No. 8759.

HENRY E. MEEKER

v.

PENNSYLVANIA RAILROAD COMPANY.

Submitted March 19, 1917. Decided April 25, 1918.

Defendant's rules with respect to notification of arrival of shipments of anthracite coal at South Amboy, N. J., for transshipment by water not found to be unreasonable. Complaint dismissed.

George W. Jackson for complainant and interveners.
Henry Wolf Biklé for defendant.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MCCHORD, MEYER, AND AITCHISON.

MCCHORD, *Commissioner:*

This proceeding brings in question the reasonableness of certain of defendant's tidewater demurrage rules and regulations governing cars containing anthracite coal at South Amboy, N. J. The complaint, as filed, involved matters other than the rules and practices relating to notices to consignees of arrival of cars; but as amended at the hearing the questions submitted for determination concern only notices of arrival and the practices thereunder.

Complainant is a wholesale dealer in coal with his main office and place of business in New York, N. Y. Pattison & Bowns, a copartnership engaged in the same business and having their headquarters likewise in the city of New York, intervened at the hearing. Complainant asks reparation because of alleged unreasonable demurrage charges on cars which arrived at South Amboy from January to October, inclusive, 1915; the interveners' claims, which are of similar character, extend back to the latter part of the year 1913. The complaint was filed March 24, 1916, and the claims of the interveners were brought to the attention of the Commission informally December 23, 1915. Complainant claims reparation in the sum of $1 per car upon 736 cars, and the interveners demand a similar sum on 501 cars, based on the allegation that these demurrage rules are unreasonable in that they do not contain a provision, similar to that contained in the Uniform Demurrage Code, providing that when claim is made that a mailed notice of arrival has been delayed the postmark thereon shall be accepted as indicating the date of the notice. Defendant's practices as to notification are attacked because notices of arrival were mailed in South Amboy too late on

the date of arrival to be stamped by the post office as of that day. In other words, the case resolves itself into a claim that defendant's rules and practices resulted in a reduction of one day from the free time allowed by the tariff.

All cars upon which these claimants ask reparation contained anthracite coal forwarded from mines in Pennsylvania to South Amboy for reshipment by water to destinations in New York harbor or New England. The demurrage on these cars accrued at South Amboy while they were held for vessels provided by claimants in which to load the coal.

The record shows that for the transportation of coal by rail the unit of handling is the carload; whereas for transportation by water the unit is the capacity of the vessel, usually many carloads. Cars loaded with coal for domestic and industrial purposes are unloaded at destination by the consignee at his own expense and as soon as possible after arrival; cars loaded with coal for transportation by water are unloaded at tidewater by the defendant at its expense, not on the arrival of the cars but on the docking of the vessel.

The Uniform Demurrage Code, which applies to cars loaded with domestic and industrial coal, grants 2 days' free time for unloading; the tidewater demurrage rules, applicable at South Amboy, until recently provided 10 days' free time to assure a cargo or vessel load. Because of the shortness of the free time allowed under the uniform code many concessions are granted which are not needed and are not granted under tidewater demurrage rules. To illustrate: The receiver of domestic or industrial coal has facilities for its receipt or storage, or he would not order the shipment thereof, and two days for unloading should ordinarily be ample; but if, because of any fault on the part of the carrier, this free time is curtailed the rules provide a compensatory extension of time. The consignee of tidewater coal must provide a vessel to receive it; vessels are not always to be had on short notice and their undue detention is costly. Ten days' free time formerly was allowed on each car consigned to tidewater in order that enough coal might be accumulated to make a full cargo or vessel load and to insure the loading of the vessel as soon as possible after arrival; and demurrage ceases immediately the vessel has docked and the consignee has instructed the defendant as to the kind and amount of coal the boat is to receive. It is also shown that at tidewater the defendant classifies the coal belonging to each shipper and loads the vessel with the number of tons of the kind ordered, the orders being without car initials or numbers.

Wholesale dealers, such as complainant and interveners, contract for large supplies of coal, sometimes for the entire output of a mine. This coal moves toward tidewater as soon as it is mined, and the dealers' duty, so far as transportation is involved, is to arrange for

vessel bottoms in which it may be received at tidewater. Defendant's rates cover handling charges from the cars into the vessel as a part of transportation. Complainant and interveners are on the straight demurrage basis, and during the times these cars were held defendant's rules allowed free time as follows: 15 days prior to April 1, 1915; 12 days from that date to June 1, 1916; and 10 days thereafter. It is not alleged that the free time allowance was unreasonable.

Defendant's facilities for the handling of coal at South Amboy consist of piers and docks provided with car dumps, a pier yard, and a classification yard, known as Old Bridge yard. These yards each have a capacity of 1,000 cars or more, and each car dump can empty a car every few minutes. There is no suggestion in the record that claimants' cars were detained because of insufficient facilities provided by defendant, and such a suggestion could not be sustained, as the tariff places the burden of unloading upon the defendant immediately after a vessel has docked and orders for loading are given.

From February 1, 1912, to the latest date here involved, defendant's tariffs provided as follows: "A car shall be considered to have arrived when it reaches Old Bridge yard for transshipment at South Amboy." From February 1, 1912, until April 1, 1915, the tariff also provided: "Time will be computed from the first 7 a. m. after the day on which notice of arrival is sent to consignee." After April 1, 1915, this rule read: "Time will be computed from the first 7 a. m. after the day on which notice of arrival is sent *or given* to consignee."

Prior to the filing of this complaint it was the practice of defendant to mail notices of arrival of cars about 11 p. m. on the day of arrival, after the post office at South Amboy had closed. This resulted in the collection of such notices by the post office early the next day, and they were delivered in New York City some time that afternoon. As these notices had been sent on the day of arrival, free time on the cars enumerated therein was computed from 7 a. m. of the following day, although the notices did not reach complainant and interveners until the afternoon of that day. This and this only is the ground of complaint, and it is upon this alone that the demands for reparation are based.

Defendant calls attention to the fact that these claimants demand notification by mail in New York City as early as the mail would serve them in South Amboy. The claimants insist that the change in defendant's practice which followed the filing of this complaint is an admission that its former procedure was indefensible. The only change shown is an earlier mailing of such notices as can be sent prior to the closing of the local post office; other notices are still sent at 11 p. m.

The record shows that the formal notice of arrival upon which the complaint is based is only one of the notices of cars on hand at South Amboy received by complainant and interveners. Every morning the defendant notifies each consignee of tidewater coal at South Amboy of the number of cars of each size and kind of coal then held subject to his orders; the notice being forwarded either by telegraph or by messenger, at the option of the consignee. These notices also specify vessels loaded, loading, and waiting. These claimants received such notices by messengers employed by them; the notices to complainant being upon the telegram form used by defendant and those to interveners being upon special forms furnished by them to the defendant for this purpose.

Complainant and interveners seldom, or never, order cars to the vessels by specific initials and number; their orders are for the delivery by defendant of so many tons of certain kinds of anthracite into particular vessels; and they have no duties to perform in transferring the coal from the cars to the vessels. Their duties end when the vessel docks and orders for loading are given and, as stated, demurrage thereupon ceases to run.

It is claimed on behalf of complainant and interveners that the delay in the receipt of the formal notices of arrival of the individual cars actually resulted in damage to them because they were not advised of the arrival of such cars early enough in the day to provide vessel bottoms for the coal in such cars. The claim, however, breaks under its own weight. Dealers in tidewater coal do not provide vessels for any individual car or cars. Vessels are provided for the receipt of so many tons of coal of specified sizes, and these claimants were informed by defendant day by day not only of the total number of coal cars then on hand subject to their orders but of the number of cars of each particular size of coal and of the vessels waiting to receive such coal. It is impossible to believe that any delay or damage was caused these claimants by the fact that the mailed notices specifying the arrival of individual cars reached them in the afternoon rather than in the forenoon 15, 12, or 10 days before demurrage began to accrue.

The claims made are entirely too technical and ignore the facts of actual information received. To support these claims and award reparation it would be necessary to hold that the rules governing demurrage on tidewater coal were unreasonable in that they differed from the uniform demurrage rules, notwithstanding the fact that tidewater coal was allowed 10 days' free time and other coal only 2 days, and regardless of the handling of these cars by defendant and their release immediately upon the docking of a vessel and the order of loading. Complainant and interveners claim $1 upon each car

specified. All these cars had been detained by them at least 11 days and some much longer than that.

The tariffs are perfectly plain. Prior to April 1, 1915, demurrage did not begin to run until 15 days after the first 7 a. m. of the day following the sending of notice of arrival, and such sending was by mailing the notice of arrival at 11 p. m. After April 1, 1915, demurrage did not begin to run until 12 or 10 days after the first 7 a. m. of the day following the sending *or giving* of notice of arrival; and such sending was by mailing the notice of arrival at 11 p. m., or more recently at 5 p. m. and 11 p. m. No demurrage is claimed to have accrued based upon the giving of notices to these claimants at 9 a. m. each morning; for the notices given at that time concerned the availability of cars for vessel loading without regard to when they arrived; and notices as to all cars so marked as available for vessel loading had been mailed at earlier dates or were mailed later on that day. In the latter event the free time began to run at 7 a. m. the following day.

These coal dealers received notification as provided for by the tariffs, and in addition thereto information not required by the tariffs. In the case of *Meeker* v. *C. R. R. Co. of N. J.*, 46 I. C. C., 657, where the tidewater demurrage rules of the Central Railroad of New Jersey were in question, the tariff under consideration made no provision for notice by mail. That tariff we did not find unreasonable. In that report we said:

> The record shows no failure on the part of defendant actually to notify complainant of the arrival of cars morning and afternoon * * *. He insists, however, that notice should be sent by mail. The record before us shows no necessity for such a notification. It may be that in other circumstances than those here shown it would be unreasonable not to provide for notification by mail. In this case, however, complainant's own witnesses testify that detailed information is received twice each day and on the facts before us we see no reason to order the defendant to change its tariff in this respect.

Since this case was heard the Commission has had under consideration the proposed reductions in free time for detention of carload shipments of coal at tidewater terminals, including South Amboy. *Tidewater Demurrage*, 46 I. C. C., 677. In that proceeding we found that the respondents had justified the proposed reduction in free time from 10 days to 6 days, under the straight demurrage plan.

Upon the facts shown in this record we find no reason to condemn defendant's tidewater demurrage rules applicable to anthracite coal in effect at South Amboy during the period stated, because they did not conform to the uniform demurrage code; nor do we find that defendant's practices with respect to notification of arrival of cars loaded with tidewater coal resulted in a reduction of one day from the free time allowed by the tariff.

This complaint should be dismissed, and it will be so ordered.