight Revenues Considered—Substitute Service

A railroad company was granted permission to discontinue passenger train service between a city and a borough where it appeared that the service was being conducted at a substantial loss, the company's freight operations were underwriting the loss incurred in the transporting of persons, and reasonably adequate and satisfactory alternate transportation service was available to the public affected by the discontinuance of the rail service, on the grounds that a strong railroad freight transportation system should not be continuously handicapped by the necessity of bearing the burden of losses sustained in the transportation of passengers while competitors are free of such disability, and a railroad company should not be forced to operate such passenger service at a loss so great that it could weaken the entire railroad system.

Donald A. Brinkworth for Pennsylvania Railroad Company.

Brandon, Shearer and Flaherty by *Albert D. Brandon* for Archbishop Gannon of the Archdiocese of Erie, et al.

S. Knox Harper for Borough of Warren, Chamber of Commerce of Warren and *G. Hall Todd*.