

No. 13024.

HENRY W. SOMERS v. NEW YORK, ONTARIO & WESTERN  
RAILWAY COMPANY ET AL.

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*Submitted May 13, 1922. Decided March 17, 1923.*

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Rates on steam sizes of anthracite coal, in carloads, from the Wyoming field of Pennsylvania to the Albany, N. Y., district, found unreasonable and unduly prejudicial. Reparation awarded and reasonable and nonprejudicial rates prescribed for the future.

*William E. Bennett and Josiah D. Greene* for complainant.

*Newton R. Cass and C. L. Andrus* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, CAMPBELL, AND COX.  
BY DIVISION 3:

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

Complainant is a wholesale dealer in coal at Albany, N. Y. By complaint filed August 3, 1921, as amended, he alleges that defendants' rates on anthracite coal, buckwheat No. 2 and smaller, known as steam sizes, in carloads, from Archbald, Forest City, Park Place, and Winton, in the Wyoming coal field of Pennsylvania, to points in the so-called Albany district of New York, including, among others, Albany, Troy, and Mechanicville, N. Y., are unreasonable and unduly prejudicial. We are asked to prescribe reasonable rates for the future and to award reparation on 123 shipments made to Mechanicville during 1920. Rates will be stated in amounts per long ton.

The shipments originated at mines served only by the New York, Ontario & Western, hereinafter called the Ontario & Western, which does not reach the Albany district. They moved over that line a few miles to Jermyn Junction, Pa., and the Delaware & Hudson to Mechanicville. They were destined to the West Virginia Pulp & Paper Company, on the Boston & Maine, and the switching charges of that road were absorbed by the Delaware & Hudson. Charges were collected at the applicable joint rates of \$1.90 prior to August 26, 1920, and \$2.66 on and after that date. On July 1, 1922, the latter rate was reduced to \$2.39, the present rate. The Delaware & Hudson operates from the Wyoming field to the Albany district. For its one-line haul the applicable rates were \$1.80 prior to August

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26, 1920, \$2.52 to July 1, 1922, and \$2.27 thereafter. Complainant contends that rates for the two-line haul in connection with the Ontario & Western should not exceed the rates for the one-line haul over the Delaware & Hudson.

The distances from the points of origin to Mechanicville over the route of movement range from 187 to 196 miles. All but six of the shipments originated at Winton from which the distance is 188 miles. For a haul of 188 miles the rates assailed yielded earnings of 1.01 cents per long-ton-mile prior to August 26, 1920, and 1.41 cents on and after that date.

Steam sizes of anthracite are shipped from the Wyoming field to the Albany district over the Delaware & Hudson. It was testified that a great deal of the coal mined on that road is controlled by large operators, particularly the Hudson Coal Company, which is affiliated with the Delaware & Hudson, and that it was difficult and, at times, impossible for complainant to buy it. Complainant has established business connections with the mines on the Ontario & Western. Coal from those mines sold by complainant in the Albany district comes in competition with coal from mines on the Delaware & Hudson and with bituminous coal. It was testified that to obtain the contract in fulfillment of which these shipments were made complainant was compelled to absorb the difference between the one-line and two-line rates; that he was able to do this because of the scarcity and prevailing high prices of coal at that time, but that he has since lost a contract with the same company because of inability to meet the prices of competitors supplying coal mined on the Delaware & Hudson.

Complainant referred to a number of points in New York and New Jersey to which joint rates of \$2.52 applied on steam sizes of coal for two-line hauls from the Wyoming field, participated in by the Ontario & Western or the Delaware & Hudson. He also showed that the class rates to Mechanicville from points in the Wyoming field are the same over the Ontario & Western and the Delaware & Hudson as over the Delaware & Hudson direct.

A rate on steam sizes from the Wyoming field to the Albany district over the Ontario & Western and Delaware & Hudson was first established in November, 1908. That rate was \$1.40, the same as the rate over the Delaware & Hudson. This parity continued until 1916. In *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220, decided July 30, 1915, we prescribed as reasonable a rate of \$1.31 on anthracite coal, pea size and smaller, from the Wyoming field to Albany, Troy, and Mechanicville over the Delaware & Hudson. By supplemental order of February 24, 1916, the order in that case was modified by substituting a rate of \$1.36.

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The \$1.36 rate was made applicable over the Delaware & Hudson on April 1, 1916, but no change was made in the two-line rate. The difference of 4 cents created at that time became 10 cents following General Order No. 28 of the Director General of Railroads, 14 cents following the general increases of 1920, and 12 cents after the general reductions of 1922.

Defendants contend that as the case cited was a general investigation of all coal rates in this territory, and as we required a reduction of only the one-line rates, the presumption is that we considered the two-line rates reasonable and the difference between the one-line and two-line rates proper. In this connection complainant refers to *Anthracite Coal to New York Stations*, 63 I. C. C., 193, involving rates from and to the territories here in question, in which we said:

It is apparent from the record that the difference between the one-line and joint-line rates to common points is too great. A proper adjustment would require a smaller spread or no spread at all. It does not exist in the rates on bituminous coal or on most, if not all, other commodities.

Defendants also refer to the fact that there is a large percentage of empty-return movement of equipment. In this connection we said in *Rates for Transportation of Anthracite Coal*, *supra*:

In considering comparisons of revenue, while giving due weight to extraordinary operating costs attributable to the anthracite traffic, we also have in mind that the heavy tonnage hauled in trains which transport coal offsets to a large extent the expense of returning the empty coal cars.

Defendants referred to a number of rates on steam sizes of anthracite coal from the Wyoming field to the Albany district over various routes composed of two or more lines, all of which are higher than the one-line rate of the Delaware & Hudson. The distances over the various routes are not given and it is admitted by defendants that many of them are circuitous.

Defendants introduced no evidence to show that the two-line haul results in a greater cost of service than the one-line haul.

In *Coakley v. Director General*, 59 I. C. C., 141, we had under consideration rates on coal from the Carbondale district of Pennsylvania to South Utica, N. Y. The defendants contend that the rates to South Utica were justified on the ground that they covered joint movements over the Delaware & Hudson and the Ontario & Western as compared with the lower rates for one-line hauls over the Lackawanna or the Ontario & Western. In refusing to sustain this contention we said:

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.

We find that the rates assailed were, are, and for the future will be, unreasonable and unduly prejudicial to the extent that they exceeded, exceed, or may exceed the rates contemporaneously applicable by way of the Delaware & Hudson from the Wyoming coal field of Pennsylvania to the Albany district of New York.

It appeared at the hearing that complainant had not paid and borne the freight charges on these shipments but that they had been paid and borne by the West Virginia Pulp & Paper Company. Subsequent to the hearing, complainant, with the consent of defendants, filed an assignment to him by the West Virginia Pulp & Paper Company of all its right and interest in any reparation that may be awarded herein.

We further find that the West Virginia Pulp & Paper Company paid and bore the freight charges on the above-described shipments; that it was damaged in the amount of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that complainant, as assignee of the West Virginia Pulp & Paper Company, is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice.

An appropriate order will be entered.

HALL, *Commissioner*, dissenting:

The rates assailed are neither unreasonable nor unduly prejudicial.

The finding of unreasonableness makes what shall be reasonable two-line rates for the future vary with the measure of one-line rates of the Delaware & Hudson. If the latter rates are increased to the level of the two-line rates there will then be no unreasonableness. The Delaware & Hudson can, by reducing its one-line rates as low as it wants to, make reasonable two-line rates for itself and another line. The two-line rates in this territory are generally higher than the one-line rates, in some instances by as much as 70 cents.

In so far as undue prejudice is concerned, the case is substantially similar to *Swift Lumber Co. v. F. & G. R. R. Co.*, 61 I. C. C., 485. Our order in that case is now before the Supreme Court for review. The undue prejudice here found to exist can not be removed by alternative methods. The Delaware & Hudson can increase its one-line rates but can not reduce the two-line rates without the consent of another line and the price of its consent might be exorbitant. The other line can not change the one-line rates of the Delaware

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& Hudson and can not change the two-line rates without the consent of that road.

If there is, in this territory, a situation that needs correction, as indicated in *Anthracite Coal to New York Stations*, 63 I. C. C., 193, the correction should be made in a proceeding that will bring in issue a more substantial part of the rate structure.

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