

No. 1529.

MOUNTAIN ICE COMPANY ET AL.

v.

DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY.

No. 1549.

SAME

v.

DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY ET AL.

No. 1631.

MOUNTAIN ICE COMPANY AND TROUT LAKE ICE COM-
PANY

v.

ERIE RAILROAD COMPANY.

No. 1632.

SAME

v.

ERIE RAILROAD COMPANY ET AL.

Submitted January 23, 1909. Decided February 2, 1909.

1. Defendants' rates on natural ice from points of harvest in New Jersey and Pennsylvania to various consuming interstate destinations found unreasonable, and just and reasonable maximum rates prescribed for the future, when the ice is carried in ordinary box cars.
2. The service rendered by defendants in the movement of this traffic may properly be styled a "special" service; but it is not in any proper sense an "expedited" service, nor is it an expensive service.

3. When it is remembered that the value of this ice when taken up for transportation is almost nothing, and that the cars readily load to their physical capacity, on the average more than 27 tons, it will be seen that to few if any kinds of business should lower rates be applied by defendants; and this is especially true in view of the fact that the business of complainants has been built up under much lower rates, voluntarily established and long maintained by defendants, and that the investment so induced must be largely destroyed if the present rates are maintained. All that, however, would be no reason for requiring defendants to perform this service for a sum which would not fairly compensate them. Cost of service, rate per ton per mile, and other factors in making present rates, considered and discussed; but when taken into account they still leave the present rates excessive.
4. Reparation will be granted upon the basis of the rates here established; but order for same deferred, awaiting adjustment of the matter between parties.

R. S. Hudspeth and H. C. Reynolds for complainants.

J. L. Seager and W. S. Jenney for Delaware, Lackawanna & Western Railroad Company.

H. A. Taylor for Erie Railroad Company; New York, Susquehanna & Western Railroad Company, and Wilkesbarre & Eastern Railroad Company.

Henry Wolf Bikle and G. S. Patterson for Pennsylvania Railroad Company.

J. F. Keany and D. B. Griffin for Long Island Railroad Company.

J. E. Reynolds for Central Railroad Company of New Jersey.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The above four cases all involve rates on natural ice from points where it is harvested, in New Jersey and Pennsylvania, to various consuming destinations. The general question is upon the reasonableness of the rates charged, and the cases were heard upon a single record.

No. 1529 attacks rates from various points upon the Delaware, Lackawanna & Western Railroad to various points upon that same line.

No. 1549 involves rates from the same points of origin upon the Delaware, Lackawanna & Western to points which are not upon that line of railroad, but are reached by its connections.

No. 1631 refers to rates from points of origin upon the Erie Railroad to local points upon its own line, while No. 1632 embraces rates from the same points of origin to points off the line of the Erie. The Wilkesbarre & Eastern Railroad and the New York, Susquehanna & Western Railroad are treated in this discussion as a part of the Erie system, although they are operated under a distinct management and as a separate proposition.

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While the points of origin are somewhat numerous they may, for the purposes of this discussion, be thrown into two groups, designated as "Jersey" points and "mountain" points. The term "Jersey" points covers certain lakes in New Jersey from which ice is moved to Jersey City and similar points by the Erie and to Hoboken and other points by the Lackawanna. The movement from these points is for the most part confined to the state of New Jersey, and therefore not subject to our jurisdiction. There is, however, one shipping point, Greenwood Lake, in the state of New York, from which the Erie Railroad handles considerable quantities of ice to Jersey City. The rates from this station are the same as from Jersey points, and hence these rates to that extent are before us for examination. The average distance from these Jersey points to Hoboken and Jersey City is about 40 miles.

Mountain points are situated in the state of Pennsylvania among the Pocono Mountains. The ice houses of the complainants in these mountains are located upon both the Lackawanna and the Erie, the principal movement over the Lackawanna being to Hoboken and similar points upon its own line, and to Philadelphia over the lines of its connections, and upon the Erie to Jersey City and corresponding points upon its own line, and to Philadelphia over the lines of its connections.

There is also a considerable movement of ice from both Jersey and mountain points to Brooklyn and to points upon the Long Island Railroad, and the rates under which this moves are attacked, as are also rates to Wilmington, Atlantic City, Trenton, and many other points.

We have therefore for consideration rates from Jersey points to Hoboken and Jersey City; from mountain points to Hoboken and Jersey City; from mountain points to Philadelphia; from both mountain and Jersey points to points upon the Long Island Railroad. The other rates put in issue depend upon the above base rates, upon which the greater part of the traffic move, and need not be separately considered.

The present rates are as follows: From Greenwood Lake and other Jersey points, 60 cents per net ton to both Hoboken and Jersey City; from mountain points, 85 cents per ton to Hoboken and Jersey City; from mountain points to Philadelphia, \$1.40 per ton. There is no movement from Jersey points to Philadelphia. Rates to points on the Long Island Railroad will be stated and discussed by themselves.

As showing the unreasonableness of the present rates, the complainants put much stress upon the fact that the defendants formerly established, and for a considerable time maintained, rates which were materially lower.

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There seems to have been some little movement of ice from Fox Hill and other representative Jersey points to Jersey City and Philadelphia as early as 1888, but no considerable business was done until about 1891. In that year the Erie Railroad, which was operating the Greenwood Lake Railroad, extending from Bergen Junction to Greenwood Lake, a distance of about 40 miles, established a rate from Greenwood Lake to Jersey City of 40 cents per ton. About the same time certain parties entered into an arrangement with the Lackawanna road looking to a large development of this business both at Jersey points and in the Pocono Mountains, and a contract was made by which rates were established for a period of not less than five years. These rates were, from Jersey points, 31 cents, and from mountain points, 41 cents to Hoboken; from mountain points to Philadelphia, \$1.20. Upon shipments to Philadelphia a shrinkage allowance of 10 per cent was made during the warm season, when most of the movement occurred, which reduced the rate to \$1.08 net.

These rates continued in effect until 1899, when the management of the Lackawanna road announced its purpose of making an advance to 50 cents from Jersey points and 65 cents from mountain points to Hoboken. The Erie seems to have contemplated the same advance, although the testimony upon that point is not equally clear.

This announcement brought out a storm of protest from the ice men, and the road finally consented to establish for that season a rate of 40 cents from Jersey points and 55 cents from mountain points. It would appear that the original Philadelphia rate was continued, although there seems to be some doubt as to whether the shrinkage allowance was made.

The next year the rate seems to have been increased to 65 cents from mountain points and to 50 cents from Jersey points, and in 1903 there was a further advance from mountain points, making the rates to Hoboken 75 and 50 cents, while the Philadelphia rate in the meantime seems to have been advanced to \$1.25, the shrinkage allowance by this time having disappeared.

In 1906 there was a further advance from all of these points of 10 cents per ton where the rate was less than \$1, and of 15 cents where it exceeded \$1. This produced a rate of 60 cents from Jersey points and 85 cents from mountain points to Jersey City and Hoboken, and of \$1.40 from mountain points to Philadelphia. Here, then, was an increase in these rates within a period of seven years of almost 100 per cent from Jersey points and of more than 100 per cent from mountain points by the Lackawanna, the advance by the Erie being somewhat less.

Both of these defendants justify this advance upon the ground that the original rates were abnormally low, and the Lackawanna road in particular points to the fact, as the evidence tending to show

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this, that the contract establishing these rates was with a company in which officials of that road were largely interested. There seems to be no claim, and there is certainly no evidence to indicate anything in the nature of a corrupt bargain in the establishment of these rates, nor can it be fairly inferred that there was the slightest idea upon the part of the officials of that company that this action was not for the interest of the road. Formerly large quantities of lumber had been transported from the Pocono Mountains, but this business, with the cutting off of the timber, had disappeared, and the officials of that railroad were anxious to find something to take its place. Business in those days was scant, and almost anything was eagerly sought which offered even a small return. Under these circumstances this ice business was undertaken as something which would afford traffic out of which a small profit might be made by the railroad, which was better than no profit at all. It will be seen presently that these rates of 31 cents and 41 cents were about the same as the cost of bringing the ice from the houses upon the Hudson River, with which these operators must come into direct competition.

While there is no reason to believe that there was bad faith in the matter, it does seem probable that these rates were fully as low as they would have been but for the dual capacity in which these persons stood, and certainly there can be little question, for whatever reason, that they were unusually and abnormally low. The rate of 40 cents established by the Erie from Greenwood Lake is not open to the sort of attack made upon the 31-cent rate of the Lackawanna, and on the whole we think that this rate of the Erie ought to be considered as a normal one, which under the circumstances might well have been established and maintained as a good business proposition.

The second claim of the complainants is that they invested their money upon the strength of the original rates; that their business can not be profitably conducted upon the basis of the present rates, and that their investment must therefore be a loss, provided these rates are maintained.

The greater part of the natural ice which supplies New York City and vicinity is gathered upon the Hudson River. Ordinarily a crop of ice can be made from that source, and very extensive ice houses have been erected upon the banks of the river, into which the ice is gathered in the winter and from which it is brought by water to the various points of consumption. Hoboken and Jersey City can be readily reached from these ice houses; to supply from them interior points to the west of the Hudson River would, of course, involve a transportation by rail.

The methods of storing ice upon the Hudson River are the same as those employed by the complainants in New Jersey and Pennsylvania, and the cost of the ice in the house is practically the same in

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the two places. The expense of taking this ice from the house and putting it into the car is about the same as that of transferring it from the house to the barge. The water freight from the ice house to the dock is about 30 cents per ton, and it seems to cost about 10 cents more per ton to handle ice from the barge over the dock into the ice wagon than it does to handle it from the car. In order, therefore, to compete upon favorable terms the complainants must have from their plants a rate of about 40 cents per ton. This applies, as already suggested, to points which can be reached from the dock. A considerable part of the shipments of the complainants are to points at which this water ice could not be sold unless transported by rail.

It would seem, therefore, that unless there is some other advantage incident to the handling of ice from these points into Hoboken and Jersey City, the complainants could not successfully compete against the Hudson River under a rate of more than 40 or 50 cents per ton. So far as the Jersey points are concerned there seems to be no such advantage, but the mountain points do have one point of superiority which is of considerable weight. While ordinarily a crop of ice can be harvested upon the Hudson, seasons occur frequently when the weather is not sufficiently cold to permit this. The crop at mountain points never fails. When ice is short upon the Hudson the price at all New York points is very much increased, so that in such seasons the profits to operators in the Pocono Mountains are very large. This is an element of advantage in favor of the operator in that locality, which, taking the years together, will fairly permit the payment of a somewhat higher rate from those regions.

The competitive relation between the Hudson River and these interior points is substantially the same to-day that it was in 1892, when these rates were established. The price of ice has somewhat increased, but the expense of gathering it has also increased, and that increase has been common both to the operator upon the Hudson River and the operator at the interior points. The cost of transportation down the Hudson is substantially the same now as it was then. An increase in the cost of carriage to the interior operator puts him, therefore, to that much additional disadvantage in comparison with his situation in 1892. When it is remembered that a profit of a few cents per ton is all that complainants can fairly expect to make in ordinary years, it will be readily appreciated that if the rate was fairly adjusted at first these advances must more than eliminate all profit and must finally extinguish the business so far as it is controlled by Hudson River competition. The complainants may still do business at points which are not accessible to water ice, but they can not compete upon an even basis where ice can be delivered over the dock.

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Another circumstance which makes against the complainants is the manufacture of artificial ice. When the ice business was first developed at these interior points the ice machine was almost unknown in the markets of the North. To-day this is entirely different. It was said that there were 34 plants engaged in the production of artificial ice in New York and Brooklyn alone. More than one-half the total ice consumption of Philadelphia is artificial. The quality of artificial ice is such that it commands the same price in the market with natural ice, and it can be manufactured to sell at a very handsome profit for \$2 per ton, which is less than natural ice is sold for in either New York or Philadelphia. To the profitable operation of the ice plant it is necessary that it should be run to its full capacity all the time. It has been found impossible, in northern climates at least, to profitably store artificial ice, and the result of this is that the ice machine supplies in these markets that demand which is constant throughout the entire season, but can not fully supply the large additional demand which comes with warm weather.

The markets in which the complainants mainly dispose of their product may be divided into three:

1. Territory which is tributary to the Hudson River, including Jersey City, Hoboken, and Brooklyn.
2. Philadelphia and adjacent territory.
3. Interior territory between the Hudson River and Philadelphia, embracing points like Atlantic City, Wilmington, Trenton, etc., together with points upon the Long Island Railroad.

In the year 1907 the complainants handled about 400,000 tons of ice, of which 100,000 went to Philadelphia, perhaps 100,000 to interior points, and the balance to Jersey City, Hoboken, and Brooklyn. The competition which is met at all points tributary to the Hudson has already been referred to.

Philadelphia originally derived its supply largely from Maine. When ice producers in the Pocono Mountains entered the Philadelphia market the principal competition was with ice brought in sailing vessels. This source of supply has mainly disappeared. To-day but little natural ice is obtained for that market from any other source than the Pocono Mountains. The serious competition which the complainants meet to-day in Philadelphia is manufactured ice, and against this they can apparently sell only during the heated term.

The most favorable market for the complainants seems to be the interior territory, where but little competition is met from natural sources of supply. The ice machine is found in all towns of considerable size, and is more and more invading the field formerly held by the natural product.

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It costs about 20 cents per ton to cut the ice and store it in the house, and another 20 cents per ton to transfer it from the house to the car. In the handling of the ice between the pond and the car, as loaded, a shrinkage of about 20 per cent in weight occurs. The above cost does not include interest on the investment or depreciation in the plant. During the year 1907 the Mountain Ice Company received at its various houses f. o. b. the cars an average price of 64 cents per ton for its product. When it is remembered that the entire amount harvested is seldom sold and that a large loss occurs in carrying over ice, and when it is further considered that the depreciation of these ice houses is rapid, it will be seen that the margin of profit in ordinary years is extremely small.

The Mountain Ice Company is a corporation organized for the purpose of operating certain ice plants in New Jersey and the Pocono Mountains, which include substantially all the ice properties in those regions. It represents a large money investment in the properties so operated. Most of these plants were constructed previous to 1901, and all of them before the last advance in 1906. A careful consideration of the record goes far toward confirming the claim of the complainants that under present conditions and upon the present rates their business can not be profitably continued. Unless some reduction in these rates is secured, that business must be materially curtailed and the value of their properties seriously impaired.

The complainants also insist that while the rates have continually advanced for the last eight years, the service has grown poorer and is to-day of less value to them than it was under the lower rates. This is mainly for the reason that the character of the equipment employed is not as good now as formerly.

Ice may be, and frequently is, transported in ordinary box cars. From the nature of the commodity almost any kind of box car can be employed for this purpose, and the testimony of the complainants indicates that, especially during the years 1906 and 1907, the cars furnished were extremely poor, being for the most part small in size and so defective as not to be capable of use for the transportation of grain and many other kinds of freight.

To a considerable extent special cars have been used by the defendants for the handling of this commodity. Some years ago the Delaware, Lackawanna & Western constructed about 600 ice cars, which are provided with a double wall and so insulated as to prevent the access of warm air to the ice. Refrigerator cars are also used for this purpose.

In warm weather ice when transported in an ordinary box car shrinks in weight during a period of from twenty-four to thirty-six hours about 20 per cent. When transported in ice or refriger-

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erator cars the shrinkage is only about 10 per cent. The ice is weighed at the point of origin and the freight is computed upon that weight. In order to determine the money value of this shrinkage the percentage of loss must be reckoned upon the price of the ice at the ice house plus the freight. The value of ice in the car upon the Pocono Mountains is about 75 cents per ton, and the freight to Hoboken 85 cents, a total of \$1.60. Twenty per cent of this would be 32 cents per ton; 10 per cent, 16 cents per ton. It therefore makes a difference to the shipper of 16 cents per ton whether his ice is transported between these points in an ice car or in the ordinary box car, a sum which would represent a handsome profit in the handling of ice by the complainants.

The complainants allege that of late years the proportion of special ice cars to the whole has been much less than formerly, and that it is continually growing less, all of which is equivalent to an advance in rates. They ask that the defendants in this proceeding be ordered to provide special equipment for the handling of this freight.

It appears that the Erie Railroad has no special ice equipment. So far as refrigerator cars are provided by that company they seem to be taken from its regular refrigerator service. As already said, the Delaware, Lackawanna & Western formerly constructed, and now has in service a considerable number of ice cars which were especially built for this business, but that company announced upon the hearing that it would not add to this equipment, so that in process of time the cars now in use will cease to be available.

Its reasons were that an ice car costs considerably more to construct than an ordinary box car; that the cost of maintaining it was about 25 per cent more than with the ordinary box car, and that it could not be used except in this special service. It is undoubtedly true that it costs somewhat more to build and maintain these ice cars than the ordinary box car. It is also true that they can not be put to the same variety of use, but they are employed for the handling of produce and other commodities which require protection from the cold in winter and from the heat in summer, and in this way can be kept in reasonably constant service. The expense of rendering this service in special equipment is greater to the carrier, but the value of that service is more than proportionately greater to the shipper.

It will be seen later that as ice moves from Jersey points to Hoboken and Jersey City it is usually loaded during the day and delivered for unloading the next morning. As it moves from mountain points, both to Philadelphia and the Hudson River, the car is loaded one day, taken from the ice house the following morning, and delivered for unloading the next morning. When transported to Brooklyn or

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to points on the Long Island Railroad the time occupied is even longer. It would appear, therefore, that this ice can be handled in box cars to fairly good advantage from Jersey points to the Hudson River and corresponding destinations, but that when the movement is from the mountains, especially when it is to Philadelphia or to Long Island, it ought to be carried in special equipment.

The defendants insist that under the old rates this business was handled at an actual loss and that the present rates are none too high. They urge that the service is an expedited one, requiring a special equipment, involving an empty return car movement, and a costly terminal service at both ends of the line.

The matter of special equipment has already been referred to. This ice is mainly transported during the months of June to October, inclusive, and from its very nature must, when loaded upon the cars, be moved with reasonable promptness to its destination. The character of the service was very fully gone into upon the hearing and will be best understood by a brief reference to the manner in which this traffic is actually handled.

These ice houses in the mountains, both upon the Erie and the Lackawanna lines, are situated sometimes upon the main line, but usually at a considerable distance from it. The switch lines connecting them with the main line are often a mile and more in length, and have as a rule been provided and are maintained and operated by the defendants.

Upon the Erie Railroad mountain ice is collected and brought into Stroudsburg, where it is made up into trains for Jersey City. The grades between Stroudsburg and the ice houses are severe, and some of the switch tracks are so situated that they can not be operated by a single engine. In the collection of this ice, therefore, it is necessary to send out two locomotives with each train, and it appears that this outfit can handle about 32 empty cars out of Stroudsburg to the ice houses and about 35 loaded cars from the ice houses into Stroudsburg. At Stroudsburg the ice is made up into a train of approximately 30 cars and is hauled as a solid train from there to Jersey City, a distance of 96 miles. These trains leave Stroudsburg at about 2 o'clock in the afternoon and the ice is delivered in Jersey City for unloading the following morning. Two engines are required to handle this train from Stroudsburg to Paterson, from which point it is taken in by a single locomotive. The run from Stroudsburg to West End occupies from 2 o'clock in the afternoon until about 11 o'clock in the evening.

Upon the Lackawanna road Gouldsboro is the first station at which ice is taken up, being distant 127 miles from Hoboken. Several of these ice plants are tributary to Gouldsboro. A switch engine and crew

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leave that yard early in the morning with the empties, which they distribute to the various plants, bringing back the cars which have been loaded the day before. At Gouldsboro these cars are made up into trains for Hoboken. Other ice houses are located to the east of Gouldsboro, and from these the cars are taken into the train upon its way to Hoboken. These ice cars leave Gouldsboro between 10 and 12 o'clock in the forenoon and reach Hoboken late that evening or early the next morning, in time to be placed for unloading the day following the loading.

The oral testimony indicated that ice was moved over the Lackawanna from Gouldsboro to Hoboken in solid trains of about 33 cars, but the wheelage reports of that company were introduced and an examination of them leads to the inference that ice is moved from Gouldsboro in whatever trains are found most convenient to the Lackawanna. These trains do not often consist entirely of ice, but are made up of various kinds of freight, the number of carloads being from 35 to 40 in the train. The train is handled by two engines for most of the way to Hoboken.

Ice moves from mountain points upon the Lackawanna to Philadelphia by way of Washington, Phillipsburg, and the Central of New Jersey, but mainly via Manunka Chunk and the Pennsylvania.

The average distance from points of origin to Manunka Chunk is about 40 miles. One engine handles a train of 40 cars to this point, leaving Gouldsboro about 11 o'clock in the forenoon and reaching Manunka Chunk not later than 4 o'clock in the afternoon. The distance from Manunka Chunk to Philadelphia by the Pennsylvania is something over 100 miles, making a total distance of about 140 miles. A single engine will handle a train of 35 cars from Manunka Chunk to Philadelphia, and with slight assistance at one point 45 cars can be taken. The train is handled as a solid ice train from Manunka Chunk to Trenton, where cars intended for other points than Philadelphia are set out, the balance being carried on to Philadelphia. From 4 o'clock in the afternoon until the next forenoon is occupied in transporting this train from Manunka Chunk to points of delivery in that city. While no complaint seems to have been made as to the service in Jersey City and Hoboken, there was complaint that cars were not placed for unloading in Philadelphia as early as they properly should be.

These cars are unloaded during the day and are returned empty to Manunka Chunk the second morning.

No account is given of the movement from points on the Lackawanna to Philadelphia via Washington and Phillipsburg. The movement from points on the Erie to Philadelphia is comparatively light. Such movement may be effected either via Sparta Junction,

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the Lehigh & Hudson, and the Reading system, or to West End and thence back to Philadelphia, a distance of nearly 219 miles. While it is stated that both these routes are used the case gives no account of the extent or circumstances of that movement.

The service rendered by these defendants in the movement of this traffic as above set forth may properly be styled a "special" service. It is not in any proper sense of that word an "expedited" service, nor is it an expensive service. In no way can traffic be moved more cheaply than in solid train loads like those moving from points upon the Lackawanna to Philadelphia via Manunka Chunk.

When, in addition, it is remembered that the value of this commodity when taken up for transportation is almost nothing, and that the cars readily load to their physical capacity, on the average more than 27 tons, it will be seen that to few if any kinds of business should lower rates be applied by these defendants. And this is especially true in view of the fact that the business of these complainants has been built up under much lower rates, voluntarily established and long maintained by the defendants, and that the investment so induced must be largely destroyed if the present rates are maintained.

All that, however, would be no reason for requiring these defendants to perform this service for a sum which would not fairly compensate them. An attempt has been made by both the Erie and the Lackawanna to show that at the present rates the revenue but slightly exceeds the actual cost of the service and that if these rates were materially reduced that little profit would be turned into an absolute loss.

Ice from Greenwood Lake over the Greenwood Lake Railroad is moved by the Erie during the shipping season with a single engine and one train crew. This engine leaves Bergen Junction with the empty cars in the forenoon, reaches Greenwood Lake in the early afternoon, and returns with the loaded cars in the evening, arriving at Bergen Junction in time for the ice to be moved into Jersey City and placed for unloading the next morning. This train hauls on the average from 14 to 18 cars and handles no other business. It would seem to be an easy matter to determine the actual expense of moving this train for the season, and the Erie has attempted, at the request of the Commission, to furnish these figures.

The statement shows, in round numbers, that the cost of maintenance of way assignable to this train was \$3,000, the cost of maintenance of equipment \$7,000, transportation expenses \$5,000, a total of \$15,000. The actual revenue, at 60 cents per ton, was something over \$20,000. The cost, as above given, is only between Bergen Junction and Greenwood Lake, but the traffic was delivered at other points than Bergen Junction, most of it in Jersey City, involving an

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additional haul of 4 miles and an expensive terminal service. If, therefore, the above statement correctly represents the actual cost of operating this train, it is evident that, estimated by the results from its operation, the present rate is none too high.

It will be noted that of the total expense above given, maintenance of way is 20 per cent, maintenance of equipment 46 $\frac{3}{4}$ per cent, and transportation expense 33 $\frac{1}{4}$ per cent. Turning, now, to the operations of the Erie Railroad as shown by its annual report for the year ending June 30, 1908, we find that of the entire operating expenses of that company maintenance of way and structures makes up 18 per cent, maintenance of equipment 29 per cent, transportation expenses 48 per cent, certain other small items being omitted.

Traffic upon this branch railroad is extremely light, and this renders any deduction from the expenses of operating this train, in so far as those expenses are determined upon a mileage basis, misleading. The transportation expenses of this train are in the main the actual expenses as determined by the amount of coal actually consumed and the number of men actually employed, but a portion of these expenses is necessarily assigned upon the basis of train mileage.

Maintenance of equipment is partly actual and partly estimated. The basis of the estimate is manifestly wrong and produces altogether too high a figure. From \$4,500 to \$5,000, instead of over \$7,000, would be more nearly correct.

The expense of maintaining way and structures has been assigned to this train upon the basis of mileage, which of course charges the train with its proportionate share of the cost of maintenance; but this expense must have been incurred almost or quite in toto if this ice train had not run.

It seems evident that the fair cost of doing this business under normal conditions would not have much exceeded \$10,000, charging against this train its full proportion of cost of maintaining way and structures, and it further seems probable that the cost of operating this train as it was actually operated upon that particular branch did not add to the total expense of the maintenance and operation of that 40 miles of road by more than \$10,000. It will be seen therefore that even though these rates were to be reduced 10 cents a ton the business would still be desirable either to this branch as it is actually situated or to the Erie Railroad upon an average part of its system.

It should also be noted that this particular ice train for the four months covered by the statement only averaged about 15 cars, while trains upon the main line of the Erie and Lackawanna engaged in this ice business carry from 30 to 40 cars.

The method employed by the Lackawanna to determine the cost of handling this ice is entirely different. That company assumes that

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ice is handled in solid trains of 30 cars from Gouldsboro to Secaucus, just west of Hoboken, where trains are broken up for switch delivery. It determines the actual cost of hauling this train from Gouldsboro to Secaucus and a corresponding number of empty cars from Secaucus back to Gouldsboro. Dividing the total by 30, it obtains the cost per car.

It then determines what is styled the "indirect line cost" per car and the "indirect terminal cost" per car. The line cost is obtained by distributing expenses between freight and passengers and then determining the cost of handling a ton of freight per mile. Assuming that these ice cars contain on the average 27 tons, the indirect line cost of handling a car per mile is obtained by multiplying the cost per ton per mile by 27. The cost per car mile thus obtained is multiplied by 159, for the reason that the empty-car movement is greater in case of this traffic than upon the average on the system of the Delaware, Lackawanna & Western.

The indirect terminal expense is obtained by distributing the total expense assignable to freight between line and terminal and dividing this amount by the total number of cars.

Upon this basis of computation that company shows that the total expense per car of moving 30 cars of ice from Gouldsboro to Secaucus and moving the empty cars back to Gouldsboro is \$2.29. In the computation as presented by the defendant there is added an item of 35 cents on account of the greater expense of maintaining the ice car than ordinary equipment.

The indirect line expense, computed as above, is \$9.63, and the indirect terminal expense \$7.28 per car. These items aggregate \$19.55, which deducted from \$22.95, the revenue at 85 cents per ton, leaves a profit of \$3.40.

While this computation of the defendant has been made at considerable expense and evidently with great care, and while it is instructive, it can not be accepted as establishing the proposition contended for, which is that the present rate only pays the actual cost of the service, and that if this defendant is required to reduce that rate it will in effect be required to handle this traffic at a loss.

The first significant fact in this computation is that the actual expense of moving this business from Gouldsboro to Secaucus and moving the empty cars back is about \$2.29 per car, while the revenue at 85 cents per ton is \$22.95 per car.

In arriving at the indirect line expense, as above stated, the average cost of moving a ton of freight upon the line of the Lackawanna is determined, and it is assumed that the cost in the case of this ice equals the average. But for this assumption there is no warrant, nor is there the slightest evidence bearing upon that point.

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Plainly, the cost might be greater or less according to the nature of the entire traffic handled over that system. Our general impression is that the average cost of handling a ton of this ice from Gouldsboro to Secaucus upon an average load of 27 tons to the car in solid trains would be much less than the average cost of handling all business, carload and less than carload, upon the line of the Lackawanna. But upon this point there is no information, and no opinion of value can be expressed.

The computation also assumes that this ice traffic ought to pay a proportionate share on the average of these so-called "indirect line expenses" with all other traffic. This can not be conceded. Some of the items which go into this indirect line expense are due in part to the movement of these ice trains and others are not. To assume that every ton of this ice should bear a proportionate share of all the expenses of this railroad of all kinds is to beg the whole question.

Nearly one-third of the total amount which is used for the purpose of determining the ton-mile cost in case of indirect line expense and of terminal cost is styled "fixed charges." Exactly what these fixed charges are does not appear. The statement shows that a small amount is for interest and taxes, the great bulk being for rent. On what theory can it be assumed that this traffic shall pay in proportion to the number of tons exactly the same contribution to these fixed charges that all other traffic pays? The fixed charges of a railroad sometimes represent the entire value of the property. Instances could easily be cited where a railroad ought not to earn in excess of its fixed charges. Can it be said that every ton of this ice shall pay as much toward this return to the holders of this property as does a ton of silk? The tariffs of this defendant are constructed, and ought to be constructed, upon an entirely different theory.

The same vice enters into the determination of the terminal expense per car, which is merely an average obtained by dividing the total terminal cost, including a proportion of these fixed charges, by the total number of cars handled.

It would be our impression from what appears as to the manner in which this business is handled that the terminal cost of originating and delivering this ice would be below the average, but here there is no testimony, and no accurate opinion can be vouchsafed.

The only positive thing about this statement is the actual cost of handling these carloads of ice from Gouldsboro to Secaucus and the empty cars back. The wide margin between this amount and the revenues received under the present rates, considered in connection with the nature of the other expenses attaching to this business, leaves little room for doubt that although these rates were materially

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reduced the Lackawanna would still obtain a fair profit from the business.

The complainants compare the ton-mile revenue received by the defendants from this business with their average ton-mile revenue, and argue from this that the present rates are excessive.

The average haul from mountain points to Hoboken and Jersey City is not far from 110 miles, and the revenue at 85 cents per ton is approximately 7.7 mills. The average ton-mile revenue of the Lackawanna for the year ending June 30, 1908, was 7.21 mills, and of the Erie 6.28 mills. It will be seen, therefore, that this rate produces, in the case of both these defendants, a ton-mile revenue above the average.

Considering the very small value of this commodity when taken up for transportation, in connection with the manner in which it is handled, and the fact that the business can only move at all under low rates, we are impressed and have already expressed the opinion that these defendants ought to accept for this business rates which are among the very lowest made by them in any instance. Other conditions being equal, their rate per ton-mile from this traffic ought not to equal the average from all sources.

In comparing the rate per-ton mile, however, length of haul is a vital element. The average haul upon the Lackawanna for the above year was 182 miles; upon the Erie 150 miles. It would hardly be proper to compare this haul of 110 miles with the longer average haul, but these ton-mile comparisons do fairly indicate that the present rates could be substantially reduced. A rate yielding 6 mills per ton-mile for the transportation of this commodity 110 miles could not be regarded as an unprofitable or extravagantly low charge.

The opinion has already been expressed that the rates originally established by the Erie, which were 40 cents from Jersey points and 55 cents from mountain points to Jersey City, were what might be styled "normal rates" at the time they were put in. Since then the cost of materials and labor has materially increased. To offset this economies have been introduced into the operation of railways and the tonnage has been very much increased, so that the net result under the old rate may be as favorable to the carrier to-day as it was in 1892. For these reasons it might happen that as applied to the entire business of a railroad company these increases in operating expenses would not justify an advance in rates. But however this might be as a whole, we are inclined to think that in the case of this low-grade traffic where the margin of profit was small to begin with, where the business itself is not as desirable to-day as it was when originally developed, this enhanced cost of operation may properly be offset by an increase of the rate.

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Taking everything into account, we are of the opinion that the present rates are excessive and that a rate of 50 cents per net ton from Greenwood Lake to Jersey City and 65 cents from mountain points to both Hoboken and Jersey City would be just and reasonable charges to be applied for the future when the ice is carried in ordinary box cars.

The principal movement from points on the Lackawanna to Philadelphia is via Manunka Chunk. The distance is about 140 miles and the present rate is \$1.40. The original rate was \$1.20, with a 10 per cent allowance for shrinkage, which produced a net rate of \$1.08. This business moves over two lines, and the terminal service at Philadelphia is an expensive one. Nevertheless, we are clearly of the opinion that the present rate is too high, and that a rate of \$1.20 per net ton ought not to be exceeded in the future when the movement is in ordinary box cars.

The movement from points upon the Lackawanna via Washington and Phillipsburg, and from points upon the Erie, either via Sparta Junction or via West End, would seem to be much more expensive and not generally resorted to. In our opinion the present rate via these lines ought not to be reduced by us. The defendants may find it for their own interest, owing to competitive or operating conditions, to establish the same rate via these other junctions, and it is possible that upon a more full development of the case the Commission itself might see fit to reduce these rates, but upon the present record it seems unjust to do so.

The Delaware, Lackawanna & Western maintains joint rates with the Long Island Railroad to stations on its line from both Jersey points and mountain points. It was stated that these rates are made by taking the local rate of the Lackawanna to Hoboken and adding 25 cents per ton for lighterage and the local rate of the Long Island Railroad.

Very little testimony was given as to the conditions surrounding this transportation beyond Hoboken, and no very satisfactory conclusion can be reached. We have held that the rate from Jersey points to Hoboken should be reduced 10 cents per ton, and that from mountain points to Hoboken 20 cents per ton. Under all the circumstances we think that the present joint rates as established by the Delaware, Lackawanna & Western under its tariff, I. C. C. No. 4147, effective February 9, 1907, should be reduced from Group I, or Jersey points, 20 cents per ton, and from Group II, or mountain points, 30 cents per ton, and that the rates so reduced would be just and reasonable rates to charge for the future when the ice is carried in ordinary box cars.

The Erie Railroad, under its tariff, I. C. C. No. 5591, in connection with the Long Island Railroad, maintains joint rates from Cooper, Ringwood, Sterling Forest, and Charlottesburg, these being Jersey points, which are apparently 10 cents per ton higher in all cases than those maintained as above by the Delaware, Lackawanna & Western. The Erie also maintains joint rates from Stockholm, N. J., which are 5 cents higher than from other Jersey points.

The reason why these rates by the Erie are higher than by the Lackawanna does not appear; nor is there any testimony as to rates from Stockholm, which seems to be a more distant Jersey point. We can make no order, properly, as to Stockholm, but we are of the opinion that the present rates from Cooper, Ringwood, Sterling Forest, and Charlottesburg, as stated in the above tariff, are unjust and unreasonable, and that rates 20 cents per ton lower would be just and reasonable rates to apply for the future, and that these should not be exceeded.

A great many other points are enumerated in the complaints and some little testimony was given with respect to some of them, but there is no information before the Commission upon which it ought to proceed to establish these rates. The carriers themselves will be able to check in rates at these points substantially in accordance with the views expressed in this opinion, and if they neglect to do so the complainants can call the matter to our attention by supplemental petition, upon which a further hearing may be had.

As already pointed out, when special ice cars are used the service is of distinctly more value to the shipper. We do not think that under the circumstances of this case we could with propriety, if we had the necessary authority, upon which no opinion is expressed, direct these defendants to furnish any particular number of special cars for the handling of this traffic. But it does seem proper to allow the imposition of a higher charge when such equipment is voluntarily furnished by the carrier. The carriers may, therefore, add to the rates above established 5 cents per ton from Jersey points to Jersey City and Hoboken, 10 cents per ton from mountain points to Jersey City and Hoboken, and 15 cents per ton to Philadelphia and Brooklyn and points on the Long Island Railroad when special ice cars are provided.

The complainants ask reparation, which will be granted upon the basis of the rates here established for a period of two years before the filing of the several complaints. If it can not be determined whether shipment was made in ordinary cars or special equipment, some method must be devised for reaching an equitable result. If the parties can agree upon the amount of reparation the Commission

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will approve the agreement, if it seems a proper one, otherwise the complainants should at once prepare schedules showing in detail the shipments with respect to which they will claim such reparation, and these schedules should be filed with the Commission and served upon the defendants. If the parties can not themselves agree upon the amounts, the matter will be taken up and further proceeded with by the Commission, the case being held open for that purpose.

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