

No. 13613.

ELEM COAL COMPANY v. LEHIGH VALLEY RAILROAD
COMPANY ET AL.

Submitted February 21, 1923. Decided June 9, 1923.

Rates on anthracite coal from mines in Pennsylvania to Claremont Park, Borough of Bronx, New York, N. Y., found not unreasonable, and complaint dismissed.

Stanley B. Houck for complainant.

H. B. Thomas, W. J. Larrabee, and R. W. Barrett for defendants.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER.

BY DIVISION 4:

Exceptions were filed by complainant to the report proposed by the examiner.

In this proceeding rates on anthracite coal from producing points in Pennsylvania to a specific destination within the corporate limits of the city of New York, N. Y., are brought in issue. Complainant corporation is engaged in the coal business and has its principal office and yard at One hundred and seventy-second Street and Webster Avenue, Borough of Bronx, north of Harlem River, at a local station of the New York Central Railroad, known as Claremont Park.

By complaint it alleges that it receives at Claremont Park many carloads of anthracite from mines in Pennsylvania; that the rates per gross ton charged for the transportation of such coal are \$4.06 for prepared sizes, \$3.92 for pea coal, and \$3.64 for smaller sizes; that these rates have been increased since January 1, 1910; and that by reason of the foregoing facts complainant has been subjected to the payment of rates which were and are unjust and unreasonable in violation of section 1 of the act. Rates for the future are asked. Except as noted, rates will be stated in amounts per gross ton for prepared sizes; rates for other sizes bear recognized differentials lower.

These rates have been increased since January 1, 1910, and the burden of proof to show their reasonableness is upon the defendants. The Lehigh Valley, the Central Railroad of New Jersey, and the Philadelphia & Reading Railway hereinafter referred to collectively

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as the initial lines, and the New York Central, hereinafter referred to as the delivering line, assumed this burden.

Complainant rested upon testimony describing its business; on its competition with other coal yards, some of which have water frontage; on the assumed lesser degradation of coal delivered in cars as compared with that of coal transferred from cars to barges; on the difference in total charges to it and to its water-front competitors; and on expert testimony and certain exhibits concerning the tariff history of the rates. These exhibits include tabulations of rates and distances to points taking the same rate basis as Claremont Park, and to other destinations in the New York, Long Island, and Staten Island districts not served by these defendants. The conditions surrounding the delivery of coal to points on the Bush Terminal Railroad, in Brooklyn, N. Y.; to points on the Long Island Railroad, on the 16-mile belt between Long Island City, N. Y., and Bay Ridge, N. Y.; to points on the South Brooklyn Railroad; and to points served by the Staten Island Rapid Transit Railway, were not shown.

In justification of the rates attacked the defendants introduced testimony which may be summarized as follows: (a) Testimony tending to show that the highest rate under attack, \$4.06 on prepared sizes, was just and reasonable in and of itself and as compared with rates on prepared sizes to other points similarly located; (b) testimony tending to show that the divisional components of this highest rate, which are (1) the rate from the mines to Jersey City, N. J., and points taking the Jersey City rate; (2) the floatage charges across the harbor to the float bridges of the New York Central at Sixtieth Street; and (3) the arbitrary divisions demanded by that line for the movement from Sixtieth Street to Claremont Park, have not been increased since January 1, 1910, except in accordance with *The Fifteen Per Cent case*, 45 I. C. C., 303, General Order No. 28, and *Increased Rates, 1920*, 58 I. C. C., 220.

Cars containing complainant's coal move from the mines to the Jersey shore of the Hudson River, whence they are floated to the float bridges of the delivering line at the foot of West Sixtieth Street, New York City; there they are classified with other cars for northbound movement in trains. These trains, generally of 20 to 25 cars, move northward and cross the Harlem River to Spuyten Duyvil, a distance of 8 miles, the junction with the Hudson division; thence eastward and southward over the busiest section of the delivering carrier's rails through Kingsbridge, University Heights, Morris Heights, and High Bridge, to the junction with the Harlem division, and nearly to One hundred and thirty-eighth Street; thence northward over the Harlem division through Claremont Park, a

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distance of 15 miles from Sixtieth Street, to Mount Vernon, 5 miles farther on. At Mount Vernon, cars for complainant and others served by the southbound tracks of the Harlem division are cut out, switched, and made into a local train for southbound movement. This extra haul beyond Claremont Park and back, a total of 10 miles, is necessary because of the high density of through and suburban passenger traffic over that division. The rates on coal are the same from Kingsbridge to Mount Vernon, inclusive, beyond which point they are higher. The Kingsbridge-Claremont Park-Mount Vernon scale of rates is the same as is maintained at Riverdale, about a mile north of Spuyten Duyvil on the Hudson division, and the same as in effect south of Sixtieth Street to the Thirtieth Street yards on Manhattan Island. This same scale applies via the New Haven Railroad at Mount Vernon. Indeed, the record shows that the reason these rates are not higher is the effectiveness of water competition along the Harlem River at Kingsbridge, University Heights, Morris Heights, and High Bridge, and along the north shore of Long Island Sound as far as Mount Vernon.

The history of the rates is well set forth in the following table of rates on anthracite coal from mines in Lehigh and Wyoming groups in Pennsylvania to Claremont Park, New York, N. Y.:

	Prepared.	Pea.	Smaller.
Sept. 4, 1906, to June 30, 1917.	\$2.30	\$2.20	\$2.00
July 1, 1917, to June 24, 1918.	2.45	2.35	2.15
June 25, 1918, to Aug. 25, 1920.	2.90	2.80	2.60
Aug. 26, 1920, to June 30, 1922.	4.06	3.92	3.64
July 1, 1922.	3.65	3.53	3.28

This table shows that prior to July 1, 1917, there had been no increase in these rates after January 1, 1910; that the increase effective that day did not exceed what was permitted in the *Fifteen Per Cent case, supra*; and that subsequent to that date these rates were subject to adjustments under General Order No. 28, *Increased Rates, 1920, supra*, and *Reduced Rates, 1922*, 68 I. C. C., 676. No direct attack is made against the general adjustments and the record is bare of testimony concerning their propriety. The defendants follow down each increase in their analyses, but for brevity this report will consider only the rates prior to July 1, 1917, and for clearness attention will be confined to the rate on prepared sizes, \$2.30.

Under date of July 30, 1915, the commission, in *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220, fixed the rates to Jersey City and to other intermediate points where the rail lines of the initial carriers terminate on the Jersey shore, at \$1.45. The rate to Claremont Park was not fixed in that proceeding, but the basal 80 I. C. C.

rate to Jersey City there found reasonable was \$1.45. The excess of 85 cents in the rate to Claremont Park over the rate to Jersey City was divided, 50 cents for the delivering line and 35 cents for car floatage. Defendants show that the 50-cent charge for the service rendered by the delivering line, a haul of 25 miles through its most congested districts, was less than 2.25 cents per 100 pounds, and that whereas floatage and lighterage was then generally 60 cents per ton, gross or net as rated, 3 cents per 100 pounds, the division of 35 cents was equal to 31.25 cents per net ton, or 1.5625 cents per 100 pounds.

Complainant markets its coal in all directions from One hundred and seventy-second Street and Webster Avenue, going as far south as One hundredth Street, as far north as Two hundred and fortieth Street, as far west as Riverside Drive, and also some distance to the east. Within this territory it meets competition from yards having water fronts such as at One hundred and thirty-eighth, One hundred and sixty-third, One hundred and seventy-second, One hundred and seventy-seventh, and Two hundred and seventh Streets, as well as from yards served by the railroad at Two hundred and seventh, Two hundred and twentieth, and Two hundred and forty-second Streets. Obviously, water-front yards paying the Jersey City freight rate, plus whatever dockage, lighterage, trimming, and labor charges may from time to time obtain, have some advantage in total costs of transportation, the amount of which is not made plain upon this record. That they also have some disadvantages is equally plain, for complainant meets the competition of its rail-served competitors as well as that of these water yards within a radius of approximately 70 city blocks; and it estimates the degradation of water-borne coal as exceeding that of its coal by 10 or 15 cents per ton. However, the record shows that even complainant's rate is depressed by this water competition and that whatever advantages there may be as between all-rail and rail-and-water borne coal must be attributed to location and business management. Complainant's freight rate does not exclude it from reaching points on Manhattan Island that require truck delivery as far south of the water yards as One hundredth Street and as far west as Riverside Drive. Complainant's own testimony shows no injustice or unreasonableness in the rates it pays as compared with rates by rail, or with total charges by rail-and-water route, to points similarly situated.

The complaint will be dismissed.

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