

No. 9002.

N. W. WOOD & SON

v.

ERIE RAILROAD COMPANY ET AL.

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*Submitted January 15, 1917. Decided July 6, 1917.*

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Rates on anthracite coal in carloads from Plains Junction, Pittston, Avoca, Dunmore, Scranton, and Honesdale, Pa., to complainants' coal yard at Middletown, N. Y., not shown to have been or to be unreasonable or unduly prejudicial. Complaint dismissed.

*Russell Wiggins* for complainants.

*H. A. Taylor* for Erie Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are Robertson G. Wood and Frances A. Wood, co-partners, engaged in the coal business at Middletown, N. Y., under the firm name of N. W. Wood & Son. By complaint, filed June 30, 1916, they allege that the rates charged by defendants for the transportation of anthracite coal in carloads from Plains Junction, Pittston, Avoca, Dunmore, Scranton, and Honesdale, Pa., to complainants' coal yard at Middletown were and are unreasonable and unjustly discriminatory. Reparation is asked on shipments made subsequently to May 1, 1916, and the establishment of reasonable rates for the future. Rates are stated in amounts per long ton.

The points of origin are coal assembling stations in the anthracite coal fields of Pennsylvania and are situated on the Wyoming division of the Erie Railroad. Middletown is on the main line of the same railroad, 68 miles west of New York, N. Y., and is also served by the New York, Ontario & Western Railway, hereinafter called the Ontario & Western, and the Middletown & Unionville Railroad. Complainants' coal yard is located on the Middletown & Unionville, about three-fourths of a mile from the latter's junction with the Erie, while all other and competing coal yards in Middletown are located on the Erie or the Ontario & Western, the latter not a party to this proceeding. The Erie assumed the burden of defense and will be referred to as defendant.

For some time prior to May 1, 1916, defendant's rates on anthracite coal in carloads from the points of origin to Middletown were \$1.60 on prepared sizes, \$1.45 on pea size, and \$1.35 on sizes smaller

than pea. On May 1, 1916, these rates were reduced to \$1.15 on prepared sizes and \$1.05 on pea and smaller sizes, in compliance with our supplemental order in *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220. Contemporaneously with this reduction defendant discontinued the absorption of the Middletown & Unionville's switching charge of 20 cents, which it had theretofore absorbed, and complainants have since paid the Middletown rate, plus 20 cents for yard delivery. Defendant's rates apply to all switches and yards of complainants' competitors located adjacent to its rails in Middletown.

Complainants buy about 3,500 tons of coal per annum, f. o. b. defendant's rails at Middletown, and compete with dealers located on defendant's line and on the Ontario & Western. The coal rates of the latter from the anthracite mines on its line in Pennsylvania to Middletown are 10 cents higher than defendant's, but this difference is equalized in the purchase price of the coal. Neither line absorbs the switching charge of the other or of the Middletown & Unionville.

Complainants show that defendant absorbs switching charges of 30 cents on coal for delivery on its connections at Newburgh, N. Y., and Weehawken, N. J., and at Wellsville and Attica, points in western New York. The rates from the points of origin to Newburgh and Weehawken are \$1.45 on prepared sizes and \$1.35 on pea and smaller sizes, and, after absorbing the switching charges at those points, defendant's earnings equal those yielded by the Middletown rates. The rates from the same points to Attica are \$1.85 on prepared sizes and \$1.62 on pea and smaller sizes, and to Wellsville \$2 on prepared sizes and \$1.75 on pea and smaller sizes. Switching charges were absorbed at these points prior to our order in *Rates for Transportation of Anthracite Coal*, *supra*, and for defendant it was testified that, since the absorption of the switching charges did not reduce its earnings at those points below \$1.15 on prepared sizes, it continued to absorb those charges. The order in the case cited required defendant to reduce the rates on coal from its mines in the anthracite coal fields to practically all points on its line east of Attica, and defendant ceased to absorb switching charges of connections at Port Jervis, Binghamton, Corning, Canisteo, Hornell, and Bath, N. Y., at the same time it discontinued the absorption at Middletown.

There is no evidence that complainants compete with coal dealers located on defendant's connections at Newburgh, Wellsville, Attica, or Weehawken, or that otherwise they are unduly prejudiced by the fact that defendant absorbs switching charges at those points; but they insist that defendant should be required to absorb the switching charge of the Middletown & Unionville in order to put them upon

45 I. C. C.

a rate parity with their competitors located upon the tracks of defendant and of the Ontario & Western at Middletown.

A trunk line can not be compelled to absorb the switching charges of a connecting line in the absence of unjust discrimination or undue prejudice. In *Manufacturers Railway Co. v. St. L., I. M. & S. Ry. Co.*, 28 I. C. C., 93, 103, the Commission said :

In the absence of an undue discrimination with respect to such absorptions the Commission could make no lawful order that they be made, and its order even in case of such discrimination would probably be in the alternative to absorb the charge of the railway or to cease absorbing similar terminal charges under like conditions. If there is shown no such discrimination, the only question left for the Commission to consider is the establishment of a joint rate between the railway and the trunk lines, and, assuming the rate of the latter to be reasonable in itself, such joint rate must necessarily be higher than that rate by the amount of the through charge accruing to the railway.

No absorptions of switching charges are made by defendant at Middletown, and it asserts that when its rates were reduced, following *Rates for Transportation of Anthracite Coal, supra*, it discontinued absorption of switching charges of connecting carriers at all points where its net returns would otherwise fall below the level prescribed by us. No evidence was adduced to show that defendant's own rates were or are in themselves, or that the switching charge of the Middletown & Unionville was or is in itself, unreasonable.

We find that the rates assailed are not shown to have been or to be unreasonable or unduly prejudicial, and an order dismissing the complaint will be entered. .

45 I. C. C.