

No. 19993

STRAIGHT LINE ENGINE COMPANY, INCORPORATED, *v.*
 DELAWARE, LACKAWANNA & WESTERN RAILROAD
 COMPANY ET AL.

Submitted April 12, 1928. Decided July 26, 1928

Ratings on cast-iron or steel coke-oven doors and coke-oven doorframes, with steel bars attached, in carloads and less than carloads, in official and southern classifications found unreasonable but not otherwise unlawful. Reparation awarded.

Stephen D. Rice for complainant.

D. T. Lawrence 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 the defendants to the report proposed by the examiner.

Complainant, a corporation manufacturing steel products at Syracuse, N. Y., alleges by complaint filed August 4, 1927, that the official and southern classification ratings and the resulting rates on cast-iron or steel coke-oven doors and coke-oven doorframes, with steel bars attached, in carloads and less than carloads, were and are unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation and reasonable ratings for the future are sought.

The allegations of unjust discrimination and undue prejudice are not supported by any evidence and they will not be further considered.

The following table shows the ratings assailed and the ratings sought:

	Ratings assailed		Ratings sought	
	Official	Southern	Official	Southern
Coke-oven doors and coke-oven doorframes, cast iron or steel, with steel bars attached:				
Less than carload.....	3	2	4	4
Carload.....	14	14	15	16

¹ Minimum 30,000 pounds.

² Minimum 36,000 pounds.

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Prior to 1926, the coke-oven doors and coke-oven doorframes manufactured by complainant were subject to the ratings on rough iron or steel castings n. o. i. b. n., which are those shown in the above table under column "Ratings sought." During 1925 complainant began attaching steel bars to the doors or frames, and due to this the articles became subject to the ratings on iron or steel hardware n. o. i. b. n., which are those shown under column "Ratings assailed." Complainant states that shipments have been made between Syracuse and points in official and southern territories under the ratings assailed. It seeks the same ratings as those applied to its articles prior to the time it began attaching the steel bars and reparation based thereon.

Cast-iron or steel coke-oven doors and coke-oven doorframes, with steel bars attached, have a weight of over 50 pounds per cubic foot, and a value of 4.5 cents per pound when prepared for shipment. The addition of bars adds 600 pounds to the weight of each casting and does not increase the value per pound.

Complainant made application to the consolidated classification committee in February, 1926, for the ratings and minimum here sought. In June it was notified that the application had been approved, but that certain questions were pending before the commission in regard to fourth-section departures resulting from classification changes, and that the approved ratings would not be made effective until these questions had been settled. The reduced ratings and increased minimum sought were established by defendants on April 30, 1928, subject to rule 79 of Tariff Circular 18-A. *Fourth Section Departures*, 136 I. C. C. 516, decided January 9, 1928.

Defendants state that they did not know whether or not the publication of the ratings sought would produce contraventions of the fourth section of the act. It does not appear that any effort was made by them to determine the matter definitely or to revise the affected rates in such manner as to avoid any fourth-section departures which might otherwise have resulted. The obligation to observe section 1 of the act rests upon defendants no less than the obligation to observe section 4; and even though it be assumed that it would have been difficult to correct the classification, that fact does not warrant the defendants in retaining for the transportation of complainant's past shipments charges which were unreasonable. As previously stated, complainant presented a request for a reduction in ratings to defendants' classification committee in February, 1926. No reason appears in this record why the reduced ratings should not have been made effective by August 1, 1926. The ratings sought by complainant became effective April 30, 1928, and are now in force. No finding for the future is necessary.

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We find that the ratings assailed during the period August 1, 1926, to April 30, 1928, were unreasonable to the extent that they exceeded, in less than carloads, fourth class in official and southern classifications, and in carloads, minimum 36,000 pounds, fifth class and sixth class in official and southern classifications, respectively; that complainant made the shipments as described, and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid, on shipments originating between August 1, 1926, and April 30, 1928, and those which would have accrued under the ratings and carload minimum herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice.

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