

No. 19529

FEDERATED METALS CORPORATION v. DELAWARE,
LACKAWANNA & WESTERN RAILROAD COMPANY
ET AL.

Submitted November 14, 1927. Decided June 15, 1928

Rate on scrap zinc, in carloads, from Waterbury, Conn., to Chicago, Ill., found unreasonable. Reasonable rate prescribed.

Ernie Adamson for complainant.

W. W. Meyer and *J. D. Brady* for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS CAMPBELL, WOODLOCK, AND BRAINERD

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner. Our conclusion differs somewhat from that recommended by him.

Complainant, doing a general metal business, with principal office at New York City and a smelting plant at Chicago, alleges by complaint filed April 9, 1927, that the rate on scrap zinc, in carloads, from Waterbury, Conn., to Chicago, Ill., is unreasonable. A reasonable rate for the future is sought. Claim was made for reparation on one shipment but was subsequently withdrawn. Rates will be stated in cents per 100 pounds.

The rate assailed, 47.5 cents, is sixth class, the official-classification basis. Complainant seeks a rate of 32 cents. The rate on pig and slab zinc, in carloads, from and to the same points is 32 cents and that on pig and slab lead, in carloads, 34.5 cents. The rate in the reverse direction on scrap zinc is 34 cents. A rate of 22 cents applies on pig, slab, and scrap zinc from Norfolk, Va., to Canton and Cleveland, Ohio, Detroit, Mich., Farrell, Pa., and Wheeling, W. Va., for hauls shown to range from 614 to 874 miles. The distance from Waterbury to Chicago is nearly 1,000 miles. All of the rates with which comparisons are made are commodity rates on articles rated sixth class. Scrap zinc is worth about 4.5 cents per pound.

Defendants offered no evidence. They contend that complainant has failed to make out a case. They say it has not shown such a volume of movement as would justify the establishment of a commodity rate. They urge that class rates should apply for sporadic

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movements and cite several cases in support of their position. They also refer to *Union Smelting & Refining Co. v. C. R. R. Co. of N. J.*, 92 I. C. C. 319, wherein the fifth-class rate of 32 cents on solder, in carloads, from Newark, N. J., to Buffalo, N. Y., was found not unreasonable.

In *Scrap Lead and Zinc from Pittsburgh*, 129 I. C. C. 541, proposed increased rates on scrap lead and zinc, in carloads, from Pittsburgh, Pa., to destinations in trunk-line and New England territories equivalent to 80 per cent of the sixth-class rates were found justified, notwithstanding the existence of lower rates on pig and slab lead and zinc. In that case the propriety of authorizing rates on scrap metal upon a higher basis than on the primary metal was an important consideration, and the report shows that the rates of the eastern carriers on the primary metal had been held down by rates from the Far West to eastern markets, so that the rates of the eastern carriers were less than maximum reasonable rates. It necessarily followed that those rates were not a proper measure of the reasonableness of the rates on the scrap material. A rate 80 per cent of the sixth-class rate from and to the points under consideration would be 38 cents.

We find that the rate assailed is and for the future will be unreasonable to the extent that it exceeds or may exceed a rate 80 per cent of the sixth-class rate contemporaneously in effect from and to the same points. An appropriate order will be entered.

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