No. 23371

ENDICOTT JOHNSON CORPORATION *v.* DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY ET AL.

Submitted December 12, 1930. Decided January 23, 1931

Rate charged on a shipment of galvanized-iron blowpipe from Camden, N. J., to Johnson City, N. Y., found applicable and not unreasonable. Complaint dismissed.

William E. Rosenbaum for complainant.
Windsor F. Cousins for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS MCMANAMY, BRAINERD, AND LEE

BY DIVISION 3:

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

Complainant, a corporation, alleges by complaint filed April 11, 1930, as amended, that the rate charged on a shipment of galvanized-iron blowpipe from Camden, N. J., to Johnson City, N. Y., delivered on or about April 16, 1928, was inapplicable and unreasonable. Reparation only is sought. Rates will be stated in cents per 100 pounds.

The shipment consisted of 9 rolls galvanized-iron blowpipe, side seams not closed, nested, weighing 1,610 pounds; 246 pieces galvanized-iron blowpipe (diameter over 8 inches), side seams closed, not nested, weighing 6,356 pounds; 8 bags of lump charcoal, weighing 200 pounds; and 1 box of rope, weighing 216 pounds. Charges aggregating $73.23 were collected based on the carload third-class rate of 47.5 cents, minimum 15,000 pounds, on the blowpipe, and the less-than-carload third-class rate of 47.5 cents on the charcoal and rope, as provided by section 4 of rule 10 of the official classification. The rate on the latter commodities is not assailed. These charges were lower than those at the rate of 47.5 cents on the highest-classed article in the mixed carload subject to the minimum of 30,000 pounds, which was the highest minimum on any of the articles included. Complainant contends that the entire shipment should have been handled as less than carload; and that the applicable rate on the 9 rolls was the rule 25 rate of 48 cents, and on the 246 pieces the second-class rate of 56.5 cents. Reparation is sought based on those rates.

In the governing official classification, blowpipe (diameter over 8 inches), side seams not closed, nested, in rolls, is rated rule 25 in less than carloads, and the same commodity, side seams closed, not nested, filled with fittings, in bundles, in less than carloads, is rated second class. Blowpipe, in carloads, side seams closed or side seams not closed, loose or in packages, is rated third class, minimum 15,000 pounds, subject to rule 34. The car used was 40 feet 6 inches in length and the minimum thereon under rule 34 would be 16,800 pounds. The record does not disclose whether the shipper ordered this size car and it is assumed that the shipper did not in view of the weight of the entire shipment, 8,474 pounds, which includes 92 pounds blocking, and the fact that the bill of lading contained the following notation: "Ship material 'car load' or 'less carload' whichever is cheapest."

Complainant's main contention is that the 246 pieces were shipped in bundles as required by the classification. This alleged bundling consisted of loading the larger pieces of pipe in the car first and then placing the smaller pieces of pipe, the elbows, tees, and other fittings inside the larger pipes. There is no evidence that the articles placed inside the larger pipes were securely fastened and neither complainant nor the shipper knows whether all of the larger pieces of pipe were filled with fittings.

The classification does not define the term "bundles," and complainant and defendants refer to the definitions in standard dictionaries, the general purport of which is that a bundle is a number of things or a quantity of anything bound together. Bound means to restrain or fasten by a band, bond, or the like; tied; or confined. As before indicated, the evidence does not show that the smaller pieces of pipe and fittings were confined in any manner, and we are, therefore, of the opinion that this portion of the shipment was not bundled. Furthermore, rule 6 of the classification requires that each package, bundle, or loose piece of freight delivered to carriers to be transported at less-than-carload ratings must be plainly, legibly, and durably marked with the name of the consignee and destination, except when a shipment fully occupies the visible capacity of a car, or when it weighs 24,000 pounds or more. There is no evidence that this rule was complied with. In view of all of the foregoing facts we are of the opinion that this was a carload and not a less-than-carload shipment, and that the charges collected were applicable.

Complainant introduced no evidence in support of its allegation of unreasonableness and it is not sustained.

We find that the rate assailed was applicable and not unreasonable. The complaint will be dismissed.