

No. 9241.
BARRETT COMPANY
v.
DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY ET AL.

Submitted January 18, 1917. Decided March 28, 1918.

Charges on benzol, in tank-car loads, from Solvay, N. Y., to Philadelphia, Pa., for export, found to have been unreasonable prior to January 30, 1913, and illegal thereafter. Reparation awarded.

J. L. Roberts for complainant.

Douglas Swift for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture of benzol at Solvay, N. Y., and Philadelphia, Pa. By complaint filed September 13, 1916, it alleges that the fifth-class rate of 15 cents per 100 pounds charged by defendants on five tank-car loads of benzol shipped from Solvay to Philadelphia, for export, between December 26, 1912, and February 4, 1913, inclusive, was unreasonable and unduly prejudicial to the extent that it exceeded 10 cents. It asks reparation. The claim was presented to the Commission informally June 27, 1914. Rates are stated in cents per 100 pounds.

The shipments, aggregating 339,580 pounds, moved over defendants' lines to Philadelphia, from which point benzol was exported to France. Charges were collected for the rail movement in the sum of \$509.37 at a rate of 15 cents. An examination of the tariffs on file with us discloses that neither this rate nor any other rate applied on the shipments moving prior to January 30, 1913.

On that date defendants established an export commodity rate of 10 cents on benzol in tank-car loads from Solvay to Philadelphia; and on February 10, 1913, provided for the application of this rate on domestic shipments. Effective February 23, 1915, these rates were increased to 10.5 cents following *The Five Per Cent Case*, 32 I. C. C., 325. One of the shipments moved subsequent to January 30, 1913, and, in our opinion, the 10-cent export rate was legally applicable thereto, so that it was overcharged 5 cents per 100 pounds.

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Complainant cited defendants' contemporaneous rates on benzol, in tank-car loads, from Solvay of 10 cents to New York and 13 cents to Thompson's Point and Carney's Point, N. J. The record indicates that the rates to these points and to Philadelphia are ordinarily related, Philadelphia taking the New York rate and an arbitrary of 3 cents being added to make the rate to Thompson's Point and Carney's Point. Defendants testified that they would have published a 10-cent rate for application to all these shipments had such a request been made. They admitted that the rate charged was unreasonable and expressed a willingness to pay the reparation asked.

We find that the charges collected on the shipments that moved prior to January 30, 1913, were unreasonable to the extent that they exceeded the charges that would have accrued at a rate of 10 cents per 100 pounds. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges collected exceeded those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$169.79, with interest, which amount includes the above-mentioned overcharge.

An order awarding reparation will be entered, but as the rate herein found reasonable has been in effect since January 30, 1913, save for the 5 per cent increase on February 23, 1915, no order for the future is necessary.

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