

No. 1351.

RAHWAY VALLEY RAILROAD COMPANY

v.

DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY.

Submitted June 11, 1908. Decided June 24, 1908.

That provision of section 1 of the act relating to switch connections with lateral branch roads does not grant plenary discretion to this Commission as to the advisability of such connection. Under the first clause of this provision it has become the duty of an interstate carrier to make connection with a lateral branch road, either upon the application of that lateral line or of any shipper, upon three conditions: (1) That such switch connection shall be reasonably practicable; (2) that it can be put in with safety, and (3) that it will furnish sufficient business to justify the construction and maintenance of such switch connection. *Held*, That under the facts presented the complainant is entitled to a switch connection with the defendant's line at Summit, N. J.

E. L. McKirgan for complainant.

W. S. Jenney and *J. L. Seager* for defendant.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

The Rahway Valley Railroad is a short line in the shape of an inverted Y, having its northern terminus at Summit, N. J., upon the line of the Delaware, Lackawanna & Western Railroad Company, its southeastern terminus at Roselle, N. J., on the Lehigh Valley Railroad, and its southwestern terminus at Aldene, on the Central Railroad of New Jersey. The whole of the railroad is in the single county of Union, and was originally built to supply transportation facilities to the industries located at the towns of Kenilworth and Springfield, which are situated in the Rahway Valley. These industries produce, approximately, 250 carloads of freight annually, and the total freight earnings of the Rahway Valley line on inbound and outbound traffic were \$14,375 in 1906 and slightly more in 1907. This road comes before the Commission asking that a switch connection be ordered at the town of Summit with the Delaware, Lackawanna & Western Railroad. It makes its petition upon the ground that it has built up to the line of the right of way of the defendant road and that such connection is in

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all ways practicable and is necessary to the prompt transfer and interchange of traffic between the Lackawanna and the Rahway Valley lines.

The defendant company resists this application primarily upon the ground that this portion of its road, extending from Bergen junction on the east to Dover on the north (formerly known as the Morris and Essex line), is essentially a passenger route. That section of New Jersey through which this line runs is largely occupied for residential purposes by business men of New York, and to expedite this passenger service extensive improvements have been made in the line itself and at its eastern terminus. The freight business of the Lackawanna road is conducted over the northern or Boonton branch, running from Bergen junction, through Secaucus and Paterson, to Dover, where the northern and southern branches connect. It has been the policy of the Lackawanna for some years to devote the southern branch largely to local passenger service and to conduct its general railroad business as one of the great trunk lines over the Boonton branch. In accordance with this policy but two freight trains are operated over the Summit line during the twenty-four hours, both of which are devoted exclusively to the carrying of the small amount of freight originating upon or destined to points on this line, no through freight or passenger business, westbound or eastbound, being conducted thereon.

The provision of the act under which this application is made is an amendment made by the Hepburn Act in 1906, and reads as follows:

Any common carrier subject to the provisions of this act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad, or private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper, such shipper may make complaint to the Commission, as provided in section thirteen of this act, and the Commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor, and the Commission may make an order, as provided in section fifteen of this act, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the Commission, other than orders for the payment of money.

It will be noticed that the law does not confer upon this Commission plenary discretion as to the advisability of such connection. The act declares that the connection shall be made under certain specified cir-

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cumstances and conditions. It is not contemplated by the law that appeal to this Commission shall be necessary; but it is provided that in case a carrier does not comply with the duty imposed complaint may be made by a shipper to the Commission, which shall have authority to make an order compelling the connection. Under the first clause of this provision it has become the duty of an interstate carrier to make connection with a lateral branch road, either upon the application of that lateral line or of any shipper, upon three conditions: (1) That such switch connection shall be reasonably practicable; (2) that it can be put in with safety, and (3) that it will furnish sufficient business to justify the construction and maintenance of such switch connection.

(1) As to such connection being reasonably practicable, we find that there are no engineering difficulties to surmount in making this connection. A third track exists at Summit which is in the nature of a siding running up to an ice house and a coal dump, with which it is entirely practicable for the Rahway Valley to connect without incommoding the business of the Lackawanna road.

(2) Such connection can be made with entire safety to the traffic of the Lackawanna.

(3) The uncontradicted testimony of the complainant's witnesses was that this connection would furnish at least 50 carloads of traffic a year at the present time, with the prospect of a greater volume of tonnage as the direct connection to the west over the Lackawanna becomes of value to the industries upon the Rahway Valley line. If this were an application for a side track to an industry, we should without question regard this volume of freight sufficient to justify the building and maintenance of a switch connection, and we see no other test which should be applied, because this is a line of railroad reaching several industries. It is true that the industries lying along this line have access to the markets generally through its southern connections; but it is undisputed that some of the industries on the Rahway Valley road have found it to their advantage to route their freight over the Lackawanna line, even at the expense to themselves of making transfer at Summit by wagon.

The idea is somewhat scouted by defendant that such a connection as is here asked for may be warranted by reason of the superiority of the service which thereby can be obtained; but the law itself does not seem to require this Commission to ask the reason for the shipper's preference; and as it has taken thirty days for a carload of freight to reach Kenilworth from Buffalo by one of the present connections of the Rahway Valley line, it would appear that the character of the service might be a matter of no inconsiderable moment to the shipper. A single industry, or a group of industries, which already have connection with

another road, would not be debarred from availing themselves of the right to another connection under this statute; and we are constrained to look upon this case from the standpoint of the shipping public rather than from that of the Rahway Valley Railroad.

The provision of the statute, as we construe it, is based upon what might be termed the "open-gateway policy;" the thought of Congress was for the shipper—the manufacturer, the mine owner, the lumberman—who wishes to market his product in the widest practicable field and have the most direct connection therewith. Such theory is in harmony with the long-standing provision in section 3 of the act requiring carriers to afford all reasonable, proper, and equal facilities for the interchange of traffic between their lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith. And it is further in step with the spirit of that requirement of section 1 that carriers shall furnish transportation upon reasonable request therefor and shall establish through routes and just and reasonable rates applicable thereto. These are all essentially shippers' provisions, and the amendment of 1906 respecting switching connections is but complementary. The shipper who heretofore might tender his freight at the yards of the defendant in Summit may now build a track, or procure one to be built, which will enable him to load his car at his factory and tender the loaded car itself to the carrier. The fact that the track from the industry to the main line has already been built by an independent railroad does not in anywise invalidate or affect the strength of this conclusion.

Another question, of course, arises and one which is not herein dealt with as to the reasonableness of and the necessity for establishing a through route between these two lines and fixing joint rates governing their traffic. It does not follow that all branch railroad lines having switch connection with a main line of railroad are entitled to joint rates; another provision of the act comes under construction and application in such regard.

We think the complainant should be granted a switch connection with the defendant's line at Summit, which shall be made with the existing siding leading to the ice house and coal dump thereon, and the expense of such connection shall be borne by the complainant. An order will issue accordingly.

Such order will be made subject to modification at any time when the defendant so changes its tracks at Summit as to make such connection impracticable or unsafe.

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