No. 6189.

RED ASH COAL COMPANY

v.

CENTRAL RAILROAD COMPANY OF NEW JERSEY.

Submitted March 6, 1915. Decided January 3, 1916.

Upon complaint that rates applying upon anthracite coal in carloads from Ashley, Pa., to Elizabethport and Port Johnston, N. J., f. o. b. vessels for reshipment are unreasonable; *Held:*

1. Reasonable rates for the future will be secured complainant by the order entered in *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220.
2. Following *Plymouth Coal Co.* v. *D., L. & W. R. R. Co.*, 36 I. C. C., 76, defendant's demurrage regulations governing anthracite coal awaiting transshipment at or near Elizabethport and Port Johnston found reasonable.
3. Question of reparation held in abeyance for determination in a supplemental report.

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

J. E. Reynolds for defendant.

Report of the Commission.

Hall, *Commissioner:*

Complainant, a corporation engaged in mining and selling anthracite coal, filed a complaint herein October 3, 1913, in which it alleges that rates charged by defendant for the transportation of anthracite coal from complainant's Red Ash colliery near Ashley, Pa., and from other points in the Wyoming coal region of Pennsylvania, to tidewater at Elizabethport and Port Johnston, N. J., f. o. b. vessels for reshipment are unreasonable and unjustly discriminatory, and asks reparation upon all shipments of anthracite coal made by it subsequent to December 20, 1912. The complaint also assails as unreasonable and unjustly discriminatory the demurrage regulations of defendant governing anthracite coal awaiting transshipment at Elizabethport and Port Johnston.

The rates under attack are, per gross ton of 2,240 pounds, delivered free on board vessels, as follows:

On prepared sizes	$1.55
Pea	1.40
Buck No. 1	1.20
Buck Nos. 2 and 3 or smaller sizes	1.10

Complainant is in direct competition with other anthracite coal operators in the Wyoming region.

In *Meeker & Co.* v. *L. V. R. R. Co.*, 21 I. C. C., 129, the Commission fixed maximum rates for the future from this region to Perth Amboy, N. J., of $1.40 on prepared sizes, $1.30 on pea, and $1.15 on buckwheat, and these became the generally applied rates from the Wyoming region to tidewater. The defendant here did not meet the rates prescribed in the *Meeker case*, *supra*, but has continued to exact the rates under attack.

The distance from complainant's colliery to destination at tidewater over the line of the defendant is 153 miles. The distance over the Lehigh Valley Railroad Company, for which the rates in the *Meeker case* were prescribed, is 165 miles. The lines of defendant and of the Lehigh Valley extend in the same general direction and are but a short distance apart. The average distances from the Wyoming region to tidewater are over defendant's lines 160 miles, over the Lehigh Valley 165 miles.

Complainant showed that the transportation conditions affecting the movement of anthracite coal over the lines of defendant and of the Lehigh Valley Railroad from the Wyoming region to tidewater are substantially similar. A comparison of the revenue per ton-mile received by defendant with such revenue from the rates prescribed by the Commission in the *Meeker case* shows the following:

	Earnings per ton-mile, gross tons, from—	
	Rates of defendant.	Rates in Meeker case.
	Mills.	*Mills.*
Prepared sizes	10.13	8.48
Pea	9.15	7.87
Buckwheat No. 1	7.84	6.96

Since the hearing in the present case, reasonable maximum rates have been prescribed for the transportation of anthracite coal in carloads from collieries in the Wyoming region on the lines of the defendant to tidewater f. o. b. vessels for reshipment. *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220. Upon consideration of the record in this case we are of the opinion that the relief which the complainant herein has shown itself entitled to will be secured by the order in the aforesaid case.

The demurrage regulations of defendant which complainant alleges are unreasonable and discriminatory were prescribed in a tariff effective November 14, 1911. The objections made by the complainant to this tariff are directed against the rule requiring that statements and bills for demurrage shall be computed at the end of each calendar month. Demurrage is computed upon a plan which permits an

average detention of five days for every car, such average being computed at the end of each calendar month, debiting the shipper for cars detained longer than five days and crediting him when cars are released within that time. The contention made here was made in the case of *Peale, Peacock & Kerr* v. *C. R. R. Co. of N. J.*, 18 I. C. C., 25, and the present tariff of the defendant, as appears from its title-page, was published to conform to the opinion of the Commission in that case. Some definite period at the end of which the average must be obtained and a balance struck must be prescribed. A calendar month is a natural division, and such division conforms to commercial usage and to the time statements of debits and credits are made in car accounting.

Upon this record, we conclude that the demurrage regulations in issue are reasonable. *Plymouth Coal Co.* v. *D., L. & W. R. R. Co.*, 36 I. C. C., 76.

There remains the question presented by the complainant's claim for reparation. We are of the opinion that in passing upon this issue consideration should be had of matters such as were put in evidence in the *Anthracite case*, *supra*. Moreover, the parties agreed at the hearing that evidence bearing on the amount of reparation, if any, should be deferred pending determination of the issue of reasonableness.

Further hearing will be had accordingly, and meantime no order will be entered.