

No. 18976<sup>1</sup>

NORTHWESTERN SCHOOL SUPPLY COMPANY v. DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY ET AL.

*Submitted October 24, 1927. Decided March 24, 1928*

Rates charged on slate blackboards, in carloads, from Pen Argyl, Pa., to Minnesota Transfer, Minn., and, in less than carloads, from Minnesota Transfer to Ames, Iowa, and from Pen Argyl to Jamestown, N. Dak., found applicable and not otherwise unlawful. Complaints dismissed.

*Maugridge S. Robb* for complainants.

*W. J. Larrabee* 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 complainant to the report proposed by the examiner.

Complainant in No. 18976, a corporation dealing in school supplies at Minneapolis, Minn., by complaint filed November 3, 1926, as amended, alleges that the rates charged on a carload of slate slabs weighing 45,400 pounds, shipped by the Minneapolis Natural Slate Company, assignor of complainant, January 11, 1923, from Pen Argyl, Pa., to Minnesota Transfer, Minn., and on a less-than-carload shipment weighing 5,646 pounds, transported November 20, 1923, from Minnesota Transfer to Ames, Iowa, were inapplicable and unreasonable. Complainant in No. 19652, a corporation dealing in stone at Minneapolis, by complaint filed May 6, 1927, alleges that the rate charged on a less-than-carload shipment of slate slabs weighing 16,400 pounds shipped January 14, 1924, from Pen Argyl to Jamestown, N. Dak., was inapplicable. Reparation is sought in No. 19652, and reparation and reasonable rates for the future in No. 18976. Rates will be stated in amounts per 100 pounds.

An informal complaint covering the carload shipment in No. 18976 was filed November 26, 1924, but alleged overcharge only. As the allegation of unreasonableness was not made until more than two

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<sup>1</sup> This report also embraces No. 19652, Reed Marble & Tile Company v. Northern Pacific Railway Company et al., in which the parties agreed to abide by the decision in the principal case.

years after the shipments moved, that issue is barred. Informal complaint in No. 19652 was filed December 4, 1926.

The shipments were in crates and consisted of slate slabs, smooth on one side, 3 feet wide, 0.25 to 0.5 inch thick, and an average of 5 feet in length, manufactured for and intended to be used as blackboards. The slate used for such purposes must be of very high grade, without defects. The finished product is the result of an elaborate manufacturing process. It is sold by the manufacturer as slate blackboards and the carload shipment was so described by complainant's assignor.

Slate blackboards, in carloads, are rated fifth class in official classification; in less than carloads, third class in official, and second class in western classification. Charges were collected at the fifth-class rate of 76 cents on the carload shipment, at the second-class rate of 76 cents on the less-than-carload shipment to Ames, and at a combination rate of \$2.38 on the less-than-carload shipment to Jamestown, composed of the third-class rate to Minnesota Transfer and the second-class rate beyond.

Slate blocks, pieces or slabs, n. o. i. b. n., in carloads, are rated sixth class in official; and in less than carloads, fourth class in both official and western classifications. The rates sought are those applicable to slate slabs, namely, 63 cents from Pen Argyl to Minnesota Transfer, 38.5 cents from Minnesota Transfer to Ames, and \$1.535 from Pen Argyl to Jamestown. Since the commodity shipped fell within the description of slate blackboards, the rates and ratings on slate slabs, n. o. i. b. n., did not apply and the rates charged were applicable.

Complainant's allegation of unreasonableness rests upon the claim that there is no proper basis for a differentiation between slate blackboards and slate slabs, n. o. i. b. n., and that the attempted differentiation makes the rate dependent upon the use to which the commodity is put. Slate blackboards are rated on the same basis as wooden, pulpboard, and metal blackboards, with which they compete. The evidence shows that slate blackboards are manufactured from higher-grade material, are more liable to damage, must be packed with greater care, and load less heavily than ordinary slate slabs. When used for structural purposes, slate slabs are usually 1 inch or more in thickness. The evidence of record does not warrant a finding that the rates on slate blackboards, as such are unreasonable. This conclusion is similar to that reached in *Centennial School Supply Co. v. L. V. R. R. Co.*, Docket No. 7418, unreported.

We find that the rates charged were applicable and that the applicable rates in No. 18976 are not unreasonable. The complaints will be dismissed.

140 I. C. C.