

No. 21523

FLORIDA DAIRIES, INCORPORATED, v. DELAWARE,
LACKAWANNA & WESTERN RAILROAD COMPANY
ET AL.

Submitted April 29, 1929. Decided September 14, 1929

Rate charged on one carload of glass milk bottles from Elmira, N. Y., to Miami, Fla., found not unreasonable. Complaint dismissed.

H. J. Flack for complainant.

Frank W. Gwathmey for defendants.

REPORT OF THE COMMISSION

DIVISION 2, COMMISSIONERS CAMPBELL, McMANAMY, AND BRAINERD
BY DIVISION 2:

This case was presented under the shortened procedure. No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation in the dairy business at Miami, Fla., alleges by complaint filed September 17, 1928, that the rate charged on one carload of glass milk bottles shipped March 19, 1927, from Elmira, N. Y., to Miami was unreasonable. Reparation is sought. Rates will be stated in amounts per 100 pounds.

The shipment consisted of 277 crates of milk bottles of various sizes, and weighed 37,934 pounds. It moved by rail over the Delaware, Lackawanna & Western, and Reading Company, to Philadelphia, Pa., and by water over the Merchants & Miners Transportation Company beyond. Charges were collected at the applicable combination rate of 80.5 cents, composed of a local rate of 22.5 cents to Philadelphia, which is not assailed, and a proportional commodity rate of 58 cents beyond. Complainant seeks a rate beyond Philadelphia of 49.5 cents, or a through rate of 72 cents.

From December 7, 1926 to March 18, 1927, one day prior to the date of shipment, the rate sought was in effect. From March 18 to May 24, 1927, the applicable rate was 58 cents. Subsequently rate changes have been made as follows:

	Cents
May 24, 1927 to January 15, 1928.....	49.5
January 15, 1928 to August 7, 1928.....	50
August 7, 1928 to November 19, 1928.....	40
November 19, 1928 to the present time.....	35

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To support its allegation that the rate assailed was unreasonable complainant relies solely upon the fact that the rate sought was formerly in effect and subsequently reestablished.

Defendants state that the fluctuation in the rate has been caused solely by competitive conditions; that for the past several years they have been confronted with competition of steamer lines along the Atlantic coast which do not file some of their rates with this commission, and apparently make such rates more with regard to attracting traffic from established lines which do file their rates here than with regard to maintaining them on a permanent and reasonable basis which will afford proper compensation for the service performed; and that, although recognizing the demoralizing effect of such an unstable rate structure, defendants have been forced to meet these rates, whenever possible, in order to receive any of the available traffic.

Defendants take the position that regardless of the various changes, the rate assailed was not unreasonable. They instance all-rail rates on the commodity concerned from Elmira to Miami in excess of the combination rail-and-water rate charged.

Complainant refers to *McFarland Lumber Co. v. B. C. R. R. Co.*, 47 I. C. C. 471, wherein we found that the rate of 15 cents charged on lumber in carloads, from Platamis, Mo., to Cairo, Ill., was unreasonable to the extent that it exceeded a rate of 10 cents which was in effect prior and subsequent to the period of 21 days when the increased rate was applicable.

We have frequently found that the voluntary reduction of a rate is not of itself a sufficient basis for an award of reparation on shipments moving prior to the reduction.

We find that the rate charged has not been shown to have been unreasonable. The complaint will be dismissed.

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