No. 8867.

DELAWARE, LACKAWANNA & WESTERN COAL COMPANY

v.

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

Submitted January 5, 1917. Decided July 18, 1917.

Where a wide readjustment, involving both increases and reductions, results from an investigation of a general rate structure and it appears that substantial justice would not be advanced by an award of reparation, the Commission in many cases has denied such claims. Applying that principle to the facts shown of record here, and giving due consideration also to the relationship between the complainant and the defendant as disclosed by the evidence, reparation is denied on the complainant's shipments of anthracite coal from the Wyoming fields, in the state of Pennsylvania, to tidewater and other points, and the complaint is dismissed.

Wilbur L. Ball for complainant.

J. L. Seager for defendant.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner:*

Under its order of June 10, 1912, the Commission entered upon and subsequently completed a general investigation of the rates, practices, rules, and regulations governing the transportation of anthracite coal from the Wyoming, Lehigh, and Schuylkill regions, in the state of Pennsylvania, to tidewater and to interior points on the lines of the initial anthracite carriers; and in *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220, hereinafter referred to as the *Anthracite Case*, the rates then in effect to various points were found to be unreasonable, the respondents being required to fix for the future the reasonable maximum rates there prescribed. The report was issued on July 30, 1915, but the rate readjustment required by it did not become effective until April 1, 1916, and our findings did not therefore become operative until the latter date.

In the complaint here before us, filed on May 9, 1916, it is alleged that during the period from May 1, 1914, to April 1, 1916, the complainant made numerous shipments over the defendant's rails from the Wyoming district to tidewater under the rates found to be unreasonable in the *Anthracite Case*. It now asks reparation on these shipments in the amount of approximately $800,000, based on

the difference between the rates actually paid and the charges that would have been paid had the rates subsequently fixed by the Commission been effective when the shipments moved. The defendant admits that the transportation conditions disclosed in the general investigation prevailed throughout the period just mentioned.

The anthracite investigation, the record of which is made a part of this record, was quite general in character. The testimony showed not only that the practices of the carriers and their affiliated coal companies were unlawful, but that the railroad companies and the coal companies were so closely associated with each other through common stock ownership as to create conditions obviously contrary to the public interest. Those relations were condemned and the unlawful concessions made by the railroads to the coal companies with which they were thus affiliated were discussed at some length. Id., 239, 250.

The rates on coal from the Pennsylvania anthracite fields to practically all destinations in official classification territory have been thoroughly revised during the past two years. Most of the reductions were the result of our conclusions in the *Anthracite Case*, but many increases were also made as a result of the findings and order in that case, particularly in the rates on the smaller sizes of anthracite coal. In *Anthracite Coal Rates to Chicago, Ill., and Other Points*, 35 I. C. C., 702, we approved certain increased rates from the Pennsylvania mines to Chicago, Peoria, and St. Louis, and a number of other points. That proceeding, as the report shows, was virtually a part of the *Anthracite Case*, and the two cases were decided on the same date. In the thought that it might be helpful to have some general impression as to the nature and the extent of the readjustment of rates to various points that followed in consequence of the two decisions, a careful study has been made by the Commission's tariff division of the changes in rates on the various sizes of anthracite coal from the Pennsylvania fields to practically all points in official classification territory and to a number of Canadian points shown in the same tariffs. Most of the changes became effective after the cases above referred to were submitted. In making this study all the tariffs embraced in the two proceedings were examined, together with all the tariffs showing through rates from the Pennsylvania mines to points in official classification territory, under which the Delaware, Lackawanna & Western is the originating line, whether the tariffs were published by that carrier or by others. The result appears on the following table:

Table showing number of increases and reductions during the last two years in the rates on anthracite coal from the anthracite region in the state of Pennsylvania to the territory designated.

To—	Increases.				Reductions.			
	Prepared sizes.	Pea.	Buckwheat No. 1.	Smaller sizes.	Prepared sizes.	Pea.	Buckwheat No. 1.	Smaller sizes.
Chicago, Peoria, etc.[1]	101	84	.....	.....	.....	.....	.....	.....
Tidewater points[2]	354	355	767	1,107	1,534	1,524	825	966
New England and Canada[3]	1,179	1,175	.....	[4]4,051	1,412	1,726	.....	[4]4,871

Total increases, 9,173. Total reductions, 12,858.

[1] These increases resulted from our approval of the rates proposed in *Anthracite Coal Rates to Chicago, Ill., and Other Points, supra.* The increases shown under "Pea" include those for the smaller sizes. These figures do not include the changes made by the Pennsylvania to points in central freight association territory effective Dec. 20, 1915. Those changes, principally reductions, apparently had no connection with the two cases referred to in the text.
[2] Includes also many local points in trunk line territory.
[3] Includes also many points in trunk line territory not embraced in the preceding item.
[4] Includes buckwheat Nos. 1, 2, 3, and bird's-eye.

The table has been prepared with care, and its general accuracy may therefore be presumed; but its exact significance can not be determined without investigating the tonnage moving under each of the rates in question; an increase in the rate to Chicago, for example, or a reduction in the tidewater rate to New York harbor would probably be of greater importance than a hundred changes to points where the consumption of coal is small. Both the increases and reductions, however, include many rates under which a heavy tonnage moves. But in any event the rate increases have been large in number and the tonnage affected thereby substantial; allowing a liberal margin for errors in the figures gathered, the table shows how general in character the readjustment was and indicates clearly that a fair solution of the question presented for determination in this proceeding can not be reached by giving consideration only to the reductions in rates that followed upon the report in the *Anthracite Case.*

An award of reparation is not infrequently withheld in cases where a wide readjustment of rates has been made as the result of the Commission's findings in a general investigation. In such instances the revision is intended to bring the entire future rate structure into closer approximation and harmony with the conditions surrounding the service. Thereafter some of the shippers must pay higher rates while others will enjoy lower rates. Although, in connection with such a readjustment the law affords no remedy to the carrier with respect to shipments in the past under rates that may have been too low, it not infrequently happens that some of the shippers, who are to have lower rates for the future, demand reparation on their past shipments on the theory that the rates under which they moved were too high.

The situation before us here is illustrative. During the period for which the complainant is seeking reparation it shipped 3,164,946.05 tons of coal at rates lower than those established after our findings and order in the *Anthracite Case* were announced; the complainant paid in freight charges on those shipments $394,512.84 less than it would have paid if the present rates had been in effect when the shipments moved. There is no provision of law permitting the set-off of this sum against the amount of reparation sought by the complainant, and this fact, of course, is not determinative of the complainant's claim. Nevertheless, the figures are of interest as indicating the general nature and effect of the readjustment. When such a revision results from our findings, all the shippers under the schedule are affected either one way or another by the changes made, and as the readjustment is general, it has been thought, under the particular circumstances appearing in various cases that have come before us, that substantial justice would not be advanced by awards of reparation to those making such demands. This course, in the light of the facts developed in those cases, seems to have been within the spirit and the meaning of those provisions of the act that relate to reparation; and in the public interest an order requiring a revision of a general rate structure ought not to be embarrassed and complicated by awards of reparation, as a necessary consequence of such a revision, unless from all the circumstances and facts surrounding the service and the traffic, as they are disclosed upon the record, the Commission feels that essential justice requires such awards. In *Rates on Bituminous Coal*, 36 I. C. C., 401, 428, we said:

> Reparation is asked by complainants in many of these cases. However, in such an extensive readjustment of rates as that here involved, and following the principles announced in *Appalachia Lumber case*, 25 I. C. C., 193, 197, and *Anadarko Cotton Oil Co.* v. *A., T. & S. F. Ry. Co.*, 20 I. C. C., 43, we are of opinion that reparation should not be awarded.

To the same effect were *Memphis Freight Bureau* v. *I. C. R. R. Co.*, 27 I. C. C., 507; *Rates on Bananas from Gulf Ports*, 30 I. C. C., 510; *Royster Guano Co.* v. *A. C. L. R. R. Co.*, 31 I. C. C., 458; *Midcontinent Oil Rates*, 36 I. C. C., 109; *Oklahoma Traffic Asso.* v. *A. & S. Ry. Co.*, 36 I. C. C., 329; *The Missouri River-Nebraska Cases*, 40 I. C. C., 201; and *Cudahy Packing Co.* v. *A., T. & S. F. Ry. Co.*, 42 I. C. C., 579.

The record shows that when the shipments in question moved the complainant was, and that it still is, a subsidiary of the defendant, and that the defendant has endeavored in various ways, both lawful and unlawful, to give preferences and advantages to the complainant. The payment of freight charges by the complainant to the defendant seems to have been largely the transfer of money from one

pocket to another. That fact, however, does not simplify or aid the complainant's demand for an order of reparation. Moreover, an award of damages in the present proceeding, from some points of view, would simply be an extension, under our authority and with our approval, of the practices condemned in the *Anthracite Case*.

Upon all the evidence of record both in the present case and in the general investigation we find and conclude that the complainant is not entitled to reparation, and an order will be entered dismissing the complaint.

No. 8981.

EARLE FRUIT COMPANY

v.

OREGON SHORT LINE RAILROAD COMPANY ET AL.

Submitted December 1, 1916. Decided July 12, 1917.

Rate on fresh prunes in carloads shipped from Emmett, Idaho, to Chicago, Ill., and reconsigned to Liberal, Kans., and subsequently reconsigned to Greensburg, Kans., and later to Pratt, Kans., found to have been unreasonable. Reparation awarded.

H. W. Adams for complainant.

James Warrack for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the fruit business, with its principal office at Sacramento, Cal. By complaint, filed May 31, 1916, it alleges that defendants' rate of $2.13 per 100 pounds on a carload of fresh prunes, shipped August 31, 1914, from Emmett, Idaho, to Chicago, Ill., and reconsigned to Liberal, Kans., was unreasonable to the extent that it exceeded 90 cents per 100 pounds. Reparation is asked. Rates are stated in amounts per 100 pounds.

The shipment, weighing 26,000 pounds, was consigned to complainant at Chicago, and moved, August 31, 1914, from Emmett over the Oregon Short Line Railroad, routed by the shipper by way of the Union Pacific Railroad and Chicago & North Western Railway. On September 3, 1914, a reconsigning order was filed by complainant with the Pacific Fruit Express Company at Sacramento, directing