

No. 18545

EDWARD G. BAILEY ET AL. v. BOSTON & MAINE RAILROAD ET AL.

Submitted October 24, 1927. Decided December 8, 1927

Joint-line rates on prepared sizes of anthracite coal, in carloads, from the Wyoming region in Pennsylvania to the Albany, N. Y., district and to Scotia, N. Y., found not unreasonable nor unduly prejudicial. Complaint dismissed.

Josiah D. Green, Charles Donley, and James M. Noonan for complainants.

C. L. Andrus, Clyde Brown, W. A. Cole, W. J. Larrabee, H. A. Taylor, and W. D. Waldron for defendants.

REPORT OF THE COMMISSION

DIVISION 2, COMMISSIONERS CAMPBELL, McMANAMY, AND TAYLOR

BY DIVISION 2:

Exceptions to the report proposed by the examiner were filed by complainants, and the issues have been orally argued.

Complainants are retail coal merchants located at points in the Albany district¹ of the State of New York and at Scotia, N. Y. By complaint filed June 23, 1926, they allege that the joint-line rates maintained by defendants on prepared sizes of anthracite coal, in carloads, from the Wyoming region in Pennsylvania to the Albany district and to Scotia were and are unreasonable, and unduly preferential and prejudicial to the extent that they exceeded or exceed the single-line rates contemporaneously maintained from and to the same points by the Delaware & Hudson. Reparation and relief for the future are sought. Rates are stated in amounts per ton of 2,240 pounds.

The only single-line haul from and to the points here involved is over the Delaware & Hudson, on which complainants' competitors alleged to be preferred are located. Complainants are served by lines other than the Delaware & Hudson. The single-line rate of the Delaware & Hudson was and is \$2.65, while the joint-line rate paid by complainants at the time of complaint and hearing was generally \$3.02.

¹ The Albany district includes Cohoes, Mechanicville, Schenectady, Rensselaër, Ushers, West Albany, and Albany, N. Y.

Complainants also ask that the joint-line rate to Scotia, a local point on the Boston & Maine, adjacent to Schenectady, be made the same as the single-line rate to the latter point. The rate to Scotia is now \$2.88 from Delaware, Lackawanna & Western mines and \$3.02 from mines on the New York, Ontario & Western.

Complainants state that they must meet the retail prices set by their competitors on the Delaware & Hudson and must, therefore, absorb the difference in the freight rates paid by them and their competitors. Complainants contend that some of the joint-line routes are unduly circuitous and that the rates should be applied over more direct routes which they suggest. They show that the assailed rates were and are higher than the rates from and to other points in the same general territory.

Prior to 1916, when the order in *Rates for Transportation of Anthracite Coal*, 35 I. C. C. 220, hereinafter referred to as No. 4914, became effective, defendants maintained a rate of \$1.95 for joint-line as well as single-line hauls to the Albany district. The rate finally established as a result of that case was \$1.65 to Albany, Utica, and Syracuse, N. Y., over all single-line routes. With few exceptions, no changes were made in the joint-line rates. This resulted in a substantial difference between the single-line and joint-line rates, and this spread has been widened by the subsequent general increases. The general increase of 1920 made the difference to Albany and Syracuse 56 cents and to Utica 70 cents. Proposed increases in the single-line rates and reductions in the joint-line rates, which would have made the spread 30 cents to Albany and 14 cents to other points, were suspended in *Anthracite Coal to New York Stations*, 63 I. C. C. 193, and the proposed increases found not justified, without prejudice to the presentation of another plan of revision designed to bring about greater uniformity between the single-line and joint-line rates. The proposed reductions were permitted to become effective. The resultant changes, followed by the general reduction of 1922, made the single-line and joint-line rates to Albany, Utica, and Syracuse \$2.65 and \$3.02, respectively.

By orders of July 10 and November 6, 1923, the commission instituted, on its own motion, an investigation into the reasonableness of all of the rates on anthracite coal. In the original report therein, *Anthracite Coal Investigation*, 101 I. C. C. 363, the carriers were admonished to reduce the higher rates on prepared sizes over the longer routes to the level of the rates over the shorter routes between the same points, to the end that where the same level was maintained prior to the order in No. 4914 that parity of rates should be restored. Subsequently the carriers presented a plan for reducing the rate disparities over single-line and joint-line routes to northern

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New York points. In a supplemental report, 104 I. C. C. 514, that plan was approved, without prejudice to different conclusions which might be reached upon a more adequate record with respect to the reasonableness of any of the rates. Upon protest from many interested parties the schedules filed by respondents to effectuate the new adjustment were suspended and the case disposed of on February 14, 1927, in a supplemental report in *Anthracite Coal Investigation, supra*, reopened, 122 I. C. C. 527. In that report the existing adjustment on prepared sizes of anthracite coal from the Wyoming, Lehigh, and Schuylkill regions to Albany and other points taking the same rates considered as a whole was found to be unjust, unreasonable, and unduly prejudicial and preferential in the relation of such rates to each other, and for the future the just and reasonable rates prescribed were \$2.65 from all points in the Wyoming region on the line of each carrier serving that region, except the Central Railroad of New Jersey, the Lehigh Valley, and the Pennsylvania, over all single-line routes, and also the shortest tariff route to each destination; and \$2.88 from all points in the Wyoming, Lehigh, and Schuylkill regions on the line of each carrier serving any of those regions over all other routes. The new adjustment became effective on June 20, 1927, when the rates herein assailed were reduced from \$3.02 to \$2.88. Since then the rate of \$2.65 has also been established from mines on the Central Railroad of New Jersey and the Lehigh & New England to the Albany district, including deliveries to some of complainants. The maximum difference, therefore, between complainants' present rates and those of their competitors is 23 cents instead of 37 cents at the time of the complaint and hearing. In *Brown v. B. & M. R. R.*, 27 I. C. C. 47, the commission prescribed a rate to Scotia somewhat higher than the contemporaneous rate to Schenectady. In the absence of a clear showing of undue prejudice we do not feel warranted in requiring an extension of the Albany district to include Scotia.

Defendants rely upon the relevant portions of the record in *Anthracite Coal Investigation, supra*, which were made a part of the record in this case. The just and reasonable adjustment prescribed in that proceeding and now in effect was prescribed upon a comprehensive record in which the entire adjustment was before the commission. Nothing upon this record indicates that the conclusions reached in the general investigation are incorrect. No reparation was granted in that investigation, and for obvious reasons it should not be granted here.

We find that the assailed rates were not, and that the present rates are not, unreasonable or otherwise unlawful. The complaint will be dismissed.

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