

No. 12656.¹

MICHAEL S. GOSS ET AL v. DIRECTOR GENERAL, AS
AGENT, LEHIGH VALLEY RAILROAD COMPANY, ET
AL.

Submitted April 14, 1922. Decided October 14, 1922.

Rates on coal, in carloads, from the anthracite region in Pennsylvania to Auburn, Groton, Moravia, Waterloo, and Seneca Falls, N. Y., via the Lehigh Valley Railroad, found unreasonable. Reasonable rates prescribed for the future and reparation awarded.

D. J. Sims for complainants.

R. W. Barrett for defendants.

John F. Finerty and *Royal McKenna* for director general.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS EASTMAN, CAMPBELL, AND COX.

BY DIVISION 3:

Exceptions to the report proposed by the examiner were filed by the defendants and the case was orally argued.

The issues raised by these complaints are similar, and although heard separately, will be disposed of in one report.

Complainants are retail coal dealers at the points of destination hereinafter named, and the Auburn Chamber of Commerce, a voluntary association representing the consumers at Auburn, N. Y. By complaints filed February 28, 1921, it is alleged that the rates charged for the transportation of anthracite coal, in carloads, from the anthracite region in Pennsylvania to Auburn, Oakwood, Union Springs, Moravia, Locke, Groton, Freeville, Genoa, Waterloo, and Seneca Falls, N. Y., have been and are unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to prescribe just and reasonable rates for the future and to award reparation. Rates will be stated in amounts per gross ton, and unless otherwise stated are those in effect at the time of hearing, July, 1921.

Auburn is a city of 36,000 inhabitants on the Lehigh Valley Railroad, 85.5 miles north of Sayre, Pa., and is the junction of the Lehigh & New York branch of that carrier extending from Sayre through

¹ This report also embraces No. 12610, Albert H. Traphagen et al. v. Lehigh Valley Railroad Company.

Freeville to North Fair Haven, N. Y., with its Auburn & Ithaca branch extending from Van Etten, N. Y., through Ithaca, N. Y., to Auburn. It is about halfway between Geneva and Syracuse, N. Y., being approximately 27 miles from either place, and is also served by the New York Central and the Central New York Southern. Waterloo and Seneca Falls are on that branch of the Lehigh Valley extending from Auburn to Geneva, about 3 and 10 miles, respectively, east of the latter point. These stations are also served by the New York Central. The other destinations named are near Auburn. Moravia, Locke, Freeville, and Groton are intermediate from Sayre to Auburn on the Lehigh & New York branch, and Union Springs and Oakwood are intermediate on the Auburn & Ithaca branch. Coal from the Pennsylvania mines may move to Auburn over either branch. The shipments to Waterloo and Seneca Falls move over the main line of the Lehigh Valley to Geneva, thence eastward over its Auburn branch. Genoa is on the Central New York Southern south of Auburn and shipments to this point move via the Lehigh Valley to Auburn and the Central New York Southern beyond. Geneva is 73 miles north of Sayre, while Rochester, N. Y., is 48 miles beyond Geneva on the Rochester branch, 13 miles off the main line.

The following table, compiled from complainants' exhibits, shows distances, rates, and earnings thereunder, to Auburn, Groton, Moravia, Waterloo, and Seneca Falls as compared with the rates and earnings to other destinations in New York. The distances are from Hazleton, Pa., taken as the geographical center of the anthracite field:

To—	Distance.	Rate. ¹	Car revenue. ²	Car-mile revenue. ³	Revenue per net ton-mile.
	<i>Miles.</i>			<i>Cents.</i>	<i>Mills.</i>
Auburn.....	249	\$ 3. 50	\$140. 00	56	13
Groton.....	221	3. 50	140. 00	63	14
Moravia.....	231	3. 50	140. 00	60	14
Waterloo.....	240	3. 50	140. 00	58	13
Seneca Falls.....	247	3. 50	140. 00	57	12
Ithaca.....	200	2. 66	106. 40	53	12
Cortland.....	223	3. 08	123. 20	55	12
Geneva.....	237	2. 94	117. 60	49	11
Rochester.....	285	3. 36	134. 40	48	11

¹ Rates on prepared sizes.

² Based on a loading of 40 gross tons.

³ Reduced to \$3.36, effective Nov. 1, 1921.

In *Goss v. Director General*, 58 I. C. C., 169, the rates from this same coal field to Auburn were attacked as unreasonable, unjustly discriminatory, and unduly prejudicial, but the complainants confined their evidence to the allegation of undue prejudice. We there found that the rates of the Lehigh Valley to Auburn were unduly prejudicial to the extent that they exceeded the rates from the same

points of origin to Seneca Falls. The Lehigh Valley complied with the order in this case on November 5, 1920, by increasing its rates to Seneca Falls to a parity with the Auburn rates.

The history of coal rates from the Pennsylvania anthracite districts to Auburn is given in detail in the case above referred to. Briefly reviewed, the rates over the Lehigh Valley to Geneva, Seneca Falls, and Auburn, and over the Delaware, Lackawanna & Western, hereinafter called the Lackawanna, to Syracuse, prior to April 1, 1916, were the same, \$1.90 on prepared sizes and \$1.65 on smaller sizes. In *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220, hereinafter referred to as the *Anthracite investigation*, we prescribed rates to certain named points and directed the carriers to establish rates to intermediate and related points in harmony therewith, giving due consideration to distance. Effective April 1, 1916, in pursuance of the order in that case, the rates of the Lehigh Valley to Geneva were reduced to \$1.60 and \$1.39, and of the Lackawanna to Syracuse to \$1.65 and \$1.39 on prepared and smaller sizes, respectively. On the same date the Lehigh Valley reduced its rates to Waterloo and Seneca Falls to \$1.70 and \$1.49, but did not change the rates to Auburn. As a result of the several general increases, the rates on August 26, 1920, became on prepared and smaller sizes, respectively, \$2.94 and \$2.66 to Geneva, \$3.08 and \$2.80 to Waterloo and Seneca Falls, \$3.50 and \$2.94 to Auburn; the single-line rates of the Lackawanna \$2.94 and \$2.52 to Syracuse; and the joint-line rates of the Lehigh Valley via Auburn and the New York Central to Syracuse, \$3.50 and \$2.94. The contemporaneous rates to Groton and Moravia were \$3.36 and \$2.94 on prepared and smaller sizes, respectively, but the record is silent as to their history. No evidence was offered relative to the rates to the other destinations.

Complainants in No. 12656 contend that the rates to Auburn are and have been unreasonable and unduly prejudicial to the extent that they have exceeded or exceed the single-line rates contemporaneously maintained to Geneva and Syracuse. They contend that defendants did not comply with our order in the *Anthracite investigation*, in that they failed to establish rates to related points in harmony with those specified, and that the failure at that time to reduce the rates to Auburn resulted in unreasonable rates which have been accentuated by the general increases.

Complainants in No. 12610 contend that the rates to Waterloo and Seneca Falls have been and are unreasonable to the extent that they have exceeded and exceed those in effect prior to November 5, 1920. They assert that in removing the prejudice as required by us in *Goss v. Director General, supra*, the defendants, instead of increasing the rates to Seneca Falls and Waterloo, should have reduced the

Auburn rates to the level of the rates to the former points. For convenience, reference will be made hereinafter to rates only on prepared sizes.

Complainants show that the class rates of the Lehigh Valley from the anthracite region to Geneva, Waterloo, Seneca Falls, and Auburn are identical. They point with emphasis to the rates prescribed by us in the *Anthracite investigation* to points throughout central New York as tending to show that the rates under attack are and have been unreasonable. Among others cited, and which were prescribed by us in that case, are rates of \$1.55 to Kendaia, 61 miles north of Sayre, and to Hayt's Corners, 59 miles north of Sayre; \$1.80 to Caledonia, 121 miles beyond; and \$1.95 to Depew, 166 miles beyond Sayre. They also compare the rates assailed with the rates of \$2.94 in effect to Geneva and of \$3.36 to Rochester, shown in the foregoing table. It is pointed out that the rates under attack to Auburn are the same as charged for the two-line haul through Auburn to Syracuse.

The Lehigh Valley states that generally no changes were made in rates following the decision in the *Anthracite investigation*, except where reductions were specifically ordered, and that the rates to Waterloo and Seneca Falls were reduced in 1916 through error. In explanation of its failure to reduce the Auburn rates it states that the decision was interpreted as indicating that we regarded those rates as reasonable which were not specifically disturbed. It is asserted that main-line service and volume of traffic account for lower rates to Geneva and Rochester, but no comparison was given as to the volume of tonnage. The Lehigh Valley endeavors to justify higher rates to Auburn by alleging more difficult operating conditions over the Lehigh & New York branch. It was testified that the grade from Sayre to Geneva is 18 feet per mile, while to Auburn it is 38 feet per mile, and that the bridges on the Lehigh & New York branch will carry locomotives of only one-third the tractive power that bridges on the main line will carry. This it claims restricts the tonnage of the trains to Auburn and results in practically double the cost in hauling coal from Sayre to Auburn over that from Sayre to Geneva.

At the hearing defendants referred to a proposed general re-adjustment of coal rates from the Pennsylvania anthracite district to points throughout central New York in which the rates to Geneva were to be increased to \$3.22 and those to Waterloo, Seneca Falls, and Auburn reduced to \$3.36. The schedules carrying these rates were suspended, and in *Anthracite Coal to New York Stations*, 63 I. C. C., 193, decided since the hearing, we found that the increases proposed were not justified.

The Lehigh Valley states that its Auburn & Ithaca branch would be a more economical route for shipments to Auburn, but claims that an injunction in a stockholders' suit prevents coal being moved over this branch. Its witness concedes that there is no reason for higher rates to the points involved than to Rochester. The rates to Ithaca were prescribed by us in the *Anthracite investigation*. Ithaca and Cortland are on branch lines, Ithaca being intermediate to Auburn and Cortland, a few miles from Groton, the latter also being intermediate to Auburn. No satisfactory explanation is offered for the difference of 42 cents between the Cortland rates and the rates to Groton, nor for the disparity between the rates to Ithaca and the rates here under consideration. The record shows the Lehigh & New York branch to be an important one over which considerable tonnage moves. The joint line rate to both Geneva and Syracuse was \$3.50, and to Auburn \$3.64, but joint line rates are not properly comparable in this territory, as in the *Anthracite investigation* only local rates of various carriers were considered; consequently joint line rates were not affected and have remained higher. The rates complained of to Auburn, Groton, and Moravia do not compare favorably with other single-line rates concurrently in effect in this same territory.

Defendant in No. 12610 offered no evidence bearing upon the reasonableness of the through rates to Waterloo and Seneca Falls, but urged that the charge of 56 cents for the haul beyond Geneva is not excessive. As sustaining this contention it stresses the services performed incident to the movement over the branch line, and cites several instances where a local rate of \$1.12 is assessed for a haul of 7 miles. The movement from the anthracite region is a through movement and that portion of the rate from Geneva to Waterloo or Seneca Falls can not be considered by itself and without regard to its relation to the entire rate for the through haul.

Defendants resist an award of reparation on the ground that even though the rates should be found to be unreasonable, complainants have not proved damage as the price of coal has been increased with the increase in rates. This contention is without merit. *Southern Pacific Co. v. Darnell-Taenzer Co.*, 245 U. S., 531. They also urge that the Auburn complainants were given an opportunity in *Goss v. Director General, supra*, to show the unreasonableness of the rates on past shipments, and that they petitioned for a rehearing, which was denied. This petition for rehearing related only to the joint rates of the Delaware, Lackawanna & Western and the New York Central; furthermore, the technical doctrine of *res adjudicata* as enforced in courts of law is not applied by us. The complainants are now before us, they have been given an opportunity to prove their allegations, among which is that of unreasonableness, and the finding

with respect thereto must necessarily be based on the record as now made. *Curry & Whyte Co. v. D. & I. R. R. Co.*, 30 I. C. C., 1, 3.

There is no testimony relative to the rates to Union Springs, Oakwood, Locke, Freeville, and Genoa, but as these points, with the exception of Genoa, are intermediate to Auburn, the rates to such points except Genoa should not exceed the rates contemporaneously maintained to Auburn. In No. 12610 there was no evidence of unjust discrimination or undue prejudice.

We find that the rates charged by the Lehigh Valley from the anthracite region in Pennsylvania to Auburn, Groton, and Moravia were unreasonable and unduly prejudicial to the extent that they exceeded \$1.70 and \$1.49 per gross ton on prepared and smaller sizes, respectively, from January 1, 1917, to March 31, 1918, inclusive; that they were unreasonable and unduly prejudicial from April 1, 1918, to June 24, 1918, inclusive, to the extent that they exceeded \$1.85 and \$1.64 on prepared and smaller sizes, respectively; that they were unreasonable and unduly prejudicial from June 25, 1918, to August 25, 1920, inclusive, to the extent that they exceeded \$2.20 and \$2 on prepared and smaller sizes, respectively; and that since and including August 26, 1920, the rates have been, are, and for the future will be unreasonable and unduly prejudicial to the extent that they have exceeded, exceed, or may exceed \$3.08 and \$2.80 on prepared and smaller sizes, respectively, subject, however, to our findings in *Reduced Rates, 1922*, 68 I. C. C., 676.

We further find that the rates on anthracite coal from the anthracite region in Pennsylvania to Waterloo and Seneca Falls via the Lehigh Valley since November 5, 1920, have been and for the future will be unreasonable to the extent that they exceeded, exceed, or may exceed \$3.08 and \$2.80 per gross ton on prepared and smaller sizes, respectively, subject to our findings in the case last cited.

We further find that complainants Louis F. Leonard and Clarence S. Warrick, copartners trading as Leonard & Warrick, E. D. Clapp Manufacturing Company, a corporation, Michael J. Cuddy and Charles M. Geherin, copartners trading as Cuddy & Geherin, Dean-Dillingham Company, a corporation, and Frank A. Eldredge and Ralph R. Keeler, copartners trading as the Garrett Coal & Ice Company, all of Auburn, N. Y., and Raymond G. Morey, Fannie G. Morey, and Mary D. Gooding, copartners trading as S. C. Gooding Company, and Albert H. Webster and Ezra C. Gleason, copartners trading as Webster & Gleason, of Groton, N. Y., made shipments as described and paid and bore the charges thereon; that they have been damaged to the extent of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest, on shipments

since September 1, 1917, prior to which time shipments were purchased f. o. b. destination.

It is our further finding that John L. Hamill and Bernard J. Luckern, copartners trading as Hamill & Luckern, Albert H. Trap-hagen, and George H. Leet, individuals, made shipments as described and paid and bore the charges thereon; that they have been damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable to Waterloo and Seneca Falls; and that they are entitled to reparation on shipments made since November 5, 1920, with interest. Complainants should comply with Rule V of the Rules of Practice.

No evidence was offered by the other complainants showing that they had paid and borne the freight charges on their shipments, and reparation can not be awarded to them. Neither was there evidence to support a finding respecting the rates to Union Springs, Oakwood, Locke, Freeville, and Genoa, and no finding is made as to those rates.

An appropriate order will be entered.