

No. 14987

WESTON DODSON & COMPANY v. NEW YORK, ONTARIO
& WESTERN RAILWAY COMPANY ET AL.

Submitted March 24, 1924. Decided July 3, 1924

Rate charged on bird's-eye anthracite coal, in carloads, from Winton, Pa., to North Adams, Mass., found unreasonable. Reparation awarded

Edwin A. Lucas for complainant.

C. L. Andrus for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

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

Complainant, a corporation, deals in coal and has its principal place of business at Bethlehem, Pa. By complaint seasonably filed, as amended, it alleges that the rate of \$3 charged on 65 carloads of bird's-eye anthracite coal shipped from Winton, Pa., to North Adams, Mass., in April, 1920, was unreasonable. The prayer is for reparation. Rates are stated in amounts per long ton.

In April, 1920, complainant contracted to sell a large quantity of bird's-eye anthracite coal to the Arnold Print Works at North Adams. Under this contract the purchaser agreed to pay freight charges from the mines to North Adams in the amount of \$2.40 per long ton. Coal to fill the contract, including these 65 cars, was secured from the Rhondda Coal Company at Winton. At the time of movement a rate of \$2.40 was in effect from Winton to North Adams, over the New York, Ontario & Western, hereinafter referred to as the Ontario, to Cornwall, N. Y., West Shore to Albany, N. Y., and Boston & Albany to North Adams, including Boston & Maine switching delivery at that point. Complainant ascertained prior to the movement that this route was embargoed by the Boston & Albany, and accordingly advised the Rhondda Coal Company to tender the shipments with instructions to move them over another route, described on the bills of lading as "O & W-B & M." On April 13, 1920, complainant secured a permit from the New York Central authorizing movement over the embargoed route. This permit called for Boston & Albany instead of Boston & Maine switching delivery, as was desired. That, however, is not material to the

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disposition of the case. On April 16, 1920, complainant tendered this permit to the division freight agent of the Ontario at Scranton, Pa., who forwarded it to the coal-shipping agent of that carrier at Mayfield Yard, Pa., a concentration and billing point for coal, together with a letter stating in part:

We understand this business is to be shipped from Rhondda operation at Winton by Weston-Dodson & Co., Inc. Please be governed accordingly.

Complainant did not change its instructions to the Rhondda Coal Company, and beginning April 19, 1920, the shipments were tendered to the Ontario on bills of lading with routing "O & W-B & M" specified. The agent of the Ontario at Mayfield Yard permitted the shipments to move in accordance with the routing instructions; 8 cars moved over the Ontario to Sidney, N. Y., Delaware & Hudson to Mechanicville, N. Y., and Boston & Maine beyond; 57 cars moved over the Ontario to Utica, N. Y., West Shore to Rotterdam Junction, N. Y., and Boston & Maine beyond. Charges were collected at the applicable rate of \$3. Complainant, under its contract with the purchaser, paid the amount of these charges in excess of those which would have accrued under the \$2.40 rate.

The applicable tariff of the Ontario, containing rules and charges governing the diversion or reconsignment of coal and coke, under "conditions" provided in part as follows:

(b) Request for diversion or reconsignment must be made or confirmed in writing, and be accompanied by satisfactory evidence of ownership.

While the exact nature of the instructions to the division freight agent of the Ontario at Scranton is not disclosed by the record, complainant admits that no request on any of the agents of that carrier was made or confirmed by it in writing. Complainant contends that its oral request, together with the tender of the New York Central permit, constituted sufficient instructions to permit the Ontario to accomplish the necessary diversion, and that the letter of instructions written by the division freight agent of the Ontario to the coal-shipping agent of that carrier at Mayfield Yard, being prepared on behalf of complainant, was a substantial compliance with the tariff rule that requests for diversion or reconsignment must be made or confirmed in writing. Defendants contend that the filing of the permit merely authorized the diversion if requested in accordance with the governing tariff provisions, that no such request was received, and that the carrier was obligated to follow the bill of lading routing in lieu of instructions from complainant to the contrary.

The letter written by the division freight agent of the Ontario to its coal-shipping agent at Mayfield Yard was in no sense the confirmation of a request for diversion. The language of that letter

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clearly indicates that it was intended to apprise the coal-shipping agent that if proper instructions to divert were received diversion to an embargoed route might be accomplished under the permit transmitted. Complainant might readily have notified the Rhondda Coal Company to bill the shipments by way of the route desired. In this event the Ontario would have been obligated to move the shipments that way. With the permit in its possession the Ontario was authorized to accept shipments for movement by way of the embargoed route and to divert shipments to that route, provided instructions to divert were made in accordance with the provisions of the governing tariff. But the direction to the coal-shipping agent to "be governed accordingly" laid no obligation on the Ontario to forward the shipments by way of the embargoed route in view of the fact that the bills of lading contained specific instructions for movement by way of a different route and no proper request to divert was received.

Complainant contends that the rate charged was unreasonable. This rate yielded ton-mile revenues of 12.6 mills for a distance of 239 miles by way of Sidney and Mechanicville, and 10.2 mills for a distance of 293 miles by way of Utica and Rotterdam Junction. The rate of \$2.40 applicable via Cornwall and Albany would have yielded 7.6 mills per ton-mile for a distance of 316 miles. Contemporaneously rates on bird's-eye anthracite of \$2.70 with the Delaware & Hudson as originating carrier, and \$2.80 with the Delaware, Lackawanna & Western as originating carrier, were in effect from Winton to North Adams. These rates were each applicable over two routes. The \$2.70 rate yielded ton-mile revenues of 10.3 and 11.6 mills over routes of 263 and 233 miles, respectively. The \$2.80 rate yielded ton-mile revenues of 9.8 and 10.9 mills over routes of 287 and 257 miles, respectively. The present rate from Winton to North Adams is \$3.28 over all routes. Apparently the basis of this rate is a \$2.60 rate applicable from mines in the Wyoming district on the Delaware & Hudson to North Adams during the reparation period, subjected to the general increase of 1920 and the general reduction of 1922.

Complainant compares the rate assailed with rates on bird's-eye anthracite coal in effect from Winton, with the Ontario as originating carrier, and from Wilkes-Barre, with the Lehigh Valley as originating carrier, to various interstate destinations. Winton is said to be representative of the Wyoming coal group in so far as the Ontario is concerned. Wilkes-Barre is located in the heart of the anthracite-producing region. The rates compared ranged from \$2.20 to \$3.10, applied to numerous destinations in New York, Massa-
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achusetts, Connecticut, and Maryland, and yielded ton-mile revenues of from 6.7 to 9.8 mills for distances of from 263 to 400 miles.

Bird's-eye anthracite, a mixture of buckwheat Nos. 2 and 3, is used principally for steam purposes and comes into keen competition with bituminous coal. Complainant compares the rates assailed with rates on bituminous coal from Johnstown, Pa., to various destinations yielding ton-mile revenues of from 6.3 to 7.6 mills for distances of from 290 to 323 miles.

Defendants assert that the \$2.40 rate was depressed. They compare the rates charged with rates on anthracite buckwheat No. 2 and smaller sizes from mines on the Ontario and various other originating carriers to North Adams. These rates average \$2.94 for an average distance of 325 miles, and yield an average of 9 mills per ton-mile. Defendants show the tonnage of steam sizes of anthracite coal and the rates under which it moved from mines on the Ontario to points on the Boston & Albany, the New York, New Haven & Hartford, and the Boston & Maine between March 1 and August 26, 1920. To Boston & Albany points these rates ranged from \$2.20 to \$2.80. Nearly half of this tonnage moved to North Adams under a rate of \$2.40. The rates to New York, New Haven & Hartford points ranged from \$2.70 to \$3.20 for distances of from 222 to 407 miles and yielded ton-mile revenues of from 7 to 14.9 mills, the average being 9.4 mills. To Boston & Maine points the rates ranged from \$3 to \$4 for distances of from 243 to 526 miles. These rates yielded average ton-mile revenues of 8.8 mills by way of Rotterdam Junction and 10.4 mills by way of Mechanicville.

We find that the rate assailed was unreasonable to the extent that it exceeded \$2.60 per ton; that complainant made shipments as described and paid and bore the charges thereon in excess of \$2.40 per ton; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice.

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