

No. 13891.¹

ATLAS PORTLAND CEMENT COMPANY v. CENTRAL
RAILROAD COMPANY OF NEW JERSEY ET AL.

PORTIONS OF FOURTH SECTION APPLICATION NO.
1774.

Submitted May 18, 1923. Decided December 27, 1923.

1. Rates on Portland cement, in carloads, from Navarro, Pa., to certain points in northern New Jersey between Navarro and New Jersey tidewater points, and to the latter for local delivery, found not unreasonable or otherwise unlawful. Complaints dismissed.
2. Fourth-section relief denied.

Walter Young for complainant.

R. W. Barrett for defendants.

F. E. Paulson, John S. Burchmore, Luther M. Walter, Nuel D. Belnap, and C. R. MacCarey for interveners.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX.

BY DIVISION 3:

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

In these cases complainant, a corporation manufacturing cement at Navarro, Pa., assails as unreasonable and in violation of the long-and-short-haul provision of section 4 of the interstate commerce act the rates on Portland cement, in carloads, from Navarro to points in New Jersey on the lines of certain² defendants intermediate³ to the New Jersey tidewater terminals⁴ of those carriers, and to those

¹ This report also embraces No. 13891 (Sub-No. 1), Same v. Delaware, Lackawanna & Western Railroad Company et al.; No. 13891 (Sub-No. 2), Same v. Central Railroad Company of New Jersey et al.; No. 13891 (Sub-No. 3), Same v. Same; No. 13891 (Sub-No. 4), Same v. Same; and No. 13891 (Sub-No. 5), Same v. Same. At the hearing complainant asked the dismissal of Sub-Nos. 2 and 5.

² Delaware, Lackawanna & Western, herein termed the Lackawanna, Central Railroad Company of New Jersey, herein termed the Jersey Central, Lehigh Valley, Erie, and New York, Susquehanna & Western.

³ Many of the points specifically complained of are not intermediate to tidewater, but are on branch lines.

⁴ Jersey City, Newark, Brills, Elizabethport, Carteret, Chrome, Perth Amboy, Maurer, Hoboken, Weehawken, and Undercliff, N. J.

terminals for local delivery. Reasonable rates for the future and reparation on shipments moving since May 1, 1922, are sought. Unless otherwise indicated, rates will be stated in cents per 100 pounds.

Portions of fourth-section application No. 1774, filed by Agent C. C. McCain, by which carriers named as parties thereto seek authority to continue to charge for the transportation of Portland cement from Navarro to those tidewater terminals rates which are lower than the rates contemporaneously maintained on like traffic to intermediate points, were heard with these cases.

Fourteen other cement-manufacturing companies intervened in opposition to the complaints.

Complainant's Navarro plant is near Northampton, Pa., on the Northampton & Bath, about 0.75 mile from its connection with the Jersey Central and about 7 miles from its connection with the Lehigh & New England and the Lackawanna. The Northampton & Bath, which is a party to the joint rates assailed, is not named as a defendant.

The intervening mills and the Navarro plant are all within the Lehigh cement district. They are located at nine points⁵ in the central portion of eastern Pennsylvania and at two points adjacent thereto in New Jersey. Some of the intervening mills are intermediate between complainant's plant and the New Jersey destinations. Others are more distant from those destinations than is complainant's mill. The Lehigh district is grouped for rate-making purposes, and the same rate applies⁶ from each of these mills to destinations in New Jersey and New York City. The spread of this origin rate blanket is approximately 75 miles.⁷

The annual consumption of cement at the destinations here considered is estimated at approximately 375,000 tons and in the New York City market about 1,000,000 tons. A thousand or more barrels is usually the unit of sale in New York City, aggregating five or more carloads. This grows out of the usual lighterage contract stipulating minimum loads of 1,000 barrels. Often when less is shipped to a New York Harbor point the lighterage is not performed by the cement company or its agent, but by the railroad. Cement from the Lehigh district to the New Jersey tidewater ter-

⁵ In addition there are mills at three other points within this portion of the Lehigh district. They are not parties to this proceeding.

⁶ Prior to General Order No. 28 of the Director General of Railroads the rate from the two New Jersey mills was 5 cents per ton lower than the rate from the Pennsylvania mills to Jersey City.

⁷ As stated, two of the points of origin are in New Jersey. Shipments from them to New Jersey destinations are intrastate. Excluding them, the interstate points of origin constitute a blanket approximately 65 miles in width.

minals usually moves in trainloads. The average carload is about 80,000 pounds.

The rates to the intermediate stations and to the tidewater terminals for local delivery ranged from 7.5⁸ to 11 cents immediately prior to July 1, 1922, and from 7.5⁸ to 10 cents thereafter. These are the rates under attack.⁸ Defendants show that by a revision made September 10, 1921, to remove fourth-section departures and to better the adjustment, the inclusion of substantially all of the destination points complained of in one blanket resulted in lower rates to most of the destinations than if only the recent general increases and reduction had been applied to the rates in effect in 1914.

To the tidewater terminals, since May 1, 1922, a rate of 7 cents has applied when for transshipment by water in coastwise or export traffic.

More than 20 years ago cement manufacturers began to lighter their shipments in New York Harbor either with their own equipment or under contract with independent lighterage companies. About the same time defendants established a difference of 3 cents to New York Harbor lighterage points over the rates to the tidewater terminals. The general increase effective August 26, 1920, made this difference 4 cents. Prior to June 7, 1922, the rate to New York Harbor lighterage points was 14 cents. Effective on that date the rate was reduced to 11 cents, making it the same as the rate to the tidewater terminals for local delivery. On July 1, 1922, it was further reduced to 10 cents.⁹ Those 11-cent and 10-cent rates were subject to the following note:

When New York Harbor lighterage service is performed by the shipper, consignee, or owner, or his agent, an allowance not exceeding 3 cents per 100 lbs. will be made therefor.

Complainant contends that this allowance has the effect of transforming the 11-cent and 10-cent rates before and after July 1, 1922, respectively, into local rates to the New Jersey tidewater terminals of 8 and 7 cents, respectively.

Complainant asks for the establishment of rates to New York Harbor lighterage points \$1 per ton over the rates to tidewater terminals. At least 95 per cent of the cement from the Lehigh district is lightered by the cement manufacturers in their own equip-

⁸ The stations carrying rates lower than 11 and 10 cents before and after July 1, 1922, respectively, are few, and are located on the western New Jersey State line or less than 10 miles therefrom, i. e., stations within or just outside the Lehigh district. The 11-cent and 10-cent rates referred to were blanketted to nearly all the destinations involved, including New York Harbor. At the hearing complainant confined its attack to those stations to which the 10-cent rate now applies.

⁹ Except to Lehigh Valley deliveries, the Lackawanna as intermediate carrier. The rate thereto via that carrier was not reduced until September 4, 1922.

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ment or in equipment of lighterage companies with whom they have contracts, on which an allowance of 3 cents per 100 pounds is made. Complainant concedes that the carriers' revenue is greater when the shipper performs the lighterage service.

Complainant contends that the allowance can not be authorized under paragraph (13) of section 15 of the act because the handling of the traffic by other than railroad lighters beyond the railroad terminals at the tidewater points is not subject to the tariffs and the jurisdiction of the interstate commerce act and of this commission ends when the cement is unloaded from the cars onto private lighters. It also contends that the assessment of rates to stations in New Jersey intermediate to the tidewater terminals and to those terminals for local delivery, higher than the rates to the terminals when for transshipment by water, and higher than the charges resulting after deducting the lighterage allowance from the New York Harbor rates, constitutes a departure from the long-and-short-haul provision of the fourth section of the act. Contention is also made that a similar departure results from the allowance of 15 cents a ton made for unloading lighters, barges, or cars on floats, which is not made when cars are delivered on tracks at the tidewater terminals or intermediate points, where unloading is done by the consignee. These contentions can not be sustained.

The distances from Navarro to the intermediate stations and the tidewater terminals range from 31 to 106 miles. Navarro is near the center of the Lehigh district. The distances from the other mills in the district range up to approximately 140 miles.

Exhibits introduced by complainant show that to destinations covered by the complaints and having a population of more than 2,000, the range of earnings under the existing rate are as follows:

Carrier.	Distance.	Per ton-mile.	Per car-mile. ¹
	<i>Miles.</i>	<i>Mills.</i>	<i>Cents.</i>
Jersey Central.....	58 to 99	20.2 to 34.4	80 to 138
Lackawanna.....	36 to 102	19.6 to 55.5	78 to 222
Lehigh Valley.....	54 to 106	18.8 to 37.0	75 to 148
Erie.....	94 to 106	18.8 to 21.2	75 to 85

¹ Based on loading of 80,000 pounds.

With these earnings per ton-mile complainant compares the earnings per ton-mile on all freight during 1921 of 17.8 mills for the Jersey Central, of 14.3 mills for the Lackawanna, 12.2 mills for the Lehigh Valley, and 11.3 mills for the Erie, the average hauls ranging from 72.6 to 218.09 miles.

Complainant compares the 10-cent group rate to the destinations in New Jersey and within New York Harbor lighterage limits with the

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sixth-class rates ranging from 10 cents to 22.5 cents, to those destinations. It also refers to the spreads of 3 cents of the Jersey Central and 3.5 cents of the Lackawanna between their sixth-class rates to tidewater terminals and to New York City.

Complainant shows that on a large number of commodities, such as lumber, billets, hollow building block and tile, stone, fertilizer, iron drums, vinegar, salt, hay, slate, knit goods, etc., the rates to the tidewater terminals are less than to New York City; that the rates on brick, clay products, plaster, and fertilizer, westbound, are higher from New York City than from the tidewater terminals; and that the latter rates are graduated and not blanketed as are the rates assailed. It also refers to the rates on ore (chrome, iron barytes, emery, and zinc), pyrites, briquettes, gypsum, and coke, westbound, which are lower than the eastbound 10-cent rate assailed.

With the 10-cent group rate assailed, complainant compares cement rates applicable in other parts of the United States. Many of these compared rates are less for the shorter distances and higher for the longer distances than the rates assailed. In some instances they are the same as the rates assailed over certain routes. For the distances to the larger consuming points they are higher than the rates assailed.

Comparison is made by complainant of the 10-cent blanket rate, equivalent to \$2 per ton, with rates ranging from 90 cents to \$2.10 per ton on brick and articles taking the same rates, and with rates on common brick ranging from 95 cents to \$1.70, for similar distances. These brick rates were prescribed in *National Paving Brick Mfrs. Assn. v. A. & V. Ry. Co.*, 68 I. C. C., 213, for application in trunk-line territory. Upon brief complainant states that the complainants would be satisfied by the establishment of the scale of rates on brick and articles taking the same rates. Those rates are lower than almost all of the many cement rates applicable in various parts of the United States to which reference is made by complainant.

Among the cement rates referred to by complainant are the distance rates of from 8 to 11.5 cents for distances up to 110 miles, applicable from Troy and Beacon, N. Y., to stations on the lines of certain railroads in New England, approved in *Allentown Portland Cement Co. v. B. & O. R. R. Co.*, 49 I. C. C., 502; and Scale II rates of from 7 to 11 cents for distances up to 110 miles, prescribed in *Western Cement Rates*, 69 I. C. C., 644. It asks for the destruction of the destination blanket and the application of a distance scale, and at the hearing expressed the view that the scale applying from Troy would be proper for application here. According to exhibits submitted by defendants, based upon the volume of movement

to the various destinations here considered, their revenue under the rates assailed is less than it would be under either of those two scales.

Defendants and interveners are opposed to the establishment of a distance scale. They urge, and lay great stress upon the contention, that complainant's real purpose is to effect an increase in the rates from the Lehigh district to New York City and to the New Jersey terminals for beyond in coastwise and export traffic in order that complainant's mill at Hudson, N. Y., could, with its low water rates, drive competitors in the Lehigh district from that large consuming territory.

Interveners question our jurisdiction to enter an order in connection with the portions of the fourth-section application assigned for hearing with these cases, on the ground that the initial carrier, the Northampton & Bath, is not a party to the proceeding. The publishing agent who filed that application was notified of the proceeding and the hearing. The contention is without merit.

Defendants represented at the hearing asked to withdraw the fourth-section application, stating that as no departure from the provisions of the fourth section now exists there is no application to be heard. No evidence was offered in support of the application and no relief is sought. The application will therefore be denied.

Witness for the Lackawanna points out that a departure from the long-and-short-haul provision of the fourth section exists inasmuch as its rate to Phillipsburg, N. J., is 7 cents and to Oxford Furnace, Bridgeville, Manunka Chunk, and Delaware, N. J., intermediate points the rate is 9 cents. Willingness was expressed to remove this departure, and it should be done forthwith.

We find that the rates assailed were not and are not unreasonable or otherwise unlawful, except that the rate to Phillipsburg over the Lackawanna is unlawful under the fourth section of the act. The complaints will be dismissed.

Appropriate orders will be entered.

COMMISSIONER CAMPBELL dissents.

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