

No. 3592.
MARIAN COAL COMPANY
v.
DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY.

Submitted May 8, 1913. Decided June 16, 1913.

Reparation awarded on account of unreasonable rates charged for the transportation of anthracite coal in carloads from Taylor, Pa., to Hoboken, N. J., and New York Lighterage station, N. J. (f. o. b. vessel), in accordance with the conclusions announced in *Marian Coal Co. v. D. L. & W. R. R. Co.*, 24 I. C. C., 140, and 25 I. C. C., 14.

H. C. Reynolds for complainant.
J L. Seager for defendant.

SUPPLEMENTAL REPORT OF THE COMMISSION.

MEYER, *Commissioner*:

In the original reports in this case, 24 I. C. C., 140; 25 I. C. C., 14, all questions involved were disposed of except that with respect to the amount of reparation. It was stated in the original report, 24 I. C. C., 140, 148, that—

We are further of the opinion that the complainant is entitled to reparation upon basis of the rates herein found reasonable as applied to such of the shipments embraced in its claim as were delivered within the statutory period of two years prior to the date of filing complaint. No conclusion as to the amount of the award will be given at this time, and this question will be held in abeyance for determination in a supplemental report.

A further hearing has been had, and complainant submitted thereat a statement showing the total number of tons of each kind of coal shipped and the amount of reparation due on such shipments on basis of the difference between the amount of freight paid and the amount that would have been paid had the rates found reasonable in the original reports been applicable. This statement has been examined by the defendant, and it is admitted that the statement is correct in so far as the dates, tonnage, and charges are concerned. The defendant does not admit that the complainant is entitled to reparation. However, it introduced no testimony nor did it file a brief in this supplementary proceeding. The complainant's statement has been carefully checked and considered in connection with

the defendant's auditor's settlements filed of record, and some errors in additions and computations have been discovered, which will appear in the amounts hereinafter to be awarded complainant.

In the statement filed by complainant some shipments moving in September, 1908, and prior to October 18, 1908, are included. With respect to the shipments moving prior to October 11, 1908, no data in connection with auditor's settlements are on file. It is agreed by the defendant that the shipments are correctly set forth in complainant's statement. The evidence shows that payments of freight on these shipments were made by agents of complainant under the same circumstances as shipments evidenced by auditor's settlements. The defendant, with respect of shipments delivered prior to October 18, 1908, pleads the bar of the two-year limitation provided in the act. The contention is that the claim was not filed with the Commission until October 18, 1910. The record shows that four copies of a petition forwarded by complainant were received in the office of the Commission August 15, 1910. It clearly appears that complainant, in the petition submitted at that time, asked that reparation be made to it based on reasonable rates to be found by the Commission for shipments of anthracite coal from the point of origin to the points of destination involved. The petition did not contain particulars as to the amount of reparation claimed, but the points of origin and destination did appear and the facts respecting charges, etc., were detailed. Reparation was also asked in behalf of those who might intervene, "or to such other persons, firms, or corporations as may hereafter become parties to this suit." Because of these general statements respecting reparation and other matters of form, the complaints were returned to complainant with the request that the averments be made more definite and certain, and that a detailed statement of shipments on which reparation was claimed be furnished. The complaint was accordingly amended, returned to the Commission, and filed October 18, 1910.

The question is, Was the receipt of the original complaint a "filing of the claim" with the Commission? We are of opinion that it was. There is no question, as we understand it, that the complaint first received did contain a prayer for reparation to be paid to complainant based upon reasonable rates to be fixed by the Commission. There has been no intervention nor complaint filed by any other party. The letter which accompanied the complaint is marked as received by the Commission August 15, 1910. We hold that on that date the claim was filed, and that shipments on which reparation is asked made within two years prior thereto are not barred.

The defendant further contends that complainant is not entitled to an award of reparation, because it did not pay the freight charges on the shipments involved. The record shows that coal produced and

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shipped by complainant was sold for it by certain agents under contract. The agents sold the coal and remitted to complainant on monthly settlements the full amount received, less an agreed commission, freight charges, demurrage, etc. There can be no doubt that under the contracts complainant ultimately paid the freight on all the shipments involved. The freight was paid by the agents of complainant for the latter's account. Under these circumstances complainant was the only party damaged by the collection by defendant of the unreasonable freight charges here involved and is the party entitled to an award of reparation.

In the original report, 24 I. C. C., 140, we found that rates per long ton charged by defendant for the transportation of anthracite coal in carloads from Taylor, Pa., to Hoboken, N. J., or New York Lighterage station, N. J. (f. o. b. vessel), were unreasonable to the extent they exceeded \$1.33 on prepared sizes, \$1.24 on pea, and \$1.09 on buckwheat. In the original report (25 I. C. C., 14) we found that the rate per long ton in carloads charged by defendant for the transportation of anthracite coal from Taylor, Pa., to Hoboken, N. J., or New York Lighterage station, N. J. (f. o. b. vessel), on rice coal and smaller sizes was unreasonable to the extent it exceeded 98 cents.

Upon the basis of our conclusions in the original reports, and upon consideration of the evidence taken at the hearing upon the question of reparation, we find that during the period from September 5, 1908, to September 1, 1911, complainant shipped from Taylor, Pa., to Hoboken, N. J., and New York Lighterage station, N. J., 1,841.44 tons of pea coal and paid charges thereon amounting to \$2,633.26 at the rate found to have been unreasonable; that complainant has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid had the rate found reasonable been applicable; and that it is entitled to an award of reparation on these shipments in the sum of \$349.85.

We further find that from September 5, 1908, to September 1, 1911, complainant shipped from Taylor, Pa., to Hoboken, N. J., and New York Lighterage station, N. J., 30,499.30 tons of buckwheat coal and paid charges thereon amounting to \$39,039.10 at the rate found to be unreasonable; that complainant has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid had the rate found reasonable been applicable; and that it is entitled to an award of reparation on these shipments in the sum of \$5,794.89. We further find that from September 5, 1908, to September 1, 1911, complainant shipped from Taylor, Pa., to Hoboken, N. J., and New York Lighterage station, N. J., 53,712.66 tons of rice coal and paid charges thereon amounting to \$60,695.30 at the rate found to have been unreasonable; that complainant has been damaged to the extent of the difference between the

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amount which it did pay and the amount which it would have paid had the rate found reasonable been applicable; and that it is therefore entitled to an award of reparation on these shipments in the sum of \$8,056.89.

We further find that complainant shipped from Taylor, Pa., to Hoboken, N. J., and New York Lighterage station, N. J., from September 5, 1908, to September 1, 1911, 77,313.61 tons of barley coal and paid charges thereon amounting to \$87,364.38 at the rate found to have been unreasonable; that complainant has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid had the rate found reasonable been applicable; and that it is therefore entitled to an award of reparation on these shipments in the sum of \$11,597. We further find that complainant is entitled to interest at the rate of 6 per cent per annum from the dates of monthly settlements made with the defendant as shown by auditor's settlements filed of record, and from October 11, 1908, on shipments moving prior to that date to June 1, 1913, in the sum of \$5,377.27.

We further find that the total amount of reparation due complainant on the shipments above made, including interest, is \$31,175.90.

An order will be issued in accordance with the findings above made.

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