

No. 20105

BRONFMAN COAL COMPANY *v.* ERIE RAILROAD COMPANY ET AL.

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*Submitted March 6, 1928. Decided July 10, 1928*

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Rates on coal, in carloads, from Lake Ariel, Pa., to Newark, N. J., found not unreasonable. Complaint dismissed.

*Samuel H. Blank and W. F. Kavanah* for complainant.

*H. A. Taylor and W. J. Larrabee* for defendants.

## REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS AITCHISON, TAYLOR, AND PORTER

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner and defendants replied.

Complainant, a corporation dealing in coal at Newark, N. J., alleges by complaint filed September 14, 1927, that the rates charged on anthracite coal, in carloads, from Lake Ariel, Pa., to Newark, were unreasonable. Reparation only is sought. Rates will be stated in amounts per long ton.

The shipments originated on a private siding connected with the main line of the Wyoming division of the Erie at a point about 2 miles west of the junction of the Erie's Lake Ariel branch with the main line. The Wyoming division extends from Lackawaxen, Pa., to Plains Junction, Pa. The shipments were billed from Lake Ariel. Under the routing directions they moved westward to Dunmore, Pa., 16 miles, thence over the Delaware, Lackawanna & Western, hereinafter called the Lackawanna, to destination, a total of 142 miles. The applicable combination rates of \$3.90 on prepared sizes and \$3.78 on pea and smaller sizes were assessed. These rates were composed of the Erie local rate of \$1.51 to Dunmore and the locals beyond of \$2.39 on prepared sizes and \$2.27 on the pea and smaller sizes. During the period of movement rates of \$2.39 and \$2.27 on the two grades of coal applied single line over the Erie from the point of shipment to Newark, 137 miles. These rates applied locally from all points on the Erie's line in the Wyoming region to Newark. Complainant seeks reparation to the basis of these rates for the joint-line movement in connection with the Lackawanna.

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Only 5 of the 14 shipments under consideration were consigned to complainant, the remaining 9 being shipped to the Acme Coal Company. The latter concern is not named as a complainant, but it is alleged in the complaint to be a subsidiary of complainant corporation. However, the evidence indicates that the Acme Coal Company was a copartnership composed of four members, only two of whom were interested in complainant corporation. The finding herein renders unnecessary further discussion of its right to recover reparation in this proceeding.

The coal consisted of material originally taken from culm banks and used in filling the roadbed of a gravity railroad abandoned 50 years ago. When the coal strike occurred between September 1, 1925, and the middle of February, 1926, complainant and the Acme Coal Company contracted with another party in December, 1925, to take all of the coal for a period of 30 days which that party should recover from the abandoned roadbed. The coal was hauled by truck from a point 3 or 4 miles inland to the point of shipment, where it was put through a washery to eliminate the accompanying dirt. Complainant paid \$16 per ton for the coal at point of shipment. During the strike period this coal was sold for \$19 or \$20 per ton in Newark. Seven cars, shipped after the 14 here under consideration, were rejected. Coal from three of these cars was sold for from \$2 to \$2.25 per ton to defray freight charges and the balance had to be dumped.

Complainant compares the rates assailed of \$3.90 and \$3.78 with the Erie's single-line rates to Newark previously mentioned and with other single-line rates maintained on the same basis by that carrier and the Lackawanna from the anthracite region to destinations at varying distances. Comparison is also made with joint-line rates maintained on the same level by the two defendants from mines on the Lackawanna to destinations on the Erie. Mines on the former carrier produce normally between 10,000,000 and 12,000,000 tons of coal annually, of which only 3,000,000 to 4,000,000 are consumed along its lines. It is for the purpose of marketing the excess coal of its operators that the Lackawanna maintains joint rates to destinations on the Erie, whose consumers use more coal than is mined on that road. This situation explains the absence of joint rates from mines on the Erie to destinations on the Lackawanna, as such rates would add to the difficulty of the operators on the Lackawanna in disposing of their coal.

The record indicates that the point of shipment is not in the coal region; that no coal has ever moved from there in the past except in the brief period of the strike and that there is no prospect of any movement in the future; that complainant had available at the

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time single-line rates over the Erie to a number of its stations in Newark, on the basis here sought; that the Erie's route was several miles shorter than the route of movement; and that deliveries of coal by complainant would have been as convenient and economical from the Erie's yards as from the yards on the Lackawanna. Complainant had no coal yard of its own at the time of shipment. Its present yard is on the Pennsylvania, so that delivery by the Lackawanna of coal from off the Erie would now be of no benefit to it.

In *Chicago Heights Mfrs. Asso. v. B. & O. R. R. Co.*, 95 I. C. C. 83, wherein the issues were very similar to those here under consideration, division 4 refused to condemn combination rates on a sporadic movement of coal from mines on the Baltimore & Ohio in the Meyersdale district of Pennsylvania and the Fairmont district of West Virginia to a destination on the Pennsylvania. The latter road's principal defense of its refusal to join in through rates was the fact that more coal was produced on its lines than was consumed thereon.

We find that the rates assailed were not unreasonable. The complaint will be dismissed.

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