No. 5638.

# PLYMOUTH COAL COMPANY

*v.*

# DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

*Submitted April 3, 1914. Decided July 30, 1915.*

Defendant's demurrage regulations governing anthracite coal awaiting transshipment at or near tidewater at Hoboken, N. J., found reasonable.

*R. D. Jenks* and *W. A. Glasgow, jr.*, for the complainant.

*J. L. Seager* for the defendant.

## Report of the Commission.

Hall, *Commissioner:*

The Plymouth Coal Company is a corporation with principal office at Wilkes-Barre, Pa., engaged in mining and selling anthracite coal. It has mines at Plymouth and Luzerne, Pa., in the Wyoming coal region of Pennsylvania, on the Bloomsburg branch of the Delaware, Lackawanna & Western Railroad Company, the sole defendant. In this proceeding it attacks the demurrage regulations of defendant governing anthracite coal awaiting transshipment at or near tidewater at Hoboken, N. J. These regulations, which became effective March 3, 1913, and have been continued to the present date without substantial change, provide that all cars containing anthracite coal consigned to and held at Hoboken, including Secaucus, N. J., a point some 3 or 4 miles from Hoboken, and there transshipped by water or reconsigned, will be subject to demurrage, computed on the average plan, allowing an average detention of five days per car free of charge, and that demurrage would be charged at the rate of $1 per car per day for detention in excess of the five days. Complainant asks that defendant be ordered to cease and desist from imposing such demurrage charges, and prays reparation.

For many years prior to 1904 the defendant maintained at Hoboken a large number of bins and piers set apart for the storage of anthracite coal. These facilities were open to all shippers without other charge than the regular rates for the transportation of the coal from mine to tidewater. They were destroyed by fire on May 29, 1904, and were not rebuilt.

Thereafter shippers obtained the substantial equivalent of this service by what was known as the "borrow and loan account." Under this arrangement shippers would "loan" to defendant the excess stock of any size of anthracite coal which they might have at tidewater. When stock conditions were reversed, the shippers would "borrow" coal from defendant. This system was in vogue until, in 1909, the Delaware, Lackawanna & Western Coal Company was organized by defendant as a result of legislation and litigation in respect of the commodities clause, and took over the coal sales business theretofore conducted by defendant.

From this time until the establishment of the regulations in question shippers were given free storage of coal in cars at the transshipment point for indefinite periods, subject to occasional endeavors by defendant in times of congestion to effect the release of cars by embargo of further shipments to designated consignees until the congestion was relieved. In its brief defendant admits that "prior to the effective date of the tariff attacked in this proceeding, no demurrage was ever charged on tidewater coal held for transshipment at Secaucus or Hoboken."

Complainant concedes that in general it is proper that the railroads "should establish such regulations as may be necessary to secure the maximum use of their equipment, and particularly of the cars used in transporting coal, so that coal shortages may be avoided." It asserts, however, that the present situation is exceptional in that the business of complainant and other shippers has been built upon a system which permitted free storage of coal at Hoboken for an indefinite period; that any system of demurrage regulations inevitably operates for the benefit of the largest shipper because it can more readily meet the varying demands for the eight sizes of anthracite coal and is thus able promptly to dispose of its coal; and that the interest of the consuming public requires the continued maintenance of free storage at or near tidewater at Hoboken in order to prevent coal shortages in the New York market. If the present regulations are found to be just and reasonable, the Commission is asked to reduce the rates for the transportation of anthracite coal to tidewater. Complainant's position is, perhaps, best summarized by the statement in its complaint that the imposition of any charges for demurrage on shipments of anthracite coal held at tidewater is unreasonable as long as the rates in effect March 3, 1913, remain in effect, for the reason that such rates "were intended to and did include unlimited free storage at Secaucus, N. J., or Hoboken, N. J."

It is unncessary to consider these contentions in detail. Similar demurrage regulations have been considered by this Commission and

not found unreasonable. *Peale, Peacock & Kerr* v. *C. R. R. Co. of N. J.*, 18 I. C. C., 25; *Lynah & Read* v. *B. & O. R. R. Co.*, 18 I. C. C., 38. In the former case the Commission said, page 35:

> Prompt release of cars increases the supply available for transportation. It is therefore not alone to the interest of the carrier, but to that of the shipper, that cars be released as promptly as the exigencies of the business in which they are engaged will permit.
>
> It is undoubtedly the right of defendant to establish and maintain demurrage regulations under which a reasonable charge will accrue for detention of cars beyond a reasonable period. We may even go further: An obligation rests upon defendant to so conduct its business that all of its patrons shall be accorded, without discrimination to any, the fullest and freest use of its equipment and facilities, and if coercive measures become necessary to accomplish that end they will be viewed with favor so long as they are reasonable and subject none to undue prejudice or disadvantage.

Defendant's facilities for transferring coal to vessels at tidewater are modern and are more than adequate to meet any demands thus far made upon them. The free storage is purely a commercial convenience and not a transportation necessity. Upon this record, and in accordance with the cases cited, we conclude that the demurrage regulations in issue are reasonable.

Just and reasonable rates for the transportation of anthracite coal over defendant's line from the Wyoming coal region to Hoboken for transshipment were prescribed in *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220. It follows that the use of the demurrage charges here found reasonable in connection with such reasonable rates will result in just and reasonable charges to complainant.

Some evidence was introduced bearing upon the relation existing between the defendant and the Delaware, Lackawanna & Western Coal Company, to which the former by private contract dated August 2, 1909, leased all of its anthracite coal storage plants at points en route from mines to tidewater. General allegations are made that thereby the lessee is given undue and unreasonable preference and advantage, but the record does not warrant a finding upon this point. The subject is covered in a general way by the Commission's report in the *Anthracite Coal case*, *supra*, at page 289.

Complainant offered no evidence on the issue of reparation. The record indicates that but little demurrage accrued.

The complaint will be dismissed.