

No. 3324.
RIDGEWOOD COAL COMPANY
v.
LEHIGH VALLEY RAILROAD COMPANY.

Submitted September 24, 1910. Decided June 2, 1911.

Upon the facts of record; *Held*, That the switch connection asked for by complainant with its coal mine near Wilkes-Barre, Pa., is reasonably practicable and can be put in with safety. Connection ordered under provisions of section 1 of the act to regulate commerce.

H. C. Reynolds for complainant.

J. F. Schaperkotter and *F. W. Wheaton* for Lehigh Valley Railroad Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Chairman*:

Complainant is a corporation with principal offices at Scranton, Pa. By petition, duly filed, it asks that the Lehigh Valley Railroad Company be required under section 1 of the act to regulate commerce to accord it a switch connection with its coal mine some 8 miles south of Wilkes-Barre, Pa. The complaint also is drawn under section 3, and we are asked to determine the extent of alleged damages. The defense urged is that the connection is unsafe and that interstate traffic has not been tendered within the meaning of section 1.

The Buffalo-to-New York main line of the Lehigh Valley Railroad descends a mountainous grade between Fairview and Conway, Pa., the latter about 5 miles south of Wilkes-Barre. This 11-mile stretch is single tracked and is designated by defendant its "mountain track." Leaving Fairview, in order to overcome the vertical descent the track runs west to Newport, where it describes what might be termed a hairpin curve, the lower tangent retracing east through Conway to Wilkes-Barre and beyond. This lower tangent affords an unobstructed view for some 3,800 feet, when a slight curve leads to Conway. The Ridgewood breaker is situated about 1,650 feet east of the Newport curve and immediately south or on the ascending side of defendant's track; that is, between the upper and lower tangents. The pedestals of the breaker under construction are 59½

21 I. C. C. Rep.

feet from the center of defendant's rails. To the north of the mountain track the descent continues into the valley. There is a block signal or semaphore about 210 feet below the proposed breaker. The average grade of the mountain track of about 96 feet to the mile obtains at the Ridgewood property.

Prior to November 8, 1888, all the Lehigh Valley's through eastern and western traffic, both passenger and freight, passed over the mountain track, which thus largely contributed to the earning of a total revenue by the Lehigh Valley for that year of \$13,554,884.04. On the date mentioned the first track of what is known as defendant's "mountain cut-off" as distinguished from its "mountain track," was opened between Gracedale, a short distance south of Fairview, and Avoca, 16 miles to the east. As the fiscal year for 1888 ended November 30, the revenue reported includes an operation of only three weeks of the one track of the mountain cut-off. Since completion of the second track of the mountain cut-off on December 21, 1894, the mountain track has been devoted as far as possible exclusively to passenger traffic, and at present there is daily but one fast freight each way and certain helper engines in addition to the passenger service. There are 9 first class passenger trains eastbound and 11 westbound every 24 hours.

Before construction of the mountain cut-off there were on the mountain track (in their order from Fairview) the Slocum, No. 7, and Newport sidings on the upper tangent, and the Espy Run and Warrior Run on the lower; also a lumber switch known as the Marcy siding. Disconnection of the Slocum, No. 7, and Espy Run switches, following a head-on collision on November 11, 1898, left only the Newport and Warrior Run; and these were changed from facing switches, or with the point up grade, to the trailing type in 1902 and 1904, respectively. The Newport connection was removed entirely in December, 1906. In the meantime (July, 1904) the Lehigh Valley Railroad had purchased the capital stock of the Warrior Run property, and later sold the property to the Lehigh Valley Coal Company, the stock of which is owned by the railroad; and simultaneously with removal of the Newport switch in December, 1906, it cleared the mountain track of all switches by extending the Warrior Run siding some 2.02 miles, at its own expense, to a point near Sugar Notch, half a mile beyond Conway. The grades of the Warrior Run, Slocum, and No. 7 sidings were about the same as at the proposed Ridgewood connection, while the Espy Run and Newport grades were a little less. It is not shown that a single accident on the mountain track can be attributed to the operation of switches and sidings during the entire period of its operation. It is shown that numerous switches and sidings in the anthracite region are constructed on grades, many of which are greater than the Ridgewood.

A block signal system was installed in 1896 on the down grade of the mountain track, which previous to that time had been operated without automatic signal device; the up grade was similarly equipped in 1900. The present staff system, which is separate from and additional to the block signal, was installed in September, 1909. The staff system, by the cooperative regulation required between the towermen at Fairview and Conway, mechanically closes the track to an opposing train, thus averting all collisions except possibly from the rear end.

The Ridgewood breaker is partially constructed, together with a siding to defendant's right of way. About 50 tons of coal have been mined and two cars shipped interstate via the Central Railroad or New Jersey after a wagon haul of a mile and a half. Further operations have been suspended because of an injunction obtained by the Lehigh Valley which in effect prohibits the hauling of materials across the mountain track and right of way. The testimony of engineers that 500,000 tons is a conservative estimate of the Ridgewood deposit is not seriously questioned, and the breaker under construction will be capable of releasing this tonnage at the rate of 300 to 500 tons, or about 10 carloads a day.

We find that complainant's siding has been constructed, application in writing made by complainant for a switch connection therewith, and interstate traffic tendered by complainant within the meaning of section 1 of the act; also that there is sufficient business to justify the construction and maintenance of the proposed connection. We further find from a careful examination of the evidence, including a study of plans which provide for derailing, interlocking, and other safety devices, that the proposed connection is "reasonably practicable and can be put in with safety." We shall make no finding or order with reference to alleged damages sustained. This is without prejudice to complainant to pursue such remedy as it may have in a court of competent jurisdiction. An order will be entered in accordance with these views.

Defendant has suggested an outlet by extension of the Ridgewood siding to connect with the Warrior Run siding to Sugar Notch, thus obviating a break in the mountain track. The distance would be practically identical with that of the Warrior Run extension, which the Lehigh Valley made at its own expense. Complainant insists that the contemplated cost of \$40,000 is prohibitive as to it, and that if this plan is preferred by the Lehigh Valley, that carrier should also bear the expense of this extension. While we make no finding with reference to this phase of the controversy, defendant may as an alternative make this extension, provided we are advised of its intention in time to take proper action with reference to the present order.

21 I. C. C. Rep.