

No. 8096.<sup>1</sup>

M. H. STEBBINS

v.

DELAWARE, LACKAWANNA & WESTERN RAILROAD  
COMPANY ET AL.

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*Submitted November 17, 1915. Decided November 25, 1916.*

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1. Rates applicable to the transportation of interstate shipments of contractors' outfits from Plymouth, Pa., to Shenango and Wellsboro, Pa., and from Shenango to Wellsboro not shown to have been unreasonable or unjustly discriminatory.
2. Certain shipments from Plymouth to Wellsboro found to have been misrouted.
3. Reparation awarded.

*H. J. Neuschafer, William F. Ashley, jr., and Ralph A. Koontz* for complainant.

*Douglas Swift* for Delaware, Lackawanna & Western Railroad Company.

*Douglas Swift* and *M. B. Pierce* for Erie Railroad Company and New York Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a resident of Wellsboro, Pa. By complaints, filed June 19, 1915, he alleges that the rates charged by defendants for the interstate transportation of certain carload shipments of contractors' outfits from Plymouth, Pa., to Shenango and Wellsboro, Pa., and from Shenango to Wellsboro, in May, 1914, October, 1914, and November, 1914, were unreasonable and unjustly discriminatory. Reparation is asked and the establishment of reasonable rates for the future. Rates are stated in cents per 100 pounds.

No. 8096 relates to four carload shipments aggregating 265,400 pounds which moved from Plymouth to Shenango, in accordance with complainant's routing instructions, by way of the Delaware, Lackawanna & Western Railroad to Elmira, N. Y., and the Erie Railroad beyond. There was and is no joint rate in effect over this route. Charges were collected in the sum of \$636.96, at a rate of 24 cents. Contractors' outfits of the kind in question were rated fifth

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<sup>1</sup> The proceeding also embraces complaints in No. 8096 (Sub-No. 1), Same v Delaware, Lackawanna & Western Railroad Company et al., and 8096 (Sub-No. 2), Same v. Erie Railroad Company et al.

class in official classification, which governed. The rate legally applicable was the combination fifth-class rate of 26 cents: 12 cents from Plymouth to Elmira and 14 cents beyond. The correct charges were \$690.04, so that the shipments were undercharged. When the shipments moved a joint fifth-class rate of 16 cents applied from Plymouth to Shenango over four routes. Complainant asks for a rate of 17 cents over the route of movement.

Sub-No. 1 relates to four shipments aggregating 190,000 pounds delivered to the Delaware, Lackawanna & Western Railroad at Plymouth, consigned to Wellsboro without routing instructions, except as to one shipment which weighed 48,700 pounds, which was routed "N. Y. C. & H. R." The shipments moved over the line of the initial carrier to Corning, N. Y., and New York Central Railroad to Wellsboro. There was and is no joint through rate from and to these points. Charges were collected in the sum of \$408.49, at a combination rate of 21.5 cents: 13.5 cents from Plymouth to Corning and 8 cents beyond. At the time lower combination rates were available over three other routes. The lowest was 19 cents, applicable over the Delaware, Lackawanna & Western Railroad to Pittston, Pa., and Lehigh Valley and New York Central railroads beyond, an intrastate route. The rate over this route, however, was on file with this Commission. The Delaware, Lackawanna & Western Railroad admits that it misrouted the shipments and is willing to make reparation on basis of the 19-cent rate, or in the sum of \$47.49. We find that the initial carrier misrouted the three shipments which were unrouted by complainant. The shipment which was routed by complainant over the New York Central, however, was not misrouted. Where a consignor specifies the routing that he desires his shipment to take by naming a carrier which, in connection with the originating line, forms a through route from point of origin to destination, the initial carrier can not be charged with having misrouted the shipment if it bills it over that route instead of selecting a cheaper route in which those carriers participate but with a third carrier intervening. Complainant contends that the rate charged was unreasonable to the extent it exceeded 10 cents.

The complaint in Sub-No. 2 relates to three carloads which moved from Shenango to Wellsboro over the Erie Railroad to Corning, and the New York Central Railroad beyond. There was and is no joint rate over this route. Charges were collected at a combination rate of 23 cents: 15 cents to Corning and 8 cents beyond. At the time a joint through rate of 17 cents applied from Shenango to Wellsboro by way of the Pennsylvania Company and also by way of the Bessemer & Lake Erie and New York Central railroads. Complainant asks for a rate of 11 cents over the route of movement.

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The only evidence offered by complainant in support of his contention that the rates legally applicable over the routes the shipments moved were or are unreasonable or unjustly discriminatory is the lower rates which were and are available over other routes. The team tracks of the carriers serving Shenango are close together, those of the Erie and the Bessemer & Lake Erie railroads being only 5 or 10 rods apart. With respect to the shipments from and to Shenango, complainant was aware that the rates over the Erie Railroad were higher than the rates over other routes, but by arrangement with the Erie for the receipt and delivery of his freight at a siding more convenient for loading and unloading, he sought to avoid cartage to and from the other lines.

We find that the rates legally applicable from and to the points in question are not shown to have been unreasonable or unjustly discriminatory. We further find that the Delaware, Lackawanna & Western Railroad Company misrouted three of the shipments from Plymouth to Wellsboro; that complainant made the shipments as described and paid and bore the charges thereon; that he was damaged by the misrouting to the extent of the difference between the charges paid and the charges that would have accrued if the shipments had been forwarded over the route via which the 19-cent rate applied; and that he is entitled to reparation from the Delaware, Lackawanna & Western Railroad Company in the sum of \$35.32, with interest.

An order awarding reparation will be entered in No. 8096 (Sub-No. 1). The complaints in No. 8096 and No. 8096 (Sub-No. 2) will be dismissed.

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