

No. 25502

WOOLEN & WORSTED MILLS, INCORPORATED v. DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY

Submitted January 11, 1933. Decided February 25, 1933

Rate charged on woolen cloth, any quantity, from Fulton, N. Y., to New York, N. Y., in interstate commerce found inapplicable. Applicable rate found unreasonable. Waiver of undercharges authorized. Complaint dismissed.

George L. Graham for complainant.

W. J. Larrabee for defendant.

REPORT OF THE COMMISSION

DIVISION 5, COMMISSIONERS PORTER, FARRELL, AND TATE

BY DIVISION 5:

The shortened procedure was followed herein. No exceptions were filed to the examiner's proposed report.

Complainant alleges by complaint filed August 23, 1932, that the applicable rate on woolen cloth, any quantity, shipped between July 29, 1929, and August 25, 1931, inclusive, from Fulton, N. Y., to New York, N. Y., in interstate commerce, was unreasonable. Waiver of outstanding undercharges is sought. Defendant instituted suit to recover undercharges July 28, 1932, which suit is now pending.

During this period 800 shipments of woolen cloth were made by complainant, ranging from less than 100 pounds to more than 5,000 pounds each. A commodity rate of 47.5 cents per 100 pounds was charged. This was established January 1, 1905, as an any-quantity rate of 25 cents, applicable to cloth and yarn, which, as treated by the general increases and reduction, became 47.5 cents. On July 29, 1929, the rate of 47.5 cents was restricted to apply only on "cloth, cotton", any quantity. Woolen cloth was then subjected to the first-class rate of 66.5 cents. On September 28, 1931, a commodity rate of 47.5 cents, any quantity, was again made applicable to woolen cloth and is the present rate.

Contemporaneously a rate of 47.5 cents was applicable on this commodity from Fulton to New York over lines of the New York Central Railroad Company and New York, Ontario and Western Railway Company, which rate has been maintained continuously by these carriers. Defendant offered no evidence.

191 I. C. C.

We find that the rate charged was inapplicable; that the applicable rate was 66.5 cents; and that the applicable rate was unreasonable to the extent it exceeded 47.5 cents. Defendants may waive collection of the undercharges. The complaint will be dismissed.

FOURTH SECTION APPLICATION No. 14944
COAL FROM NICHOLAS, FAYETTE & GREENBRIER
RAILROAD COMPANY MINES

Submitted November 22, 1932. Decided February 27, 1933

Authority granted, on conditions, to establish and maintain rates on coal, in carloads, from mines on the Nicholas, Fayette & Greenbrier Railroad in the New River district in West Virginia, to points in the South and East, without observing the long-and-short-haul provision of section 4.

P. P. Belitz for applicants.

REPORT OF THE COMMISSION

DIVISION 2, COMMISSIONERS AITCHISON, PORTER, AND TATE

BY DIVISION 2:

The New York Central Railroad Company for itself and on behalf of the Nicholas, Fayette & Greenbrier Railroad Company hereinafter called the originating line, the Virginian Railway Company, and other carriers parties to Virginian Railway Company's tariffs I. C. C. Nos. 1830, 1891, and 1905, apply for authority to establish and maintain rates on bituminous coal, in carloads, from mines on the originating line in the New River district in West Virginia to points in Alabama, Delaware, Florida, Georgia, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, and Virginia, as described in the tariffs mentioned, without observing the long-and-short-haul provision of section 4 of the interstate commerce act. Rates will be stated in amounts per net ton.

The originating line is owned jointly by the New York Central and Chesapeake and Ohio and connects with those lines, respectively, at Swiss and Meadow Creek, W. Va. Joint rates now apply from the mines in question to the destinations concerned by way of Meadow Creek, Chesapeake and Ohio and connections. Applicants propose to establish rates over their lines through Swiss, New York Central, Deepwater Bridge, W. Va., Virginian and connections, the same as in effect through Meadow Creek to the same destinations.

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