

No. 4806.  
PLYMOUTH COAL COMPANY  
*v.*  
LEHIGH VALLEY RAILROAD COMPANY.

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*Submitted April 3, 1914. Decided July 31, 1915.*

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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  
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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.

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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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