

# INTERSTATE COMMERCE COMMISSION REPORTS

No. 23243

MASTER BUILDERS COMPANY *v.* DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY ET AL.

*Submitted October 13, 1930. Decided December 13, 1930*

Commodity rates charged on ground iron borings, in carloads, from Buffalo, N. Y., to destinations in official territory found inapplicable. Applicable class rates found to have been unreasonable. Reparation awarded.

*A. E. Whiteside* for complainant.

*H. R. Hendrick* for intervener.

*W. S. Flint* and *W. J. Larrabee* for defendants.

## REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS McMANAMY, BRAINERD, AND LEE

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant is a corporation manufacturing ground iron borings, hereinafter called ground borings, at Buffalo, N. Y. By complaint filed March 3, 1930, as amended at the hearing, it alleges that since February 11, 1929, the rates charged on ground borings, in canvas bags, in carloads, from Buffalo to Cleveland and Cincinnati, Ohio, Chicago, Ill., St. Louis, Mo., Carrollville, Wis., Nitro, W. Va., Irvington and Newark, N. J., New York and Brooklyn, N. Y., South Wilmington, Mass., and other points in official territory were and are unreasonable and in violation of section 6 of the Interstate Commerce act. Reasonable rates for the future and reparation on shipments to Irvington and Cleveland are sought. The Cincinnati Chemical Works, Incorporated, intervened in support of the complaint. It seeks reparation on shipments from Buffalo to Norwood and St. Bernard, Ohio, and rates for the future to those points.

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The material used in the manufacture of these ground borings is obtained chiefly from automobile plants in the form of cast-iron borings or turnings from a lathe, or boring machine of that type. In treatment the borings are ground to a certain degree of fineness and screened. Before or after the grinding grease and oil are removed, and as thus processed the borings are utilized by manufacturers in the production of chemicals used in the making of aniline oils for dyes. Some manufacturers use the unground borings for the same purpose, but the grinding and cleaning process produces a more efficient material. The value of these ground borings is approximately \$20 per ton, which is about \$5 per ton above the price of the unground borings. The average weight of complainant's shipments is about 80,000 pounds per car. Shipments are in 100-pound heavy cloth bags. The volume of movement from Buffalo is 1,200 tons per month.

Iron borings, filings, or turnings, in packages or in bulk, minimum 50,000 pounds, are rated sixth class in the official classification and class D in the western. In the southern classification they are accorded scrap-iron rates. Powdered iron, n. o. i. b. n., or iron sand, in double bags, or in barrels, or boxes, was rated fifth class in the official classification, sixth class in the southern, and fifth class in the western, minimum 36,000 pounds, prior to October 15, 1930. On that date the description in the consolidated classification was changed to "Iron, granulated, ground or powdered, n. o. i. b. n., or iron sand," in bags, barrels or boxes, minimum 40,000 pounds, and the rating changed to sixth class in the official classification.

Primarily, complainant attacks the rating of ground borings in official territory. On a majority of the shipments defendants collected fifth-class rates. On the others, they applied commodity rates applicable to iron or steel borings, which were somewhat less than the sixth-class rates. On some of the latter shipments defendants have presented due bills to complainant based on fifth-class rates. As to other shipments charged the commodity rates, defendants elect to await the determination of the issues herein.

Complainant and intervener contend that as the tariffs publishing the commodity rates on borings contain no qualification as to the material being ground, those rates are applicable, but that if the commodity rates were and are inapplicable, then fifth-class rates, or any rates exceeding sixth class, are unreasonable. They state that they would be satisfied with a finding that reasonable rates on these ground borings were and are sixth-class rates.

Although the tariffs publishing the commodity rates do not limit the application of such rates to unground borings, the evidence discloses that grinding and cleaning so change the crude material as

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to make it a distinct commodity. But complainant stresses the fact that in no event can ground borings be regarded as powdered iron, on which the fifth-class rates applied. As differentiating between powdered iron and ground borings, which are also called chemical iron, the testimony is that whereas all powdered iron will pass through a 100-mesh screen and some through a 200-mesh screen, most of the ground borings will be retained on a 20-mesh screen. As above observed, however, under the official classification the fifth-class rating also embraced iron sand. There is nothing of record to indicate that iron sand is a technical term applied by users thereof to a particular kind of ground iron or borings, or that the constituents of these ground borings, which may be said to be granulated, are much different from iron sand granules. We are of the opinion that these ground borings were rated fifth class prior to October 15, 1930.

As contrasted with the value of ground borings, complainant instances feldspar, calcium chloride, aluminum sulphate, litharge, and various other commodities valued at from \$21 to \$180 per ton and which are rated sixth class in the official classification or by exceptions thereto. Intervener refers to sodium sulphide and sodium bisulphite, rated fifth class, and zinc dust, rated sixth class in the official classification, on which commodity rates substantially lower than the class rates apply to Cincinnati from various points of origin. These commodities are used as reducing agents in the chemical industry, as are ground borings.

Defendants concede that the fifth-class rating was unreasonable because of the weight and value of the material, and do not oppose an award of reparation based on the contemporaneous sixth-class rates.

The record clearly discloses that the fifth-class rating in official territory, was unreasonable and that a reasonable basis should not exceed the present rating of sixth class, minimum 40,000 pounds.

We find that the commodity rates charged were inapplicable; that the applicable rates on the shipments were the fifth-class rates applying from and to the points considered at the time of movement; but that such fifth-class rates charged were unreasonable to the extent they exceeded sixth-class rates from and to the same points, subject to a minimum of 40,000 pounds. We further find that the sixth-class rates will not be unreasonable for the future. We further find that complainant made shipments as described from Buffalo, N. Y., to Irvington, N. J., and Cleveland, Ohio; that intervener received shipments as described from Buffalo to Norwood and St. Bernard, Ohio; that the charges on some of these shipments were collected at the fifth-class rates herein found unreasonable;

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that complainant and intervener paid and bore the charges on their respective shipments; that they were damaged thereby in the amount of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. Defendants are authorized to waive the outstanding undercharges in excess of those which would have accrued on the basis of the rates herein found reasonable. Complainant and intervener should comply with Rule V of the Rules of Practice.

No order for the future is necessary, as the rates herein found reasonable were established on October 15, 1930.

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