No. 3241.

EDISON PORTLAND CEMENT COMPANY

v.

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY ET AL.

Submitted November 19, 1910. Decided January 13, 1911.

Upon all the facts disclosed by the record, the Commission is unable to declare defendants guilty of negligence in not having established through routes and joint rates for the transportation of complainant's shipments of Portland cement from New Village, N. J., to Williamstown and Enosburg Falls, Vt.

F. C. Morris for complainant.

J. L. Seager for Delaware, Lackawanna & Western Railroad Company.

C. S. Pierce for Boston & Maine Railroad.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner:*

The complainant is engaged in the manufacture of Portland cement at New Village, N. J., and claims, in this proceeding, damages with respect to two carload shipments of its product.

The first shipment was a carload of cement in paper sacks from New Village to Williamstown, Vt., and the route was via the Delaware, Lackawanna & Western, Delaware & Hudson, and Rutland companies to Burlington, thence by Central Vermont to destination. Charges were assessed by combining the joint through rate then in effect from New Village to Burlington with the local rate of the Central Vermont from Burlington to Williamstown. Complainant concedes that both the joint and the local rates were reasonable. The route taken was that indicated by the complainant.

The second shipment was a carload of Portland cement, in paper sacks, from New Village to Enosburg Falls, Vt., and the route via Delaware, Lackawanna & Western, Delaware & Hudson, Boston & Maine, and St. Johnsbury & Lake Champlain to Sheldon Junction,

and Central Vermont from Sheldon Junction. This routing was indicated by the complainant. Charges should have been assessed upon the combination of the joint through rate from New Village to Sheldon Junction plus the local rate from Sheldon Junction to destination, but through some error, the nature of which did not clearly appear, the shipment was overcharged at destination by the amount of $56.43.

This overcharge was admitted upon the hearing, and it was stated that refund had not been made for the reason that the Boston & Maine and the Central Vermont were unable to agree as to which was responsible for the error and which should make the refund. Upon suggestion that the complainant should not be deprived of its money by this disagreement among the carriers and that this Commission ought not to be troubled with suits growing out of differences of this kind, it was stated that this amount would be at once paid to the complainant, and this has since the hearing been done.

This case is therefore to be disposed of upon the assumption that both shipments were routed by the defendants according to the instructions of the complainant and that the charges assessed were the published tariff rates then in effect. Nor does the complainant claim that either the joint rates or the local rates applied were excessive, when considered as such. Its complaint is that the defendants should have had in effect at the time of these shipments joint through rates from New Village to the destination points named.

There was in effect at this time from New Village to these points via New York and boat from thence to New London a joint through rate to both these points which was satisfactory to the complainant, upon Portland cement in barrels and in cloth sacks, but inasmuch as this rate applied to a route which involved a water carriage, cement in paper sacks could not be sent under it. Since the movement of these shipments a joint through rate has been established to these points via the New York, New Haven & Hartford which is satisfactory to the complainant.

It appears that some time before these shipments the complainant had applied to the Delaware, Lackawanna & Western for a through route and a joint rate to these Central Vermont points and that this company had endeavored to establish such through arrangements with the Central Vermont via the lines over which these two shipments moved, but without success. There is no evidence in this case which indicates, nor can the Commission from its knowledge of the situation find, that such a through route ought to have been in effect at the time of these shipments. The fact that the Central Vermont declined to enter into such through arrangements and that the present through route is via a different line rather indicates that that company may have been justified in refusing the proposition of the Delaware,

Lackawanna & Western for such through arrangements. We can not therefore award damages against these defendants for failure to have in effect a through route and a joint rate under which these shipments might have moved.

Neither can we award damages against the Delaware, Lackawanna & Western and the other railroads which make up the present through route. Without deciding whether we might under any circumstances award damages against those lines over which a shipment did not actually move upon the theory that there should have been a rate under which it might move, we are not satisfied upon this record that either the Lackawanna or the other carriers in that route, which are not parties to this proceeding, were at fault. The Delaware, Lackawanna & Western has finally succeeded in establishing joint rates under which the complainant can ship its cement in paper sacks to these Central Vermont points, and we can not say that it was guilty of negligence in not having been able to bring about this arrangement at the time of the movement in question.

The complaint must therefore be dismissed.