

INVESTIGATION AND SUSPENSION DOCKET No. 1060.
TIDEWATER DEMURRAGE.

Submitted October 24, 1917. Decided December 11, 1917.

Proposed reductions in free time for detention of carload shipments of coal at tidewater terminals, New York harbor, Philadelphia, Pa., Wilmington, Del., and Baltimore, Md., found to have been justified.

Alexander H. Elder and *Henry Wolf Bicklé*, committee of counsel for respondents; and *William Ainsworth Parker* for Baltimore & Ohio Railroad Company.

G. V. S. Williams and *Charles S. Allen* for various coal distributors at New York, Philadelphia, and Baltimore; *A. G. Dickson*, *Henry S. Drinker, jr.*, *C. E. Morgan, 3d*, and *H. M. Search* for Anthracite Coal Operators' Association; and *E. Bartram Richards*, *Thomas Raeburn White*, and *William A. Glasgow, jr.*, for Franklin Sugar Refining Company and American Sugar Refining Company.

George W. Jackson for protestants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND ATTCHISON.

By DIVISION 1:

By schedules, filed to take effect April 10, 1917, and later dates, respondents proposed the following reductions in free time for carload shipments of anthracite and bituminous coal and coke, transported to tidewater terminals at or near Jersey City, N. J., Philadelphia, Pa., Wilmington, Del., and Baltimore, Md., for transshipment by water: Under the usual or "straight" demurrage plan, from 10 days to 6 days, and under the average agreement plan, from 5 days to 3 days. Upon protests filed by various coal mining operators and associations and retail and wholesale coal dealers, the schedules were suspended until February 8, 1918.

The phrase "tidewater coal" is applied to shipments from interior mining points billed to the railroad terminals at north Atlantic ports and unloaded, at the expense of the carriers and by means of their special facilities, into vessels or barges for transshipment by water. The transportation rates cover the movements up to the tidewater terminals and the unloading service. The water movements are not under a common arrangement with the rail lines.

The points of destination include all of respondents' tidewater coal terminals on the Jersey shore of New York harbor, extending from Undercliff, N. J., to St. George, Staten Island, N. Y., and South Amboy, N. J.; also the terminals in the vicinity of Philadelphia and Chester, Pa., Wilmington, and Baltimore.

The present and proposed free time provisions are practically uniform, except that the tariffs of the Baltimore & Ohio Railroad, Staten Island Rapid Transit, and Western Maryland railways, Pennsylvania Railroad and affiliated lines, Philadelphia & Reading Railroad and affiliated lines, and New York, Ontario & Western Railway provide both the straight demurrage plan and the average agreement, whereas the tariffs of the Erie, the Delaware, Lackawanna & Western, and the Lehigh Valley railroads and Central Railroad of New Jersey provide only the average agreement. Prior to 1907 tidewater shipments were allowed to remain in the cars at the ports indefinitely without demurrage charges. Thereafter, and until June 1, 1916, the free time allowed at some terminals was 15 days straight demurrage, and 7 days average agreement; at others, 12 days straight demurrage and 5 days average agreement. On June 1, 1916, the present allowance of 10 days straight demurrage and 5 days average agreement became effective.

It is the practice at the mines to load and forward the entire daily output of coal according to sizes and grades, no storage facilities being provided there for the reason, it is testified, that the storage of particular sizes is impracticable, principally because of the added expense. The movement to tidewater is usually in trainloads and the volume is enormous. At the different tidewater coal terminals the capacities of the storage tracks vary from 100 cars to 3,000 cars. The cars are there classified according to the particular shipper and consignee and the particular kind and size of coal. Many coal operators bill cars to themselves and, upon arrival, order the carrier to place so many tons of a certain kind and size into a particular barge or vessel, without designating particular cars. When the barges provided by the shippers have been registered and docked at the piers the cars, which are thereby released from detention, are switched and unloaded directly into the holds by automatic car dumps at some piers and by means of trestles and chutes at others. Cars can be unloaded and moved from the automatic dump tracks within a minute and a half after placement, while the unloading of hopper-bottom cars at the chutes requires only a few minutes. Under the present method of handling coal according to classifications, which requires excessive switching, the unloading facilities can not be operated at full capacity; each classification must be assembled for a particular barge. In May, 1917, the Pennsylvania

had at South Amboy 888 classifications of bituminous coal. The number of classifications of anthracite at the different terminals averaged about 800. There is practically no difference between the handling of bituminous and anthracite coal, except that it includes but two or three sizes or grades of bituminous and eight sizes of anthracite. The additional number of sizes of anthracite multiplies the classifications, but embargoes are less frequent on anthracite than on bituminous coal.

The water movements consist of hauls by barges to private and public piers and by vessels to New England ports. A small amount of the tonnage is dumped directly into vessel bunkers, and but little is for full cargo movement by vessel. The most important movement is by barge from the New Jersey terminals to Greater New York, especially Manhattan Island and Brooklyn, for local consumption. New York offers the largest market for tidewater coal. On account of the lack of storage facilities and the great congestion of population on Manhattan Island there is a demand for a constant stream of coal from day to day, varying in volume with the seasons. It is estimated that the retail storage space on Manhattan Island is limited to a supply sufficient for about 10 days. Less than 10 per cent of the coal consumed in New York City moves on car floats and practically none by all-rail routes; tidewater shipments from terminals on the Jersey shore comprise over 90 per cent of the city's total tonnage.

Exhibits filed on behalf of respondents purport to show that the average detention of tidewater shipments of coal, both anthracite and bituminous, during the year 1916 was 3.83 days under the average agreement and 5.25 days under straight demurrage, and it was testified that during 1916 the detention was abnormally high. These exhibits are not uniform, there being in some cases no separation of the two demurrage plans and in others a commingling of anthracite and bituminous shipments; and as the figures which indicate net average detentions also are computed in many instances upon other averages, they are of interest only as approximations of results under the present free time allowances. It appears that the average detention of anthracite coal was a fraction of a day more than that of bituminous under the average plan and approximately one and one-half days more under straight demurrage. The experiences of the Lehigh Valley and the Baltimore & Ohio indicate that the average detention tends to diminish as the abnormal conditions of congestion are abated. The lower yearly averages do not mean, of course, that no demurrage accrued, as the accounts under the average agreement are adjusted monthly, and in many instances substantial sums were assessed.

It appears that the present free time allowance was not fixed by calculating the time actually necessary for the accumulation of cargoes at the ports, but rather that the former, present, and proposed allowances represent a progressive series of attempts to eliminate the car waste resulting from the abuse of the old practice of permitting indefinite detention without penalty. The revenue accruing from the charge of \$1 per car per day after the free time may be largely or wholly offset by the per diem charge for foreign equipment of 75 cents per car, which runs during the period of free time as well as during the demurrage period. Respondents expect that the proposed reduction will secure more prompt release of equipment, which in turn will enable the operators to increase the production. This would not only increase the carriers' revenues but would also benefit the public during these times of increased demand. Since the outbreak of the European war the shortage of vessels has caused large increases in the rates for water transportation, and the supply of coal for New England, which up to this time has moved largely by vessel from Hampton Roads, Va., has been diverted to a considerable extent to the all-rail routes, thus further increasing the congestion of cars at the tidewater ports and the delays incident to the movement of equipment to and from New England. During the winter of 1916 adverse weather conditions added to the difficulties and necessitated widespread embargoes. At the instance of the Council of National Defense the carriers' agents have been instructed to give preference to the movement of coal, coke, ore, and furnace material, and efforts are being made by the carriers along varied lines to facilitate the movement of these kinds of traffic. Between January 1, 1907, and January 1, 1917, respondents augmented the carrying capacity of their coal equipment from 5,115,537 tons to 9,103,789 tons by increasing the size and number of their cars. During the past year the carriers hauled 66,000,000 tons of coal more than during 1915, and the tonnage is still increasing. At the time of hearing the anthracite mines were supplied with practically all the cars needed, but the supply for bituminous mines is still considerably below the output. Precautions are being taken to prevent during the coming winter a recurrence of the congestion experienced during the past two years. For respondents it is predicted that the proposed reduction in free time will enable them to keep their tidewater terminals and storage tracks open for the prompt and regular movement and handling of coal.

One measure undertaken to promote the relief of congestion at tidewater was the formation of a pooling arrangement for bituminous coal, to become effective at about the same time that the schedules here suspended were to take effect. It is proposed to unload the

coal into barges according to numerical designation of the classifications, without regard to the identity or origin of the coal. This will result in reducing the number of classifications of bituminous coal to about 41, and a similar arrangement as to anthracite, which respondents hope to effect, would mean a reduction in classifications from about 800 to less than 100. It is claimed that under the pool the bituminous classifications for the Pennsylvania, for instance, will be reduced to 17 at its Baltimore, Philadelphia, and New York terminals. It was testified that the pool for lake coal, which went into effect in the spring of 1917, has been successful and has reduced the average detention to about two days. A material benefit to be derived from the pool is the reduction in the amount of drilling and switching required under the present complex system, and respondents predict that the operation of the arrangement at tidewater will reduce the average detention to less than three days. This, it is estimated, will enable the carrier to transport to tidewater 6,000,000 tons of coal per year additional. One of the conditions of the pooling arrangement is the reduction of the free time to three days, average agreement, as proposed.

It was testified for respondents that it was not uncommon in the past for operators to ship to tidewater when they had neither made a sale nor engaged a boat; and that during the winter of 1915-16 from 30 per cent to 40 per cent of shipments to tidewater arrived prior to sale. This practice is also referred to upon the record as speculation. To prove that the holding of coal on account of market conditions produces congestion and irregularity of movement to the ports, it is shown that the maximum of congestion and average detention occurs in the summer months, when the market for coal is lightest and the transportation conditions best for regular movement and prompt unloading. During the first five months of the year 1917 the demand for coal of all sizes and kinds was so great that the percentage of coal unsold at the time of arrival diminished. One of protestants' witnesses testified that the increased demurrage paid during the summer months might be due to delays of cars in transit and irregularity of movement to the ports, to delays in securing boats, or to the shipper's desire to dispose of the coal at a profit.

Protestants contend, and their witnesses testified, that the proposed reduction in free time can not result in more prompt release of cars, because their business is now being conducted with the greatest possible dispatch; that shippers now have every incentive, for commercial reasons, to have their coal unloaded as quickly as possible; that the proposed reduction will result only in increasing the amount of demurrage charges, which will have to be borne by

the coal dealers or the consumers; that it will be impossible for coal dealers, other than the large coal companies that are controlled by the carriers, to escape payment of demurrage; that coal is moved to the ports with such irregularity that a boat cargo can not be accumulated without the payment of demurrage, either for cars or for boats; and that it is practically impossible to accumulate a full export cargo of from 5,000 tons to 8,000 tons within the proposed free time.

To support their contention that the present free time is a necessary incident of tidewater traffic, numerous illustrations are given. For example, out of a shipment of 700 tons of gas coal to St. George, the first car was shipped from the mines May 20 and arrived June 6, 17 days en route; the last car was shipped June 4 and arrived on the 13th, 9 days en route; one car shipped May 29 arrived June 4, 6 days en route. The variation between the arrival of the first and last cars was 8 days; but the variation between the loading dates of the first and last cars was 15 days, or in excess of the variation of time en route. Furthermore, it is admitted that gas coal is not shipped in great volume, and it appears that in order to accumulate a cargo of this particular kind of coal demurrage accrues, even under the present free time. Another example cited was a shipment of 1,500 tons of gas coal from a mine near Pittsburgh, on which one car was en route 4 days and another 23 days, a variation of 19 days; but the period of loading extended from April 3 to April 30, a spread of 27 days. It was claimed that in this instance the delay in loading was due to delay in furnishing cars. Each of the orders in the two illustrations cited was purchased from one mining operation, according to usual practice. The spread in the time of loading is usually due to the fact that the average mining operation must load all of the sizes produced concurrently and can not load enough of a particular size or kind in one day to fill an average order. For respondents it is contended that there is no delay in loading the cars which have been placed at the mines, and suggested that the dealer might divide his order for a particular size between a number of mining operations in order that the loading could be performed in one day. It is urged for respondents that under such a wide spread in the loading period the shipper should not expect to escape payment of demurrage.

The irregularity in the movement of cars from mines to tidewater is particularly stressed by protestants to support their contention that the average shipper will not be able to escape the payment of demurrage under the free time proposed. Many instances of irregularity in movement were shown in the record, and of demurrage which accrued in spite of the efforts of consignees to use their delivery and storage facilities to capacity. It is testified that such

irregularity was a more or less common experience during the past winter. The shippers wait until a number of cars for a certain order have arrived, then have the barge placed, and run the risk of holding the barge and paying demurrage thereon until the balance of the cargo arrives. Their alternative is not to order the barge until the cars have arrived.

It is testified for respondents that, while there is some variation among the carriers, tidewater coal moves with greater regularity than any other freight, except high-class tonnage which moves in special fast freight trains; and that the average time on the Pennsylvania under normal conditions from mines to tidewater has been from four days to seven days; further, that when the number of cars detained at tidewater terminals increases, the storage tracks become blocked and as the later cars arrive the congestion is extended farther and farther back into freight yards and on to the lines of road, hindering the flow of traffic and necessitating embargoes. It is insisted for respondents that the acute congestion during the past two winters was the primary cause of the irregularity of movement and that the proposed reduction in free time will tend to avoid its recurrence; also that under ordinary conditions the movement from the mines to tidewater should not vary more than one or two days. For the Central Railroad of New Jersey it is shown that in January, 1917, 51.3 per cent of the cars shipped from collieries on its lines arrived at tidewater within one day, 39.52 per cent within two days, 6.43 per cent within three days, 1.31 per cent within four days, and the remainder within five days and over; in July, 1916, 39.97 per cent arrived within one day, 46.88 per cent in two days, 8.69 per cent within three days, 2.49 per cent within four days, and the balance within five days and over. The maximum time required for any one car was 16 days in January, 1917, and 10 days in July, 1916. During the past two years 88.83 per cent of all its cars arrived within two days and 95.89 per cent within three days. It is stated that the records of the Delaware, Lackawanna & Western probably will show even greater regularity; that 95 per cent of the shipments over the Lehigh Valley move within from one day to four days, and that the record of the Erie is about the same. The record of the Philadelphia & Reading appears not to have been so good.

The barges used at tidewater carry an average of from 500 tons to 600 tons, or from 12 cars to 14 cars. For protestants it is testified that the rail carriers control a large percentage of the towboats used in New York harbor, and that, as it is necessary to secure barges before the coal can be unloaded, and they can not be placed before arrival of the cars without accrual of barge demurrage, shippers are dependent upon the carriers in respect of both rail and

water movements. During the past winter there was a shortage of boats in New York harbor, and weather conditions have a bearing upon the time within which they can be docked at the piers. The rail lines own tugs or towboats which operate at Port Reading, South Amboy, and some other piers, but not at St. George. Most of the tugs used at South Amboy are owned by the Pennsylvania, but the evidence for that carrier is that shippers are not limited to the use of its tugs and can secure both tugs and barges from independent companies.

While in many instances the present allowances of free time have been materially exceeded, it appears that the general average detention on all of respondents' lines during the year 1916, under disadvantageous conditions, was less than the free time under the proposed schedules for the straight demurrage plan, and the figures submitted for the first part of the year 1917 indicate that the abnormal conditions have been to some extent relieved and the average detention correspondingly decreased; furthermore, that a number of shippers, under varying circumstances, have been able to conduct their tide-water business within the average free time proposed, even under the abnormal conditions which have existed. While the protestants have shown that considerable demurrage has accrued on cars and on boats from irregularity in the periods of time cars were en route over the lines of certain carriers, it also appears that the irregularity of movement has been caused to a large extent by the congestion of traffic at the ports. In other words, the record does not demonstrate that either condition is the cause or the effect, and the fair conclusion is that each in turn has contributed to the other. While, therefore, the reasonableness of any period of free time for this traffic may well depend in large measure upon a fair and efficient cooperation on respondents' part, the carriers' equipment should not be detained for storage purposes beyond any period reasonably necessary to effect its release, and, subject to such modifications as future practical results may require, our conclusion is that the periods proposed should suffice.

Upon all the facts of record we find that respondents have justified the proposed reduction in free time, and the orders of suspension will be vacated.

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