No. 18512

LOUIS COHEN & SON *v.* DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY

Submitted December 16, 1926. Decided June 27, 1927

Assessment of reconsignment charges on carload shipments of scrap iron at Syracuse, N. Y., found unreasonable in certain instances. Reparation awarded.

William H. Knaake for complainants.
W. J. Larrabee 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 complainants to the report proposed by the examiner. Our conclusions differ from those recommended by him.

Complainants are Ben Cohen, A. H. Cohen, J. A. Goldman, and Charles Meyers, copartners, dealing in scrap iron, scrap metals, etc., at Buttonwood, Pa., under the trade name of Louis Cohen & Son. By complaint seasonably filed they allege that the assessment of reconsignment charges of $18.90 on two carloads of scrap iron shipped August 30 and September 3, 1924, respectively, from Jersey City, N. J., to Syracuse, N. Y., thence reconsigned to Wilkes-Barre, Pa., was unreasonable. Reparation only is sought.

Both shipments were consigned to complainants at Syracuse and were routed "DL&W delivery." The first car, P. R. R. 316665, moved over the Central Railroad of New Jersey and the Delaware, Lackawanna & Western, arriving at Syracuse at 3 a. m. September 3, 1924. Notice of arrival was sent by defendant at 9 a. m. that day, and the car placed on a hold track awaiting delivery instructions. Subsequent to 7 a. m. on September 5, complainants ordered delivery to the Halcomb Steel Company, hereinafter called the steel company, and on September 6 the car was placed on the private sidetrack of that company, about 2.5 miles from the hold track. On September 9 the steel company rejected the shipment, whereupon the car was again placed on the hold track awaiting further disposition orders.

On September 12 complainants ordered it forwarded to themselves at Wilkes-Barre and furnished a new bill of lading to cover the movement from Syracuse. The car was forwarded September 13, and charges, based on the local rate from Jersey City to Syracuse, the local rate from Syracuse to Wilkes-Barre, two reconsignment charges of $6.30 each accruing at Syracuse, and certain demurrage charges were collected at Wilkes-Barre.

The second car, C. N. J. 85054, arrived at Syracuse September 7, and pursuant to reconsignment order received before its arrival, was placed on the private track of the steel company on September 8. On September 11 the steel company also rejected this car, whereupon complainants, on September 12, ordered it forwarded to themselves at Wilkes-Barre, and furnished a new bill of lading to cover the movement. All charges were billed as advances, and collected at Wilkes-Barre. One reconsignment charge of $6.30 was assessed on this car. Complainants having ordered delivery to the steel company prior to its arrival at Syracuse there was no reconsignment charge for placement on that company's private track.

Admittedly the reconsignment charges assessed were applicable, the sole question for determination being as to the reasonableness of these charges. Of the two charges assessed on car P. R. R. 316665, the first was based on rule 10, section 11(c), of defendant's tariff, which reads as follows:

> Section 11. DIVERSION OR RECONSIGNMENT POINTS WITHIN SWITCHING LIMITS BEFORE PLACEMENT.—A single change in the name of consignor and/or consignee at destination and/or a single change in or a single addition to the designation of place of delivery at destination will be allowed.
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> (c) At a charge of $6.30 per car if, after arrival of car at destination, such order is not received in time to permit instructions to be given to yard employees prior to the expiration of 24 hours after the first 7:00 a. m. after the day on which notice of arrival is sent or given to the consignee or party entitled to receive same.

As indicated above there is no charge for reconsignment if the order is received in time to permit instructions to be given to yard employees prior to arrival of the car at destination. It is urged by defendant that a tariff rule is not unreasonable which, as here, holds out an inducement to act promptly, thus aiding the carrier to transact its business more expeditiously and efficiently in the public interest, as well as its own. Defendant further points out that had reconsignment instructions on car P. R. R. 316665 been received prior to 7 a. m. on September 5, its schedule of work could have been arranged so as to place the car on the steel company's siding that day, thus conserving at least a day's use of the hold track and avoiding payment of a per diem charge.

The second charge of $6.30 assessed against car P. R. R. 316665, covering the change in destination from Syracuse to Wilkes-Barre, and the similar charge assessed against car C. N. J. 85054, were made under rule 10, section 12, note 2. The section and note in question read as follows:

Section 12. DIVERSION OR RECONSIGNMENT TO POINTS OUTSIDE SWITCHING LIMITS AFTER PLACEMENT.—If a car has been placed for unloading at original billed destination and is reforwarded therefrom without being unloaded to a point outside of the switching limits, it will be subject to the published rates to and from the point of reconsignment, plus $6.30 per car, reconsignment charge, except that in no case shall the total charge be less than the charge based on the through rate from point of origin to final destination, plus $6.30 per car reconsignment charge.

(See Notes 1 and 2.)

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Note 2.—Where all charges have been paid to or at original destination, and delivery accepted and a new bill of lading (not an Exchange Bill of Lading) issued to a new destination on basis of local (not proportional, reshipping or trans-shipping) rate from the reforwarding point, and without any carrier or agent of the carrier acting for the shipper, the transaction will not be considered as a diversion or reconsignment and no diversion or reconsignment charge will be assessed. This Note will not apply, viz:

(1) Where less than the full combination of local rates upon the original destination is applied.

(2) When the factors to and from the original destination are reduced by the application of Combination Tariff (Agent Jones' 228, I. C. C. No. U. S. 1); D. L. & W. R. R. Circular No. 1356.

(3) Where all or any portion of the charges to the original destination are collected at final destination.

This must not be construed as authorizing the application of intrastate rates (i. e., rates applicable only on intrastate traffic) on any portion of the interstate movement.

In support of their allegation of unreasonableness, complainants contend that the charge for reconsignment is not based upon any service on the part of defendant other than that usually performed under the local rates. They cite *Chesnutt Lumber Co.* v. *Director General*, 89 I. C. C. 236, *National Hay Asso.* v. *A. & R. R. R. Co.*, 91 I. C. C. 615, *Meneely Co.* v. *C., I. & W. R. R. Co.*, 101 I. C. C. 389, *Hollingshead Co.* v. *N. Y. C. R. R. Co.*, 91 I. C. C. 657, and *Taylor Co.* v. *S. Ry. Co.*, 109 I. C. C. 431.

Defendant points out that under the provisions of that note 2 a shipper may obtain a change in destination without additional charge. It argues that in view of the additional bookkeeping and clerical work incident to the advancement of the freight charges to Wilkes-Barre and the assumption of the risk of being unable to collect these charges at the latter point, the charges on the shipments of $6.30 each for change in destination from Syracuse to Wilkes-Barre can not be said to be unreasonable.

In *Chesnutt Lumber Co.* v. *Director General*, *supra*, we found that the assessment, in addition to the rates to and from the point of reshipment, of the reconsignment charge provided by rule 12 was unreasonable, reversing to that extent certain former decisions in which the provisions of rule 12 had been approved. Rule 12 under consideration in that case contained provisions identical with rule 10, section 12, of defendant's tariff before the addition of note 2. A similar finding was made in *Wilgus* v. *P. R. R. Co.*, 113 I. C. C. 617. In that case we said:

> The record shows no service in addition to that performed under the separate line-haul rate which would justify a charge for reconsignment any more than it would if the car had been actually or constructively delivered.

We find that the charge of $6.30 for the first reconsignment on car P. R. R. 316665 was not unreasonable, but that the charges assailed covering reconsignment of the shipments from Syracuse were unreasonable. We further find that complainants made the shipments as described and paid and bore the charges thereon; and that they were damaged thereby, and are entitled to reparation in the amount of $12.60, with interest.

An appropriate order will be entered.