No. 6770.

WESTON DODSON & COMPANY, INCORPORATED, ET AL.

v.

CENTRAL RAILROAD COMPANY OF NEW JERSEY.

Submitted July 1, 1916. Decided April 6, 1920.

Reparation awarded on account of unreasonable rates charged for the transportation of anthracite coal in carloads from Beaver Brook and Coleraine collieries, in the Lehigh anthracite coal region of Pennsylvania, to Elizabethport, N. J., for transshipment by water. Former report in 38 I. C. C., 206, corrected and order therein vacated.

Robert D. Jenks and *William A. Glasgow, jr.* for complainants.
Jackson E. Reynolds and *Charles E. Miller* for defendant.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

Our original report, decided March 1, 1916, appears in 38 I. C. C., 206. We found therein that the carload rates, hereinafter stated in amounts per long ton of 2,240 pounds, collected by defendant during the period from May 31, 1912, to July 31, 1914, inclusive, for the transportation of complainants' shipments of anthracite coal in prepared and pea sizes, from the Beaver Brook and Coleraine collieries in the Lehigh anthracite coal region of Pennsylvania to Elizabethport, N. J., for transshipment by water were unreasonable. The rates so found unreasonable were $1.55 for prepared sizes and $1.40 for pea size. Reparation was awarded in the amount of the difference between the rates charged and those found reasonable. Through error we stated the rates found reasonable as $1.45 for prepared sizes and $1.35 for pea and smaller sizes. The latter were local rates from the Pennsylvania anthracite region to Elizabethport, which by supplemental order in *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220, hereinafter referred to as the *Anthracite Case*, we had permitted defendant to establish. The reshipping rates to Elizabethport prescribed in that case, and to basis of which we intended to award reparation, were $1.40 and $1.30, respectively. Due to this error reparation was awarded to Charles M. Dodson & Company,

hereinafter called the partnership, in the sum of $4,790.18, and to Weston Dodson & Company, hereinafter called the corporation, in the sum of $22.81, whereas the correct amounts of reparation were $7,213.24 and $34.22, respectively.

Following our report complainants filed two petitions. In one of these they pointed out the errors above noted and asked that the order awarding reparation be corrected. In the other reparation was asked on shipments which moved subsequent to July 31, 1914. Accordingly, on April 10, 1916, we reopened the case for further hearing respecting these subsequent shipments, and on May 1, 1916, directed defendant to show cause by brief to be filed on or before July 1, 1916, why our previous order should not be corrected.

At the subsequent hearing exhibits were submitted covering shipments made by the partnership from the Beaver Brook colliery to Elizabethport for reshipment by water during the period from August 1, 1914, to April 1, 1916, on which date the rates prescribed by us in the *Anthracite Case* became effective. These shipments aggregated 60,754.07 long tons of prepared sizes and 2,408.18 long tons of pea size, and charges were collected thereon in the amount of $97,541.74 at the applicable rates of $1.55 and $1.40, respectively. This exhibit has been checked by the defendant and found to be correct. Defendant's counsel, however, objected to the admission of this exhibit, asserting that "the Commission has no jurisdiction to award reparation on shipments made after the institution of this proceeding." Upon brief they contended that these complainants had not proved they were damaged by merely showing that they made shipments and paid charges at rates which were subsequently ordered reduced.

The complainants' petition for reparation on shipments which moved subsequent to July 31, 1914, contained specifically and by reference to the original complaint all the allegations necessary to apprise the defendant of the issue it was called upon to meet. There was thus a substantial compliance with the provisions of the act respecting complaints for the recovery of damages. Defendant's second contention ignores the fact that after the case was reopened the evidence submitted at the prior hearing was properly to be considered in connection with the evidence subsequently introduced. This evidence had been found sufficient by us to establish the unreasonableness of the rates charged on previous shipments. It was unnecessary, therefore, for the complainants to do more than submit evidence of the movement of subsequent shipments of a similar nature at the rates so held unreasonable. This was done and has not been overcome by any showing on the part of the defendant that changed circumstances and conditions warranted a different finding.

Although defendant did not avail itself of the opportunity afforded for filing a brief in opposition to a correction of our former report, its counsel at the hearing held in connection with our order of April 10, 1916, entered an objection to our power to correct an error in our report or order except upon a formal application for a rehearing. This objection is not well taken. *Traugott Schmidt & Sons* v. *M. C. R. R. Co.*, 23 I. C. C., 684, 685.

Upon the facts of record we are of opinion and find that the rates charged by defendant from May 31, 1912, to April 1, 1916, for the transportation of complainants' shipments of anthracite coal in carloads from Beaver Brook and Coleraine collieries to Elizabethport, for transshipment by water were unreasonable to the extent that they exceeded rates of $1.40 per long ton on prepared sizes and $1.30 per long ton on pea size; which rates we find would have been reasonable for this service.

We further find that during the period from May 31, 1912, to July 31, 1914, inclusive, complainants Charles M. Dodson & Company, a partnership composed of Charles M. Dodson, the estate of Weston Dodson, deceased, the estate of T. M. Dodson, deceased, the estate of Samuel Adams, deceased, Frank C. Stout, E. L. Bullock, and A. S. Schopp, made certain carload shipments of anthracite coal over defendant's line from Beaver Brook colliery to Elizabethport, for transshipment by water; that said shipments aggregated 47,342.27 long tons of prepared sizes and 1,119.01 long tons of pea size; that the partnership paid and bore charges thereon at rates of $1.55 and $1.40, respectively; that the rates paid were unreasonable to the extent that they exceeded $1.40 on prepared sizes and $1.30 on pea size; that the partnership has been damaged to the extent of the difference between the charges paid and those collectible at the rates herein found reasonable; and that it is entitled to reparation in the sum of $7,213.24, with interest.

We further find that during the period from August 1, 1914, to April 1, 1916, the partnership made certain carload shipments of anthracite coal over defendant's line from Beaver Brook colliery to Elizabethport, for transshipment by water; that these shipments aggregated 60,754.07 long tons of prepared sizes and 2,408.18 long tons of pea size; that this complainant paid and bore the charges amounting to $97,541.74 at rates of $1.55 and $1.40, respectively, which rates we have found unreasonable; that charges amounting to $88,187.70 would have accrued at the rates herein found reasonable; that the partnership has been damaged to the extent of the difference between the charges paid and the charges which would have accrued at the rates found reasonable; and that the partnership is entitled to reparation in the sum of $9,354.04, with interest.

We further find that during the period from January 20 to January 31, 1913, inclusive, complainant Weston Dodson & Company, a corporation, made certain carload shipments of anthracite coal over defendant's line from Coleraine colliery to Elizabethport, for transshipment by water; that these shipments aggregated 228.14 long tons of prepared sizes upon which this complainant paid and bore charges at the applicable rate of $1.55; that this rate was unreasonable to the extent that it exceeded $1.40; that this complainant was damaged to the extent of the difference between the amount paid and the amount which would have accrued at the rate found reasonable, and that the damages amount to $34.22 and interest.

An appropriate order will be entered.

HALL, *Commissioner*, concurring:

For reasons stated in my separate expression in *Plymouth Coal Co.* v. *P. R. R. Co.*, 56 I. C. C., 699, at 709, I concur in the foregoing report.