No. 10865.

FRANK A. COAKLEY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, DELAWARE & HUDSON COMPANY, ET AL.

Submitted February 24, 1920. Decided September 28, 1920.

Rates charged on anthracite coal, in carloads, from the Carbondale district in Pennsylvania to South Utica, N. Y., for delivery on the West Shore Railroad, found to have been and to be unreasonable and unduly prejudicial to the extent that they exceeded and exceed the rates contemporaneously in effect to Utica, N. Y. Reparation awarded and reasonable and nonprejudicial rates prescribed for the future.

John G. Duffy and *A. G. Senior* for complainants.
Parker McCollester for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

To the report proposed by the examiner, exceptions were filed by defendants.

Complainants are four retail coal dealers whose yards are adjacent to the tracks of the West Shore Railroad in South Utica, N. Y. By complaint filed September 2, 1919, they allege that the rates exacted by defendants on anthracite coal from points in Pennsylvania on the Delaware & Hudson known collectively as the Carbondale district, moving via defendants' lines for delivery by the West Shore in South Utica, were and are unreasonable, unduly prejudicial, and unduly preferential of their competitors served by defendants in Utica, in violation of sections 1 and 3 of the act to regulate commerce and section 10 of the federal control act. Reparation on shipments moved during the period between September 1, 1917, and September 2, 1919, and the establishment of just and reasonable rates for the future are asked. Rates and switching charges will be stated in amounts per long ton.

The West Shore station within the corporate limits of the city of Utica has for several years been designated as South Utica, for the purpose of avoiding confusion with Utica station on the New York

Central. The West Shore is operated by the New York Central under lease. Utica does not appear in defendants' tariffs as a station on the West Shore.

Anthracite coal from the Carbondale district in Pennsylvania moves to Utica over the Delaware, Lackawanna & Western, hereinafter called the Lackawanna, the New York, Ontario & Western, hereinafter called the Ontario & Western, each a one-line haul, or over the Delaware & Hudson and the Ontario & Western, a two-line haul. Coal consigned to complainants is delivered to the West Shore by the Lackawanna at its junction with the West Shore beyond the corporate limits of Utica, but within the switching limits of South Utica, and by the Ontario & Western at its junction with the West Shore, also beyond the corporate limits of Utica. This latter interchange point is within the switching limits defined by the tariff of the West Shore providing switching charges applicable on traffic in general at South Utica, but the tariff specifically excepts coal from its application. The West Shore publishes a switching charge of 30 cents applicable on coal and coke at South Utica. This switching charge is now absorbed by the Lackawanna out of its rate to Utica on coal for West Shore delivery in South Utica, but is not absorbed by the Ontario & Western. This proceeding has to do with the rates on coal from mines on the Delaware & Hudson moving in conjunction with the Ontario & Western and the West Shore to South Utica. Reference is made to the rates of the Lackawanna for comparative and historical purposes.

For many years prior to 1916 the rates on anthracite from the Carbondale coal district to Utica and South Utica were the same, $2 on prepared sizes and $1.75 on smaller sizes. No greater charge was made for a two-line haul than for a one-line haul. Following *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220, decided July 30, 1915, as subsequently modified, the rates on anthracite from points in Pennsylvania to Utica via the Lackawanna, a one-line haul, were reduced from $2 to $1.65 on prepared sizes and from $1.75 to $1.36 on smaller sizes, but no similar reduction was made in the joint rates via the Lackawanna for delivery on the West Shore in South Utica. Although the Delaware & Hudson and the Ontario & Western were respondents in the case cited their rates to Utica were not required to be reduced by that decision, but were voluntarily reduced to meet the lower rates which the Lackawanna was required to establish. On traffic other than coal the rates to South Utica and to Utica are generally the same.

Effective February 20, 1919, South Utica was eliminated from the Lackawanna tariffs as a station on the West Shore. The Utica rates were thereby made applicable on coal moving via the Lackawanna

for delivery on the West Shore in South Utica. In *Clark-Davis Coal Co.* v. *Director General*, 53 I. C. C., 357, we found that the rates exacted by the Lackawanna on coal from Scranton, Pa., for delivery on the West Shore in South Utica during the period covered by that complaint and until February 20, 1919, were unreasonable and unduly prejudicial to the extent that they exceeded the rates contemporaneously in effect from Scranton to Utica, and awarded reparation.

The existing rates on anthracite coal from the Carbondale district to Utica are $2.10 on prepared sizes and $1.80 on smaller sizes; and to South Utica $2.60 on prepared sizes, $2.40 on pea size, $2.20 on buckwheat sizes, and $2 on screenings. The evidence was directed mainly to the question whether the $2.60 rate was unreasonable and unduly prejudicial to the extent that it exceeded the rate of $2.10 contemporaneously in effect to Utica. It tends to show that complainants are concerned chiefly with the relationship between the rates to Utica and those to South Utica. Witnesses for complainants admitted that if defendants should remove the discrimination by establishing the same rates to Utica as to South Utica they would be satisfied. In this respect the instant case is not unlike *Kickapoo Sand & Gravel Co.* v. *Director General*, 55 I. C. C., 657, in which the rates assailed were found to be unreasonable and unduly prejudicial, although the evidence showed there as here that complainant's real interest was to secure a restoration of the relationship in the rates previously existing.

The record shows that complainants sell coal at all points within the city of Utica in competition with dealers there on the lines of the Ontario & Western and the Lackawanna; that during most of the period covered by the complaint, the Fuel Administrator appointed by the President under an act of Congress of August 10, 1917, fixed the retail price of coal in amounts which included the cost of the coal in cars at the yards and a definite margin of profit; and that while complainants, because of the great demand for coal during the war, might have added to their selling price the difference between the rates to Utica and South Utica, they did not in fact do so, as they feared it would impair their prestige and result, upon a return to normal conditions, in a loss of trade which they had been years in building up. The record also shows that complainants assumed the difference between the rates to South Utica and Utica, which reduced their profit to that extent. Complainants contend that they have been damaged to the extent of this difference.

Defendants urge that the rates to South Utica are justified on the ground that they cover joint movements via the Delaware & Hudson and the Ontario & Western, as compared with the lower rates for

one-line hauls over the Lackawanna or the Ontario & Western, and that in this respect the case is distinguishable from *Clark-Davis Coal Case, supra.* In fact, they insist that the movement by the West Shore from Utica to South Utica is a line-haul movement which makes the through movement a three-line haul. They admit that on merchandise traffic, as distinguished from coal traffic, the movement from Utica to South Utica would, under their tariffs, be regarded as a switch movement.

We have frequently said that carriers may justify a reasonably higher rate for a two-line than for a one-line haul. *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160; 23 I. C. C., 656. But the mere fact that one haul is two-line and another one-line does not in and of itself justify a higher charge for the two-line haul. The reasonableness of the higher rate "depends solely on the facts and circumstances made to appear which show an increased cost or some other fact or circumstance which would warrant a higher charge." *Stonega Coke & Coal Co.* v. *L. & N. R. R. Co.*, 39 I. C. C., 523, 551. Defendants introduced no evidence to show that their haul to South Utica, whether called a two-line or three-line, involves an increased cost of service as compared with their two-line haul to Utica, or with the one-line haul of the Lackawanna to Utica or the two-line haul of the Lackawanna and the West Shore to South Utica. As has been observed, there is no real distinction between Utica and South Utica; and there are no facts or circumstances of record which justify higher rates to South Utica than to Utica.

Defendants urge that no order should be made by us with respect to rates to be maintained for the future, because a committee representing the Director General has made an investigation of the rates on anthracite coal from points in Pennsylvania to Utica and other points in New York as well as to points in New England, and recommended the establishment of a differential of 10 cents in the rates covering two-line hauls over the rates covering one-line hauls. Apparently the Director General took no action upon this recommendation prior to the termination of federal control.

As to the claim for reparation the evidence with respect to the volume of the shipments leaves much to be desired in the way of definiteness. But it shows with reasonable certainty that complainants paid and bore the charges on the shipments described in the complaint. A general description in the complaint of the shipments on which reparation is asked is sufficient to meet the requirements of the statute. *Missouri Pacific Ry.* v. *Ferguson Sawmill Co.*, 235 Fed., 474; *Michigan Hardwood Mfrs. Asso.* v. *Freight Bureau*, 27 I. C. C., 32; *Commercial Club of Omaha* v. *A. & S. R. Ry. Co.*, 41 I. C. C., 480. The fact that complainants elected to assume the dif-

ference in the rates, instead of passing it on to the consumers as they might have done, does not act as a bar to their claim for reparation, as contended by defendants. *Clark-Davis Coal Co.* v. *Director General, supra; Ballou & Wright* v. *N. Y., N. H. & H. R. R. Co.*, 34 I. C. C., 120.

We find that the rates assailed for the transportation of anthracite coal in carloads from the Carbondale district in Pennsylvania to South Utica have been, are, and for the future will be, unreasonable and unduly prejudicial to the extent they exceeded, exceed, or may exceed the rates contemporaneously in effect to Utica; that complainants paid and bore the freight charges on the shipments described, have been damaged thereby, and are entitled to reparation, with interest, from defendant carriers on such shipments made during the period September 1, 1917, to December 31, 1917, inclusive, and from defendant John Barton Payne, Director General of Railroads, as Agent, on such shipments made on and after January 1, 1918, to September 2, 1919, in amounts equal to the difference between the charges paid and those which would have accrued at the rates contemporaneously in effect from the same points of origin to Utica. The exact amount of reparation due can not be determined upon this record, and complainants should comply with rule V of the Rules of Practice.

An order for the future will be entered.

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