

LOWER RATES ON EX-LAKE GRAIN IN CARGO LOTS THAN ON SUCH
GRAIN IN CARLOADS.

PAINÉ BROTHERS & COMPANY

v.

LEHIGH VALLEY RAILROAD COMPANY; PHILADELPHIA
& READING RAILROAD COMPANY and JOSEPH S. HARRIS, ED-
WARD M. PAXSON and JOHN LOWBER WELSH, Receivers
thereof; CENTRAL RAILROAD COMPANY OF NEW JERSEY;
WILMINGTON & NORTHERN RAILROAD COMPANY; NEW YORK,
SUSQUEHANNA & WESTERN RAILROAD COMPANY; ERIE RAIL-
ROAD COMPANY; DELAWARE & HUDSON CANAL COMPANY;
NEW ENGLAND RAILROAD COMPANY; FITCHBURG RAILROAD
COMPANY; FALL BROOK RAILWAY COMPANY; DELAWARE,
LACKAWANNA & WESTERN RAILROAD COMPANY; CENTRAL
VERMONT RAILROAD COMPANY and E. C. SMITH and CHAS.
M. HAYS, Receivers thereof; NEW YORK CENTRAL & HUDSON
RIVER RAILROAD COMPANY.

(No. 451.)

Decided June 24, 1897.

Defendants established rates on "ex-lake" grain from Buffalo, N. Y., to New York and Philadelphia, and points taking New York and Philadelphia rates, which were lower on so-called cargo lots of 10,000 bushels of oats and 8,000 bushels of other grain than on shipments of oats and such other grain in carload lots, but afterwards modified their tariffs so that, with few exceptions, the lower rates for cargo lots were restricted to export shipments. Such modification of tariffs removed the principal grievance complained of, and no evidence was offered concerning rates on shipments of grain for export. *Held*, That the principle involved under lower rates for cargo or trainload quantities than for carload shipments, whether for export or domestic use, violates the rule of equality and tends to defeat its just and wholesome purpose; and such purpose is not fully accomplished by making all cargo shippers pay the same rate and charging all carload shippers alike. That defendants should reconsider their grain tariffs with a view to amendment thereof in accordance with the opinion herein expressed, and that the case be held open for such further action as may be deemed appropriate.

Cassius M. Paine, for complainant.
Francis I. Gowen, for Lehigh Valley R. R. Co.
John Stirlen, for Chicago & Erie R. R. Co.
Frank Loomis and Winston & Meagher, for N. Y. C. & H. R.
R. R. Co.
David Willcox, for Del. & Hud. C. Co.
E. G. Bradford, for Wilmington & Northern R. Co.
J. D. Campbell, for Phila. & Reading R. Co.
G. M. Cumming, for Erie R. Co.
Daniel Beach, for Fall Brook R. Co.

REPORT AND OPINION OF THE COMMISSIONER.

KNAPP, *Commissioner* :

The complainants in this case allege that they are grain dealers at Milwaukee, Wis., engaged in shipping grain and feed from Milwaukee and other western points to Philadelphia, New York City, and other points in the Middle and Eastern States, in competition with other dealers and shippers; that the defendants are common carriers of such traffic between said interstate points; that prior to March, 1896, the defendants, in the all-rail transportation of wheat, corn, rye, barley and oats from said western points to Philadelphia and the other points named above, charged and collected the same rates on train loads or "cargo" lots as on carload shipments; but that they, in March, 1896, put into effect on such grain coming to Buffalo by the great lakes and destined for Philadelphia, New York city, and other points known as "Philadelphia and New York rate points," and to other eastern points, lower rates for cargo lots of 8,000 bushels or over of wheat, corn, rye and barley, and cargo lots of 10,000 bushels or over of oats, than for lots of less than said specified number of bushels, such rates being as follows: Wheat, 8,000 or more bushels, 4 cents per bushel; less quantity, $5\frac{1}{4}$ cents per bushel; corn, rye and barley, 8,000 or more bushels, $3\frac{3}{4}$ cents per bushel; less quantity, 5 cents per bushel; oats, 10,000 or more bushels, 3 cents per bushel; less quantity, 4 cents per bushel; that said lower rates are expressly limited in the tariffs to "grain ex-lake at and east of Buffalo" in quantities above specified, "forwarded at one time by one shipper to one consignee and one destination and for one station delivery at such destination;" that such rates

give the larger dealer a monopoly of the business, and are unreasonable and unjust, and subject complainants to unreasonable prejudice and disadvantage, and give undue preference and advantage to shippers of grain in large lots under said tariffs, in violation of sections 1, 2 and 3 of the Act to Regulate Commerce.

Several of the defendants, not initial carriers, answered that they had no voice in fixing the rates complained of, and that the same were determined by the roads on which the traffic originated. The answers of the initial carriers admit that the rates are correctly stated in the complaint, but deny that such rates necessarily result in a monopoly to larger shippers, or unduly prejudice complainants' business, or violate any provision of the Act. These defendants further allege that, in thus fixing the minimum quantity of bushels accorded the lower rates established as aforesaid at and east of Buffalo, they followed a practice of long standing which recognizes a lake shipment or ex-lake shipment as consisting of not less than 8,000 bushels of wheat, corn, rye, and barley, and not less than 10,000 bushels of oats; that these quantities (known as cargo lots) represent the minimum bin capacity of lake vessels and of grain elevators, and the minimum quantity for which a lake bill of lading will be issued by any vessel; that there is very active canal competition for the forwarding of lake grain eastward from Buffalo in cargo lots only, and to meet this competition it is necessary to make a lower eastward rate for cargo lots than for single carload shipments; that the circumstances and conditions governing the movement and handling of lake and ex-lake grain in cargo lots and in single carload shipments are dissimilar in many respects, as, for instance: A cargo quantity is forwarded at one time by one shipper to one consignee at one station at destination; such quantity can be loaded to the full capacity of the cars; only one bill of lading is required for the several cars containing the cargo lot, and the railroad company's responsibility ceases with the delivery of the one train load at one time and place; whereas, for single carload shipments, of which the minimum weight is 24,000 pounds per car, more cars would be required to transport the same quantity, numerous bills of lading might be required and numerous transactions with elevators made necessary, all of which increase the carrier's responsibility and the cost of performing the service.

At the hearing of the case, Cassius M. Paine, a member of the complaining firm, was the only witness who testified, and no evidence has been offered on behalf of the defendants. It appears from Mr. Paine's testimony that complainant's business of shipping grain from Buffalo in carload lots to points taking Philadelphia rates had been practically destroyed by the lower rates on ex-lake grain from Buffalo in so-called cargo lots to the same points, but that at New England points, to which the cargo rates did not apply, complainants' carload grain trade had remained unaffected.

Towards the close of the testimony, counsel for the Lehigh Valley Railroad Company stated the willingness of that carrier to discontinue the cargo-lot rates to points between Buffalo and the seaboard, if that would be satisfactory to complainants, but declined to disturb such rates to the seaboard. The complainants insisted that defendants should abolish cargo rates on all grain except that destined to the seaboard for export, and intimated that if this were done they would be satisfied; but no offer or proposition to that effect was then made by the carriers. Subsequently, however, the Erie, the Delaware, Lackawanna & Western and the Lehigh Valley Railroad Companies filed with the Commission tariffs on grain ex-lake, for the season of 1897, on cargo lots in the number of bushels above specified, as follows:

To New York, for export only:

Wheat.....	5 cents per bushel.
Corn and Rye.....	4½ " " "
Barley.....	4½ " " "
Oats.....	3½ " " "

To Philadelphia, for export only:

Wheat.....	4 cents per bushel.
Corn and Rye.....	3½ " " "
Barley.....	3½ " " "
Oats.....	3 " " "

The foregoing rates to New York for export also apply on ex-lake grain to New York in carload lots; also to carload shipments to nearly all interior points taking New York rates; while the rates on grain ex-lake in carloads from Buffalo to Philadelphia, for local delivery and, with few exceptions, for interior points taking Philadelphia rates, are the same as the rates given above

to New York. Boston export rates on grain are the same as those to New York. The carload rates per bushel to Boston, for local delivery are: Wheat, 8 cents; corn and rye, $7\frac{3}{4}$ cents; barley, $7\frac{1}{4}$ cents; oats, $4\frac{1}{2}$ cents.

Rates to Albany, N. Y., and Albany rate points *via* the Erie and Lackawanna are, in cargo lots, the same from Buffalo as rates to New York above specified. In carload lots to Albany rate points, the rates by those lines, reduced to rates per bushel, are: Wheat, 5.40 cents; corn and rye, 5.04 cents; barley, 4.32 cents; oats, 2.88 cents. Under such rates, carload wheat to Albany takes a rate ⁴ of a cent *higher* than cargo wheat, while carload oats is carried at about $\frac{5}{8}$ of a cent a bushel *less* than is charged on cargo oats.

The Lehigh Valley tariffs do not name Albany or Albany rate points. The New York Central & Hudson River Railroad Company has not filed any tariffs on grain ex-lake for the season of 1897.

The action of defendants in establishing tariffs for the present season, which restrict the lower cargo-lot rates to export shipments, is understood to remove the principal grievance complained of in this case. The complaint, however, broadly alleges that the less rate for cargo lots, on shipments of ex-lake grain to seaboard points, unlawfully discriminates against shippers of like grain' in carloads, and this allegation covers rates on export as well as domestic shipments to the same port. A difference of 1 cent per bushel on wheat and corn and $\frac{1}{2}$ cent per bushel on barley and oats equals, according to the standard weights per bushel, a difference per 100 pounds of about $1\frac{2}{3}$ cents on wheat, $1\frac{3}{4}$ cents on corn, $1\frac{1}{2}$ cents on oats, and 1 cent on barley; and the so-called cargo lots of 8,000 and 10,000 bushels apparently require about ten cars of average capacity to effect the transportation. The grain trade is well known to be conducted on profit margins sometimes less than 1 cent per bushel, and transportation rates on cargo lots or train loads, lower to the extent of from 1 to $1\frac{2}{3}$ cents per 100 pounds than those applied to carload shipments, even if strictly confined to export business, must tend very strongly to throw that business into the hands of the larger dealers exclusively. While no evidence has been presented on this branch of the case, it is difficult to see, if the cargo rates

formerly in force to interior points taking seaboard rates were destructive of complainants' carload business to such points, how the effect of lower cargo rates on export grain can be much less burdensome to those who handle grain for export in carload quantities. Another objection to lower cargo or train-load rates on export grain is the opportunity thereby afforded for manipulations at seaboard points, whereby the favored dealer in grain for domestic consumption may, by one device or another, secure the export rate on such grain, while his more honest or less fortunate competitor is required to pay the higher and largely prohibitory rate. But conceding that lower rates on export than on domestic grain may be properly allowed, we perceive no sufficient reason for different rates on carload than on cargo or train load shipments, whether grain is carried for export or for domestic use. The principle involved in such a distinction violates the rule of equality and tends to defeat its just and wholesome purpose. That purpose is not fully accomplished if one scale of charges is applied to cargo shipments and a higher rate is imposed for single carloads, even though all cargo shippers pay the same and all carload shippers are charged alike.

Inasmuch, however, as this question does not seem to require final determination at this time, the Commission will only recommend that the carriers reconsider these export and domestic tariffs, with the view to their amendment in accordance with the opinion here expressed. No formal order will now be entered, but the case will be held for such future action as, upon the application of any interested party and further investigation by the Commission, may appear to be appropriate.