No. 17966

JEWEL TEA COMPANY *v.* DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY ET AL.

Submitted December 16, 1926. Decided July 18, 1927

Rates charged on less-than-carload shipments of food products and merchandise from Hoboken, N. J., to Norfolk and Richmond, Va., found inapplicable. Refund of overcharges directed. Complaint dismissed.

H. N. Williams for complainant.

T. C. Crouch and *Chester N. Jones* for defendants.

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 defendants to the report proposed by the examiner.

Complainant is a corporation manufacturing and selling food products and merchandise with principal offices at Chicago, Ill., and a warehouse at Hoboken, N. J. By complaint filed January 21, 1926, it alleges that the rates charged on certain less-than-carload shipments of food products and merchandise shipped between April 1 and May 29, 1924, from Hoboken to Norfolk and Richmond, Va., were unreasonable, unduly prejudicial, and illegal. Rates will be stated in cents per 100 pounds.

The shipments were loaded in trap cars at complainant's warehouse on the Hoboken Manufacturers' Railroad at Hoboken, and moved over that line, the Delaware, Lackawanna & Western, hereinafter referred to as the Lackawanna, and the Old Dominion Steamship Company to Norfolk. The shipments to Richmond moved over the Hoboken Manufacturers', Lackawanna, and Richmond-New York Steamship lines. The Old Dominion and Richmond-New York lines have since been absorbed by the Eastern Steamship Lines, and hereinafter will be referred to as the steamship lines. Charges were collected on basis of combination rates to and beyond New York, N. Y., but defendants are unable to show authority for the factor from Hoboken to New York. While complainant alleges unreasonableness and undue prejudice, it relies primarily on the allegation that the rates charged exceeded those applicable.

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At the time the shipments moved the Lackawanna published the following joint class rates from New York Lighterage Station, Hoboken, and Jersey City, N. J., to Norfolk and Richmond, respectively, applicable over its line in connection with the steamship lines:

To—	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6
Norfolk, Va.:	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*
Prior to April 15, 1924	76	65.5	56.5	47.5	36.5	31
On and after April 15, 1924	79	66.5	58.5	47	35	31
Richmond, Va	79	66.5	58.5	47	35	31

The tariff which named these rates contained a provision to the effect that the rates also were applicable from stations and sidings of connecting lines as provided in terminal tariffs. A terminal tariff contemporaneously published by the Lackawanna contained the following provision:

On traffic to or from Hoboken, N. J., via Hoboken Manufacturers' R. R. rates published to or from New York and Brooklyn stations of this company, or points within free lighterage limits will apply, except when the traffic is destined to or originates at Jersey City, N. J., or where specific rates to or from Hoboken, N. J., are in effect.

Complainant contends that New York Lighterage Station, Hoboken, is a point within the free-lighterage limits, and that the rates published from this point were applicable over the route of movement, no specific rates from points on the Hoboken Manufacturers' having been in effect.

Defendants take the position that the receiving stations of the Hoboken Manufacturers' and Lackawanna at Hoboken are not located on the water front but are inland some distance from the water front, and, therefore, can not be considered points within lighterage limits from which shipments are usually handled to and from piers, docks, or landings. The tariff specifies routing for less-than-carload shipments "via New York Lighterage Station, N. J., float to Pier 41, N. R." Defendants also point to the fact that the tariff publishing the class rates above shown is not concurred in by the Hoboken Manufacturers' Railroad. That tariff, however, publishes an omnibus rule referring to the terminal tariff which contains the provision above quoted with respect to traffic originating on the Hoboken Manufacturers' Railroad. On January 5, 1925, subsequent to the movement here considered, defendants amended the provision in the terminal tariff in such a manner as to make the rates applying in connection therewith inapplicable over the lines of the steamship lines.

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If it was intended that the rates should not apply from New York Lighterage Station, Hoboken, on traffic originating on the Hoboken Manufacturers' and routed over the steamship lines, the tariff should have contained appropriate provisions in terms that could not give rise to a reasonable doubt as to this intention. As previously stated the rate tariff published through rates from New York Lighterage Station, a point which the record indicates to be within the free-lighterage limits of New York Harbor, and the terminal tariff provided that rates from points in the free-lighterage limits would apply on shipments from Hoboken via the Hoboken Manufacturers', except where specific rates from Hoboken were in effect. No specific rates from Hoboken to the destinations considered were shown to have been applicable in connection with the Hoboken Manufacturers' and the steamship lines. As previously stated the tariff has since been so amended. We have repeatedly stated that where there is a doubt as to the meaning of a tariff provision the doubt should be resolved against the maker and in favor of the shipper.

In view of the conclusions reached herein it is unnecessary to pass upon the allegation of unreasonableness. The allegation of undue prejudice is not sustained.

We find that the applicable rates on complainant's shipments were the class rates shown in the above table, subject to the governing classification. We further find that complainant made the shipments as described and paid and bore the charges at the rates found inapplicable; and that it has been damaged thereby in the amount of the difference between the charges collected and those which would have accrued at the rates found applicable herein. The overcharges should be promptly refunded. The complaint will be dismissed.

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