

No. 22926

KEUKA LAKE ICE COMPANY v. LEHIGH VALLEY
RAILROAD COMPANY ET AL

Submitted September 23, 1930. Decided February 14, 1931

Rates on anthracite coal, in carloads, from Hazleton, Pa., billed from Coxton, Pa., to Penn Yan, N. Y., found not unreasonable but unduly prejudicial. Undue prejudice ordered removed. Reparation denied.

William J. Tylee for complainant.

C. A. Halpin for defendants and intervener.

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 the case was orally argued. Our conclusions differ from those recommended by him.

Complainant is a corporation dealing in anthracite coal at Penn Yan, N. Y. By complaint filed October 18, 1929, as amended, it is alleged that on anthracite coal, in carloads, from Hazleton, Pa., billed from Coxton, Pa., to Penn Yan, defendants "unlawfully charge a greater sum for a short haul than for a long haul" in that lower rates are maintained on anthracite coal to Corning, N. Y., than to Penn Yan, 57 and 19.1 miles, respectively, from Geneva, N. Y.;¹ also, that defendants "unlawfully discriminate" against complainant "in favor of" coal dealers at Dresden, N. Y., Corning, and points on the Pennsylvania division of the New York Central other than Penn Yan, on account of the application of higher rates on anthracite coal from mines on the Lehigh Valley in Pennsylvania to the latter point that are contemporaneously applied to Dresden and Corning; that the same inbound commodity rates on bituminous coal, plaster, plaster board, and tile apply to Penn Yan and Dresden, and that the same class rates apply between Penn Yan and Dresden and points on the Lehigh Valley. Such facts, it is alleged, also constitute unlawful discrimination in violation of section 2 of the interstate commerce act.

¹ Junction of Lehigh Valley and New York Central. It may be conclusively discerned through an examination of a map introduced in evidence that these particular facts have no reference to an alleged violation of section 4.

Lawful rates for the future and reparation, including in the award shipments which may move *pendente lite*, are sought. An informal complaint presenting substantially similar allegations was filed February 12, 1929, and was closed on April 22, 1929. The Pennsylvania intervened to protect its interests. Rates will be stated in amounts per ton of 2,240 pounds.

No evidence was introduced which requires further consideration of the alleged violation of section 2. At the hearing, defendants made a motion to dismiss the complaint because of alleged insufficiency of the facts pleaded to bring in issue sections 1 and 3 of the act. Thus a preliminary question is presented as to whether this motion should be sustained.

The complaint contains an allegation that rates from mines on the Lehigh Valley to Dresden and Corning have been reduced without a corresponding reduction in rates to Penn Yan, and asks that complainant be "relieved from paying the effective present rates," and that refund be made of "the amounts already paid in excess of rates established to Dresden and Corning, and that rates to Penn Yan be established on an equal basis with Dresden and Corning." Our practice has been to look to the substance rather than to the form of a complaint. We have repeatedly found that complaints need not be technically pleaded and the courts have sustained this position. *Kanawha Black Band Coal Co. v. K. C. Ry. Co.*, 98 I. C. C. 431. Our right to consider a case under a particular provision of the statute depends on the facts alleged, and not on such provisions being formally referred to in the complaint. *Chicago, R. I. & P. Ry. v. U. S.*, 274 U. S. 29. In connection with pertinent facts it is alleged that complainant has been "unlawfully charged" and "unlawfully" discriminated against in its rates. Clearly the complaint is sufficiently definite to bring in issue both sections 1 and 3. Moreover, defendant Lehigh Valley answered the complaint on the assumption that sections 1 and 3 were in issue, and at the hearing defendants introduced evidence in support of the rates assailed. Defendant's motion is denied.

Penn Yan is at the end of a branch line of the New York Central, 6 miles west of Dresden, Yates County, a local point on the Pennsylvania division of that defendant, 13 miles south of Geneva. Penn Yan is also on the main line of the Pennsylvania, intervener herein, between Elmira and Sodus Point, N. Y. Complainant's anthracite coal is purchased at Hazleton, Pa., a point approximately in the center of the Lehigh region of the anthracite coal fields of Pennsylvania. The coal is hauled by the Lehigh Valley to Coxton, in the Wyoming region, for assembling and billing, 54 miles north of Hazleton, thence to Geneva, 158 miles, thence 19 miles over the

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New York Central through Dresden to destination,¹ 231 miles. The average distances from mines on the Lehigh Valley to Penn Yan and Dresden through Geneva are 232 and 226 miles, respectively.

Between August, 1927, and October, 1929, approximately 55 carloads of the prepared sizes, and 36 carloads of pea and the smaller sizes of anthracite coal averaging about 45.7 gross tons moved from Hazleton to Penn Yan at the applicable rates of \$3.02 on prepared sizes, and \$2.65 on pea and smaller sizes. These rates apply from all points on the Lehigh Valley in the anthracite fields of Pennsylvania to Penn Yan through Geneva, and generally from all points on other lines serving the anthracite fields to Penn Yan. Complainant seeks rates of \$2.65 on prepared sizes, and \$2.39 on pea and smaller sizes for the future, and reparation based on rates of \$2.88 on prepared sizes and \$2.63 on pea and smaller sizes, on shipments which moved between June 20, 1927, and April 22, 1928; and \$2.65 on prepared sizes, and \$2.39 on pea and smaller sizes, on shipments since the latter date.

Complainant compares the rates assailed with rates of \$2.65 on prepared sizes and \$2.39 on pea and smaller sizes from the anthracite regions to Geneva, Dresden, Corning, Syracuse, Auburn, Waterloo, Seneca Falls, Groton, and Moravia, N. Y. Corning is on the New York Central, 44 miles south of Dresden, and Syracuse is on the line of that defendant about 51 miles northeast of Geneva. Auburn is a common point to the Lehigh Valley and New York Central, and is located about halfway between Geneva and Syracuse. Waterloo² and Seneca Falls are on the branch of the Lehigh Valley extending from Auburn to Geneva, about 3 and 10 miles, respectively, east of the latter point. These points are also served by the New York Central. Groton and Moravia are points local to the Lehigh Valley, approximately 17 and 27 miles, respectively, southeast of Auburn.

From January 1, 1900, to April 1, 1916, the rates from mines in the Lehigh, Schuylkill, and Wyoming regions to Penn Yan were the same as those to the foregoing destinations, and to June 20, 1927, were generally the same as those applicable to all destinations on the Pennsylvania division of the New York Central.³ On the latter date, except to points on the Penn Yan branch, rates of \$2.88 on prepared sizes, and \$2.63 on pea and smaller sizes, were established which remained in effect until April 22, 1928, when rates of \$2.65, on prepared sizes, and \$2.39 on pea and smaller sizes, were established to the same destinations. Rates to Penn Yan, however, remained \$3.02 on prepared sizes, and \$2.65 on pea and smaller sizes.

¹ Seneca County.

² Includes stations on the New York Central, Geneva to Dresden, excluding Geneva; Dresden to Penn Yan; and Dox, N. Y., to Corning.

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Complainant refers to *Goss v. Director General*, 73 I. C. C. 649, decided October 14, 1922, wherein we found that since August 26, 1920, rates on anthracite coal from mines on the Lehigh Valley in Pennsylvania to Auburn, Groton, and Moravia were unreasonable and unduly prejudicial to the extent that they exceeded \$3.08 on prepared sizes, and \$2.80 on pea and smaller sizes, subject, however, to the general 10 per cent reduction of 1922,⁴ and that since November 5, 1920, rates to Waterloo and Seneca Falls applicable over the Lehigh Valley were unreasonable to the extent that they exceeded those found reasonable to the other destinations involved. It was there observed that distances from Hazleton to the considered destinations ranged from 221 to 249 miles.

In *Anthracite Coal Investigation*, 122 I. C. C. 527, decided February 14, 1927, also relied upon by complainant, we found that reasonable rates on prepared sizes to Geneva, Albany, Troy, Mechanicville, Utica, Syracuse, Hornell, and other points grouped therewith, would be (a) \$2.65 from all points in the Wyoming region on the line of each carrier serving that region, except mines on the Central Railroad of New Jersey, the Lehigh Valley, and the Pennsylvania, over all single-line routes; and also over the shortest tariff route to each destination, determined by averaging the distances from all mines in the Wyoming region on each carrier to each destination; and (b) \$2.88 from all mines in the Wyoming, Lehigh, and Schuylkill regions on the line of each carrier serving any of those regions, over all routes over which a rate of \$2.88 was proposed under the schedules suspended in that proceeding, except those routes over which a lower rate was authorized. Following that decision, rates on prepared sizes to Dresden and Corning were reduced to \$2.88, and subsequently as above indicated were again reduced to \$2.65. The average distances introduced by respondents in that case were as follows:

From—	To Albany, N. Y.	To Utica, N. Y.	To Syracuse, N. Y.	To Albany, Syracuse, and Utica, N. Y.
	Miles	Miles	Miles	Miles
Logical and tariff routes combined from Wyoming region *.....	300	232	235	256
Logical and tariff routes combined from all regions *.....	322	281	278	294
Logical routes from all regions *.....	257	248	238	248
Principal tariff routes.....	266	271	263	266

* Embraces logical routes and tariff routes not included in logical routes.

† Embraces both tariff routes and routes over which no joint rates are published; considered reasonable by protestants.

⁴ These respective rates were reduced to \$2.77 and \$2.52.

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Complainant shows that rates on bituminous coal from Morris Run, Pa., and from points in the Pittsburgh district, and on brick, plaster, and certain other commodities from various other points to Penn Yan, are, in most instances, on a parity with the rates to Dresden.

Defendants point out that the rates assailed apply over a joint-line haul, and that to destinations on the New York Central located off the main line which are not intermediate over any route to single-line competitive points, such as Syracuse and Utica, rates are generally higher than those applicable to main-line points. For instance, while the rates to Syracuse and Utica on prepared sizes are \$2.65, the rates to Woodward, N. Y., 7 miles north of Syracuse, and to Marcy, 6 miles north of Utica, are \$3.15 and \$3.28, respectively. The mere fact that a route embraces a joint-line haul does not in and of itself warrant a higher rate than would be reasonable for a single-line haul. *Anthracite Coal Investigation, supra*, page 535. The same basis of rates is frequently ordered established to both branch and main line points, especially in instances where group rates are under consideration.

Defendants also point out that rates similar to those assailed apply from anthracite fields in Pennsylvania to Penn Yan, over the intervener, average distance 224 miles, and that in *Fiero & Monin v. Pennsylvania R. Co.*, 147 I. C. C. 592, division 2 found that a rate of \$3.15⁵ on prepared sizes applicable over the intervener to Penn Yan was not unreasonable or otherwise unlawful. That rate is not in issue here. Over the route of the Pennsylvania to the destinations⁶ there considered the maximum circuitry is about 45 per cent and the present rates over the Pennsylvania to those destinations exceed those contemporaneously in effect over other available routes by from 14 to 51 cents.

As previously stated, prior to June 20, 1927, the rates from points on the Lehigh Valley to Penn Yan generally were on a parity with rates applying to destinations in the same territory. Based on an average distance of 231 miles, and average carloading of 45.7 long tons of 2,240 pounds, the rate assailed of \$3.02, on prepared sizes, yielded car-mile earnings of 59.7 cents and ton-mile earnings of 13.07 mills. A rate of \$2.65 on prepared sizes now applicable to Syracuse, Dresden, and other destinations in the same territory, if established to Penn Yan from mines in the Wyoming, Lehigh, and Schuylkill regions, would yield earnings of about 52 cents per car-mile and 11 mills per ton-mile.

⁵ Reduced to \$3.02, following *Anthracite Coal Investigation, supra*.

⁶ Elmira, N. Y., and several destinations on the lines of the intervener north thereof to and including Seneca Castle, N. Y.

In *Sussex County Fuel Club v. Erie R. Co.*, 167 I. C. C. 193, decided July 15, 1930, we prescribed rates on anthracite coal of \$2.39 on prepared sizes, and \$2.27 on pea and smaller sizes, from points in the Schuylkill region on the Reading to certain destinations on the Lehigh & Hudson River in the northern part of New Jersey, average distance approximately 150 miles.

Other than an apprehension that the equalization of rates to Penn Yan with those applicable to Dresden may have an adverse effect upon the rates to certain points on the line of the intervener, defendants offer no justification from a transportation standpoint why complainant should have a rate relationship different from that accorded receivers of coal at Dresden. Complainant competes with coal dealers located at that point. The intervener's line does not connect with that of the New York Central at Penn Yan. The maintenance by defendants of rates to Penn Yan which subjects complainant to a decided rate disadvantage as compared with its competitors' rates at Dresden is not justified by transportation conditions and results in undue prejudice and preference which should be removed.

We find that the rates assailed were not and are not unreasonable, but that they were, are, and for the future will be unduly prejudicial to complainant at Penn Yan and unduly preferential of its competitors at Dresden to the extent that they exceeded, exceed, or may exceed the rates contemporaneously maintained by defendants from the same origin to Dresden. The evidence of damage by reason of the undue prejudice found to exist is not sufficient, however, to justify an award of reparation.

An order for the future will be entered.

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