No. 973.

SOLVAY PROCESS COMPANY

v.

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

No. 974.

SOLVAY PROCESS COMPANY

v.

NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY.

Submitted April 20, 1908. Decided June 30, 1908.

Following the ruling announced in *General Electric Company* v. *N. Y. C. & H. R. R. R. Co. et al.*, 14 I. C. C. Rep., 237, in respect of receipt and delivery of carload freight at large industrial plants having an internal trackage system; *Held*, That complainant is not entitled to compensation from defendants for the movement of cars between points in its plant and defendants' interchange tracks.

Stewart Chaplin and *King, Waters & Page* for complainant.

A. H. Harris, *Thomas Emery*, and *Clyde Brown* for New York Central & Hudson River Railroad Company.

W. S. Jenney and *F. W. Thomson* for Delaware, Lackawanna & Western Railroad Company.

REPORT OF THE COMMISSION.

KNAPP, *Chairman:*

In these proceedings the Commission is asked to require defendants to pay complainant $3 per loaded car as compensation for services performed and instrumentalities furnished by it in connection with the interstate transportation of shipments to and from its works at Solvay, N. Y. The instrumentalities mentioned are the tracks in and about its extensive plant and the locomotives operated thereon. The services alleged to be performed for the benefit of defendants by such instrumentalities consist of taking from the so-called interchange tracks, which connect defendants' main lines with complainant's tracks, cars placed there by defendants, switching the same to the several

loading and unloading points within the plant, and switching loaded or empty cars, as the case may be, from points within the plant to the interchange tracks, whence they are carried by defendants.

This switching between the interchange tracks and the loading or unloading points within the plant is alleged to be a service which defendants by law and custom are required to perform in connection with the transportation of carload freight, and for which defendants ought to compensate complainant when it takes upon itself the burden, risk, and expense of this terminal service. The controversy is in all essential respects similar to that presented in *General Electric Company* v. *N. Y. C. & H. R. R. R. Co. et al.*, 14 I. C. C. Rep., 237, which has just been decided, and these cases must be disposed of in accordance with the principles announced in that report. Inasmuch as the duty of common carriers by rail in respect of delivery and receipt of carload freight at large industrial plants, having an extensive trackage system within the plant and numerous buildings to and between which cars must be switched, is discussed at length in the General Electric Company case, *supra*, no further presentation of that phase of the controversy is here necessary, and a brief summary of the facts appearing in the record will be sufficient for the purposes of this report.

The complainant is a New York corporation engaged in the manufacture of soda products at the village of Solvay, near Syracuse, N. Y. It was founded in 1881 and has since become an enterprise of great magnitude, having more than 100 buildings distributed over approximately 400 acres of land. Within this area there is a network of 11.8 miles of railway owned by complainant, connecting about 60 unloading and 30 loading points within the plant, and connected also with the interchange tracks of defendants. The plant was originally laid out with the view of locating the buildings conveniently with respect to loading and unloading facilities upon the Erie Canal. In 1885 tracks were constructed between different buildings within the plant, complainant furnishing the right of way, doing the grading and laying the ties, and the New York Central road furnishing the rails. For about two years thereafter the New York Central, which was the only railroad then having track connection with the plant, assisted complainant in switching cars between the interchange tracks and points in the plant. After complainant had obtained sufficient motive power, it assumed the entire work of switching within its plant and between the plant and interchange tracks. In 1900 complainant's tracks were connected by switch with the tracks of the Delaware, Lackawanna & Western Railroad, the expense of the connecting tracks being borne jointly by the Solvay Company and the Lackawanna. About January, 1906, the interest of both defendants in the tracks within the plant was pur-

chased by complainant. At the present time complainant is the absolute owner of the 11.8 miles of track within the plant and the appurtenances thereof, consisting of 6 locomotives, 3 locomotive cranes, and about 175 box, tank, and flat cars. The value of complainant's investment in tracks, appurtenances, and equipment is said to be about $300,000, and the total expense of the switching service performed, excluding movements of cars from one building to another within the plant, is said for the year 1906 to have been in the neighborhood of $73,000. This figure includes only the movement of loaded cars.

During 1906 complainant received from and delivered to the New York Central 37,565 loaded and empty cars, and received from and delivered to the Lackawanna 26,349 loaded and empty cars, or a total of 63,914. The traffic handled in and out of its plant in 1906 aggregated more than 850,000 tons, consisting in the main of coal, manufactured soda products, broken stone, building material, cooperage supplies, engines, machinery, and castings, upon which it is estimated the freight charges exceeded $1,300,000. Perhaps three-fourths of this traffic is interstate. With slight exceptions, the freight in and out consists of full carloads, moving with substantial regularity. The various plants of the soda works and coke ovens run day and night, week days and Sundays, at all seasons of the year, and economic operation thereof requires delivery of cars at the exact time when their contents are needed at the several buildings.

There are four interchange tracks lying outside of complainant's land on the New York Central side of the plant. The ordinary practice of the New York Central is to bring their trains in from the east on the first track north of the main line of the Auburn branch. The distance from the average point of delivery to the first switch entering the plant is about 1,500 feet. On the Lackawanna side of the plant are two tracks which are used as interchange tracks. From the average point of delivery to the first point of access to the plant the distance is about 700 feet. Delivery at the average points mentioned is said to be the most convenient delivery with respect to the proper operation of complainant's yard and the sorting and rearranging of cars intended for different buildings.

Complainant contends that it would be physically impracticable and unsafe for defendants' engines to operate upon complainant's tracks and attempt to make delivery and receive cars at its numerous buildings. The statement of complainant's counsel in this respect is as follows:

> It appears conclusively that it is absolutely necessary that the work of handling the freight as set forth in subdivision 2 hereof shall be done by the complainant, the Solvay Process Company; that from the nature of the layout of tracks and switches of the complainant, and from the relation and location of the track of the defendants with relation to the plant and tracks of the complainant, it is absolutely

impossible for either of the defendants to perform the work of delivering cars to the loading or unloading points of complainant from their respective roads or to any of such points, and that it is equally impossible, or at least inadvisable, for either of said roads to haul cars away from the plant of the complainant, when loaded or empty, out onto the tracks of the respective defendants.

The evidence convinces us that the foregoing statement is substantially correct. The complainant could not successfully or economically manage its vast industry if this switching service were performed by defendants at their reasonable convenience, nor could it safely permit defendants' engines to enter its plant, interfere with its own switching engines, and perform the work for which it now demands compensation.

Upon the evidence disclosed by the record we are constrained to hold that the service performed by complainant is essentially a shipper's service, rather than a part of the transportation service, and that the storage and switch tracks and all the internal arrangements and facilities for moving the cars are for complainant's own convenience and necessary to the economic conduct of its business. It is admitted that the successful operation of the plant precludes the possibility of having the switching therein performed at the reasonable convenience of the carrier. Careful consideration of all the facts and circumstances brings this controversy clearly within the principles announced in the General Electric Company case, *supra*, as follows:

> It (complainant) assumed charge of the work of switching cars between its storage tracks and various points within the inclosure of its plant, not because the defendants refused longer to spot cars for it or because they did not give the complainant a reasonably good service in that respect, but simply because the growth of its business to vast proportions, the multiplication of its buildings, and the extension of its switching arrangements within the inclosure required the complainant to take charge of the interior switching for itself and to exclude the defendants from its plant. And it now demands compensation for doing that which it claims the defendants are under the obligation to do, but which it does not and could not permit them to do. On the ground alone the complaint is without merit. Relief against a defendant must ordinarily be predicated upon his failure or refusal to do what he is legally bound to do and not upon the fact that the complainant has volunteered to do it for him. But aside from that suggestion, we expressly hold that carriers are under no duty to extend their transportation obligations with the extension of great industrial plants like that of complainant. They can not be called upon as part of their contract of transportation to make deliveries through a network of interior switching tracks constructed as plant facilities to meet the necessities of the industry. Their obligation as common carriers involves only a delivery and acceptance of carload shipments at some reasonably convenient point of interchange.

We find that the switching service performed by complainant within its plant is not a service which it can lawfully call upon defendants to perform for it, and consequently is not a service for which it may lawfully demand compensation. It follows that the complaints must be dismissed, and it will be so ordered.