

No. 12332.
ARMOUR & COMPANY
v.
DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY AND DIRECTOR GENERAL, AS AGENT.

Submitted September 12, 1921. Decided February 10, 1922.

Rates on fresh meat, in carloads, from freezer to plant at Jersey City, N. J., during federal control, found unreasonable. Reparation awarded.

Paul E. Blanchard for complainant.

W. J. Larrabee for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in the packing-house business at Jersey City, N. J., alleges that the rates charged by defendants on 10 carloads of imported fresh pork, moved during September, 1919, from the freezer of the Eastern States Refrigerator Company, Jersey City, to complainant's plant at Jersey City, were unreasonable. We are asked to award reparation and also to prescribe a reasonable rate on interstate traffic for the future. Switching charges will be stated in amounts per car.

Both freezer and plant are within the switching limits of Jersey City and both are served by the Delaware, Lackawanna & Western, hereinafter called the Lackawanna. The plant is on Erie rails over which the Lackawanna has trackage rights. These shipments formed part of a cargo of dressed pork imported from South America, were unloaded from vessel at Brooklyn, N. Y., and, because of limited storage facilities at the plant, were placed in storage in the freezer. They were subsequently moved by the Lackawanna to the plant. No switching charge applied and charges were collected ranging from \$34 to \$38.51 per car on nine shipments at the minimum third-class rate of 17 cents per 100 pounds, carload minimum 20,000 pounds, and \$32.50 on the remaining shipment at the less-than-carload first-class rate of 25 cents per 100 pounds. These rates were increased on August 26, 1920, to 24 and 35 cents, respectively.

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When the shipments moved the Erie maintained a charge of \$5, increased August 26, 1920, to \$7, for switching between the plant and the Union Terminal Refrigerator warehouse on the Erie, which is about the same distance from the plant as the freezer.

Complainant contends that the charges assessed were unreasonable to the extent that they exceeded \$5 and that the charge for the future should not exceed \$7. It refers to a switching charge of \$7 maintained since August 26, 1920, by the Lackawanna on carload traffic placed for unloading at one of its yards within the switching limits of Hoboken, N. J., or Jersey City and switched to another yard within the same switching limits; also switching rates of \$5 in effect prior to August 26, 1920, and \$7 thereafter, maintained by the Erie between any two industries having private sidings, or between two sidings of the same industry, in Jersey City, Johnsonburg and Johnson City, Pa., or Towanda, N. Y. It also refers to the present switching charges ranging from \$7 to \$9 of the New York Central between points in Albany, Rochester, or New York, N. Y.

The freezer is 5,925 feet from the plant over the rails of the Lackawanna and Erie. When one or two empty cars are ordered, as was the case here, they are obtained near the icing platform and moved thereto by a switching crew for icing and precooling; they are then moved about 0.25 mile to Sixteenth street and switched back to about Fourteenth street where they are left, and later moved by a different switching crew to the freezer for loading. After loading the cars are switched to Fourteenth street, thence in the opposite direction to Sixteenth street and back to the icing platform where they are held for placement orders. When such orders are received the cars are moved by another switching crew through the Lackawanna's freight yards to the poultry yard, where they are usually set out, and later moved by another crew to complainant's plant. When the poultry yard is not congested, a rare occurrence, cars are handled from the icing platform to complainant's plant by one switching crew.

In making the above-described movement the loaded cars pass through two interlocking plants through the freight yards and over about 300 yards of main line of the Lackawanna. Their free movement is delayed by engine movements to and from the roundhouse just north of the freezer and by switching movements of the Erie at the plant. The Lackawanna asserts that the Jersey City terminal is the most congested portion of its entire system, and that by reason thereof charges for interplant or intraplant switching at that point are not published.

When the shipments moved the tariffs of the Lackawanna provided that traffic from Chicago, Ill., destined to ship side could be stopped

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for storage in transit in the freezer at \$3 per car, increased to \$4 on August 26, 1920. The Lackawanna also maintained on freight requiring refrigeration a rate of 9 cents per 100 pounds, now 12.5 cents, from ship side in Brooklyn to both the plant and the freezer, a service which includes floating the cars from the ship to the docks of the Lackawanna at Jersey City; also a rate of \$4.50 per car plus 4.5 cents per 100 pounds, now \$6.50 and 6.5 cents, respectively, from the plant or the freezer and other points in Jersey City to ship side; but under neither of these rates is storage in transit at the freezer permitted on traffic from or to the plant.

Substantially all animal products and other commodities used by complainant at Jersey City originate either at Chicago and points west thereof or are imported through New York, and it is stated that about 99 per cent of the outbound products from the plant is exported. In the handling of this export and import business complainant has use for a large amount of cold-storage space, sometimes in excess of its own capacity, and desires to avail itself of space in the freezer. The domestic rates to ship side, New York harbor, also apply to the plant and to the freezer, and the rate from ship side to the plant applies also to the freezer. When any of this traffic is placed in the freezer and later taken to the plant, or is moved from the plant to the freezer for storage, the only rates available are the minimum class rates herein attacked. Complainant seeks the establishment of a reasonable switching charge to cover this service.

The question is presented whether the movement from the plant to the freezer or in the reverse direction, under the circumstances here disclosed, is interstate or intrastate. The Lackawanna contends that when delivery is made at either the freezer or the plant the interstate transportation has been completed and that a subsequent movement between these industries is purely intrastate and not within our jurisdiction, and cites *Gulf, Colorado & Santa Fe Ry. Co. v. Texas*, 204 U. S., 403. Complainant urges that substantially all traffic moved through either the plant or the freezer has been imported or is to be exported. A shipment moved between the plant and the freezer is not interstate in character unless in some way connected with an interstate movement. Complainant does not seek the establishment of reasonable interstate, export, or import rates from and to its plant at Jersey City, with the right of storage in transit at the freezer. We make no finding as to rate or charge for the future.

The charges on nine of these shipments, ranging from \$34 to \$38.51, and the charge of \$32.50 collected on the other shipment, were clearly too high. In view of the somewhat complex movement in-

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volved we are of opinion that the charge should not have been less than \$15 per car.

We find that the rates charged on the shipments during federal control were unreasonable to the extent that they exceeded \$15 per car; that complainant made the shipments as described and paid and bore the charges thereon at the rates herein found unreasonable; that it was damaged thereby in the amount of the difference between the charges paid and those which would have accrued on the basis herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

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