

No. 4334.
WHARTON STEEL COMPANY
v.
DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY ET AL.

No. 4390.
B. NICOLL & COMPANY
v.
DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY ET AL.

Submitted May 15, 1912. Decided November 12, 1912.

The complainants assail the rates on iron ore in carloads from certain points in northern New Jersey and southeastern New York to the consuming furnaces in the Lehigh and Schuylkill Valley districts of eastern Pennsylvania; also the rate from Keene's, N. Y., to Wharton, N. J.; *Held:*

1. That from a consideration of the record and from the tests and comparisons made by the aid of averages obtainable from the annual reports of the defendants, the Commission is unable to find that the rates, as a whole, are unreasonable in and of themselves.
2. That some of the rates are relatively unreasonable and certain readjustments should be made and inequalities and inconsistencies in the schedules removed.
3. That the rate from Keene's to Wharton was not unreasonable as applied to complainants' shipments, and following *Southern Pacific Co. v. I. C. C.*, 219 U. S., 433, the Commission is unable to hold that the defendant damaged the complainant by reason of defendant's action in canceling the rate of \$1.35 and restoring the rate of \$1.50, now in force.

William A. Glasgow, jr., and *Robert D. Jenks* for complainants.

J. L. Seager and *A. S. Learoyd* for Delaware, Lackawanna & Western Railroad Company.

Ernest S. Ballard and *Clyde Brown* for New York Central & Hudson River Railroad Company.

H. A. Taylor and *T. H. Burgess* for Erie Railroad Company and New York, Susquehanna & Western Railroad Company.

William L. Kinter for Philadelphia & Reading Railway Company.

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

John J. Beattie for Lehigh & Hudson River Railway Company.

REPORT OF THE COMMISSION.

MEYER, *Commissioner*:

These two cases involve substantially the same subject matter and were heard and argued together. The petitions assail the rates published by defendants for the transportation of iron ore in carloads from certain points in northern New Jersey and southeastern New York to the consuming furnaces in the Lehigh and Schuylkill Valley districts of eastern Pennsylvania, hereinafter designated as the eastern furnaces.

The Wharton Steel Company, whose complaint was filed August 23, 1911, is engaged in the business of mining and selling iron ore. It seeks reparation in the sum of \$3,990.50 for alleged unlawful rates imposed upon shipments from Wharton, N. J., to Birdsboro, Pa., and from Keene's, N. Y., to Wharton, N. J. The basis of the claim covering the latter movement differs from that covering all the other shipments in question and therefore such claim will be discussed separately in this report.

B. Nicoll & Company, which is the trade name under which B. Nicoll conducts the business of buying and selling iron ore and other commodities, asks the Commission, in its petition, filed September 2, 1911, to award it reparation in the sum of over \$38,000 upon basis of what it considers just and reasonable rates to have applied on shipments from Ringwood and Wharton, N. J., and Fort Montgomery, Sterlington, and Salisbury Center, N. Y., to the furnaces at Pottstown, Coatesville, and other Pennsylvania points in the before-mentioned districts. At the hearing counsel for this complainant withdrew the attack on the rate from Salisbury Center and the claim for reparation on shipments from that point.

The following statement shows the traffic involved in the reparation claims:

TRAFFIC INVOLVED IN REPARATION CLAIM OF B. NICOLL & COMPANY.

Origin.	Destination.	Gross tons.	Rate imposed per gross ton.
Ringwood.....	Pottstown.....	26,344.85	\$1.20
Do.....	Coatesville.....	22,967.72	1.20
Do.....	Harrisburg.....	55.85	1.50
Do.....	Parryville.....	504.78	¹ 1.05
Do.....	Birdsboro.....	294.82	1.20
Do.....	Catasauqua.....	3,932.05	.95
Wharton.....	do.....	6,294.21	.70
Do.....	Harrisburg.....	719.85	1.07
Do.....	Coatesville.....	3,666.72	.90
Do.....	Pottstown.....	1,555.62	.88
Fort Montgomery.....	do.....	18,495.07	1.30
Do.....	do.....	1,188.47	1.50
Do.....	Catasauqua.....	1,039.88	1.20
Do.....	Wharton.....	1,149.09	1.20
Do.....	Parryville.....	236.12	1.25
Do.....	Coatesville.....	27,575.49	1.45
Do.....	Harrisburg.....	1,177.50	1.45
Do.....	Birdsboro.....	3,918.84	1.45

¹ This rate reduced to \$0.95 effective February 15, 1912.

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TRAFFIC INVOLVED IN REPARATION CLAIM OF B. NICOLL & COMPANY—Continued.

Origin.	Destination.	Gross tons.	Rate imposed per gross ton.
Sterlington.....	Wharton.....	11,333.83	\$0.60
Do.....	Philipsburg.....	11,643.31	.92
Do.....	Catasauqua.....	11,719.40	.97

TRAFFIC INVOLVED IN REPARATION CLAIM OF WHARTON STEEL COMPANY.

Wharton.....	Birdsboro.....	19,678.27	\$0.86
Keenes.....	Wharton.....	1,277.14	1.50

The petitions contend that these rates are unreasonably high for the services rendered thereunder and unjustly discriminatory as compared with the rates charged by the defendants for the transportation of iron ore from Buffalo and Port Henry, N. Y., to the same destinations. They assert that the existence of such rates has deprived the iron mines located adjacent to or in the immediate locality of the points of origin in question of the advantages to which they are entitled by reason of their close geographical proximity to the consuming furnaces. It is not contended that the rates from Buffalo and Port Henry are too high or should be changed, but it is claimed that the rates complained of are unreasonable as compared therewith. Pointing to the much longer haul from the latter points the complainants admit the correctness of the principle that the carriers are entitled to a somewhat higher revenue per ton per mile on short hauls than on longer hauls, but insist that the application of this principle does not warrant charging them rates so much in excess per ton per mile of the rates applied for the longer hauls from Buffalo and Port Henry. In other words, the charge of discrimination is predicated on the allegation that the rates assailed are relatively unreasonable rather than that the Buffalo and Port Henry rates are unduly preferential.

The carriers deny the contentions of the complainant and assert that the rates attacked are reasonable in and of themselves, and are not unreasonable or unjustly discriminatory as compared with the rates from Buffalo and Port Henry when due attention is given to the diverse conditions surrounding the transportation of ore from the points in question.

Of the ore included in the shipments involved, that moving from Ringwood was mined at the Peters mine, located about 2 miles from that point; the Forest of Dean mine originated the ore shipped from Fort Montgomery, a near-by point on the west bank of the Hudson River; the ore from Sterlington came from the Sterling mine, about 2 miles distant; and the Hibernia and Hurd mines fur-

nished the ore transported from Wharton. The Hibernia mine is 12 miles from Wharton, and the Hurd mine is very close thereto.

Ringwood is on the Ringwood branch of the New York & Greenwood Lake division of the Erie Railroad; Sterlington is on the main line of the Erie Railroad, a few miles west of Suffern, N. Y.; Fort Montgomery is on the West Shore line of the New York Central & Hudson River Railroad; and Wharton is on the Wharton & Northern Railroad, High Bridge branch of the Central Railroad of New Jersey, and the Delaware, Lackawanna & Western Railroad.

According to the statement submitted by the complainants the actual movement of the ore shipments was over the following lines:

Ringwood to Pottstown, Erie Railroad and Pennsylvania Railroad.

Ringwood to Coatesville, Harrisburg, and Birdsboro, New York, Susquehanna & Western Railroad, Lehigh & Hudson Ry., Central Railroad of New Jersey, and Philadelphia & Reading.

Ringwood to Parryville, Erie R. R., N. Y., S. & W. R. R., L. & H. Ry., and C. R. R. of N. J.

Ringwood to Catasauqua, Erie R. R., N. Y., S. & W. R. R., L. & H. Ry., Lehigh Valley Railroad. Part of the shipments between these points also moved over the following route: Erie R. R., N. Y., S. & W. R. R., Wharton & Northern Railroad, C. R. R. of N. J.

Wharton to Catasauqua, C. R. R. of N. J.

Wharton to Harrisburg, Coatesville, and Pottstown, C. R. R. of N. J. and Philadelphia & Reading Ry.

Wharton to Birdsboro, C. R. R. of N. J. and P. & R. Ry.

Fort Montgomery to Pottstown, West Shore R. R. and Pa. R. R. Some of the shipments between these points moved via the Fort Montgomery and New York Barge line, C. R. R. of N. J., and P. & R. Ry.

Fort Montgomery to Catasauqua, Wharton, and Parryville, West Shore R. R. and C. R. R. of N. J.

Fort Montgomery to Coatesville, Harrisburg, and Birdsboro, Fort Montgomery and New York Barge line, C. R. R. of N. J., and P. & R. Ry. Other shipments between these points moved via West Shore R. R. and Pa. R. R.

Sterlington to Wharton, Erie R. R., N. Y., S. & W. R. R., and W. & N. R. R.

Sterlington to Phillipsburg and Coatesville, Erie R. R., L. & H. Ry., and Lehigh Valley R. R.

It will be noted that except for the movement from Wharton to Catasauqua the transportation in question involved the services of from two to five carriers for each shipment.

Following is a statement based on complainant's exhibits of the rates per ton mile between the points of shipment:

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Origin.	Destination.	Rate.	Distance.	Rate per ton-mile.
			<i>Miles.</i>	<i>Mills.</i>
Ringwood.....	Birdsboro.....	\$1.20	143	8.39
Do.....	Catasauqua ¹95	101	9.40
Do.....	do. ²95	100	9.50
Do.....	Coatesville.....	1.20	173	6.96
Do.....	Harrisburg.....	1.50	187	8.02
Do.....	Parryville.....	1.05	121	8.67
Fort Montgomery.....	Birdsboro.....	1.45	174	8.33
Do.....	Catasauqua.....	1.20	137	8.75
Do.....	Coatesville ³	1.45	163	8.89
Do.....	do. ⁴	1.45	204	7.10
Do.....	Harrisburg ⁵	1.45	229	6.33
Do.....	do. ⁶	1.45	223	6.50
Do.....	Parryville.....	1.25	157	7.96
Do.....	Pottstown ⁷	1.30	172	7.55
Do.....	do. ⁸	1.30	165	7.87
Do.....	do. ⁹	1.50	188	7.96
Do.....	Wharton ¹⁰	1.20	122	9.83
Do.....	do. ¹¹	1.20	85	14.11
Sterlington.....	Catasauqua.....	.97	118	8.22
Do.....	Phillipsburg.....	.92	97	9.48
Do.....	Wharton.....	.60	52	11.53
Wharton.....	Catasauqua.....	.70	67	10.44
Do.....	Coatesville.....	.90	139	6.47
Do.....	Harrisburg.....	1.07	152	7.03
Do.....	Pottstown.....	.88	117	7.52
Do.....	Birdsboro.....	.86	108	7.96

- ¹ Via Sparta Junction and Lehigh Valley Railroad.
- ² Via Green Pond Junction and Lehigh Valley Railroad.
- ³ Via Pennsylvania Railroad.
- ⁴ Via barge and Philadelphia & Reading Railway.
- ⁵ Via Pennsylvania Railroad.
- ⁶ Via barge and Philadelphia & Reading Railway.
- ⁷ Via Pennsylvania Railroad.
- ⁸ Via barge and Philadelphia & Reading Railway.
- ⁹ Via Central Railroad of New Jersey and Philadelphia & Reading Railway.
- ¹⁰ Via Central Railroad of New Jersey.
- ¹¹ Via Erie Railroad.

The complainants submit in comparison with these rates the following rates from Buffalo and Port Henry to the same destinations:

Origin.	Destination.	Rate.	Distance.	Rate per ton-mile.
			<i>Miles.</i>	<i>Mills.</i>
Buffalo.....	Birdsboro.....	\$1.45	424	3.42
Do.....	Coatesville.....	1.45	378	3.83
Do.....	Harrisburg ¹	1.45	312	4.64
Do.....	do. ²	1.45	480	3.02
Do.....	Pottstown ³	1.45	415	3.47
Do.....	do. ⁴	1.45	445	3.25
Do.....	Wharton ⁵	1.45	419	3.47
Do.....	do. ⁶	1.45	418	3.47
Port Henry.....	Birdsboro.....	1.65	428	3.85
Do.....	Catasauqua.....	1.60	379	4.22
Do.....	do. ⁷	1.50	354	4.23
Do.....	Coatesville ⁸	1.80	426	4.22
Do.....	do.....	1.80	482	3.73
Do.....	Harrisburg.....	1.80	416	4.32
Do.....	Parryville.....	1.60	359	4.45
Do.....	Pottstown.....	1.65	437	3.77
Do.....	Wharton.....	1.60	446	3.58

- ¹ Via Pennsylvania Railroad.
- ² Via Erie Railroad.
- ³ Via New York Central & Hudson River Railroad.
- ⁴ Via Lehigh Valley Railroad.
- ⁵ Water transportation, cargo lots, to Elizabethport, N. J.

It is urged by complainants that as a result of this rate adjustment it has been impossible to sell ore from their mines in competition with 25 I. C. C.

the ore from Buffalo and Port Henry and that the prohibitive character of the rates attacked is the real reason why their mines have not been fully developed and the ores more largely used in the eastern furnaces.

The complainants offered no conclusive evidence that their rates, from the standpoint of the cost of the service, are too high. They submitted rate comparisons and attempted to show that there was probably less terminal expense in the traffic from the eastern mines than in the traffic from Buffalo and that the ore from Buffalo has to pass through mountainous country.

The defendants state that the Buffalo rate is a low rate made with reference to the rates on ore from Lake Erie ports to Pittsburgh and points in the Mahoning and Chenango Valleys for the purpose of enabling the eastern furnaces to compete with furnaces at the latter points. They claim that this rate is justified because there is a constant and very heavy tonnage of ore movement to the furnaces, with an equally heavy return haul of coal. The cars used are hopper-bottomed gondolas, which carry anthracite from the Pennsylvania mines to Buffalo. The ore generally moves in train loads, and in the case of the Lehigh Valley Railroad and the Lackawanna Railroad the transportation is entirely over one line. Via the New York Central, as originating carrier, the movement is over two lines—that road and the delivering carrier, which is either the Philadelphia & Reading Railway or the Central Railroad of New Jersey.

The testimony shows that the Port Henry rates, which the complainants also use as a basis of comparison, are governed to some extent by water competition via Lake Champlain, the Delaware & Hudson Canal, and the Hudson River to Elizabethport, Perth Amboy, and Jersey City, N. J. This movement lasts about nine months in the year and embraces the major part of the entire traffic. The movement by rail from Port Henry is usually confined to instances where the consumer desires the ore in carload instead of in cargo lots. It is claimed that this water competition has necessarily tended to keep the Port Henry rates below what they would otherwise have been.

Practically none of the conditions involved in the traffic from Buffalo and Port Henry prevail with respect to the movement from the points involved in the complaint. In contrast to such conditions it appears that the ore movement from the latter points is more or less intermittent and not at all commensurate with that from Buffalo; it is in single cars or a few cars at a time; it involves considerable empty car mileage; and, as before shown, requires the services, except to one point, of from two to five carriers. The defendants show by detailed records of the car movements from Ringwood that this ore occasions a comparatively large amount of empty mileage, and they urge that the differences in density of traffic, the number of carriers

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involved in the movements, and in the amount of empty mileage combine to make the haul from the eastern mines relatively more expensive than from Buffalo. The ore movement from Buffalo and Port Henry is apparently not comparable in all respects with that from the points in question in the manner set forth by the complainants. The fact that the total transportation charge from eastern mines to eastern furnaces is much lower than from western mines to these furnaces suggests that the lack of development of eastern mines is due wholly or in part to other causes than the railway rate on ores produced by them. Testimony for petitioners tended to show that unless the price for lake ores exceeded certain levels it would be unprofitable to mine eastern ores and unbusinesslike for eastern furnaces to purchase the latter at the higher prices. The reduction from 80 to 60 cents per gross ton in the railway rate on iron ore from the Mesabi range probably makes the position of the eastern furnaces still more difficult.

We are unable to find from the record in these cases or from the tests and comparisons we have made by the aid of averages obtainable from the annual reports of the carriers that the rates assailed, as a whole, are unreasonable in and of themselves. We are of the opinion, however, that some of the rates are relatively unreasonable and that certain readjustments should be made and inequalities and inconsistencies in the schedules removed. This will involve reductions to some stations and advances to others.

Among the rates which appear to be out of line are the following: The Ringwood rate to Harrisburg is higher than the Fort Montgomery rate to the same destination, although Ringwood is nearer, and the rate from Fort Montgomery to Pottstown seems too high compared with the Ringwood rate to Pottstown. The rate from Fort Montgomery to Wharton is \$1.20 for 125 miles—nearly 1 cent per ton per mile. Coatesville and Pottstown have the same rate from Ringwood, but they are not placed on a parity in shipments from Wharton or from Fort Montgomery. It is not suggested that the adjustment shall be strictly in accordance with mileage. Some of the consuming points have been grouped, and this ignores mileage necessarily to some extent, and the special conditions may necessitate other departures from any uniform scale; but the suggestion may be offered that in the absence of good reasons to the contrary some scheme like the following might be adopted. Assuming a charge of 30 cents per ton for nonhaulage service, irrespective of distance, and a rate of 5.5 mills per ton per mile for the haulage service, the resulting rates are as follows.

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Original destination.	Distance, miles. ¹	Existing rate.	Rate composed of 30 cents nonhaulage and 5.5 mills per ton-mile for distance.
From Ringwood to—			
Pottstown.....	152	\$1.20	\$1.14
Coatesville.....	173	1.20	1.25
Harrisburg.....	187	1.50	1.33
Parryville.....	120	.95	.96
Birdsboro.....	143	1.20	1.09
Catasauqua.....	101	.95	.86
From Wharton to—			
Catasauqua.....	66	.70	.66
Harrisburg.....	152	1.07	1.14
Coatesville.....	138	.90	1.04
Pottstown.....	116	.88	.94
Birdsboro.....	108	.86	.89
From Fort Montgomery to—			
Pottstown.....	172	1.50	1.25
Catasauqua.....	140	1.20	1.07
Wharton.....	125	1.20	.99
Parryville.....	159	1.25	1.17
Coatesville.....	204	1.45	1.42
Harrisburg.....	229	1.45	1.56
Birdsboro.....	174	1.45	1.26
From Sterlington to—			
Wharton.....	51	.60	.58
Phillipsburg.....	97	.92	.83
Catasauqua.....	116	.97	.94
From Buttsville to			
Parryville.....	58	.60	.62
Coatesville.....	111	1.00	.91

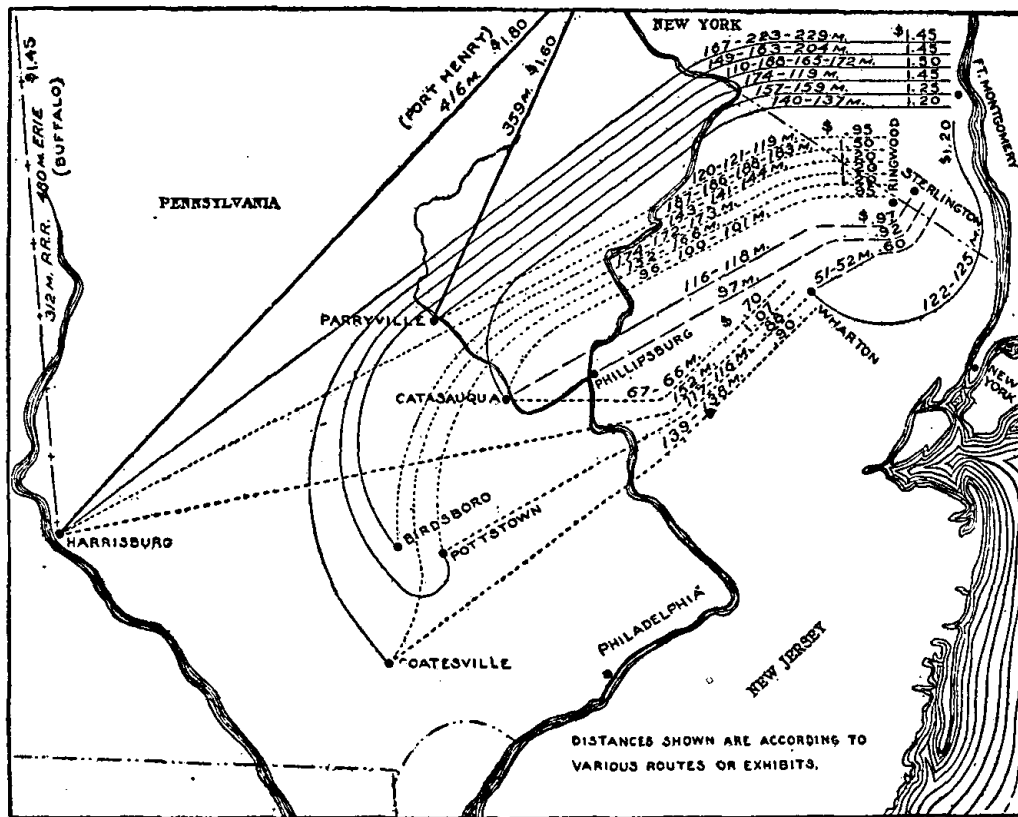
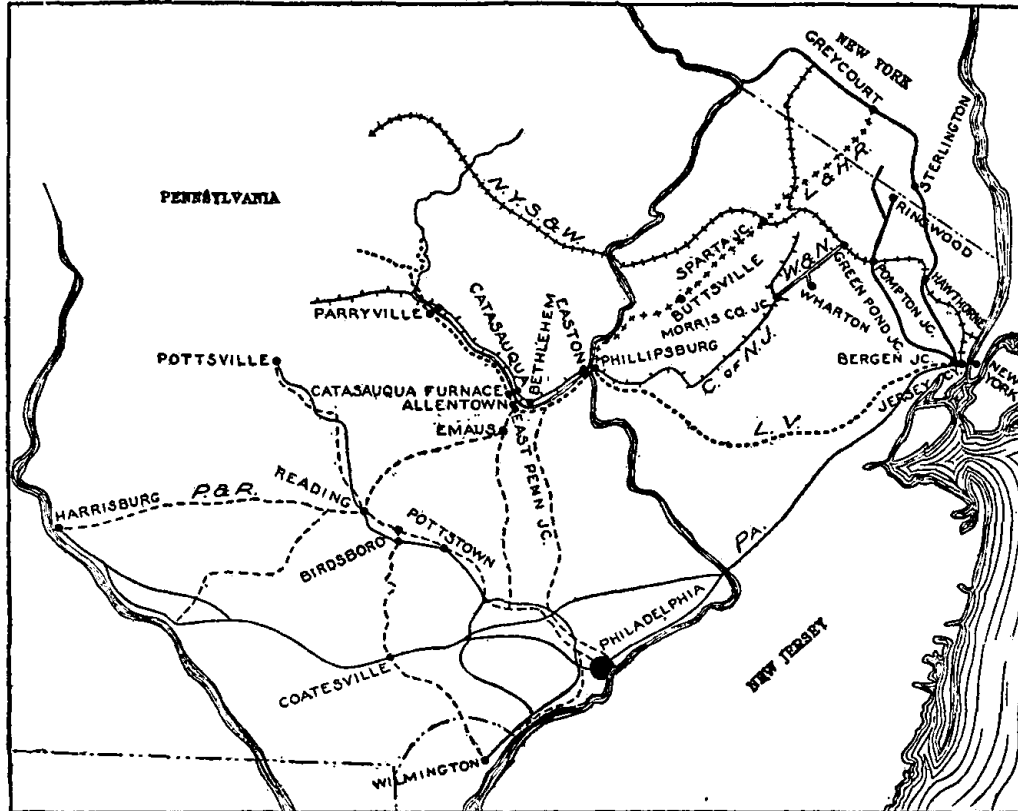
¹ Distances are variously given in the exhibits.

A glance at the maps and the tables in this report and the exhibits of both sides in the record will suggest the complex character of the rates and the relationships of the traffic to which they apply. There are factors connected with the reductions and advances suggested above which possibly are not fully disclosed in the record and which can be handled much more satisfactorily in conference by the interested parties. We shall make no order at this time, but await the results of conference between petitioners and respondent carriers. If no satisfactory schedule of rates can be agreed upon within 60 days, we will make such order as may be proper.

The rate from Keene's, N. Y., a point on the New York Central line 101 miles north of Syracuse, to Wharton, N. J., involved in the complaint of the Wharton Steel Company, has not been hereinbefore discussed because it presents considerations different from those affecting the other rates referred to. The history of this rate is—\$1.50 prior to May 22, 1906; \$1.35 from May 22, 1906, to August 1, 1907; \$1.50 on and after August 1, 1907.

The ore movement covered by the reparation claim was over the New York Central line and the Delaware, Lackawanna & Western Railroad, and the carriers' earnings per ton-mile on the rate imposed, \$1.50, for the distance of 348 miles given by the complainant were 4.31 mills. Reparation is sought to the basis of a rate of \$1.45,

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which is stated in the memorandum of claim attached to the complaint as "admitted just and reasonable rate."

At Keene's is the Rossie mine, owned by a corporation, the capital stock of which belongs to the Wharton Steel Company. It is stated on behalf of the complainant that the rate of \$1.50—

is attacked not on the ground that it is unjustly discriminatory when compared with the Buffalo and Port Henry rates, but on the ground that it had been increased by the New York Central & Hudson River Railroad Company after Wharton Steel Company had been induced by the establishment of a rate of \$1.35 to invest in that locality on the faith of the agreement of the New York Central Railroad that the lower rate would be continued. Edward Kelly, general manager of the Wharton Steel Company, and also an officer of the Rossie Iron Ore Company, testified that on the representation of the New York Central that a \$1.35 rate would be maintained, a large amount of money was spent at the Rossie mine, but that the \$1.35 rate was thereafter taken away and a rate of \$1.50 established, which is prohibitive. The mine is now closed. Wharton Steel Company contends that, having been induced to invest in this property by the railroad, it is entitled to reparation on all shipments made under the higher rate.

The assistant freight traffic manager of the New York Central & Hudson River Railroad Company testified that his company agreed to establish a rate of \$1.35, but that it was distinctly understood by the general manager of the Wharton Steel Company that it was made experimentally for a period of one year and upon an agreement that not less than 75,000 tons of ore a year would move under it. It appears from the testimony that the general manager of the Wharton Steel Company denied knowledge of any understanding as to the experimental nature of the rate, but admitted as to the minimum tonnage of 75,000 a year that "there was a certain tonnage mentioned," but he had forgotten just what it was.

The defendant claims, and it is not disputed, that only 64,000 tons of ore were shipped during the 12 months following the establishment of the rate of \$1.35; it also contends that on this amount of traffic the rate of \$1.35 "was, as nearly as could be ascertained, unremunerative, on account of the large empty-car haul which was involved," and for these reasons the rate of \$1.50 was restored in 1907.

The complainant did not submit evidence to show that the \$1.50 rate, as applied to its shipments, was unreasonable or unjustly discriminatory, although it claims that a rate of \$1.45 should have been applied. No claim was made for the establishment of a rate of \$1.45 for the future, for its general manager in his testimony stated that the ore would not move on a rate of \$1.40, and was not sure that it would move on a rate of \$1.35. The complainant states that it was induced to invest in the mine at Keene's by virtue of the establishment of the rate of \$1.35, but it does not measure its damages by that rate. In brief, the complainant rests its claim upon the alleged

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breach of promise, or of a representation made by the defendant that it would further maintain the \$1.35 rate.

The opinion of the United States Supreme Court in the case of *Southern Pacific Co. v. I. C. C.*, 219 U. S., 433, seems clearly to apply to complainant's contention. The third paragraph of the syllabus therein is as follows:

Where the shippers do not complain of a new and higher rate because it is intrinsically an unreasonable one, but because, although reasonable, the railroads are estopped to advance it on account of having maintained the lower rate for a considerable period, it is beyond the power of the Commission to direct restoration of the old rate * * *.

We are unable to find that the rate of \$1.50 from Keene's, N. Y., to Wharton, N. J., was unreasonable as applied to complainant's shipments, or to hold that the defendant damaged the complainant by reason of its action in canceling the rate of \$1.35 and restoring the rate of \$1.50.

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