

No. 10219.
NAYLOR & COMPANY
v.
DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY.

Submitted February 24, 1919. Decided March 18, 1919.

Storage charges assessed at Hoboken, N. J., on certain carloads of pig iron found unreasonable. Reparation awarded.

P. L. Smith for complainant.

Douglas Swift for defendant.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

The complainant in this proceeding, a corporation, claims reparation on account of alleged excessive demurrage and storage charges collected by defendant on 12 carload shipments of pig iron transported by defendant to Hoboken, N. J., for export. When the shipments reached Hoboken, at various dates in January, 1917, the vessel on which they were to be exported had not arrived. Pending its arrival, the shipments were held in cars for varying periods, but were finally unloaded by the defendant in order to release the equipment. They were ordered to vessel on February 17. The average period of holding in cars was about 24 days, and of storage on ground or pier about 10 days. At the time the shipments arrived and during the period of detention defendant's tariff applicable to the traffic contained the following provision:

Unloading, storage, and reloading coarse freight, carloads.—When requested by shipper or consignee, the following articles, in carloads, may be unloaded from cars upon open piers, bulkheads or lands of the Delaware, Lackawanna & Western Railroad Company on or adjacent to New York harbor, subject to the charges named below to cover unloading, reloading, and storage for a period of six months, such storage period to be computed from the first 7 a. m. after notice of arrival is sent to consignee.

Among the articles listed is pig iron, and the charge named is 25 cents per ton.

It appears that no specific request for the unloading of these cars was given by shipper or consignee, and defendant collected charges based upon current demurrage rates for the full period from the arrival of the shipments at Hoboken to February 17, less the free time 52 I. C. C.

provided by effective demurrage rules, the amount thus collected aggregating \$682. Collection of charges for the period after unloading was based upon a general tariff provision reading—

Carload freight which is unloaded by the Delaware, Lackawanna & Western Railroad Company for the purpose of releasing needed equipment will be subject to storage charges the same as would have accrued under car-demurrage and track-storage charges, if any, had the freight remained in the car, which charges are provided for in rule 83 and in G. F. D. Circular No. 1186 (I. C. C. No. 11214), supplements thereto and reissues thereof.

The circular last referred to contained the general demurrage rules, a reissue of which at that time provided a charge of \$1 for the first day of detention after free time, \$2 for the second day, \$3 for the third day, and \$5 for each day thereafter.

By complaint seasonably filed, the complainant alleges that the charges collected were unreasonable and unjustly discriminatory, in violation of sections 1 and 3 of the act, and requests reparation in the amount that the charges collected exceed the amount that would have accrued had the charge of 25 cents per ton, provided in the rule first above quoted, been applied for the entire period. Some testimony was offered by complainant tending to establish the existence of a general understanding or arrangement with defendant for the unloading of shipments, but the showing in this regard was too indefinite to be given material weight.

Effective May 15, 1917, defendant's storage rule here in question was amended to read as follows; the principal changes being here italicized:

When requested by shipper or consignee, *or for the convenience of the Delaware, Lackawanna & Western Railroad Company*, the following articles, in carloads, may be unloaded from cars upon open piers, bulkheads, or lands of the Delaware, Lackawanna & Western Railroad Company at New York Lighterage Station, N. J., * * * subject to the charges named below to cover unloading, reloading, and storage for a period of *sixty (60) days*, such storage period to be computed from the *expiration of the free storage period, if any*.

Under the amended rule, the charge for most articles, including pig iron, was increased to 35 cents per ton. The intended effect of the amendments was to permit the application of the storage charge to shipments unloaded by the carrier without request from the shipper or consignee. They also brought the defendant's rule into conformity with that of the Pennsylvania Railroad Company, already in effect. The defendant neither admits nor denies the unreasonableness of its former rule, as applied.

The Commission should find that the collection of storage charges based upon demurrage charges on these shipments for the period sub-

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sequent to the unloading and release of the equipment was unreasonable, and that a reasonable charge for that period would be 25 cents per ton. The existence of a general provision for the storage of freight at that rate under substantially similar circumstances, and the extraordinary nature of the demurrage charges effective at the time of the storage of these shipments, differentiate this case from *Parry & Co. v. P. R. R. Co.*, 29 I. C. C., 559, and *Levering Bros. v. P., B. & W. Ry. Co.*, 38 I. C. C., 349, in which cases storage charges based upon demurrage charges were sustained. The record affords no basis for authorizing the defendant to waive the collection of tariff demurrage charges for the period of detention in cars. According to the evidence of record, the complainant was given prompt notice of the arrival of its shipments, and it must be held responsible for failure to request their unloading. The Commission should further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued upon the basis herein found reasonable; and that it is entitled to reparation, with interest. Complainant should prepare a statement of its claim upon this basis, showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the date or dates on which the charges were paid, which statement should be submitted to the defendant for verification. Upon receipt of a statement so prepared and verified the Commission should consider the entry of an order awarding reparation.

No evidence was offered upon which the Commission could base a finding of unlawful discrimination or prejudice.

CLARK, *Commissioner*:

The foregoing proposed report of the examiner was served upon the parties. No exceptions thereto were filed. The report correctly states the facts of record and we are of opinion that the conclusions of the examiner are sound. The report and conclusions of the examiner are adopted as the report and conclusions of the Commission.

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