

No. 10315.

CLARK-DAVIS COAL COMPANY ET AL.

v.

DIRECTOR GENERAL, DELAWARE, LACKAWANNA &
WESTERN RAILROAD COMPANY, ET AL.

Submitted May 19, 1919. Decided May 21, 1919.

Rates charged for the transportation of anthracite coal, in carloads, from Scranton, Pa., to South Utica, N. Y., for delivery by the West Shore Railroad, found to have been unreasonable and unduly prejudicial to the extent that they exceeded the rates contemporaneously in effect from Scranton to Utica, N. Y. Reparation awarded.

John G. Duffy and A. G. Senior for complainants.

John L. Seager and Walter J. Larrabee for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

The complainants are retail coal dealers in the city of Utica, N. Y., having their coal yards adjacent to the tracks of the West Shore Railroad. By complaint, filed October 28, 1918, they allege that the rates on anthracite coal from Scranton, Pa., for delivery by the West Shore Railroad in Utica are unreasonable, unduly prejudicial, and unduly preferential of their competitors served by other carriers in Utica, in violation of sections 1 and 3 of the act to regulate commerce and section 10 of the federal control act. They ask for an order prescribing just and reasonable rates for the future and for reparation on all shipments received by them since September 1, 1917.

Utica, located in central New York, 95 miles west of Albany, N. Y., is 154 miles north of Scranton. It is served from the east and west by the New York Central and West Shore railroads and from the south by the Delaware, Lackawanna & Western and New York, Ontario & Western railroads. A large part of the anthracite coal consumed at that point is purchased by the complainants and other dealers from the Delaware, Lackawanna & Western Coal Company, hereinafter called the coal company, and moves over the rails of the Delaware, Lackawanna & Western Railroad, hereinafter called the Lackawanna.

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Prior to July 15, 1916, the Lackawanna absorbed the switching charges of the West Shore, as well as those of other carriers in Utica; and the Utica basis of rates applied throughout the city. From that date until February 20, 1919, however, the through charges on shipments of coal delivered by the West Shore exceeded those on similar shipments delivered by the New York Central, New York, Ontario & Western, or the Lackawanna.

At the time this complaint was filed and for several years prior thereto Utica was not named as a station on the West Shore; instead, the name South Utica was used. The substitution of South Utica for Utica was made in publications of the West Shore in 1909 in order to avoid confusion with the station of the same name on the New York Central. Prior to April 1, 1916, the rates from the Pennsylvania coal district to Utica and South Utica were the same, \$2 per gross ton on prepared sizes and \$1.75 on smaller sizes. Following the decision in *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220, decided July 30, 1915, which as subsequently modified prescribed, among other rates, maximum rates on anthracite from Lackawanna producing points in Pennsylvania to Utica, the rates were reduced, effective April 1, 1916, to \$1.65 and \$1.36 per gross ton on prepared and smaller sizes, respectively, and, as before, were applicable within the Utica switching limits. Switching charges of 30 cents per ton, published by connecting lines, were absorbed. This rate parity between Utica and South Utica continued until July 15, 1916, when a mileage rate of 50 cents per ton for a distance of 10 miles or less was made applicable on shipments of anthracite received from the Lackawanna and the New York, Ontario & Western, producing combination rates of \$2.15 and \$1.86 per ton on prepared and smaller sizes, respectively, from Scranton to South Utica.

Apparently the Lackawanna continued to absorb 30 cents per ton of the West Shore's charge, making the net cost for transportation \$1.85 and \$1.56. Effective May 1, 1917, joint rates of \$2 on prepared sizes and \$1.75 on smaller sizes were established from Scranton to South Utica. On April 2, 1918, the Utica rates were increased 15 cents per ton by approval of the Commission, but no change was made in those to South Utica, and on June 25, 1918, in accordance with General Order No. 28 of the Director General, both sets of rates were increased. The rates made effective June 25, 1918, were, to Utica \$2.10 per long ton on prepared sizes and \$1.80 on smaller sizes, and to South Utica \$2.60 and \$2.20 per long ton, respectively. Effective February 20, 1919, after the hearing herein, South Utica was eliminated from the station list of the West Shore and the

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Utica basis of rates was made applicable. This action satisfied the complaint in so far as rates for the future are concerned.

It appears, therefore, that between July 15, 1916, and February 20, 1919, the rates on anthracite coal from Scranton to complainants' yards were materially higher than those in effect to coal yards located on the rails of other carriers in that city. The record shows that until September 1, 1917, this fact was not a matter of concern to the complainants, inasmuch as the prices paid by them for Lackawanna coal included delivery and were the same as those paid by their competitors. The additional transportation charge was assumed by the coal company. On that date a different method of selling was adopted by the producers. On August 10, 1917, an act of Congress, designed to encourage the production, conserve the supply, and control the distribution of food products and fuel, was approved, and shortly thereafter, on August 23, 1917, the President announced the appointment of a federal fuel administrator with authority to carry out the provisions of the act with respect to fuel. At the same time maximum prices were established for anthracite coal of various grades and sizes free on board cars at the mines, to be made effective September 1, 1917. Beginning with that date invoices were rendered by the coal company for the price of the coal at the mines plus the actual cost of transportation. The transportation charges were paid by the coal company and collected from the dealers.

As a result of the control thus exercised over the producers, coal dealers in Utica on the rails of the West Shore were required to pay prices for their coal, including transportation, which exceeded those paid by their competitors elsewhere in Utica for the same coal by the difference between the transportation charges. As will have been observed, this difference amounted, on prepared sizes, to 35 cents per long ton between September 1, 1917, and April 2, 1918, 20 cents per ton between that date and June 24, 1918, and 50 cents per ton thereafter until February 20, 1919. By order of the Fuel Administrator the retail prices were fixed at amounts which included the cost of the coal in cars at the yards and a definite margin of profit.

There are 27 coal dealers in Utica, of whom 16 are served by the New York Central, New York, Ontario & Western, and Lackawanna, and 11 by the West Shore. All but one of the latter are here seeking the recovery of damages, because of the alleged unreasonable and unduly prejudicial charges to which they were subjected. They allege that they were in direct competition with all other coal dealers in Utica; that the prices paid by the consumers for Lackawanna coal had always been the same, regardless of the location of the dealer; and that they were unable, for business reasons, to charge more after September 1,

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1917, than their competitors who enjoyed the Utica basis of rates were charging for the same quality of coal.

The defendants argue, on the other hand, that since the retail price fixed by the local representative of the Fuel Administrator permitted the dealers a certain margin of profit over the cost of the coal, the complainants could have charged a price which would have taken into account the greater cost of transportation, and that because of the abnormal demand during the winter of 1917-18 they would have experienced no difficulty in obtaining purchasers. The complainants concede that the rules under which they operated did not prohibit them from maintaining higher prices than their competitors were charging, inasmuch as their costs were greater, but insist that to have taken advantage of the opportunity would have meant a loss of prestige which would have had its effect upon their sales with the return of normal conditions.

There is no necessity for a more extended discussion of the controversy. The conclusion reached in the *Anthracite Case, supra*, was that rates in excess of \$1.65 per ton on prepared sizes and \$1.36 on smaller sizes from Scranton to Utica were unreasonable. The record is clear that there is no real distinction between South Utica and Utica, and that the former name was employed in publications of the West Shore merely as a matter of convenience. The defendants made no real effort to justify the higher rates maintained to South Utica after July 15, 1916, and subsequent to the hearing restored the Utica basis.

Although the rates charged on shipments delivered by the West Shore exceeded those on shipments delivered by other lines after July 15, 1916, the difference was at first borne by the coal company and did not affect complainants. Their interest in the rates began with the effective date of the order prescribing maximum prices at the mines. Thereafter they had either to sell at prices under the margin authorized by the local fuel administrator to meet those of other dealers, and thereby shrink their profits, or maintain higher prices. The fact that they chose the former plan and did not attempt to pass on to the consumers the difference in the transportation charges does not warrant a finding that they were not damaged, as contended by defendants. In the absence of any substantial reason justifying the imposition of higher rates to South Utica it can not be urged as a bar to reparation that the additional charges under such rates could have been added to the selling prices.

The Commission should find upon the record that the rates charged for the transportation of anthracite coal, in carloads, from Scranton to South Utica, during the period covered by the complaint and until February 20, 1919, were unreasonable and unduly prejudicial

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to the extent that they exceeded those contemporaneously in effect to Utica; and that complainants in so far as they made shipments and paid and bore the charges thereon were damaged and are entitled to reparation on shipments made by them since September 1, 1917, in amounts equal to the difference between the charges borne by them and those that would have accrued at the rates in effect to Utica. The exact amount of reparation can not be determined on the present record, and complainants should therefore prepare statements showing the details of the shipments in accordance with rule V of the Rules of Practice, which statements should be submitted to the defendants for verification. Upon receipt of statements so prepared and verified the Commission should consider the entry of an order awarding reparation.

DANIELS, *Commissioner*:

The report of the examiner substantially as printed above was served on the parties. No exceptions were filed. Oral argument was requested, but the failure of defendants to appear thereat led to the submission of the case upon the record as made.

The report and findings of the examiner have been carefully examined and are approved and adopted as the findings of the Commission.

No order for the future is necessary. The entry of an order for reparation will await the submission of the statements required under rule V.

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