It is further said that the latter carrier may be unable to establish some of the proposed rates because of the necessity of meeting the lower rates of the Louisville & Nashville Railroad. Upon further examination of the record we adhere to our original finding that the Louisville & Nashville Railroad has not established the reasonableness of the rates in question.

No. 5905.

PLYMOUTH COAL COMPANY
v.
LEHIGH VALLEY RAILROAD COMPANY.

Submitted March 6, 1915. Decided July 30, 1915.

1. Defendant has justified its refusal to continue to furnish storage bins at Perth Amboy, N. J., for the free storage of anthracite coal.
2. Defendant's demurrage regulations governing anthracite coal awaiting transshipment at tidewater at Perth Amboy found reasonable.

R. D. Jenks and *W. A. Glasgow, jr.*, for complainant.
E. H. Boles and *S. C. Pratt* for defendant.

REPORT OF THE COMMISSION.

HALL, *Commissioner:*

Complainant is a corporation engaged in mining and selling anthracite coal. One of its mines is on defendant's line at Luzerne, in the Wyoming coal region of Pennsylvania. By complaint, filed June 27, 1913, it attacks as unreasonable and unjustly discriminatory defendant's demurrage and storage regulations applicable to anthracite coal awaiting transshipment at tidewater at Perth Amboy, N. J. Reparation is asked.

For more than 25 years prior to June 1, 1913, defendant's tariffs provided that cars containing anthracite coal forwarded to Perth Amboy for transshipment by boat and held at that port would not be subject to car-service charges. It was further provided that limited free storage at Perth Amboy was available to shippers and that space there would be allotted to them on the basis of the tonnage for the previous year of their respective shipments over the piers. Such free storage was limited in time to two years. After the expi-

ration of that time a charge of 15 cents per gross ton per month or fraction thereof was assessed.

Effective June 1, 1913, defendant filed tariffs canceling the provisions outlined above and providing, first, that the privilege of storing coal in bins at Perth Amboy had been withdrawn and that anthracite coal which was unloaded by defendant for the purpose of releasing needed car equipment would be subject to storage charge in the same amount as would have accrued under its car demurrage rules and regulations; and, second, that cars containing anthracite coal consigned to and held at Perth Amboy and various other points for transshipment by water would be subject to demurrage at the rate of $1 per car per day, computed on the average plan, allowing an average detention of five days per car free of charge.

Complainant's position is that it is the duty of defendant to continue to maintain and furnish storage facilities at tidewater; that the demurrage regulations involved are unjust and unreasonable; and that the imposition of any storage or demurrage charges at Perth Amboy is unreasonable as long as the rates in effect prior to June 1, 1913, remain in effect, for the reason that such rates included free storage at tidewater. It insists that there is a commercial necessity for free storage of anthracite coal at tidewater.

Under the tariffs in effect prior to June 1, 1913, shippers often delivered coal to the defendant to be transported to Perth Amboy for transshipment before a market for the coal had been obtained. Owing to the limited capacity of the bins at that point a considerable quantity of coal awaiting disposition by the shippers was held in cars. The evidence clearly shows that this practice of permitting storage in cars substantially impaired the defendant's ability to meet the transportation needs of the shippers upon its line. Evidence introduced by defendant shows that it became necessary to use for traffic in general, including anthracite coal, the space at Perth Amboy formerly occupied by storage bins for anthracite coal alone.

Upon the record we hold that defendant has justified its refusal to continue to furnish storage bins at Perth Amboy for the free storage of anthracite coal.

This case, as developed in the record, is in many respects similar to *Plymouth Coal Co.* v. *D., L. & W. R. R. Co.*, *ante*, page 76. In that case, after quoting from the report in *Peale, Peacock & Kerr* v. *C. R. R. Co. of N. J.*, 18 I. C. C., 25, we said:

> Defendant's facilities for transferring coal to vessels at tidewater are modern and 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.

Defendant's present demurrage regulations differ in some particulars from those effective June 1, 1913. At the hearings specific objections were made to the tariff basis for computation of charges, under which shippers might not in all cases secure a detention of five days per car free of charge; the requirement that the entire cargo of coal to be unloaded into a particular vessel must have arrived at the transshipment point and must have been ordered by shipper or consignee for unloading before any car containing a part of such cargo would be considered as finally released; and the failure of the tariff to provide for the substitution of cars containing the same grade or size of coal for those which through the fault of the carrier were not released in the order of their arrival. Tariffs subsequently filed, and now in effect, have cured the defects to which these objections were addressed. Upon the record we conclude that the present demurrage regulations in issue are reasonable.

Since the record in this case was closed just and reasonable rates have been prescribed for the transportation of anthracite coal over defendant's line from the Wyoming coal region to Perth Amboy for transshipment. *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220. As was said in *Plymouth Coal Co.* v. *D., L. & W. R. R. Co., supra:*

> 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.

Complainant alleged that "the withdrawal of the present storage privileges will necessarily and inevitably result in unjust discrimination against them and in favor of Lehigh Valley Coal Sales Company," to which defendant has leased its coal-storage plant at South Plainfield, N. J. The record affords no basis for a finding upon this point. For the views of the Commission on this subject in general, reference may be had to its report in the *Anthracite Coal case, supra,* at page 289.

There is no basis for award of reparation.

An order will issue dismissing the complaint.

No. 4806.

PLYMOUTH COAL COMPANY

v.

LEHIGH VALLEY RAILROAD COMPANY.

Submitted April 8, 1914. Decided July 31, 1915.

Reparation awarded on account of unreasonable rates charged for the transportation of anthracite coal from Luzerne, Pa., to Perth Amboy, N. J., for transshipment.

W. A. Glasgow, jr., and *R. D. Jenks* for complainant.
E. H. Boles and *S. C. Pratt* for defendant.

Report of the Commission.

Hall, *Commissioner:*

Complainant, a corporation engaged in mining and selling anthracite coal, filed a complaint herein April 17, 1912, in which it alleged that rates charged by defendant for the transportation of anthracite coal from complainant's Black Diamond Colliery at Luzerne in the Wyoming coal region of Pennsylvania to Perth Amboy, N. J., for transshipment during the period from August 27, 1910, to October 15, 1911, were unreasonable and unjustly discriminatory and asked reparation.

In *Meeker & Co.* v. *L. V. R. R. Co.*, 21 I. C. C., 129, we held that defendant's rates for the transportation of anthracite coal from this Wyoming coal region to Perth Amboy, of $1.55 per gross ton on prepared sizes, $1.40 on pea size, and $1.20 on buckwheat size, were unreasonable to the extent that they exceeded the maximum rates of $1.40 on prepared sizes, $1.30 on pea, and $1.15 on buckwheat, which were prescribed as reasonable for the future. We also held that reparation should be awarded upon the basis of the rates found reasonable. A further hearing was had to ascertain the amount of reparation, and an award was made in the supplemental report of the Commission, 23 I. C. C., 480. For the history of the *Meeker case* in the courts, reference may be had to decisions reported in 190 Fed., 1023; 204 Fed., 986; 211 Fed., 785; 211 Fed., 802; and 236 U. S., at pages 412 and 434, wherein the Commission's orders were sustained.

During the period from August 27, 1910, to October 15, 1911, complainant made shipments of anthracite coal of various sizes from

Luzerne to Perth Amboy for transshipment, upon which defendant collected charges at the rates found unreasonable in the *Meeker case*, *supra*. Since October 15, 1911, the rates prescribed as reasonable in the *Meeker case* have been in effect.

Complainant's Black Diamond Colliery is about 6 miles south of the Stevens Colliery, from which was shipped the coal involved in the *Meeker case*, and about 7 miles south of Coxton, Pa., the assembling point on defendant's line for coal from both collieries. Both are in the Wyoming district and have uniformly had the same rates to Perth Amboy. From Coxton the coal shipped by the complainant moved over the same tracks and under exactly the same operating conditions as that from the Stevens Colliery. Except for the increased haul of 6 miles, it appears that no distinction can be made between the conditions surrounding the transportation from the two collieries.

Defendant's position, as voiced by its counsel, is based on a lack of equity in that complainant "stood aside and watched the battle from the high hills, and then comes down and asks for part of the spoils," and again:

> There is no dispute as to the facts in this case. The sole contention is whether or not a shipper is entitled to an award of reparation by the Commission merely because the Commission has, in another case, awarded reparation to a shipper who has shipped his coal under exactly similar circumstances and conditions as the shippers claiming the reparation.

It was conceded that complainant paid the freight charges and that if reparation were awarded to anyone on the shipments here involved it should be paid to complainant.

The courts have repeatedly held that in so far as rulings of the Commission are administrative they may be availed of by any person in a position to do so. Upon the record herein we find:

1. That during the period from August 27, 1910, to October 15, 1911, inclusive, complainant made certain carload shipments of anthracite coal from Luzerne, Pa., to Perth Amboy, N. J., for transshipment.

2. That such shipments aggregated 33,925.09 gross tons, prepared sizes; 2,048.18 gross tons, pea size; and 1,334.01 gross tons, buckwheat size.

3. That complainant paid thereon the established tariff rates per gross ton of $1.55 on prepared sizes, $1.40 on pea size, and $1.20 on buckwheat size.

4. That said rates, so paid, were excessive and unreasonable to the extent that they exceeded, per gross ton, $1.40 on prepared sizes, $1.30 on pea size, and $1.15 on buckwheat size, which latter would have been reasonable rates for the service.

5. That complainant was injured by the payment of said unreasonable rates to the extent of the difference between the amount paid at the rates herein found unreasonable and the amount it would have paid at the rates herein found reasonable, and that the damages amount to $5,360.46, together with interest.

Upon these findings we conclude that an order should issue authorizing and directing defendant to pay to complainant the amount of the damages sustained, together with interest thereon.

An order will issue accordingly.

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