

No. 6399.  
LEHIGH VALLEY COAL SALES COMPANY  
v.  
LEHIGH VALLEY RAILROAD COMPANY.

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*Submitted July 15, 1914. Decided May 9, 1916.*

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Reparation on account of services performed by complainant in connection with the transfer of interstate shipments of coal from open cars to box cars at Buffalo, N. Y., denied.

*Nicholas W. Hacker* for complainant.

*Stewart C. Pratt* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the wholesale coal business, with its principal office at New York, N. Y. By complaint filed December 5, 1913, it alleges that defendant's failure to furnish box cars for the transportation of numerous shipments of anthracite coal from points on defendant's line in Pennsylvania to points beyond Buffalo, N. Y., and to Canadian points, compelled complainant, at its own expense, to transfer coal from open cars to box cars at Buffalo, and subjected complainant to unreasonable charges in the sum of \$9,306.49. Reparation is asked.

The shipments specified in the complaint consisted of 1,304 carloads of coal, aggregating 49,253.21 gross tons, that were received from day to day at complainant's storage plant near Buffalo during December, 1912, and January, 1913. Complainant ordered box cars for the shipments, but defendant's lines were short of box cars and an arrangement was made that the shipments should be transported to complainant's storage yard near Buffalo in open cars, where complainant should transfer them to box cars, defendant to pay complainant for the transfer service. Complainant had special facilities for doing the work and performed it as agreed. Defendant refused to pay the bill subsequently rendered on the ground that its tariffs did not authorize payment for such services. Complainant submits itemized statements showing the cost of transferring the shipments and the loss sustained by the degradation of the coal through its transfer. The combined transfer cost and loss is placed at \$9,306.49.

A witness for complainant testified that it has long been the custom to forward anthracite coal to points beyond Buffalo and to Canadian points in box cars; that box-car delivery has been specified by complainant's customers; that many of the plants to which the shipments involved were consigned were not equipped to unload coal from open coal cars and that some of the shipments doubtless would have been refused if they had been tendered at destinations in open cars. Effective January 23, 1914, defendant published an allowance of 15 cents per ton of 2,240 pounds on anthracite coal transferred by shippers from coal cars to box cars for defendant's convenience, which allowance is still in effect. Defendant expresses willingness to make refund to complainant on this basis.

Section 15 of the act provides:

If the owner of property transported under this act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable.

Although Canadian and western coal consumers may prefer its shipment in box cars, that custom does not make transfer from car to car transportation. The transfer herein involved was primarily for the commercial convenience of complainant and not a transportation service which defendant was required by the act to provide and furnish upon reasonable request therefor. The fact that defendant promised to reimburse complainant for the service the latter performed in the transfer of the coal from car to car and that defendant did provide an allowance of 15 cents per gross ton subsequently to such transfer do not, of course, constrain the Commission to find the allowance to be for a transportation service for which defendant may make an allowance.

From the facts of record it does not appear that the transfer of this coal from coal cars to box cars was a service of transportation which defendant was required to perform and for the performance of which by the owner defendant could lawfully pay an allowance. Manifestly, the Commission may afford relief only within the confines of the provisions of the law, no violation of which has here been proved. The complaint must be dismissed, and it will be so ordered.

39 I. C. C.