No. 16852

MILLER & BRICKLEY GRAIN COMPANY *v.* DIRECTOR GENERAL, AS AGENT

Submitted November 5, 1925. Decided December 31, 1925

Rate charged on a carload of chestnut hard coal from Dunmore, Pa., to Uniondale, Ind., found inapplicable. Reparation awarded.

F. D. Roberts and *J. B. Miller* for complainants.

A. A. McLaughlin, *G. W. Billings*, and *Alex Koplin* for defendant.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND WOODLOCK

BY DIVISION 4:

This case was presented under the shortened procedure. Exceptions were filed by defendant to the report proposed by the examiner.

Complainants are J. B. Miller and J. A. Brickley, copartners, dealing in grain at Uniondale, Ind., under the trade name of Miller & Brickley Grain Company. By complaint filed March 12, 1925, they allege that the rate charged on a carload of chestnut hard coal shipped during July, 1918, to Uniondale from Dunmore, Pa., was inapplicable. Reparation is sought. The claim was presented informally on June 16, 1922. Rates will be stated in amounts per long ton.

The shipments weighed 88,032 pounds and moved over the Erie throughout. There was no joint rate in effect and charges were collected at a combination rate of $4.70, composed of $2.60 to Salamanca, N. Y., plus $2.10 beyond. A supplement to the tariff naming the latter rate contained the following rule:

> Basis for Combination Rates.
>
> Where rates published in this tariff are used as factors in constructing through rates to points of destination in Official Classification Territory, the aggregate through charge to such point of destination will be the combination of rates lawfully published and on file with the Interstate Commerce Commission in effect on March 26, 1918, plus fifteen (15) cents per ton of 2,240 pounds.

The supplement containing the rule made no reference to the tariff naming the $2.60 rate to Salamanca, nor did the latter contain

any reference to the rule. The combination rate on March 26, 1918, was $3.60, composed of $2 to Salamanca plus $1.60 beyond, and by adding 15 cents, as provided by the above rule, complainants arrive at a rate of $3.75. This rate was applicable on the shipment by virtue of the publication of the rule in a supplement to the tariff naming what would otherwise have been one of the factors of the through rate. *Sligo Iron Store Co.* v. *W. M. Ry. Co.*, 62 I. C. C. 643, 73 I. C. C. 551; *McCloud River Lumber Co.* v. *Director General*, 89 I. C. C. 645; *California Cotton & Factorage Co.* v. *Director General*, 93 I. C. C. 260; *M'Fadden & Bro.'s Agency* v. *Director General*, 95 I. C. C. 734.

Defendant contends that those cases can be differentiated from the instant proceeding in that the rule involved therein contained a general reference to the other factors of the through rate in the following language:

> When the total charges on a through continuous movement * * * are constructed by combination of separately established commodity rates applying to and from the junction points, * * *.

This contention is without merit. Manifestly the reasons for holding in the above cases that a specific reference to such factors was unnecessary apply with even greater force to a general reference to such factors. Defendant further contends that to hold under the circumstances presented here that the applicable rate is that arrived at under the combination rule would be to ignore the provisions of section 6 of the act, our rules, and the tariffs of the carriers published in accordance therewith. We do not agree with this view for the reasons set forth in the cases cited.

We find that the rate charged was inapplicable; that the applicable rate was $3.75 per long ton; that the shipment was made as described; that complainants paid and bore the charges thereon and were damaged thereby to the extent that the charges paid exceeded those which would have accrued at the rate herein found applicable; and that they are entitled to reparation in the sum of $37.34, with interest. An order awarding reparation will be entered.