No. 13229.

SPENCER KELLOGG & SONS, INCORPORATED, *v.* DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY ET AL.

Submitted October 23, 1922. Decided January 26, 1923.

Rates on flaxseed, in carloads, from New York Harbor points to Buffalo, N. Y., found not unreasonable. Complaint dismissed.

E. A. Hodkinson and *T. H. Burgess* for complainant.
Parker McCollester and *E. H. Burgess* for defendants.

Report of the Commission.

Division 3, Commissioners Hall, Eastman, Campbell, and Cox.

By Division 3:

Exceptions were filed by complainant to the report proposed by the examiner, and oral argument was had.

Complainant, a corporation manufacturing linseed oil, has its office in New York, N. Y., and a plant at Buffalo, N. Y. By complaint filed September 23, 1921, it alleges that the rates charged on flaxseed, in carloads, shipped from New York Harbor points to Buffalo, since February 29, 1920, were unreasonable. We are asked to award reparation and to establish reasonable rates for the future. Rates will be stated in cents per 100 pounds.

The flaxseed was imported from South America, and was unloaded from the vessel into defendants' grain boats or barges, lightered to their terminals on the New Jersey shore, and transferred into cars, generally by the use of floating elevators. Charges were collected at the applicable sixth-class rates of 20.5 cents prior to August 26, 1920, and 28.5 cents on and after that date. Complainant contends that these rates were and are unreasonable to the extent that they exceeded 15 and 21 cents, respectively.

For some time prior to October, 1913, defendants maintained commodity rates of 10 and 17 cents on this traffic from New York to Buffalo and Toledo, Ohio, respectively. In *Major Co.* v. *D., L. & W. R. R. Co.*, Docket No. 4807 (Sub-No. 1), unreported, we found that the maintenance of these rates resulted in undue prejudice to Toledo, and ordered the carriers to establish rates thereto which would not exceed the rates to Buffalo by more than 50 per cent. We also found that the 17-cent rate to Toledo was not unreasonable, and the carriers purported to comply with our order by canceling the commodity rates on this traffic to Buffalo and Toledo, leaving applicable the six-class rates. Complainant points out that if the 10-cent rate had been continued and the several general increases applied, the rates sought would have become effective.

Complainant also points out that for a number of years defendants joined in the publication of a commodity rate of 10 cents from Baltimore, Md., to Buffalo. It contends that the long maintenance of this rate, which, during the period of movement, was on the basis sought, raises a presumption that it was considered by defendants as just and reasonable. Defendants state that the continuance of this rate was due to oversight. It was canceled in February, 1922, and traffic from Baltimore put upon the sixth-class basis. Complainant's witness testified that he was unable to find a record of any movement under the former commodity rate.

Complainant compares the rates sought with rates on grain of 17 and 24 cents, before and after the general increases of 1920, between New York and Buffalo. There was in effect on August 26, 1920, an ex-lake rate from Buffalo to New York of 23.79 cents, which, after deducting elevation allowances at Buffalo, resulted in a net rate of approximately 22 cents accruing to the rail lines. Reference is also made to an ex-lake rate of 22 cents on flaxseed from West Fairport, Ohio, to New York, 635 miles, to a rate of 20.5 cents from Cleveland, Ohio, to Baltimore, 585 miles, and to a rate of 16 cents from New York to Amsterdam, N. Y., 175 miles. The record does not show the volume of movement under these rates.

Rates on flaxseed from New York to most points in central territory are on the sixth-class basis. The value of the seed is ordinarily higher than that of wheat. Defendants show that on January 1, 1921, their average prices per bushel in the United States were $1.637 and $1.492, respectively. Taking the month of September, as typical for the year 1920, complainant shows that the values at New York were $3.20 and $2.91 per bushel, respectively.

Complainant admits that ordinarily it uses domestic seed, shipped from the Northwest through Duluth, Minn., and down the lakes to Buffalo. Its use of imported seed at Buffalo during 1920 apparently resulted from the small production in the United States and Canada. Since the period of movement complainant has made no further shipments of imported seed to Buffalo. It concedes that the movement from New York was and will be sporadic, depending upon crop conditions in the United States and Canada, as well as upon prices. Complainant's interest in future rates was based upon predictions that the crop in North America was likely to be short during 1922.

The short-line distance of 396 miles is over the Delaware, Lackawanna & Western. Over that route, the rates assailed of 20.5 and 28.5 cents yielded ton-mile earnings of 10.4 mills and 14.4 mills, respectively. The wheat rates of 17 and 24 cents applicable from Buffalo to New York yield ton-mile earnings of 8.5 mills and 12.1 mills, respectively. The rates sought would yield ton-mile earnings of 7.6 mills and 10.6 mills, respectively.

We find that the rates assailed were not and are not unreasonable. The complaint will be dismissed.