

No. 18685

MAGOR CAR CORPORATION v. DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY

Submitted December 28, 1927. Decided May 16, 1928

Failure of defendant to maintain fabrication-in-transit arrangements on car trucks at Athenia, N. J., found not to result in unreasonable or otherwise unlawful charges. Complaint dismissed.

Charles S. Belsterling for complainant.

W. J. Larrabee for defendant.

Charles R. Webber, John J. Fitzpatrick, and E. L. Beach for interveners.

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 and the case was orally argued.

Complainant, a corporation operating car-fabricating shops at Athenia, N. J., by complaint filed August 13, 1926, alleges that the failure of defendant to maintain a fabrication-in-transit arrangement on car trucks at Athenia has resulted in the application of unreasonable, unjustly discriminatory, and unduly prejudicial rates. Reparation and the establishment of rules providing for fabrication in transit at Athenia of car trucks are sought. Rates will be stated in cents per 100 pounds.

Various trunk-line carriers intervened in opposition to the complaint.

Complainant purchases most of the iron and steel parts, used in the fabrication of car trucks in and around Pittsburgh, Pa., in what is known as the Pittsburgh steel-producing district. The process of fabrication consists of cutting the material to length, punching, drilling, planing, riveting, and fitting together. Complainant ships the car trucks to New York, N. Y., for export to foreign countries. Some of the component parts of the trucks are shipped loose.

The rate applicable on iron and steel articles, including the component parts of car trucks, from the Pittsburgh district to New York

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rate points, including Athenia, is the fifth-class rate of 34 cents and the rate on car trucks from Athenia to New York Harbor for export is 7 cents, resulting in an aggregate rate of 41 cents.

In its export business complainant competes with foreign car manufacturers as well as with fabricating shops at Butler, McKees Rocks, and Koppel, Pa., which latter points are located in the Pittsburgh district. On August 15, 1926, a rate of 25.5 cents became effective on car trucks from the Pittsburgh district to New York for export. The average rate from Pittsburgh stations to McKees Rocks on iron and steel articles, including the component parts of car trucks, is 3.4 cents and to Koppel and Butler 7 cents, making aggregate rates of 28.9 cents to and from McKees Rocks and 32.5 cents to and from Koppel and Butler. Complainant seeks the establishment of rules providing for the fabrication in transit of car trucks at Athenia on the basis of the export rate of 25.5 cents from the Pittsburgh district to New York plus a stop-over charge of 3 cents.

Prior to January 24, 1916, fabrication in transit was not accorded car trucks at any point in central or trunk-line territories, for the reason that axles and wheels were not named in the list of inbound iron and steel articles. On that date these necessary parts were included in the inbound list and fabrication in transit of car trucks was permitted at Athenia and other points in connection with traffic taking domestic rates. By tariff published February 28, 1920, wheels and axles were eliminated from the list of inbound iron and steel articles and since that date fabrication-in-transit service has not been accorded car trucks at any point in official classification territory.

On November 1, 1918, a uniform basis of rates became effective on iron and steel articles and car trucks, domestic or export, by application of the fifth-class rating. On October 15, 1921, the carriers voluntarily established a commodity rate of 25.5 cents on manufactured iron and steel articles, from the Pittsburgh district to New York for export. By schedules filed to become effective March 15, 1926, an attempt was made to extend the iron and steel export rates to car trucks for export. These schedules were suspended and in *Car Trucks to Atlantic Seaboard*, 112 I. C. C. 583, we found that the proposed rate of 25.5 cents on car trucks from the Pittsburgh district, including Butler, McKees Rocks, and Koppel, to New York for export was not unreasonable, but that the establishment of such rate, while maintaining a rate in excess of 7 cents on car trucks without journal bearings from Athenia to New York and points within the New York lighterage limits, for export, would be unduly prejudicial to Athenia and unduly preferential of the points in the Pittsburgh district from which the proposed rate was published.

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The present export rates on car trucks from the Pittsburgh district and Athenia to New York are in accordance with the finding in that report. Domestic shipments of iron and steel articles and car trucks from the Pittsburgh district to New York rate points still move under the fifth-class rate of 34 cents.

In March, 1926, defendant recommended to the Trunk Line Freight Association that axles, wheels, and forgings be added to the list of iron and steel articles on which transit was accorded, but this action was not taken.

Complainant states that the production of its plant has been greatly curtailed, due to the advantage in transportation charges enjoyed by its competitors in the Pittsburgh district. It shows a list of 18 contracts covering the construction of 3,350 cars for foreign markets which it lost to its competitors during the year 1926. Five of these contracts, covering the construction of 435 cars, were placed with complainant's competitors in the Pittsburgh district, the remainder being placed with foreign car builders. During 1926 complainant exported 791 cars.

Reference is made by complainant to a tariff rule published by the eastern carriers under which tin or terne plate received at various points and manufactured into packages or containers that are ultimately exported, either empty or loaded, is subject to the export rate for the inbound movement to the manufacturing plant. The publication of the above rule on tin or terne plate was brought about by conditions not shown to be present in the instant case.

The export rates on car trucks from Koppel, Butler, McKees Rocks, the Pittsburgh district, and Athenia to New York are compared with the scale of rates prescribed in *Jones & Laughlin Steel Corp. v. B. & O. R. R. Co.*, 96 I. C. C. 682, showing that the export rate from Athenia averages 93 per cent of the scale, while complainant's competitors' export rates are from 75 to 80 per cent of the scale. Comparison is also made of the domestic and export rates and revenues on car trucks from Pittsburgh to New York with the domestic rates and revenues on numerous commodities from and to the same points. The car-mile revenue shown on car trucks is predicated upon an average loading of 38.60 tons which is a substantially greater weight than is shown in connection with the majority of the compared commodities.

Intervenors point out that the export rate from Athenia to New York is 54.6 per cent of the fifth-class rate, while the export rate from the Pittsburgh district to New York is 75 per cent of the fifth-class rate. They compare rates made up of the factors applying on iron and steel articles from Pittsburgh to Butler, Koppel, and McKees Rocks and those on car trucks from these points to New

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York with rates made up of the factors on iron and steel from eastern shipping points to Athenia and 7-cent rate on car trucks from Athenia to New York. These comparisons indicate that aggregate rates of from 21.5 to 26 cents are available to complainant when their supplies of iron and steel parts are drawn from eastern Pennsylvania points or Camden, N. J. Complainant states that due to a lack of diversity of manufacture of steel articles in the East it is dependent upon the Pittsburgh district for most of its materials and especially axles which, it is said, are not manufactured east of the Allegheny Mountains.

The record shows that the rates paid by complainant and its competitors in the Pittsburgh district are on the same basis, namely, domestic rates on iron and steel articles to the fabricating point and the export rates on car trucks from the fabricating point to New York. The advantage enjoyed by the fabricators in the Pittsburgh district lies in the close proximity of their plants to the steel-producing district. In *Vinegar Rates from Pacific Coast*, 81 I. C. C. 666, we said:

We have repeatedly held, however, that we can not regulate rates for the purpose of equalizing cost of production or manufacture and that "primarily it is not our concern to equalize market competition." *Salt from Louisiana Mines to Chicago*, 69 I. C. C. 312, 316.

The transit tariffs throughout trunk-line and central territories are uniform in their application and upon this record it does not appear that there is any compelling reason for extending transit to car trucks at Athenia.

We find that the failure of defendant to maintain fabrication-in-transit arrangements on car trucks at Athenia has not resulted in the application of unreasonable or otherwise unlawful rates. The complaint will be dismissed.

EASTMAN, *Commissioner*, dissenting:

Complainant is here denied relief upon the ground that its competitors in the Pittsburgh district have a natural advantage of location which they are entitled to enjoy and of which we should not attempt to deprive them by any rate readjustment. On the contrary, it seems to me that the competitors have no natural geographic advantage and that what they are now enjoying is an unduly preferential rate advantage. That they have a rate advantage is clear, for in the process of securing iron and steel articles from plants in the Pittsburgh district, assembling and fabricating these articles into car trucks, and then shipping the trucks to New York city for export, they pay aggregate transportation charges ranging from 28.9 to 32.5 cents, whereas complainant pays aggregate charges of 41 cents. The question is whether this advantage is unlawful.

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It is not shown that the competitors have any advantage over complainant in aggregate length of haul of inbound and outbound shipments. Nor is it shown that they have any advantage in the transportation characteristics of the aggregate movement. They move the inbound iron and steel articles a lesser distance and the outbound trucks a greater distance than does complainant, but there is no showing that the trucks are superior in transportation characteristics to the iron and steel articles; on the contrary, so far as value and weight density are concerned, the reverse is probably true. Nor have the competitors any advantage in the number or character of terminal operations, for in each case the through haul is divided into two separate movements attended by terminal operations at either end.

Upon analysis it is clear that the advantage which the Pittsburgh district competitors have over complainant does not lie in any natural advantage of geographic location or in cost of transportation, but rather in the fact that the export rates on car trucks are lower than the domestic rates on iron and steel articles and that the competitors derive relatively greater benefit from the former than does complainant. This situation would not be unlawful if car trucks were fairly entitled by reason of superior transportation characteristics to lower rates than iron and steel articles generally, but as aforesaid there is no showing to that effect.

It seems to me, therefore, that the facts prove a violation of section 3, although not of section 1. This violation could be cured by the establishment of export rates on car trucks from the Pittsburgh district to New York, subject to an arrangement for fabrication in transit en route at complainant's plant and also at the plants of its competitors. It may be that it could also be cured in some other way and, if so, defendants should have the option of selecting their own cure so long as they eliminate the violation of section 3.

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