

No. 22817

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

Submitted September 22, 1930. Decided December 15, 1930

Rate on cotton piece goods, any quantity, from Minetto, N. Y., to Bridgeport, Conn., found unreasonable and unduly prejudicial. Reasonable and non-prejudicial rate prescribed and reparation awarded.

O. R. Peterson for complainant.

W. J. Larrabee for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS MCMANAMY, BRAINERD, AND LEE

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner and oral argument was had.

Complainant, a corporation manufacturing surgical dressings, absorbent cotton, and gauze products at Bridgeport, Conn., alleges by complaint filed October 22, 1929, that the rate charged on cotton piece goods, any quantity, from Minetto, N. Y., to Bridgeport was and is unreasonable and unduly prejudicial. A lawful rate for the future and reparation on shipments delivered or tendered for delivery on and after October 23, 1927, are sought. Rates and differences in rates will be stated in cents per 100 pounds.

Minetto is on the Oswego branch of the Delaware, Lackawanna & Western, hereinafter called the Lackawanna, 5 miles southeast of Oswego, N. Y., and 99 miles northwest of Chenango Forks, N. Y. Minetto is accorded the Oswego group rate on cotton piece goods to Bridgeport. Bridgeport is on the New York, New Haven & Hartford, hereinafter called the New Haven, approximately 17 miles west of New Haven. The shipments moved over the Lackawanna to Port Morris, N. J., Lehigh & Hudson to Maybrook, N. Y., and New Haven beyond, 420 miles.

The cotton piece goods considered are used in the manufacture of adhesive plaster, and known as crinoline. It is shipped in rolls containing approximately 2,500 yards. From October 19, 1927, to February 4, 1930, complainant received from Minetto about 79 shipments weighing in the aggregate approximately 547,818 pounds. The applicable rule 25 rate of 56.5 cents was charged. Complainant contends that the rate charged was and is unreasonable and unduly

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prejudicial to the extent that it exceeded and exceeds the commodity rate of 39.5 cents contemporaneously applicable from Chadwick, N. Y., to New Haven, Conn., 406 miles. Chadwick is on the Utica branch of the Lackawanna, 76 miles northeast of Chenango Forks.

Complainant compares the rate assailed with the commodity rate of 39.5 cents from Chadwick to New Haven and Worcester, Boston, and Waltham, Mass., for distances ranging from 383 to 422 miles. It points out that this rate is 14 cents less than the contemporaneous rule 25 rate from and to those points. Comparison is also made with a commodity rate of 28.5 cents from Cohoes, N. Y., to Glenwood, Farley, Boston, and Webster, Mass., for distances ranging from 100 to 211 miles, which is from 13 to 21 cents less than the contemporaneous rule 25 rates. Complainant also instances a commodity rate of 47.5 cents from Burlington, Vt., to points in Massachusetts and Rhode Island for distances ranging from 173 to 213 miles, which is from 16 to 19.5 cents less than the contemporaneous rule 25 rates. These and other comparisons of the same general import submitted by complainant indicate that commodity rates on cotton piece goods in the territory considered are from 61 to 79 per cent of the contemporaneous rule 25 rates. The rate sought is 70 per cent of the rate assailed.

Defendants contend that there is no evidence of the circumstances surrounding the establishment of these compared rates or the volume of movement thereunder, and that they should not be accepted as a measure of the rate from Minetto to Bridgeport. The record shows, however, that commodity rates are generally maintained on cotton piece goods in this territory which are lower in varying percentages than the class rates, and that from Minetto to Bridgeport there is and has been a constant movement.

Defendants rely principally on the fact that, on traffic to New England, Minetto and Chadwick are in the Oswego and Norwich groups, respectively; that the short-line distances from these groups to Boston, New Haven, and Bridgeport are over the New York Central; that the New York Central makes and controls the rates from those groups; and that the rates from Chadwick to New Haven and Boston over the Lackawanna are made to meet this competition. However, Chadwick and Minetto are served only by the Lackawanna and that carrier controls the rates from those points to New England points. Furthermore, the applicable class rates from Minetto and Chadwick to Bridgeport, and the applicable commodity rate from Chadwick to New Haven, are restricted to apply over the Lackawanna to Port Morris via Chenango Forks thence over the route these shipments moved to Bridgeport and New Haven beyond.

In support of its allegation of undue prejudice, complainant states that it competes with a manufacturer at New Haven on the

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basis of the lowest competitive bids for adhesive tape, which is sold in the surrounding territory; that transportation costs are reflected in the sales price; and that its competitor, by reason of the commodity rate of 39.5 cents applying from Chadwick to New Haven, has an advantage of 17 cents per 100 pounds.

Defendants concede that the maintenance of the assailed rate of 56.5 cents from Minetto to Bridgeport and the rate of 39.5 cents from Chadwick to New Haven results in undue prejudice to the extent that the former exceeds the latter by more than 7 cents, which is the difference between the rule 25 rates from Minetto to Bridgeport and Chadwick to New Haven prescribed in the *Eastern Class Rate Investigation*, 164 I. C. C. 314, for the short-line distances of 308 and 235 miles, respectively. While Chadwick and Minetto are located in different groups, the present rule 25 rate is only 3 cents higher from Minetto to Bridgeport than from Chadwick to New Haven whereas the commodity rates on knit goods, lumber, matches, iron and steel articles, and other commodities, from those and other groups to New England points are the same.

In *Bay Co. v. Boston & M. R.*, 152 I. C. C. 226, division 2 found unreasonable the rule 25 rates of 56 and 47 cents on cotton piece goods, in less than carloads, from Exeter, N. H., and Walpole, Mass., to Bridgeport, 202 and 137 miles, respectively, and prescribed commodity rates which were 10.5 and 15 cents, respectively, lower than the rates assailed therein.

We find that the rate assailed was, is, and for the future will be, unreasonable and unduly prejudicial to the extent that it exceeded, exceeds, or may exceed 39.5 cents; that complainant made the shipments as described and paid and bore the charges thereon; 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, with interest. Complainant should comply with Rule V of the Rules of Practice, including in the statements any shipments which moved during the pendency of this proceeding supported by affidavits that complainant paid and bore the charges thereon. If defendants object to this method of proof, complainant may request a further hearing. An order for the future will be entered.

BRAINERD, *Commissioner*, concurring in part:

I concur in the finding of undue prejudice but not to the extent found by the majority. A spread of 7 cents is, in my opinion, a reasonable relationship between the rate from Minetto to Bridgeport on the one hand and from Chadwick to New Haven on the other. I am unable to agree with the finding of unreasonableness and respectfully dissent therefrom.

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