

No. 10699.

MICHAEL S. GOSS ET AL.

*v.*DIRECTOR GENERAL, AS AGENT, LEHIGH VALLEY
RAILROAD COMPANY, ET AL.

Submitted December 15, 1919. Decided July 15, 1920.

Rates charged by the Lehigh Valley Railroad for the transportation of anthracite coal from mines in Pennsylvania to Auburn, N. Y., found to have been and to be unduly prejudicial to the extent that they exceeded or may exceed those contemporaneously charged to Seneca Falls and Naples, N. Y. Reparation denied.

D. J. Sims for complainants.*R. W. Barrett* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, AND EASTMAN.

McCHORD, *Commissioner*:

The issues here presented were made the subject of a proposed report by the examiner and exceptions thereto were filed by the complainants.

The complainants are retail coal dealers in Auburn, N. Y. By complaint, filed June 10, 1919, they allege that since September 1, 1916, the local and joint rates charged by defendants for the transportation of anthracite coal from the coal-mining districts in Pennsylvania to Auburn have been unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they have exceeded the rates contemporaneously maintained by the Lehigh Valley Railroad to Seneca Falls, N. Y., and Naples, N. Y. Reparation is asked. The Auburn Chamber of Commerce intervened in behalf of the consumers of coal in Auburn.

Auburn, a city of some 35,000 inhabitants, is in central New York, 26 miles west of Syracuse, N. Y. It is on the Auburn division of the Lehigh Valley Railroad, 85.5 miles north of Sayre, Pa., the junction with the main line extending from New York to Buffalo, and is also served by the New York Central Railroad over its so-called Auburn road. Anthracite coal from the Pennsylvania field moves to Auburn over the direct line of the Lehigh Valley, or by way of the Delaware,
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Lackawanna & Western Railroad, hereinafter called the Lackawanna, and the New York Central through Syracuse, and over the Philadelphia & Reading Railroad and New York Central through junctions west of Auburn. There are also other two and three line routes by which coal may reach that point. The distance from Wilkes-Barre, Pa., to Auburn via the Lehigh Valley is 189 miles; from Kingston, Pa., via the Lackawanna and New York Central, 184 miles; and from Tamaqua, Pa., via the Philadelphia & Reading and New York Central, 307 miles.

Seneca Falls is 10 miles east of Geneva, N. Y., 5 miles west of Cayuga, N. Y., and 15 miles west of Auburn. It is on the New York Central's Auburn road and also on a branch of the Lehigh Valley extending between Geneva and Cayuga. The distance from Wilkes-Barre to Seneca Falls via Geneva is 187 miles. Anthracite coal destined to Seneca Falls by way of the Lehigh Valley moves to Geneva and thence east over the Seneca Falls branch. Naples is 29 miles south of Geneva at the terminus of the Naples branch. The distance from Wilkes-Barre to Naples is 206 miles and to Geneva, 177 miles.

The local rates of the Lehigh Valley and the joint rates of the Philadelphia & Reading and New York Central on anthracite coal to Auburn prior to the effective dates of our orders in *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220, hereinafter referred to as the *Anthracite Investigation*, were \$1.90 per long ton on prepared sizes and \$1.65 on smaller sizes. The joint rates of the Lackawanna and the New York Central through Syracuse were 10 cents higher. Rates of \$1.90 and \$1.65 on prepared and smaller sizes, respectively, were in effect to many other points in central and western New York on the Lehigh Valley, including Geneva, Seneca Falls, Naples, and as far west as Caledonia, N. Y., 225 miles from Wilkes-Barre, and also to some points on the Lackawanna, including Syracuse. To other stations on the Lackawanna rates of \$2 and \$1.75, respectively, were in effect.

Rates to points in New York on the Lehigh Valley and Lackawanna were among those considered in the *Anthracite Investigation* which was a general investigation into the rates, practices, rules, and regulations governing the transportation of anthracite coal from the Wyoming, Lehigh, and Schuylkill regions in Pennsylvania to tidewater and interior points on the lines of the initial carriers. Maximum rates were prescribed to certain specific points and the carriers were directed to establish rates to intermediate and related points in harmony therewith, giving due consideration to distance. Under the orders entered in that proceeding reductions were required in the rates to such points as Ithaca, Burdett, Hayt's Corners,

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Kendaia, and Geneva, N. Y., on the Lehigh Valley immediately west of its Auburn division. Reductions were also required in the rates of the Lackawanna to Syracuse, to points on the branch line of that carrier paralleling the Lehigh Valley's Auburn division, to Utica, N. Y., and to points on its main line to Buffalo, N. Y. The orders did not specifically name Seneca Falls or Naples, nevertheless the Lehigh Valley reduced the rates to those points 20 cents per ton on prepared sizes and 16 cents on smaller sizes. No changes were made in the rates to Auburn or to points on the Auburn division.

The reduced rates became effective April 1 and September 1, 1916, and remained in force until on or about April 1, 1918, when, with our permission, all anthracite coal rates were increased 15 cents per ton. The present rates were made effective June 25, 1918, under General Order No. 28 of the Director General. The following table states the rates in effect prior to the *Anthracite Investigation* to a number of representative points in this general territory and the changes that were thereafter made. The distances given are those from Wilkes-Barre on the Lehigh Valley, Kingston on the Lackawanna, and Tamaqua on the Philadelphia & Reading.

Rates on anthracite coal from mines in Pennsylvania.

[A, prepared sizes; B, smaller sizes.]

	Dis- tance.	Prior to anthracite investiga- tion.		Effective Apr. 1 and Sept. 1, 1916.		Effective in April, 1918.		Present rates.	
		A	B	A	B	A	B	A	B
Auburn via:	<i>Miles.</i>								
L. V. R. R.	189	\$1.90	\$1.65	\$1.90	\$1.65	\$2.05	\$1.80	\$2.50	\$2.10
P. & R.-N. Y. C.	307	1.90	1.65	1.90	1.65	2.05	1.80	2.50	2.10
D. L. & W.-N. Y. C.	184	2.00	1.75	2.00	1.75	2.15	1.90	2.60	2.20
Lehigh Valley points:									
Hayt's Corners.....	148	1.90	1.65	1.55	1.35	1.70	1.50	2.00	1.80
Geneva.....	177	1.90	1.65	1.60	1.39	1.75	1.54	2.10	1.90
Seneca Falls.....	187	1.90	1.65	1.70	1.49	1.85	1.64	2.20	2.00
Naples.....	206	1.90	1.65	1.70	1.49	1.85	1.64	2.20	2.00
Caledonia.....	225	1.90	1.65	1.80	1.56	1.95	1.71	2.30	2.00
Lackawanna points:									
Utica.....	174	2.00	1.75	1.65	1.36	1.80	1.51	2.10	1.80
Bath.....	173	2.00	1.75	1.45	1.27	1.60	1.42	1.90	1.80
Dansville.....	205	2.00	1.75	1.60	1.40	1.75	1.55	2.10	1.90
Syracuse via—									
D. L. & W.	158	1.90	1.65	1.65	1.36	1.80	1.51	2.10	1.80
L. V.-N. Y. C.	215	1.90	1.65	1.90	1.65	2.05	1.80	2.50	2.10
P. & R.-N. Y. C.	333	1.90	1.65	1.90	1.65	2.05	1.80	2.50	2.10

The retail prices of coal at Auburn, which are based on the prices at the mines plus the freight rates and the cost of doing business, are considerably higher than the retail prices in Geneva, Seneca Falls, Naples, and Syracuse. The complainants admit that they have not suffered because of the rates charged by the defendants as they have

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maintained their margin of profit by increasing the retail prices when the rates were increased, but they contend that the consumers are entitled to purchase coal at substantially the same prices that are paid elsewhere in their locality, which can only be brought about by placing the rates on a parity. The reparation asked is for the benefit of the consumers and not for complainants, and it is stated that wherever possible any reparation awarded will be paid over to complainants' customers.

Complainants contend that the failure of the Lehigh Valley to reduce its rates to Auburn in September, 1916, was in contravention of our direction in the *Anthracite Investigation*, and led to the continued maintenance of the higher joint rates by the Philadelphia & Reading and the Lackawanna in connection with the New York Central, and, further, that because of such failure the application of General Order No. 28 made it obligatory to assess an additional 10 cents per ton after June 25, 1918. They take the position that inasmuch as Auburn is about the same distance and in the same direction from the mines as Geneva, Seneca Falls, and Naples, formerly took the same rates, and is a related point, it should have been accorded the reduced rates established generally throughout this territory.

The only reason offered by the Lehigh Valley in explanation of its failure to reduce the rates to Auburn was that the order in the *Anthracite Investigation* did not require it. The reductions in the Seneca Falls and Naples rates were said to have been due to inadvertence through including those points in the Geneva group. Because of its interpretation of the requirements of our decision in that case the Auburn rates have been materially higher than those to near-by points. Syracuse, for example, 26 miles east, enjoys a rate of \$2.10 per ton on prepared sizes moving over the Lackawanna, and Seneca Falls, 15 miles west, a rate of \$2.20 per ton, as compared with \$2.50 to Auburn. The order in the *Anthracite Investigation* was confined to the local rates of the various carriers, consequently the joint rates of the Philadelphia & Reading and New York Central to Seneca Falls and Syracuse were not affected and have remained higher than the local rates of the Lehigh Valley and Lackawanna.

The defendants admit that the rates to Auburn are out of line and should be readjusted so as to place them on a parity with rates to neighboring points. At the time of the hearing, revision of the rates, not only to Auburn but to many points in New York and New England, was under consideration by the Railroad Administration. That revision contemplated increases in single-line rates to certain

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points and reductions in joint rates, largely restoring the basis in effect prior to September 1, 1916. In view of this proposed readjustment it is urged that we suspend action in this case until the proposed rates have been made effective. The contemplated revision, which may or may not become effective, does not relieve us of our duty to consider the issues here presented.

The evidence was confined to the allegation that defendants subject Auburn, as a locality, to undue prejudice by maintaining rates to that point which are higher than those contemporaneously charged to Syracuse, Geneva, Seneca Falls, and Naples.

The Lehigh Valley does not reach Syracuse and does not participate in rates to that point on the basis maintained by the Lackawanna. Its rates in connection with the New York Central are on a materially higher basis, which is true also of the joint rates of the Philadelphia & Reading and New York Central. Also, the rates maintained by the New York Central and its connections to Geneva and Seneca Falls are the same as those to Auburn. There is therefore no undue preference or advantage extended to Syracuse by the Lehigh Valley or the New York Central and its connections, or by the latter to points west of Auburn.

The Lackawanna does not reach Auburn over its own rails, but participates in joint rates to that point, which were formerly 10 cents and are now 50 cents per ton higher on prepared sizes than its local rates to Syracuse. The complainants urge that so long as the Lehigh Valley and New York Central maintain joint rates to Syracuse that are the same as those in effect over the Lehigh Valley to Auburn, the Lackawanna and New York Central should be required to maintain rates to Auburn not in excess of the local rates of the Lackawanna to Syracuse. The New York Central is not responsible for the rates of the Lehigh Valley or the Lackawanna, and although the joint rates through Syracuse appear high in comparison with the rates to Syracuse the record is insufficient to support a finding that they are unduly prejudicial.

The rates charged by the Lehigh Valley to Auburn are now 30 cents per ton higher on prepared sizes and 10 cents per ton higher on smaller sizes than those charged to Seneca Falls and Naples, and the record does not justify this disparity.

In its brief on exceptions complainants request that the case be reopened for the purpose of enabling evidence to be presented as to the reasonableness of the Auburn rates via the Lackawanna-New York Central Lines. Ample opportunity was given complainants to present such evidence when the record in this case was made, and the request is therefore denied.

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We find that the rates assailed on anthracite coal from points in Pennsylvania to Auburn applicable via the Lehigh Valley Railroad were, are, and for the future will be unduly prejudicial to the extent that they exceeded or may exceed those contemporaneously maintained by that carrier from the same points of origin to Seneca Falls and Naples. No damage having been shown, reparation is denied.

An appropriate order will be entered.

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