

No. 7747.  
**THORNE, NEALE & COMPANY**  
*v.*  
**WABASH RAILROAD COMPANY ET AL.**

*Submitted July 17, 1915. Decided June 5, 1916.*

Complainant, by its agent, misbilled three carload shipments of coal from Plymouth Junction, Pa., to Sharon, Ill., in error for Peoria; complaint that the shipments had been misrouted by the defendants, found to be without merit and dismissed.

*E. B. Wilkinson* and *M. F. Gallagher* for complainant.

*T. H. Lynch* for Wabash Railroad Company.

*L. F. Perry* for Delaware & Hudson Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in mining and shipping coal, with its principal office at Philadelphia, Pa. By complaint, filed February 12, 1915, it alleges that, due to misrouting, defendants collected unjust and unlawful charges for the transportation of three carloads of coal from Plymouth Junction, Pa., to Chicago, Ill. Reparation is asked.

The Kingston Coal Company delivered three carloads of nut coal to the Delaware & Hudson Company at Plymouth Junction, two on July 31, 1913, and one on August 26, 1913, consigned to the Sharon Coal Company, Sharon, Ill., specifically routed "D&H-Schdy.-NYC-Buffalo-Wabash-CP&St.L." The shipments were moved by the Delaware & Hudson Company to Schenectady, N. Y., thence by the New York Central Railroad to Buffalo, N. Y. They were stopped in transit at Buffalo by defendants, because Sharon was not reached by the Chicago, Peoria & St. Louis Railroad. Sharon is situated about 10 miles from Geneseo, Ill., a local station on the Chicago, Rock Island & Pacific Railway, hereinafter called the Rock Island, the nearest railroad point at which consignments to Sharon can be delivered. The consignor was advised and changed the routing to include Rock Island delivery. The shipments were then moved from Buffalo by the Wabash Railroad to Chicago, and by the Rock Island thence to Geneseo. They were unclaimed at Geneseo, and the shipper was requested to furnish disposition instructions. The ship-

per replied that complainant for whose account the shipments were made would make the required disposition. Complainant consulted with the Wabash agent at Chicago, representing to him that the coal was intended for delivery to the Sharon Coal Company at Peoria, and that the shipper's instructions had not been followed. In order to expedite delivery and correct the alleged error, the Wabash acted promptly upon complainant's representation and directed the Rock Island to back haul two of the shipments to Chicago, from which point the Wabash intended to participate in the movement to Peoria. The Rock Island complied with these instructions, but when the delivery to the Wabash was made at Chicago, it was discovered that complainant's representations were incorrect and that Geneseo was the proper destination under the instructions furnished by the consignor. The third car in controversy was apparently back hauled from Geneseo to Chicago with the others, but it does not appear by what authority. Complainant accepted the shipments at Chicago under protest and paid the demurrage and transportation charges for the portion of the movement from Chicago to Geneseo and return. The coal was then reshipped to other western points.

The reasonableness of the rates charged is not assailed and nothing specific has been furnished regarding the demurrage charges. The three shipments aggregated 261,836 pounds, or 130.9 net tons. No joint through rate was applicable from the point of origin to Geneseo and charges apparently were collected on the combination of intermediate rates to and from Chicago. The legal rates were \$3.50 per gross ton to Chicago; \$1.30 per net ton from Chicago to Geneseo; and \$1.72 per net ton from Geneseo to Chicago. The record does not disclose the charges assessed up to Chicago. It does show, however, that \$421.69 was collected after the three shipments first reached Chicago, composed of \$166.17 freight charges from Chicago to Geneseo, \$68 demurrage at Geneseo, \$133.52 freight charges for the back haul from Geneseo, and \$54 demurrage at Chicago. The legal rate applicable from Chicago to Geneseo apparently was not applied on the shipment of August 26, 1913, and one of the shipments of July 31, 1913. There are therefore outstanding undercharges due the Rock Island on these shipments for the movements to and from Geneseo.

Complainant concedes the consignor's initial error in routing the shipment to Sharon, but insists that the defendants substituted Geneseo as the point of delivery and the Rock Island as the delivering carrier without authority; that the back haul from Geneseo to Chicago was unauthorized; and that the demurrage charges at Chicago and all charges collected after the shipments first left Chicago were unjust and unlawful.

40 I. C. C.

The evidence establishes that the consignor authorized defendants to change the destination in the billing from Sharon to Geneseo and to include the Rock Island as a participating carrier. It does not appear that complainant specifically directed the Wabash to return the shipments to Chicago, but it does appear that the original misconsignment to Geneseo was due to the error of complainant's agent at Plymouth Junction, and that in refusing receipt of delivery at the billed destination and insisting upon delivery at another point, complainant impliedly authorized the movement. The back haul movement to Chicago was due to a mutual mistake of fact for which the complainant was primarily responsible.

We find that the shipments involved were not misrouted, and an order will be entered dismissing the complaint.

---

No. 8573.

BURLINGTON SAND & GRAVEL COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY  
COMPANY ET AL.

---

*Submitted April 18, 1916. Decided June 5, 1916.*

---

Rate charged for the transportation of sand and gravel in carloads from Burlington, Wis., by way of the Chicago, Milwaukee & St. Paul Railway to Chicago, found to be unduly prejudicial to the extent that it exceeds the rate contemporaneously maintained from other points in the so-called outer zone to the same destination.

*William W. Storms* for complainant.

*J. N. Davis* and *O. W. Dynes* for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in mining and shipping sand and gravel, with a plant at Burlington, Wis. By complaint, filed January 10, 1916, it alleges that the rates charged by defendants for the transportation of sand and gravel in carloads from Burlington to Chicago, Ill., are unreasonable, unjustly discriminatory, and in violation of the fourth section.

40 I. C. C.