

No. 7560.

HENRY E. MEEKER, TRADING AS MEEKER & COMPANY,
v.
 ERIE RAILROAD COMPANY ET AL.

Submitted April 21, 1915. Decided May 3, 1920.

1. Rates on anthracite coal, pea size, in carloads, from Wayne washery, Clemo, Pa., to Undercliff (Edgewater), N. J., for reshipment by water found to have been unreasonable. Reparation awarded.
2. Rates on sizes smaller than pea from and to the same points found not unreasonable, unjustly discriminatory, or unduly prejudicial.

Robert D. Jenks, William A. Glasgow, jr., and John A. Garver for complainant.

George F. Brownell and H. A. Taylor for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is an individual engaged in the coal business under the name of Meeker & Company, with an office at New York, N. Y. By complaint filed December 9, 1914, he alleged that the rates charged by the defendants for the transportation of anthracite coal from Wayne washery, Clemo, Pa., to tidewater at Undercliff (formerly Edgewater), N. J., for reshipment by water, were unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation is asked. Rates are stated herein in amounts per long ton.

Clema is on the Wyoming division of the Erie Railroad on the eastern slope of the Pocono Mountains, 138 miles from Undercliff and 33 and 25 miles, respectively, east of Avoca and Dunmore, Pa., concentration points on the Erie for shipments from the Wyoming anthracite region. The Wyoming region lies west of the Pocono Mountains and shipments from the concentration points above named when destined to tidewater are transported over these mountains and pass through Clema. There are no coal mines on the eastern side of the Pocono Mountains. The source of the coal supply at Clema was an abandoned railroad embankment or fill built many years ago out of what was then regarded as waste material from the mines in the Wyoming region. In later years the use of smaller sizes of coal and improved methods of washing made the material used in this embankment merchantable. The Wayne Coal Company

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leased the fill, erected a washery, and began operation in June, 1912, and in August, 1914, it had exhausted the supply of coal. During the operation of the washery complainant purchased the output thereof at prices f. o. b. washery. There is no possibility of further shipments, and complainant's interest in this case is with respect to reparation only.

The shipments consisted entirely of pea and smaller sizes. They moved over the lines of the defendants during the period from January 3, 1913, to August 31, 1914, inclusive. Complainant paid charges thereon at the applicable rates of \$1.45 for pea size, \$1.30 for buckwheat, and \$1.15 for smaller sizes. These rates were the same as those applicable from the mines on the Erie and its connections in the Wyoming region. Complainant's testimony was confined largely to a comparison of the operating conditions between Clemo and the Wyoming region to tidewater. He contends that the rates from Clemo should have been materially lower than from the Wyoming region because of the shorter distance from Clemo and because the operating conditions between Clemo and tidewater are more favorable than between the Wyoming region and tidewater. Defendants concede that on shipments to tidewater Clemo occupies a favorable location, but contend that there were special circumstances attending the transportation of complainant's shipments which offset this advantage. Thus, they assert, it was impracticable to handle cars to or from Clemo in the trains which handled the coal cars to and from the mines in the Wyoming region. They point out that this would have required on the loaded movement the running of coal trains from the concentration points at less than full tonnage in order to pick up the cars at Clemo, as well as the maintenance of a car inspector at that point or the subsequent cutting out of the cars from Clemo for inspection; while, on the movement of empty cars to Clemo for loading, the construction of the tracks and the nature of the terrain prevented the switching in of the cars by the engines carrying empties to the Wyoming region. Instead, therefore, it was found more economical to handle the cars between Clemo and the Erie's main-line division terminal at Port Jervis, N. Y., in local freight trains, the loaded cars requiring three such movements and the empty cars two. Further, defendants point to the fact that the advantage of location is not in favor of Clemo on westbound coal shipments, where longer hauls are required than on shipments from the Wyoming region, but on which the same rates applied. They also state that on traffic, other than coal, eastbound to New York, N. Y., and westbound as far as Buffalo, N. Y., Clemo takes generally the same rates as Scranton, Pa., and other points located in the Wyoming region.

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In *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220, we found that the defendants' rates for the transportation of anthracite coal from points in the Wyoming region, or taking Wyoming region rates, as named in Erie tariff I. C. C. No. D-662 to Undercliff, for reshipment by water, were unreasonable to the extent they exceeded \$1.45 on prepared sizes and \$1.35 on pea and smaller sizes. As pointed out at page 226 of that report, blanket rates are applied generally from all collieries on the lines of the various carriers serving the Wyoming and other Pennsylvania anthracite regions "although the distance between the collieries in the group may be 50 miles more or less," and we are not convinced that the application of the Wyoming region basis to the transportation of coal from Clemo was unreasonable, or that it subjected complainant to unjust discrimination or undue prejudice.

Following the case cited, and upon the facts of record, we are of the opinion and find that the rate of \$1.45 per long ton charged by the defendants for the transportation of complainant's shipments of anthracite coal, pea size, in carloads, from Wayne washery, Clemo, Pa., to Undercliff (formerly Edgewater), N. J., was unreasonable to the extent that it exceeded \$1.35 per long ton, which rate we find would have been reasonable for this service. We find further that during the period from January 3, 1913, to August 31, 1914, inclusive, complainant made shipments of anthracite coal, pea size, in carloads, as above described; that he paid and bore the charges thereon at the rate herein found to have been unreasonable; that in the payment of said charges he has been damaged by the defendants to the extent that the charges so paid exceeded those that would have accrued at the rate herein found reasonable for this service; and that he is entitled to reparation, with interest. The exact amount of reparation due can not be determined from the record and the complainant should comply with rule V of the Rules of Practice.

The rates assailed on sizes smaller than pea were not found to have been unreasonable in *Rates for Transportation of Anthracite Coal, supra*, and the evidence submitted on this record is insufficient to warrant a different finding. Accordingly, we further find that the rates charged on complainant's shipments of sizes smaller than pea were not unreasonable, unjustly discriminatory, or unduly prejudicial.

HALL, *Commissioner*, concurring:

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

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