

# INTERSTATE COMMERCE COMMISSION REPORTS

No. 22551

BERNEY-BOND GLASS COMPANY *v.* DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY ET AL.

*Submitted April 15, 1930. Decided June 10, 1930*

Rate on old wooden crates, in carloads, from Newark, N. J., to Clarion, Pa., found unreasonable. Reparation awarded.

*H. C. Moag* for complainant.

*W. J. Larrabee* for defendants.

## REPORT OF THE COMMISSION

DIVISION 5, COMMISSIONERS LEWIS, PORTER, AND FARRELL

BY DIVISION 5:

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

Complainant, a corporation manufacturing glass bottles at Clarion, Pa., alleges by complaint filed July 22, 1929, that the rates charged on 10 carloads of old wooden crates shipped between August 24, 1927, and January 31, 1928, inclusive, from Newark, N. J., to Clarion, were unreasonable. Reparation is sought. Rates will be stated in cents per 100 pounds.

The shipments weighed from 3,520 to 6,200 pounds and moved as routed by the consignor over the Delaware, Lackawanna & Western and the Pennsylvania to Summerville, Pa., thence the Lake Erie, Franklin & Clarion to destination, 414 miles. Charges aggregating \$887.89, including \$5.40 diversion charges, were collected at various rates ranging from 45.5 to 62 cents, subject to minimum weights ranging from 12,000 to 20,160 pounds. The diversion charges are not assailed and will not be further considered. The applicable rate was a rule 26 rate of 62 cents, minimum 12,000 pounds, subject to rule 34, composed of local factors of 45 cents to Summerville and 17

cents beyond. Rule 34 provides that when a commodity is subject to a 12,000-pound minimum, and when, as here, a 40-foot car is used, the minimum weight will be 13,440 pounds. Complainant seeks reparation to the basis of a rate of 45 cents subsequently established.

A joint rule 26 rate of 45 cents from Newark to Clarion was applicable over the Lake Erie, Frankin & Clarion and the Pennsylvania on and after September 6, 1927, and over those lines and the Central Railroad of New Jersey on and after October 6, 1927. For some reason not explained of record, the reduced rate, however, was not established over the route of movement, until February 14, 1928, although that route is 37 miles shorter than either of the two other routes mentioned. Of the shipments considered, eight moved after September 6, 1927.

A contemporaneous rule 26 rate of 56.5 cents was in effect between the points under consideration, over routes not heretofore mentioned, for distances ranging from 451 to 708 miles. Contemporaneous rule 26 rates of 62 and 45 cents applied from Newark to Urbana, Ohio, and Pittsburgh, Pa., 668 and 430 miles, respectively.

Defendants offered no evidence.

We find that the rate assailed was unreasonable to the extent it exceeded 45 cents, minimum 12,000 pounds, subject to rule 34; that complainant received the shipments as described and paid and bore the charges thereon as herein stated; that it was damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$277.69. Complainant waives interest. Defendants should waive collection of the outstanding undercharges. An order awarding reparation will be entered.

165 I. C. C.