

No. 13172.

BOARD OF COMMISSIONERS OF THE CITY OF HOBOKEN
v. DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY.

Submitted December 22, 1922. Decided April 9, 1923.

Defendant's ferry charges on vehicles and live stock between Hoboken, N. J., and New York, N. Y., found unjust and unreasonable, but charges for passengers found reasonable.

William A. Kavanagh for complainant.

J. L. Seager and *W. J. Larrabee* for defendant.

J. Raymond Tiffany and *Eric E. Ebert* for Chamber of Commerce of Hoboken, N. J., and other interveners; *Joseph Stewart* for Postmaster General; *James C. Lincoln* for Merchants Association of New York, N. Y.; *E. A. Gallman* for Chamber of Commerce of Paterson, N. J.; *C. J. Fagg* for Chamber of Commerce of Newark, N. J., and New Jersey Industrial Traffic League; *James J. Cutlington* for Jersey City Chamber of Commerce; and *T. A. Pratt* for Motor Truck Association of America, interveners; and *John E. De Shazo* and *John A. McNulty* for others.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, AITCHISON, AND LEWIS.

LEWIS, *Commissioner*:

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

Complainant, the governing body of the municipality of Hoboken, N. J., alleges that the ferry charges of the defendant between Hoboken and New York, N. Y., which became effective October 1, 1921, are unjust and unreasonable and were not lawfully published and filed. We are asked to reject the tariff naming the charges and to require the restoration of the charges formerly in effect. No rates or fares in connection with defendant's rail line are in issue. The Chamber of Commerce of Hoboken and other commercial organizations¹ intervened and offered evidence in support of the com-

¹ Petitions of intervention were filed by the Postmaster General; Chamber of Commerce of the City of Hoboken, N. J.; Jersey City Chamber of Commerce; The Merchants Association of New York, N. Y.; Chamber of Commerce of the City of Newark, N. J.; and Chamber of Commerce of Paterson, N. J.; New Jersey Industrial Traffic League; and the Motor Truck Association of America, Incorporated.

plaint, and reference to complainant hereinafter made will include interveners.

Defendant's tariff naming the charges in issue was filed with us on August 31, 1921, 30 days before the effective date. Complainant alleges that it had no knowledge of the proposal to increase the rates until September 27 and that defendant did not give general publicity to the proposal to increase its ferry charges. Patrons of the ferries generally appear not to have been aware of the increased rates until October 1, or shortly before, but there is no evidence that the tariff naming them was not filed in compliance with the law and our regulations.

Defendant operates a railroad extending from tidewater at New York Harbor through the States of New Jersey, Pennsylvania, and New York to Buffalo, N. Y., with a number of branch lines in each of the States mentioned. It has extended its operations to the city of New York by means of ferry boats, car floats, lighters, and barges. Defendant's ferries are an essential part of its railroad system in handling passengers and baggage to and from New York. Some of its competitors have direct rail access to New York. It has freight and passenger terminals at Hoboken and Jersey City, N. J. In connection with the passenger terminal at Hoboken it maintains a ferry terminal at Hudson Place, hereinafter referred to as the lower ferry. Defendant also maintains a ferry terminal at Fourteenth Street, Hoboken, between 0.5 and 1 mile distant from the lower ferry. There is no rail connection between the Fourteenth Street ferry and the lower ferry. Ferry routes are operated from the lower ferry across the Hudson River to terminals located at Twenty-third, Christopher, and Barclay Streets, New York, the distances being from approximately 0.875 to 1.25 miles. Only one ferry route is operated from Fourteenth Street, Hoboken, the terminal on the New York side being at Twenty-third Street. Four double-deck boats, 220 feet long, of about 1,200 horsepower, are regularly operated on the Barclay Street route, three double-deck boats, about 210 feet long, of about 900 horsepower, on the Christopher Street route, and three double-deck boats, of about 1,000 horsepower, on the Twenty-third Street route. Each of the boats is equipped to carry passengers, vehicular traffic, and live stock. On the lower deck are two gangways for vehicles separated by a cabin or roundhouse. Defendant operates two single-deck boats on the Fourteenth Street ferry route. It also has three other boats for emergency use. It operates no vehicles across the ferries except hand trucks for baggage. At the time of the hearing herein two new single-deck boats were under construction at a cost of about \$300,000 each.

78 I. C. C.

Much evidence was offered to show congestion at the Hoboken ferry terminals, with resulting delays to vehicular traffic. Instances are cited where trucks and wagons have been required to wait in line for more than an hour before being able to go aboard a ferry. Defendant admits that there is at times congestion, but attributes any undue congestion to fog, ice jams, blocking of ferry slips by floats, tows, and ships, stalling of vehicles, winds and currents, and a large volume of vehicular traffic presenting itself at an irregular time. The greatest movement of vehicular traffic appears to be from about 7 a. m. to 10 a. m. and from 4 p. m. to 7 p. m. Ferries are also operated across the Hudson between Jersey City and other points in New Jersey and New York City by other railroads. The daily sailings between New Jersey and New York of the Erie, Pennsylvania, Central Railroad of New Jersey, and West Shore ferries vary from 126 to 184 trips each, with a combined total of 634 trips. Defendant's ferries make a total of 385 trips daily. An examination of the entire record does not lead to the conclusion that defendant's ferries are not efficiently operated or that the congestion complained of can be entirely relieved without the addition of more boats, with a corresponding increase in investment and operating expenses.

Defendant, at a cost of \$3,863,800, acquired control of the ferry properties in 1903 by purchase of the entire capital stock of the New York & Hoboken Ferry Company, par value \$3,300,000, which in turn owned the entire capital stock of the Hoboken Ferry Company, \$100,000 par value, the latter being the owner of the ferry properties.

Since January 1, 1910, the ferries have been operated by defendant under a 20-year lease from the Hoboken Ferry Company, at an annual rental of \$420,150, which is equivalent to the annual interest on the bonded debt of the two ferry companies and the annual franchise tax on the capital stock of the New York & Hoboken Ferry Company, the latter amounting to \$3,150. Defendant must pay all taxes, assessments, water rent, and other rents for which the lessor might be liable. The ferries are operated as the ferry division of defendant's marine department. A yard for making repairs to defendant's marine equipment, including ferries, lighters, tugs, and car floats, is maintained adjacent to the Fourteenth Street terminal.

The ferry charges assailed include charges for the transportation of passengers on foot and in vehicles, animals, light pleasure vehicles, automobile pleasure vehicles, auto tally-ho and observation cars, auto business wagons, auto trucks, auto vans, business wagons, trucks, ice wagons, vans, beer wagons, brewery grain wagons, vehicles in tow, machinery and stone trucks, reach and timber-reach vehicles, and iron, scenery, or reach horse trucks. The charges in effect immediately prior to October 1, 1921, were increased on that date 20 per

78 I. C. C.

cent on passenger fares and 40 per cent on all other traffic. The defendant and other carriers in the eastern group on July 1, 1922, subsequently to the hearing in this proceeding, reduced freight rates to the extent that they represented an increase of more than 26 per cent over the rates in effect immediately prior to August 26, 1920. At the same time defendant also reduced its ferry charges on vehicles and live stock so that they are now approximately 10 per cent lower than the rates assailed in the complaint and 26 per cent higher than the charges in effect immediately prior to October 1, 1921. The issues and record were made upon the basis of the charges which became effective October 1, 1921. Accordingly, the discussion herein will be upon the basis of charges assailed in the complaint, keeping in mind, however, the reductions which became effective July 1, 1922, and the effect thereof. Representative of the charges and increases which became effective October 1, 1921, are the following:

	Prior to Oct. 1, 1921.	Effective Oct. 1, 1921.	Increase.
Passenger:	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Adult.....	3	4	1
Ten-trip tickets.....	25	30	5
Cow.....	9	13	4
Pleasure vehicles:			
One horse and driver.....	12	17	5
Two horses and driver.....	25	35	10
Automobile, one seat.....	12	17	5
Auto trucks:			
Not exceeding 15 feet, without load.....	40	56	16
Not exceeding 15 feet, with load.....	50	70	20
Exceeding 17 feet, but not over 20 feet, with load.....	70	98	28
Over 20 feet, 10 cents for each 3 feet or fraction, without load, and 12 cents for each additional 3 feet or fraction, with load, increase of 4 cents and 5 cents, respectively.....			
Machinery truck or small skid without load, two horses and driver.....	37	52	15
Team tickets in lots of 50 or multiples thereof (per 100):			
One horse truck, loaded.....	\$15	\$21	\$6

Based on the difference between the actual revenue for the first nine months of 1921, adjusted to a 12 months' basis, and the revenue estimated for a year by defendant at the charges assailed, the additional revenue per annum amounts to approximately \$378,274 from vehicular traffic and live stock and \$256,892 from passenger traffic, or a total increase in revenue of \$635,166.

The percentage of increase made in the ferry charges was the same as that authorized by us under the general increases of 1920, for carriers in the eastern group, viz, 20 per cent on passenger traffic and 40 per cent on freight traffic. Vehicular traffic and live stock are classified as freight traffic in accounts of carriers. The general increases of 1920 in defendant's rail rates, fares, and charges were made on August 26, 1920, more than a year prior to the time when the increased charges complained of became effective. A traffic

78 I. C. C.

witness appearing for defendant testified that the increase in the ferry charges was made to overcome alleged losses in operation. No investigation was made into the details of each particular rate, but the percentage increases were simply added to the rates in effect. The reason given by defendant for not increasing its ferry charges at the same time rail rates and fares were increased on August 26, 1920, is that defendant's counsel advised that it was not practical to do so, but no reference is made to any change in conditions or circumstances occurring between August 26, 1920, and October 1, 1921, to explain why it was more practical to increase the ferry charges at the later date, when the general economic trend was toward reduced prices.

Defendant submitted an exhibit which purports to show that the actual results of its ferry operations for the first nine months of 1921 resulted in a deficit of \$376,462.11; that the same period adjusted to the ferry charges effective October 1, 1921, as well as reduced wages effective July 1, 1921, would result in a credit to income of \$140,769.54, and for a constructive year based on the adjusted nine months of \$187,693.70.

We issued a classification of revenues and expenses effective July 1, 1908, for outside operations, such as ferry operations for steam railroads, which remained in effect until June 30, 1914. Defendant has continued to keep a memorandum account of its ferry operations in accordance with that classification for its own purposes and use, and its accounts and memorandum accounts constitute the basis of the exhibit just referred to.

From 1910 until the period of Federal control defendant's ferry operations resulted in net credit to income each year as follows:

1910-----	\$211, 573. 24	1915-----	\$159, 006. 73
1911-----	212, 712. 78	1916-----	133, 210. 84
1912-----	262, 822. 44	1917-----	244, 969. 04
1913-----	276, 533. 61	1918-----	29, 391. 32
1914-----	221, 700. 15		

In 1919, 1920, and the first nine months of 1921, deficits of \$349,136.78, \$1,319,670.51, and \$376,462.11, respectively, were reported. Defendant paid dividends on its capital stock at the rate of 20 per cent per annum prior to 1921. During that year the capitalization was increased 100 per cent and a stock dividend of that amount was declared. On the increased capitalization the dividend rate was 12 per cent in 1921.

No valuation of the ferry properties has been made. Defendant states the cost of the capital stock of the New York & Hoboken Ferry Company and of additions and betterments to the ferry properties chargeable to capital account as \$5,823,917.85.

78 I. C. C.

As stated, in 1903 defendant paid \$3,863,800 for the entire capital stock of the New York & Hoboken Ferry Company, which also owned the capital stock of the Hoboken Ferry Company. The par value of the entire stock of both companies is \$3,400,000. There is no evidencê as to whether the amount paid by defendant was excessive or not. Defendant has been charging off depreciation on the ferryboats at 2.5 per cent per annum only since July 1, 1914. The record does not clearly show the various charges to capital account for additions and betterments and when they were made, so that the depreciated value of the property can not be stated.

For service rendered through passengers to or from New York, using defendant's rail lines beyond Hoboken, an allocation of 2.5 cents per passenger was made prior to October 1, 1921, and 3 cents thereafter. An allowance of 2.5 cents per passenger was made by defendant to the ferry company prior to taking over the operation of the ferries. Three cents is the amount paid for each trip by local passengers who buy 10-trip tickets. Complainant contends that the apportionment made to ferry operations is and has been insufficient as only a part of the ferry traffic consists of those who purchase multiple-trip tickets. The number of local ferry passengers was 30,961,988 in 1907, 19,814,177 in 1910, and 21,890,872 in 1920. The number of train passengers, which represents the total number of railroad tickets reading to and from New York, for which the ferry operations received credit was 12,636,278 in 1907, 17,147,513 in 1910, and 19,635,300 in 1920. Defendant estimates that approximately 50 per cent of its train passengers use the trains of the Hudson & Manhattan via the so-called Hudson tubes, to which there is an entrance from the lower-ferry terminal, but the record indicates this estimate is probably somewhat too high. It also estimates that about 3.1 per cent of its train passengers in and out of Hoboken are through passengers, the remainder being suburban passengers, of which about two-thirds travel on commutation tickets. If the ferry operations were allowed 4 cents for train passengers, an additional amount of approximately \$197,676 per annum would be credited to ferry operations on the basis of figures for the month of October, 1921. The apportionment to ferry operations for train passengers was not increased when defendant's railroad fares were increased on August 26, 1920. No allowance is made to ferry operations for the transportation of train passengers' baggage across the ferry, while no provision is made for such service for local ferry passengers.

In 1919 the item of maintenance was \$730,219.90 and in 1920 it was \$1,458,049.22, a sum approximately five times as great as the maintenance per year in 1915, 1916, and 1917. During the years

781. C. C.

1918, 1919, and first nine months of 1921 there was charged to maintenance \$2,744,427.88, a sum equivalent to approximately 47 per cent of the investment stated by defendant. Defendant admits the maintenance shown during this period to be abnormally high.

The amount shown as maintenance for the year 1915 is \$262,966.22. The item of maintenance for 1920 as shown above therefore represents an increase of approximately 454 per cent over that of 1915. It is to be noted in this connection that the cost of maintenance of way and structures for Class I roads in the eastern district for the year 1920 represented an increase over the cost for 1915 of approximately 171 per cent. In *Reduced Rates, 1922*, 68 I. C. C., 676, 691, we observed with reference to the conditions of the carriers of the country generally that—

Unusual features in the operations of 1920 make that year unreliable as a measure of what the annual outlay for maintenance should be. It was a period of peak prices, when the greatest ton-mileage and passenger-mileage in the history of the railroads moved under most adverse conditions.

In a statement prepared for the Director General of Railroads for the purpose of arriving at a final settlement for the use of defendant's properties during Federal control, among other items, were certain items arising out of the use of the ferries. The director general denied that there was undermaintenance, but in final settlement of all defendant's claims paid about \$5,000,000, no portion of which was credited to the ferry account.

Defendant has not credited its ferry operations with a number of items, such as allowance for rental for ticket offices and baggage rooms used for serving defendant's rail passengers at the ferry terminals; services of ferry-ticket collectors; porter service at ferry terminals and baggage rooms; and heating and lighting at the ferry terminals. A detailed statement or study of the credits and charges for services of this character rendered by and to the ferry operations to ascertain whether they compensated each other, has never been made, but defendant's general auditor expressed the opinion that charges of this kind which might properly be made against ferry operations would more than offset credits which should be allowed. Defendant states that among the charges which might be properly made against ferry operations, but are not, are freight charges for the transportation of coal consumed on ferryboats, which in September, 1921, at current tariff rates, would amount to \$8,747.93, or at the cost of service, based on defendant's general operating ratio for that year, would be \$6,983.44, and expenses of offices of the defendant's engineering and real-estate department and general offices in New York.

78 I. C. C.

Defendant credits ferry operations with \$2,500 per month for the transportation of vehicles of the American Railway Express between Hoboken and New York. Had the vehicles of the express company which used the ferries in October, 1921, been charged the regular rates, the revenue accruing therefrom would have reached \$6,613.92, or over \$4,000 more than was credited to ferry operation for the service rendered. Had they been charged the rates in effect prior to October 1, 1921, the revenue accruing therefrom would have been \$4,713.86 or over \$2,200 in excess of that credited to ferry operation for this service. On the same basis the difference for a year would have amounted to \$26,566.32. Trucks of the Post Office Department used for hauling mail are charged the regular ferry rates. Based on the charges for the months of October, November, and December, 1921, at the rates assailed, defendant's charges on mail trucks for a year would amount to \$35,864.52.

Charges for passengers which were increased October 1, 1921, had been in effect since prior to 1850. The individual fare for an adult passenger is 4 cents on all of the railroad-operated ferries across the Hudson between New Jersey and New York City except that of the Central of New Jersey, which is 3 cents, and the West Shore's fare of 6 cents from Weehawken, N. J., to Cortland Street, New York, but the latter's fare to Forty-second Street, New York, is 4 cents. The defendant and the Pennsylvania provide for a 10-trip ticket for 30 cents, and defendant also sells a 21-trip ticket for 60 cents. The other railroads do not provide for multiple-trip tickets. Defendant's fare for passengers in vehicles is 4 cents and the fare for passengers below 10 years of age and not less than 5 years is 3 cents; if below 5 years they are carried free. The fare via the Hudson tubes is 10 cents from Hoboken to Christopher Street and all other stations in New York except to Hudson Terminal the fare is 6 cents.

The charges on horse-drawn vehicles had been in effect since 1888, and on motor vehicles without material changes since 1903, when they were increased on October 1, 1921. The charges on vehicles include a driver or operator.

For the nine months' period ended September 30, 1921, the revenue from passenger traffic amounted to \$791,750.42. The revenue from vehicular traffic and live stock was \$709,264.93, or if the revenue apportioned for the transportation of American Express trucks is included, \$739,264.93, which amounts to about 48 per cent of the total revenue. Defendant has no way of apportioning operating expenses as between passenger traffic and vehicular traffic.

Complainant submitted exhibits comparing the charges on various kinds of vehicles. These show, for example, that the charge for 78 I. C. C.

ferrying a one-horse truck, 11 feet in length, loaded, with a total length of 21 feet, including horse and shafts, is 26 cents, and the charge for an autotruck, 11 feet in length, with load, is 70 cents. If 20 of the horse trucks are loaded on a 220-foot ferry, the revenue accruing therefrom would be \$5.20, while the revenue from forty 11-foot autotrucks would be \$28. The charge for a 15-foot touring automobile is 35 cents, while an autotruck of the same length, without load, is charged 56 cents. The charges on autotrucks of other lengths are from 62 to 140 per cent higher per linear foot of space occupied than the charges on auto pleasure vehicles of corresponding lengths. One of the ferry patrons engaged in the milk business uses two-horse trucks and 5-ton autotrucks for carrying approximately the same load of milk. The area on the ferry's deck occupied by one of the two-horse trucks is about 201 square feet and by a 5-ton autotruck, 143.5 square feet. The former is ferried for 97 cents while the latter is charged \$1.11, although occupying 28 per cent less deck area. In this connection it may be observed that the ferry charges assailed represented an increase of 40 per cent in the charges of milk transported across the ferry, while the charges on milk hauled by rail were only increased 20 per cent under the general increases of 1920. According to a table submitted by the defendant the charges of the Central Railroad of New Jersey, operating a ferry between Jersey City, N. J., and New York, on business vehicles, loaded, are from 4 to 56 cents lower than defendant's charges for vehicles of approximately the same length. Some of defendant's charges are from 1 to 58 cents lower than those of the West Shore for horse trucks with load, but the West Shore's charges for autotrucks are lower generally than defendant's. The Pennsylvania charges on horse-drawn vehicles are based on the width of the truck, but a majority of the Pennsylvania's charges for autotrucks, with load, referred to by defendant, are from 3 to 12 cents less than defendant's charges for trucks of the same length, and in no instance are they more. The Erie makes no difference in its charges for a vehicle, with load, and the same vehicle, without load.

The charges of the Riverside & Fort Lee Ferry, operating between Edgewater, N. J., and West One hundred and thirtieth Street, New York, and not affiliated with any railroad, on vehicles, are lower than defendant's. An exhibit submitted by complainant shows charges of defendant's which are from 25 to 238 per cent higher than the ferry charges of the Pennsylvania between Philadelphia, Pa., and Camden, N. J., for vehicles of corresponding length. In addition to an operator or driver, the latter's charges include the transportation of a helper, for which defendant makes an additional charge.

78 I. C. C.

Defendant contends that it costs more to ferry autotrucks than horse trucks and that from time to time it has been compelled to strengthen and reinforce its decks on account of the weight of autotrucks. The evidence is not entirely in accord as to the relative weight of autotrucks and the combined weight of trucks and horses, but the weight of the load on an autotruck is more centralized. The combined weight of a three-horse truck, empty, and the horses formerly used by a coal company using the ferries was approximately the same as that of an autotruck now used having the same loading capacity. An exhibit submitted by defendant showing the weights of trucks which use the ferries and their carrying capacity indicates that the loads carried by autotrucks generally and without regard to the length of the vehicle or deck area occupied are greater than the loads on horse-drawn trucks. It costs more to operate a loaded boat, but defendant has made no study or investigation to ascertain in what proportion weight enters into the costs of operation.

Defendant refers to a fire hazard by reason of the gasoline used for propelling autotrucks, but there is no evidence of any appreciable loss or damage from that source. Both the horse-drawn vehicles and autotrucks occasion delays to boats, principally by reason of the inability of horses to draw loaded trucks onto the boat and by the stalling of the engines of autotrucks.

Practically no evidence was offered in respect of the charges on animals, wheelbarrows, hand carts, or baby carriages.

Respecting vehicular traffic, we are not shown what elements were given consideration when defendant's charges thereon in effect prior to October 1, 1921, were originally established. We have pointed out, however, examples of the differences between the charges assessed on horse-drawn vehicles and those on motor vehicles; also in the charges on the different kinds of motor vehicles. Whatever differences existed prior to October 1, 1921, in the charges on the several kinds of vehicles, were accentuated by the blanket percentage increases of that date to such an extent as to make the present vehicular charges appear disproportionate and illogical. Defendant presented the case simply on the theory that the increased charges were justified.

We are not prepared to say that some increase in the revenue over that accruing from the charges on vehicular traffic in effect prior to October 1, 1921, could not be justified provided the charges on this traffic were properly adjusted. Our findings herein, therefore, are not to be construed as meaning that different conclusions might not be reached if we had before us for consideration such a basis of charges as has been indicated.

78 I. C. C.

Upon this record we find that the charges for passengers are reasonable, but that defendant has not shown the justness and reasonableness of its present ferry charges on vehicular and live-stock traffic, which charges we further find are and for the future will be unjust and unreasonable to the extent that they exceed the charges in effect immediately prior to October 1, 1921.

An appropriate order will be entered.

78 I. C. C.