No. 3592.

MARIAN COAL COMPANY

v.

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

Decided October 19, 1912.

Defendant's rate per long ton on anthracite coal in carloads from Taylor, Pa., to Hoboken, N. J., or New York Lighterage station, N. J., f. o. b. vessel, of $1.13 on rice and smaller sizes found excessive and unreasonable to the extent that exceeds 98 cents per long ton.

H. C. Reynolds for complainant.

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

SUPPLEMENTAL REPORT OF THE COMMISSION.

MEYER, *Commissioner:*

The original report in this case, 24 I. C. C., 140, found that the rates of defendant per long ton on anthracite coal in carloads from Taylor, Pa., to Hoboken, N. J., or New York Lighterage station, N. J., f. o. b. vessel, of $1.58 on prepared sizes, $1.43 on pea, and $1.28 on buckwheat, were excessive and unreasonable in and to the extent that they exceeded $1.33 on prepared sizes, $1.24 on pea, and $1.09 on buckwheat, and that for the future the latter rates must not be exceeded for such movement. No finding was made as to the rate on the smaller sizes, barley, and rice, although the complaint also put such sizes in issue.

The complainant has applied for a modification of our order, requesting that we reduce defendant's rate of $1.13 per long ton on rice and smaller from Taylor, Pa., to tidewater, f. o. b. vessel, Hoboken, N. J., to a degree proportionate to the reduction on the larger sizes. We are asked to establish rates on rice, barley, and culm. The original petition does not involve culm and no testimony covering it was submitted; therefore we can not in this proceeding consider the matter of a specific rate on that grade of coal.

It appears, however, from further investigation that our original findings should be supplemented so as to include a rate on rice and barley. The record shows that the complainant sought the establishment of a rate on these sizes and introduced evidence in support thereof. Our former report embraced a consideration of defendant's rate of $1.13 on rice and smaller (which would apply on rice and barley) and showed that such rate per ton-mile for the distance of 147.8 miles from Taylor to Hoboken amounts to 7.6 mills; also that on basis of the rate sought by complainant the ton-mile revenue would be 5 mills. We further pointed out that the ton-mile earnings on the rate of $1.13 approximate 7.2 mills, when we accept defendant's claim of 155 miles as the average distance to tidewater from all the collieries and washeries reached by its line.

A large part of the shipments involved in the original claim for reparation consisted of rice and barley and the complainant asserts that it still has a considerable tonnage of these sizes to ship. In our former report we found that the rate on buckwheat should not exceed $1.09, and it is apparent that our failure to fix a rate on rice and barley, which are in size and value less than buckwheat, would leave in force the rate of $1.13 on such smaller sizes, or a rate 4 cents greater than the rate fixed by us on the next larger size.

We based our conclusions with respect to the rates on prepared sizes, pea and buckwheat, upon the evidence of record and the facts adduced from our examination and analysis of the annual reports filed by defendant in their relation to the rates on coal. We think such evidence and facts apply with equal force to the rate on rice and smaller and in consideration thereof it is our judgment and determination that defendant's rate per long ton on anthracite coal in carloads from Taylor, Pa., to Hoboken, N. J., or New York Lighterage station, N. J., f. o. b. vessel, of $1.13 on rice and smaller is excessive and unreasonable to the extent that it exceeds 98 cents per long ton and that for the future the latter rate must not be exceeded for such movement. An order will be issued in accordance with these conclusions.

We further find that the application of defendant's rate of $1.13 per long ton upon such of complainant's shipments of rice and smaller sizes embraced in its claim as were delivered within the statutory period of two years prior to the date of filing the complaint, damaged complainant to the extent of the difference between the amount which it did pay on such shipments and the amount which it would have paid at the rate of 98 cents per long ton herein found reasonable, and that it is entitled to reparation in the sum of such difference. An order awarding reparation will be issued following the receipt and approval by the Commission of an itemized statement agreed to by the complainant and defendant, which shall show the amount due the complainant under our findings herein.

INVESTIGATION AND SUSPENSION DOCKET No. 120.

IN THE MATTER OF HOP RATES.

Submitted October 2, 1912. Decided October 14, 1912.

The carriers have in this proceeding fairly sustained the burden of satisfying the Commission that $1.75 per 100 pounds in carloads, with a minimum of 15,000 pounds, and $2.25 per 100 pounds in less than carloads, as blanket rates for the transportation of hops from points of production in Washington and Oregon to destinations upon the Missouri River and east, are reasonable. Order of suspension vacated.

Ehrich & Wheeler for S. & F. Uhlmann, T. Rosenwald & Company, and others, protestants.

W. F. Herrin, *J. B. Baird*, *N. H. Loomis*, *W. W. Cotton*, *P. L. Williams*, *J. D. Armstrong*, *H. A. Scandrett*, and *J. G. Wilson* for Union Pacific Railroad Company, Southern Pacific Company, Oregon-Washington Railroad & Navigation Company, Oregon Short Line Railroad Company, Northern Pacific Railway Company, and Great Northern Railway Company.

E. B. Boyd for Western Pacific Railway Company.

REPORT OF THE COMMISSION.

PROUTY, *Chairman:*

The advances involved in this proceeding are upon hops from points of production in the states of Washington and Oregon to various points of consumption on and east of the Missouri River. The former rates were $1.50 per 100 pounds in carloads and $2 per 100 pounds in less than carloads, and both these rates are increased 25 cents per 100 pounds by the tariff under suspension.

The hop production of the United States is mainly upon the Pacific coast. It was said that the entire production in this country is about 240,000 bales annually, of which all but about 35,000 bales is grown in the three Pacific coast states, of which Oregon is much the largest producer.

In ordinary seasons about one-third of this production is exported, the balance being consumed for the most part in territory east of the Missouri River. The testimony did not show definitely how this consumption was distributed between the middle west and the Atlantic seaboard.

The rates are blanketed from all points of origin to all destination points upon the Missouri River and east.