

No. 16721

CENTRAL RAILROAD COMPANY OF NEW JERSEY v.
NEW YORK, NEW HAVEN & HARTFORD RAILROAD
COMPANY ET AL.

Submitted July 16, 1926. Decided February 8, 1927

1. Reestablishment of joint rates on traffic from and to points on the Central Railroad of New Jersey and its connections west of Allentown, Reading, and Harrisburg, Pa., and west of and including Hagerstown, Md., via New York Harbor to and from points on the New York, New Haven & Hartford and Central New England, found not necessary or desirable in the public interest, and failure of defendants to establish such rates found not unduly prejudicial.
2. Failure of defendants to accord to the Central Railroad of New Jersey joint rates via New York Harbor on traffic from and to points in the territories described in the foregoing paragraph, while contemporaneously according joint rates via New York Harbor on such traffic to the Lehigh Valley and Pennsylvania, found to be discriminatory, in violation of paragraph (3), section 3, of the act.
3. Divisions of joint rates on anthracite coal from points on the lines of complainant via Maybrook, N. Y., to points on the New York, New Haven & Hartford and Central New England found not in violation of section 208 (b) of the transportation act, 1920. Reasonableness and fairness of the divisions of joint rates on this traffic via Maybrook and New York Harbor under paragraph (4) of section 1 of the act in issue in Docket No. 11756, and no finding herein made with respect thereto.

Alexander H. Elder for complainant.

Walter Young and *Allan McCarty* for Atlas Portland Cement Company; *Charles M. Lum* and *George W. Grimm, jr.*, for Hay Foundry & Iron Works; *Charles E. Finck* for Bayway Terminal; *Clark & La Roe* and *Julius Henry Cohen* for Port of New York Authority; *John H. Buck* for Manufacturers Association of Connecticut; and *S. T. Hubbard, jr.*, for New York Cotton Exchange, interveners.

Charles F. Choate, jr., and *James Garfield* for defendants.

REPORT OF THE COMMISSION

CAMPBELL, *Commissioner*:

Exceptions were filed to the report proposed by the examiners, and the case was orally argued. Our conclusions differ in one respect from those of the examiners.

122 I. C. C.

Complainant, the Central Railroad Company of New Jersey, hereinafter called the Jersey Central, seeks in this proceeding the reestablishment of joint rates by way of New York Harbor on traffic between points on its line west of Allentown, Pa., and on connecting lines west of that point and of Reading and Harrisburg, Pa., and west of and including Hagerstown, Md., on the one hand, and points, except those west of Bridgeport, Conn., on the New York, New Haven & Hartford, hereinafter referred to as the New Haven, and on the Central New England, on the other, alleging that the refusal of defendants to join with it in establishing such rates is unduly prejudicial to shippers on its line and unduly preferential of shippers on the Lehigh Valley and Pennsylvania and discriminatory against it in violation of section 3, and also in violation of sections 1, 6, and 15 of the interstate commerce act. It is also alleged that the divisions of joint rates on anthracite coal which defendants allow the Jersey Central and its connections via Maybrook, N. Y., are unduly prejudicial as compared with those accorded competing carriers via Jersey City, N. J., in violation of paragraph (4) of section 1 of the act; and, further, that the basis of these divisions is and has been since August 26, 1920, in violation of section 208(b) of the transportation act, 1920. In addition to the prayer for the establishment of joint rates via New York Harbor, the complaint also contains request that we make a fair distribution, as between the Jersey Central and trunk-line carriers with which the New Haven interchanges freight through New York Harbor, of all unrouted traffic transported by the New Haven to New York Harbor en route to points on or reached over the lines of the Jersey Central, but that request is not supported by any substantial evidence and will not be further considered. No violation of section 6 was pointed out. The Atlas Portland Cement Company, the Port of New York Authority, Manufacturers Association of Connecticut, Bayway Terminal, and the Hay Foundry & Iron Works intervened and offered testimony. The New Jersey Zinc Company and the Lawrence Portland Cement Company also intervened, but were not represented at the hearing. The New York Cotton Exchange was permitted to intervene after the hearing and participated in the oral argument.

The main lines of the Jersey Central extend from Jersey City west through Easton, Bethlehem, and Allentown, Pa., to Scranton, Pa., and south through New Jersey to a point on Delaware Bay. Interchange between the Jersey Central and New Haven at Jersey City is effected by means of car floats which the New Haven operates through New York Harbor to and from its rail terminus at Oak Point, located in the lower Bronx on the East River. The Jersey

122 I. C. C.

Central connects with the Lehigh & Hudson River, hereinafter termed the Lehigh & Hudson, at Easton, 73 miles west of Jersey City, and with the Lehigh & New England at Bethlehem, 84 miles west of Jersey City. The lines of the two last-named carriers extend in a northeasterly direction to Maybrook and Campbell Hall, N. Y., respectively, where they connect with the Central New England. From Maybrook and Campbell Hall the Central New England proceeds northeasterly to the Hudson River, which it crosses over a bridge at Poughkeepsie, N. Y., and thence easterly to connections with the New Haven. The Lehigh & Hudson is owned jointly by the Jersey Central, Reading, Pennsylvania, Lehigh Valley, Delaware, Lackawanna & Western, and Erie Railroads and the Lehigh Coal & Navigation Company. The Central New England is controlled through stock ownership by the New Haven.

ROUTES AND RATES

Through routes and joint rates are in effect via New York Harbor between all points generally on the Jersey Central and its connections and points on the New York division of the New Haven, Bridgeport, Conn., and west and between points on the Jersey Central, with some minor exceptions not here involved, and connecting carriers east of a line drawn west of Allentown, Reading, Harrisburg, Pa., and east of Hagerstown, Md., including points reached through Potomac Yard, Va., on the one hand and points on the New Haven and Central New England on the other. Joint rates between points on the Jersey Central west of Allentown and its connections west of the above-described line and points on the lines of defendants, other than stations Bridgeport and west, and on cement from Vulcanite, N. J., a local point on the Jersey Central east of Allentown, and all points on defendants' lines apply by way of Maybrook, and to some extent Campbell Hall.

For many years prior to September, 1908, through routes and joint rates were in effect via New York Harbor on practically all traffic between points on or reached over the Jersey Central and points on the New Haven. Through routes and joint rates were also in effect via Maybrook as early as October, 1904, on anthracite coal from points on the Jersey Central to certain destinations on the lines of defendants and prior to that date on certain other traffic from points on the Jersey Central to points on or reached over the Central New England. Beginning early in 1906, the New Haven undertook to have the Jersey Central discontinue using the New York Harbor route in favor of the Maybrook route, giving various reasons therefor, among others the necessity for relieving congestion on its New York division via Harlem River, the rail terminus of the New Haven

then used in the interchange of traffic through New York Harbor. As the result of its efforts in this direction merchandise traffic moving over the Central States Despatch and Blue Ridge Despatch fast-freight routes, of which the Jersey Central forms a part, was diverted to the Maybrook route in September, 1906, and finally, at the suggestion of the commission, following hearing and oral argument in Docket No. 1400, upon complaint against the proposed cancellation by the New Haven of all joint rates in connection with the Jersey Central via New York Harbor, the Jersey Central and New Haven entered into negotiations, the outcome of which was a compromise arrangement, which became effective in September, 1908, whereby the application of joint rates from and to points generally on and east of the above-described line was confined to the harbor route and from and to points west of that line to the Maybrook route. The Jersey Central urges that this arrangement was not the result of amicable agreement on its part, but was the best that it could obtain at a time when car floats were not included in the term "railroad" as defined in the then effective act to regulate commerce, and there was, therefore, doubt as to our jurisdiction to accord it relief under its former complaint. Joint rates between points west of that line and stations on the New York division of the New Haven, Bridgeport and west, were reestablished over the harbor route February 1, 1918.

The greater part of the traffic between points on or reached over the Jersey Central and points on the lines of defendants now moves over the Maybrook route, the bulk of the movement being eastbound. During 1923 approximately 75 per cent of the total tonnage between points on the Jersey Central and its connections and points on the New Haven moved over that route. Of that amount about 14 per cent was anthracite coal and about 2.8 per cent cement and other commodities which originated on the Jersey Central west of Allentown. Most of the anthracite coal and all the cement and other commodities were delivered by the Jersey Central to the Lehigh & Hudson at Easton, and a relatively small part of the anthracite tonnage to the Lehigh & New England at Bethlehem. With joint rates via New York Harbor on such of this traffic as was not routed by the shippers through Maybrook the Jersey Central would have received additional hauls over its line of 73 miles from Easton and 84 miles from Bethlehem to Jersey City. The balance of the tonnage which moved via Maybrook, with the exception of a small amount of merchandise traffic to points on the Jersey Central west of Allentown, originated at or was destined to points on connections of the Jersey Central. Most of this traffic was delivered to or received from the Jersey Central by the Reading at Allentown and moved

122 I. C. C.

over the Jersey Central between that point and Easton, 16 miles. If routed via New York Harbor this traffic would move over the Jersey Central between Bound Brook, N. J., and Jersey City, 30 miles. On cement from Vulcanite to points on defendants' lines the Jersey Central receives the haul to Easton, about 4 miles; via New York Harbor it would receive a haul somewhat in excess of 68 miles.

The gravamen of the complaint is that the Jersey Central is being deprived of the additional revenues which it would receive under joint rates via New York Harbor between these points. The divisions of joint rates west of Maybrook are the same as those west of Jersey City, except on anthracite coal. The Lehigh & Hudson and to some extent the Lehigh & New England, however, share in the divisions west of Maybrook and Campbell Hall, whereas under joint rates via New York Harbor the Jersey Central would receive the entire amount of the divisions west of that point and substantially longer hauls from and to points on its line, and larger proportions and a longer haul on traffic received from or delivered to its connections. The divisions on anthracite coal which the Jersey Central shares with the other two carriers west of Maybrook and Campbell Hall are, in addition, less than those west of Jersey City. An exhibit submitted by the Jersey Central shows that if all traffic between points on or reached over its line and points on the New Haven which were handled via Maybrook during 1923 had moved at equal joint rates via New York Harbor its gross revenues would have been increased by about \$1,700,000. On the same basis the gross revenues of defendants would have been decreased to the extent of about \$400,000. The total decrease in the gross revenues of the Lehigh & Hudson which would have resulted if all of that traffic had moved via New York Harbor is not shown, but that it would have been substantial is indicated by the fact that more than half of the total tonnage handled by that carrier in that year was received from the Jersey Central. In this connection the Jersey Central suggests that it has no present intention of canceling the joint rates via Maybrook in the event that such rates are reestablished via New York Harbor and that with equal joint rates available over both routes it anticipates that much of the traffic now moving via Maybrook will continue to move that way. Making allowance for the latter traffic, and based upon the tonnage that moved in 1923, it estimates upon brief that its gross revenues would be increased approximately \$700,000 per year by the establishment of joint rates via New York Harbor.

Expenditures made during recent years on its line between Easton and Jersey City, including approximately \$13,500,000 for a new
122 I. C. C.

four-track bridge over Newark Bay, which was completed during 1926 and has replaced its former two-track bridge, are urged by the Jersey Central as showing the need for additional traffic over this portion of its line.

The Jersey Central insists that it is entitled as a matter of right to its long haul on this traffic under paragraph (4) of section 15 of the act, which provides, in substance, that no carrier by railroad shall be required to embrace in a through route substantially less than the entire length of its railroad which lies between the termini of such route, unless the inclusion of its line would make the through route unreasonably long as compared with another practicable through route which could otherwise be established. This provision places a limitation only on our power to require the establishment of such through routes and does not affect the right of carriers to join in their establishment.

It is conceded that there is no breach by defendants of the duty of establishing through routes imposed by paragraph (4) of section 1 of the act, in that a through route, together with facilities for its operation, now exists via New York Harbor between all points on or reached over the Jersey Central west of the above-described line and points served by defendants. Defendants' rules and regulations with respect to the operation of this route between these points are not shown to be unreasonable, and the evidence of record, consisting merely of general statements to the effect that the rates are combinations which exceed the joint rates in effect over other routes, is too vague to support a finding that the rates over this route between these points are unreasonable in violation of the above section of the act. The first major question, therefore, is, whether the establishment of joint rates between these points over this route should be required under paragraph (3) of section 15 of the act. As recognized by the parties, the test as to when we should exercise our authority under this section is whether the joint rates are necessary or desirable in the public interest.

The Jersey Central urges that joint rates via New York Harbor are necessary for purposes of reconsignment and transit at points on its line east of Allentown, and that the privilege of consigning surplus commodities to New York before sale, and, in the event a purchaser is not found, of reconsigning to destinations on defendants' lines at such rates is particularly desirable to shippers. It states that it has in the past received inquiries from anthracite coal shippers as to whether shipments consigned to points on its line between Easton and Jersey City could be reconsigned at joint rates to points on the New Haven and that when informed that this could not be done they disposed of their shipments elsewhere. Inter-

122 I. C. C.

vener Atlas Portland Cement Company, a manufacturer of cement at Navarro, Pa., and the only shipper located west of the above-described line represented at the hearing, favors the establishment of joint rates on cement via New York Harbor in order that it may obtain reconsignment privileges at the latter point. Interveners Hay Foundry & Iron Works, Bayway Terminal, and New York Cotton Exchange, which also appeared in support of the complaint, are interested in securing transit arrangements, as hereinafter indicated, at certain points east of that line.

Storage in transit of anthracite coal originating on its line for a period not exceeding two years is permitted by the Jersey Central at Hampton, N. J., 16 miles east of Easton, the only point on its line at which facilities for that purpose are maintained. Coal stored at that point and reshipped to destinations other than Bridgeport and points west thereof on the lines of defendants must be back hauled from Hampton to Easton, for which a charge of 32 cents per long ton is made in addition to the joint rates. With joint rates on this commodity via New York Harbor to all points on the lines of defendants storage in transit at Hampton would be available without the imposition of a back-haul charge.

As tending to prove that joint rates between these points via New York Harbor are desirable in the public interest, the Jersey Central shows that the route beyond Easton through the harbor is shorter than that through Maybrook to all but a few destinations on the New Haven, the average tariff distances from Easton to more than half of these destinations being about 42 miles, and to the others, with certain exceptions, ranging from 11 to 47 miles less over the former than the latter route. Based upon the operating distances of the New Haven, the differences in favor of the New York Harbor route average somewhat greater. The tariff distances to 22 destinations and the operating distances to 15 destinations on the New Haven are greater via New York Harbor than via Maybrook, the former averaging from 4 to 31 miles and the latter from 27 to 35 miles. To many of the stations on the New York division of the New Haven the distances via New York Harbor are substantially less than those via Maybrook, and, as above indicated, joint rates are now applicable via New York Harbor between most of these stations and all points on or reached over the Jersey Central.

Although, as indicated, the route beyond Easton via New York Harbor is in most instances more direct, there is no contention that it would afford shippers a quicker service than that via Maybrook. No comparison is available of the actual time consumed in the transportation of traffic between the same points over the two routes, as such traffic moves by way of one or the other of these routes exclu-

122 I. C. C.

sively, but an exhibit submitted by defendants indicates that the Maybrook route affords the quicker service. In this exhibit comparison is made of the time consumed via the two gateways in the handling of eastbound local merchandise and anthracite-coal traffic and overhead merchandise traffic interchanged by the Jersey Central with defendants during September, 1924. The time shown for the movement of anthracite coal to Oak Point was based upon the handling of shipments of that commodity interchanged by the Lehigh Valley with the New Haven during that month, as that commodity from points on the Jersey Central moves via New York Harbor only to Bridgeport and points west thereof on the New Haven. The time consumed in the handling of local merchandise traffic from Jersey City was used as representative of that for overhead merchandise from that point. These comparisons show that the handling of local merchandise traffic averaged about 10 hours per car, of overhead merchandise traffic about 13 hours per car, and of anthracite-coal traffic more than 36 hours per car less from the Hudson yard of the Lehigh & Hudson than from the Jersey City yard of the Jersey Central to points of destination. The Hudson yard of the Lehigh & Hudson is at Phillipsburg, N. J., across the Delaware River from Easton, and the distances to the destinations to which that traffic moved are in all instances greater from Hudson yard than from the Jersey City yard. The exhibit also shows that the time consumed from the arrival at Jersey City to departure from Oak Point accounts for the fact that traffic through the New York Harbor gateway was in transit longer than that through the Maybrook gateway, the road-haul movements via Maybrook consuming more time in the aggregate than those from Oak Point. The number of carloads of anthracite coal interchanged by the Jersey Central with the New Haven via New York Harbor during that period was relatively much smaller than the number interchanged via Maybrook, and the Jersey Central contends that if the situation had been reversed the handling from Jersey City to Oak Point would have been more rapid. It appears that the length of time cars are held in either the Maybrook or Oak Point yard is dependent to a considerable extent on the number of trains operated to or by way of the points to which the cars are destined, and that the latter in turn is controlled largely by the volume of traffic moving to or by way of such points. The volume of local merchandise traffic interchanged by the Jersey Central with defendants in September, 1924, was greater via Jersey City than via Maybrook, and, as above stated, the time consumed in the handling of that traffic was greater from Jersey City than from the Hudson yard. Upon brief the Jersey Central questions the propriety of basing the time of handling overhead merchandise traffic from

122 I. C. C.

Jersey City upon that consumed in the handling of local merchandise traffic therefrom, pointing out that some of its overhead traffic has been moved from point of origin to Oak Point in less time than that shown for the handling of local merchandise traffic from Jersey City to Oak Point.

The choice of more than one route between the same points at equal rates is generally of advantage to shippers, particularly during periods of congestion, but the record indicates that these two routes would afford little, if any, benefit to shippers in this respect. The history of embargoes placed for account of defendants against traffic from points on or via their lines since 1916 shows that they were generally in effect via both gateways concurrently.

The record indicates that the local needs of New York City and other communities in the New York port district, together with the needs of export, import, and coastwise commerce handled through the port, impose a heavy burden on the transportation facilities within that district. According to a report of intervener Port of New York Authority dated December, 1921, copy of which was made a part of the record, the New York port district includes 105 organized municipalities, embracing a population of approximately 8,000,000 people and numerous industries; more than 4,000,000 tons of food-stuffs alone are required annually by the people of this district; the total amount of freight brought to or taken from or through the port by the 12 trunk-line railroads serving the district is in excess of 75,000,000 tons per annum; and approximately 8,000 foreign and domestic steamships annually move to or from the port 45,000,000 tons of freight. Anticipated continued growth of many of these communities will produce increasing demands on the present transportation facilities. Defendants and intervener Port of New York Authority urge that, in the circumstances, the public interest of New York and its environs, and, the port of New York being concerned, of the country at large, requires that traffic which does not have to be moved through New York Harbor should not be so moved to any greater extent than at the present time. Intervener Port of New York Authority is a public body engaged, under joint authority of the States of New York and New Jersey and with the approval of Congress, in working out a comprehensive plan for the development of the Port of New York.

The evidence shows that operating conditions generally are less favorable via New York Harbor than via Maybrook between these points. From Easton the grades over the two routes do not differ materially. The route via Maybrook, however, is an all-rail route through a comparatively thinly populated region over lines that are devoted almost entirely to the transportation of freight. Eastbound

122 I. C. C.

traffic over this route is delivered by the Jersey Central to the Lehigh & Hudson generally at Hudson yard, from which it is moved, usually without classification, by the Lehigh & Hudson to Maybrook, there classified by the Central New England in a modern hump, or gravity, yard of ample capacity, and thence moved to destination by way of the Poughkeepsie bridge. Traffic in the reverse direction is similarly handled. The New York Harbor route, on the other hand, traverses a thickly settled and rapidly growing region west of and at Jersey City, passes through a generally crowded terminal at the latter point, crosses New York Harbor by car float through the East River and Hell Gate, subject to delays and difficulties caused by fog, wind, storms, tides, and, during certain seasons, by ice, passes through the frequently congested Oak Point yard, and thence to New Haven, Conn., follows one of the busiest sections of main line operated by the New Haven. The use for the movement of freight of reasonably direct routes which avoid congested centers is generally regarded as a sound operating practice, and a number of instances are cited where additional lines and other facilities, generally known as cut-offs, have been constructed by carriers for the handling of through traffic around certain other large cities.

Intervener Manufacturers' Association of Connecticut, an organization of some 800 manufacturers in that State, opposes the reestablishment of joint rates via New York Harbor between points here considered. This intervener is apprehensive lest the increase in traffic through the latter gateway and the consequent reduction in traffic via Maybrook, which might follow upon the reestablishment of joint rates, would increase the financial burden of defendants and result in a lowering of the standard of service which it says is satisfactory under the present routing arrangements.

We find that the establishment of joint rates between the points here considered via New York Harbor under conditions which would add substantially to the volume of traffic interchanged by the New Haven with its connections at that point is not necessary or desirable in the public interest.

The allegations of undue prejudice and discrimination arise from the fact that joint rates via New York Harbor are in effect generally between all points on or reached over the Lehigh Valley and Pennsylvania, on the one hand, and points on defendants' lines on the other. The Jersey Central competes for traffic with the Lehigh Valley and Pennsylvania, its principal competition being with the former, the line of which, to a large extent, parallels that of the Jersey Central between Wilkes-Barre and Jersey City. The float bridges of the Lehigh Valley at Jersey City, over which most of the traffic which it interchanges with the New Haven is handled, are located to

122 I. C. C.

the north of those of the Jersey Central, and, except that the distance favors the latter somewhat, the car floats follow the same route between the float bridges of these two carriers and those of the New Haven at Oak Point. The present route through New York between points on the Pennsylvania and points on the New Haven, which was established for the handling of freight traffic in 1918, is by way of the Greenville piers of the Pennsylvania, located about 2.5 miles southeast of the Jersey Central float bridges, car float to Bay Ridge, Long Island, 3.5 miles, Long Island Railroad to Fresh Pond Junction, Long Island, New York Connecting to Port Morris, and thence over the New Haven through Oak Point yard. The New York Connecting is owned jointly by the Pennsylvania and New Haven. The New Haven performs the floatage service between Greenville piers and Bay Ridge.

The undue prejudice and preference alleged is primarily between interveners supporting the complaint and their competitors located on either the Lehigh Valley or Pennsylvania. Intervener Atlas Portland Cement Company contends that the lack of joint rates from its plant over the Jersey Central via New York Harbor to points on defendants' lines deprives it of the privilege of reconsignment at Jersey City which its competitors on the Lehigh Valley enjoy. The record, however, fails to disclose to what extent, if any, the latter exercise that privilege. This intervener's plant is served by the Northampton & Bath, which it owns, and which connects with the Jersey Central at Northampton, Pa., about 23 miles west of Easton. Its cement shipments destined to points on the lines of defendants move over its own line to Bath Junction, Pa., the Lehigh & New England to Campbell Hall, and the Central New England and New Haven beyond, although to Bridgeport and points west thereof on the New Haven joint rates are now in effect by way of Northampton and the Jersey Central through New York Harbor.

Intervener Hay Foundry & Iron Works, a fabricator of structural steel at Newark, N. J., on the Jersey Central, favors the establishment of joint rates on steel from the Pittsburgh, Pa., district in connection with the Jersey Central via New York Harbor to destinations on defendants' lines, contending that it is unable to sell its product at these destinations in competition with fabricators of structural steel at Newark and New Market, N. J., on the Lehigh Valley, who enjoy joint rates from and to the same points with fabrication in transit. Under transit arrangements maintained by the Jersey Central, steel produced at Bethlehem, Pa., can be shipped to this intervener's plant, there fabricated, and thence reshipped to points on defendants' lines at joint rates from Bethlehem, plus a charge for transit. Most of the steel used for fabrication at its

122 I. C. C.

plant is now purchased by this intervener at Bethlehem. The record shows that during the period January 1 to July 21, 1925, much of the steel fabricated in transit at Newark and New Market on the Lehigh Valley and thence reshipped to points on the lines of defendants originated at Bethlehem. In this connection it appears that in the division of the joint rates between the Lehigh Valley and the New Haven on steel from the Pittsburgh district which is fabricated in transit at points on the Lehigh Valley and thence reshipped to points on the New Haven the latter is allowed as its proportions the amounts which it would receive if this traffic moved locally from the transit points, and that the difference between those proportions and the divisions received by the New Haven out of joint rates on through continuous shipments of the same commodity from the Pittsburgh district is reflected in the joint rates applied under transit, and that the Jersey Central could, if it so desired, provide the same basis of rates on this traffic with transit at Newark.

Intervener Bayway Terminal operates a warehouse for the storage of cotton and other commodities at Bayway, N. J., on the Jersey Central. The Jersey Central authorizes the storage in transit of compressed cotton at Bayway, and this arrangement is available at joint rates from cotton-producing points generally in the South, from which the movement of this commodity is through Potomac Yard to points on the lines of defendants, but not from cotton-producing points in the Southwest, the joint rates in which the Jersey Central participates from the latter territory to these destinations applying via St. Louis, Mo., and Maybrook. Cotton stored at Bayway is either exported or shipped to consuming points in New England, and evidence was offered to show that there is a demand on the part of certain cotton dealers for the storage in transit of this commodity at Bayway. The Lehigh Valley permits storage in transit of cotton at its Black Tom terminal in Jersey City, but since 1920 little, if any, cotton has been stored under that arrangement. Under a tariff of the Pennsylvania compressed cotton from both producing territories may be stored at Philadelphia, Pa., and thence reshipped at joint rates from original shipping points to destinations on the lines of defendants. It is contended that the refusal of the New Haven to participate with the Jersey Central in joint rates on this commodity from the Southwest via New York Harbor results in undue prejudice to the Bayway Terminal and New York cotton dealers and in undue preference of warehouses and cotton dealers at Philadelphia. Although this intervener suggests that defendants should be required either to withdraw from participation in joint rates on cotton from the Southwest subject to storage in transit at Philadelphia or join in the establishment of joint rates on this traffic in

122 I. C. C.

connection with the Jersey Central, the record indicates that it would derive no benefit from the first of these alternatives. But even if this were not so, we could not find these defendants guilty of undue prejudice in the respect here charged. The prejudice arises not from the existence of joint rates through New York Harbor over the Lehigh Valley and the Pennsylvania, or the absence of such rates over the Jersey Central, but from conditions local to these carriers over which defendants have no control. *Central R. R. Co. v. United States*, 257 U. S. 247. We find that the failure of defendants to establish the joint rates sought by complainant is not unduly prejudicial.

Participation by defendants without territorial restriction in joint rates via New York Harbor with the Lehigh Valley and Pennsylvania is, as stated, the basis of the allegation that they discriminate in their rates against the Jersey Central in violation of paragraph (3) of section 3 of the interstate commerce act. That provision of the law is as follows:

All carriers engaged in the transportation of passengers or property, subject to the provisions of this Act, shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in their rates, fares, and charges between such connecting lines, or unduly prejudice any such connecting line in the distribution of traffic that is not specifically routed by the shipper.

There can be no dispute over the fact that the New Haven deals differently with complainant in the matter of joint rates than it does with the Lehigh Valley and the Pennsylvania. In the one case there is territorial restriction of joint rates via New York Harbor; in the other cases there is none. The question is whether the differentiation is without just cause so that it amounts to the discrimination prohibited by the provision of law above quoted. The Maybrook route can be and is used by both the Lehigh Valley and the Pennsylvania. The former connects with the Lehigh & Hudson at Easton, as does the Jersey Central, and with the Lehigh & New England at Lizard Creek Junction, Pa. The latter has direct access to the Lehigh & Hudson by means of a good line up the Delaware River from Trenton, N. J., and apparently can, if it so desires, operate its trains over the Lehigh & Hudson as far as Maybrook under trackage rights. The excess distance over the Maybrook route in comparison with the New York Harbor route is somewhat greater in the case of the Pennsylvania than in the case of the Jersey Central, but in view of the operating advantages which are claimed for the Maybrook route this difference is not of substantial consequence. In the case of the Lehigh Valley the only difference is that in mak-

ing interchange with the Lehigh & Hudson at Easton it is necessary to cross the Jersey Central tracks at grade, but this difference also is inconsequential.

There is, then, a substantial similarity of circumstances and conditions so far as these three connections of the New Haven are concerned, and no just cause has been shown for the discrimination by defendants in the matter of joint rates. *Western Pacific R. R. Co. v. S. P. Co.*, 55 I. C. C. 71, 80-81. In limiting joint rates with the Jersey Central via New York Harbor for the purpose of restricting the amount of traffic moving through that gateway and at the same time making no similar limitation in the case of the Lehigh Valley and the Pennsylvania, defendants have acted arbitrarily. We find that the failure of defendants to accord to complainant like treatment with the Lehigh Valley and the Pennsylvania in the matter of joint rates via New York Harbor is discriminatory and unlawful.

Obviously, however, the discrimination ought not to be removed either by closing one of the routes and forcing all the traffic through the other or by opening both on such terms that the bulk of the traffic will seek the New York Harbor route. It ought to be removed in such a way that the relative uses of the two routes, so far as defendants are concerned, will remain about the same as at present, or at least will be in such proportions that traffic congestion over neither route will be threatened. The key to the problem may be found in the method already adopted in the case of Jersey Central traffic. There territorial lines have been drawn, one on the New Haven and the other on the Jersey Central and its connections, and the establishment of joint rates via New York Harbor is governed by these lines in order that there may be an apportionment of the interchange traffic between the two routes. The same plan may be followed in the case of the Lehigh Valley and of the Pennsylvania, and at the same time the present lines in the case of the Jersey Central may be shifted so that it will be permitted relatively greater interchange via New York Harbor than at present. The lines should be so drawn that the proportions of traffic moving via the two routes will be substantially the same over all three roads.

The determination of such territorial lines is plainly a matter of some difficulty, requiring intimate knowledge of the interchange traffic of all three roads and of the points between which this traffic moves. It is a problem which should be worked out by cooperation and negotiations between the carriers concerned. For that reason we shall for the present enter no order, but will allow 90 days from the service of this report for such a voluntary readjustment. If at the end of that time it appears that no agreement can be reached,

122 I. C. C.

upon the request of complainant we shall proceed to further hearing for the purpose of securing the evidence essential to the entry of a definite order.

ANTHRACITE DIVISIONS

In 1908, when traffic between the points here considered was diverted from the New York Harbor to the Maybrook route, the Jersey Central and its connections west of Maybrook received as their division of joint rates on prepared sizes of anthracite coal from and to these points \$1.25 per long ton. This was the same as the division applied in connection with joint rates on this commodity via this gateway which were established in October, 1904, from points on the Jersey Central to a number of destinations east of that gateway, and prior to 1904 from points on certain other carriers to destinations on defendants' lines. At that time the division of joint rates on like traffic was \$1.55 per long ton west of Jersey City. The difference of 30 cents in these divisions reflected a like difference in the selling price of this commodity at New York Harbor and Maybrook at the time the divisions of joint rates on this traffic via the latter point were first established. The Jersey Central asserts and defendants deny that this was the equivalent of a fixed differential, and that the established basis of divisions on this traffic west of Maybrook is 30 cents less than the division west of Jersey City. The divisions of \$1.25 west of Maybrook and \$1.55 west of Jersey City were applied until some time during the early part of Federal control. In a division sheet published by the Jersey Central in 1912 and which was in effect in December, 1917, the division on this traffic west of Maybrook was shown as \$1.25 per long ton. During Federal control the rates on anthracite coal from producing points to destinations on defendants' lines were increased 15 cents per long ton, effective April 1, 1918, and by varying amounts, depending upon the measure of the rates, on June 25, 1918. In April, 1918, certain of the traffic representatives of the New Haven and Jersey Central, among others, agreed that of the 15-cent increase established on April 1, 1918, the lines west of Maybrook and Jersey City should receive 9 cents. Under such an apportionment of this increase the difference in divisions west of Jersey City and Maybrook would have continued to be 30 cents. Before settlement was made on that basis, however, the director general issued General Order No. 21 requiring that joint rates between Federally controlled carriers, including the Jersey Central and defendants, should be divided on the basis of road-to-road percentages. This latter basis was applied thereafter until discontinued by General Order No. 64, of November 122 I. C. C.

ber 20, 1919, which as supplemented December 30, 1919, provided, among other things, as follows:

In apportioning revenues between carriers the following shall be observed:

- (a) When joint through rates and agreed published divisions or per cents are in effect, such divisions or per cents shall be used.
- (b) Where joint through rates are applied for which divisions or per cents have not been arranged by interested carriers, the revenue shall be apportioned on the following basis until other divisions can be arranged by mutual agreement of the interested carriers.
 - (1) Where joint through rates were in effect in December, 1917, but have since been increased or otherwise modified, the revenue shall be apportioned on the basis effective in December, 1917, per cents to be used when divisions are so stated, otherwise the proportion for each carrier being increased or modified in proportion to the change in the joint through rates.

Applying the terms of the last clause of paragraph (1) of section (b) of the above order, defendants apportioned the revenues on this traffic by increasing the divisions east and west of the two gateways in effect December, 1919, using \$1.25 and \$1.55 as the divisions west of Maybrook and Jersey City, respectively, in proportion to the increases in the joint through rates made subsequent to that date. The amounts thus derived were similarly increased and reduced in proportion to the corresponding changes in the joint through rates following the general increases and reductions since Federal control, with the result that the proportions received by carriers west of Maybrook and Jersey City were \$2.13 and \$2.67 from about September 1, 1920, to June 30, 1922, and thereafter \$1.94 and \$2.41, reflecting differences of 54 and 47 cents, respectively, between the two gateways. The Jersey Central contends that the agreed division on this traffic west of Maybrook at the time the above order was issued was 30 cents under the division west of Jersey City; that section (a) of the above order, therefore, was applicable; that this section provided the only method of dividing these rates in effect on February 29, 1920, and that by apportioning revenues on a different basis defendants are and have been violating section 208 (b) of the transportation act, 1920, which requires that all divisions of joint rates in effect on February 29, 1920, between carriers subject to the interstate commerce act shall continue in force until thereafter changed by mutual agreement between the interested carriers or under State or Federal authority. It points out that as late as April, 1918, a division of the 15-cent increase had been arranged under which a difference of 30 cents in the proportions accruing to the carriers west of the two gateways would have been maintained. As above stated, that arrangement never became effective. So far as the record discloses there was and is no published division sheet showing the division

122 I. C. C.

on this traffic west of Maybrook as 30 cents less than the division contemporaneously in effect west of Jersey City. The only division of these rates published was the proportion west of Maybrook in effect prior to the application of the road-to-road percentages during Federal control, which was set forth in a division sheet of the Jersey Central, as \$1.25, without any reference to the division west of Jersey City or to a differential basis. The record lacks definite and convincing proof of any agreement otherwise between the parties whereby the divisions west of Maybrook were to be determined by the use of a fixed differential of 30 cents under the divisions west of Jersey City. The contention of the Jersey Central, therefore, must be rejected.

The reasonableness and fairness, under section 1, paragraph (4), of the act, of the divisions on anthracite coal from points on the line of the Jersey Central, as well as from points on other carriers serving the anthracite region, to destinations in New England via Maybrook and New York Harbor is in issue in Docket No. 11756, now pending, and we shall leave this issue for determination in that proceeding.

HALL, *Commissioner*, dissenting:

In this proceeding the Central of New Jersey is arrayed against the New Haven and a subsidiary of the New Haven. Jointly they have established and maintain joint rates from and to all points considered. No complaint is made of the quantum of the rates. The complaint is as to the routes over which the joint rates apply. One route is all rail through Maybrook or Campbell Hall across the bridge at Poughkeepsie. Over this route some of the joint rates apply. Another route is through New York Harbor and necessitates a car-float movement in that harbor. Over this route the other joint rates apply. Both routes are open to all traffic but not to all traffic at joint rates. The Central wants the joint rates to apply on all traffic over the harbor route without disturbing the existing application of some of them over the all-rail route. The transportation facilities in and about the harbor are already heavily burdened. We find that establishment of joint rates between the points here considered via that harbor is not necessary or desirable in the public interest, but we qualify that finding by the words "under conditions which would add substantially to the volume of traffic interchanged by the New Haven with its connections at that point." Among those connections are instanced the Pennsylvania and the Lehigh Valley, not parties to this proceeding. In their absence their rate relations and mode of interchanging traffic with the New Haven are canvassed, and the conclusion is reached, despite their absence, that

122 I. C. C.

their flow of traffic through the harbor should be restricted by territorial lines delimiting the points of origin and destination in a manner similar to, but not identical with, the lines now used for segregating joint-rate traffic interchanged between the Central and the New Haven. That seems to be prejudgment of a matter as to which the carriers affected are proper, if not necessary, parties. The suggestion is made that when the new limits are drawn the present limits affecting the Central may be shifted. In that suggestion lies the only relief or prospect of relief in this report for the Central, unless it be that if, after 90 days, the carriers concerned fail to work out a readjustment we will hold further hearings in this proceeding looking to an order. There again the Pennsylvania and Lehigh Valley and their connections and the connections of the Central will not be before us as defendants and will not be bound by any order which we may feel justified in making. The readjustment suggested would not close their routes through New York Harbor. It would merely make applicable, from and to points beyond the newly created pales, combination rates where joint rates now apply over the harbor routes of the Pennsylvania and the Lehigh Valley and, to the extent that the combination rates might exceed the present joint rates, impose an added burden upon shippers over those routes.

I am not in accord with this ineffectual disposition. If the Central has failed to establish its allegations against the two defendants—and I think it has—the complaint should be dismissed. In another complaint it could perhaps bring before us such other parties as might be needed for effectual disposition, if one can be made, of a problem turning largely on the extent to which, in the public interest, the 12 trunk lines serving New York Harbor, and their connections, should be allowed to move traffic through it to destinations beyond.

I am authorized to say that COMMISSIONERS AITCHISON and WOODLOCK join me in this expression.

TAYLOR, *Commissioner*, dissenting:

I dissent from the conclusions of the majority in this case, because the only public interest which the record discloses is in the allegation that some shipper may be deprived of transit privileges at points intermediate to and at the city of New York if this prayer is not granted. I do not believe that any shipper has such an inherent right in transit privileges as would justify the requirement of a new route, if there were no other reason for doing so, merely to enable him to enjoy such privileges at a point not located upon the established line of movement. No traffic moving between the New York, New Haven & Hartford Railroad and any of its connections via Maybrook can enjoy transit privileges at New York City, and

122 I. C. C.

if shippers have the right to demand this privilege upon all of their traffic which could move through New York Harbor, this might reasonably result in closing the route via Maybrook entirely to all of this traffic.

Unless from a result of undue discrimination, which I do not believe exists, we should not be concerned in the effort of the Central Railroad Company of New Jersey to secure a larger proportion of the revenue upon this traffic, especially as that company contends that, even after the creation of a route and joint rates via New York, much of the traffic now moving via Maybrook will continue to move that way. No shipper using the Maybrook route could enjoy transit privileges at New York City. For these reasons I believe that it is well within the proper managerial functions of the New York, New Haven & Hartford Railroad Company to name the all-rail route via Maybrook instead of that via the overcrowded terminals of New York City, as the most convenient, economical, and efficient way for it to interchange the traffic involved.

55426°—27—VOL 122—45