

No. 27361

JACOB GROOT ET AL. v. DELAWARE, LACKAWANNA &
WESTERN RAILROAD COMPANY ET AL.

Submitted November 9, 1936. Decided December 15, 1936

Carload rates charged on cattle from Amherst, Wis., and Wayland, Mich., to Passaic and Mountain View, N. J., found applicable. Applicable charges can not be determined, as weights to compute such charges cannot be ascertained. Complaint dismissed.

O. H. Brown for complainants.

W. J. Larrabee for defendants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, PORTER, AND MAHAFFIE

BY DIVISION 4:

The shortened procedure was followed. Complainants filed exceptions to the examiner's report.

Complainants, Jacob Groot and Joe Kahn, allege that, due to the use of unauthorized weights, the rates charged on one carload of cattle shipped August 27, 1932, from Amherst, Wis., to Passaic, N. J., and on two carloads of cattle shipped February 6 and May 26, 1934, from Wayland, Mich., to Mountain View, N. J., were inapplicable.

The shipment from Amherst moved over certain of the defendants' lines, and charges of \$198.38 were collected at the applicable rate of 75 cents per 100 pounds, composed of a distance commodity rate of 22 cents to Rugby Junction, Wis., and a proportional rate of 53 cents beyond. The shipments from Wayland moved over certain of the defendants' lines, and charges of \$160.72 on the February shipment and \$136.22 on the May shipment were collected at the applicable rate of 49 cents. Complainants state that the respective weights of the above shipments were 26,450, 32,800, and 27,800 pounds, but they do not show how these weights were ascertained. They refer to the governing tariffs and contend that the weights on which the charges collected are based were in excess of minimum weights of 24,400 and 24,000 pounds provided therein.

The governing tariffs contain numerous rules, which must be considered, that provide the conditions upon which weights on cattle are to be ascertained for the purpose of computing freight charges. Be-

219 I. C. C.

fore these rules can be applied to the instant shipments it is necessary to have evidence of record that will enable us to determine which weights are to be used. The record is totally lacking in this respect.

Defendants state that the shipments were overcharged, and that the overcharges have been paid, that is, by set-off on other shipments on which complainants have neglected or refused to pay the applicable charges. No evidence of any value in determining the weights to apply on the instant shipments has been offered by defendants.

We find that the rates of 75 and 49 cents charged were applicable, but this record does not afford a basis upon which we can determine the applicable charges. The complaint will be dismissed.

219 I. C. C.