No. 27792

STRAIGHT LINE ENGINE COMPANY, INCORPORATED, v. DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY ET AL.

Submitted February 8, 1938. Decided March 9, 1938

Rate charged on one carload of machinery and machinery parts from Syracuse, N. Y., to North Baton Rouge, La., found inapplicable. Applicable rate on this shipment and the rate charged on four carloads of machinery and machinery parts n. o. i. b. n., and the power pumps and parts for same included in one of the shipments from and to the same points not shown to have been unreasonable. Reparation awarded.

L. V. Brandt, *Robert A. Peckens*, and *Edgar O. Anderson* for complainant.

W. J. Larrabee for defendents.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS MCMANAMY, PORTER, AND MILLER

BY DIVISION 3:

The shortened procedure was followed. Complainant filed exception to, and our conclusions differ from, the examiner's recommendations.

Complainant corporation alleges by complaint filed July 6, 1937, that the rates charged on one carload originally described and billed as rough and finished castings, three carloads of machinery and machinery parts n. o. i. b. n., and one carload of the latter articles and eight crates of power pumps and one box of parts for same, shipped between December 10 and 31, 1934, inclusive, from Syracuse, N. Y., to North Baton Rouge, La., were unreasonable. Reparation is sought. An informal complaint covering these shipments and alleging violations of sections 1, 4, and 6 of the Interstate Commerce Act was filed on behalf of complainant on November 23, 1936, and closed June 11, 1937. Rates are per 100 pounds.

The shipments, aggregating 219,819 pounds, moved as routed by the shipper over lines of the Delaware, Lackawanna and Western Railroad Company to Buffalo, N. Y., the New York, Chicago and St. Louis Railroad Company to St. Louis, Mo., the Missouri Pacific Railroad Company to Alexandria, La., and the Louisiana & Arkansas Railway Company beyond, 1,702 miles.

Rough and finished iron or steel castings were rated sixth class and fifth class, minimum 36,000 pounds, respectively, and machinery and machinery parts and power pumps were rated sixth class, minimum 24,000 pounds, subject to rule 34, in the governing southern classification. The one shipment, described on the bill of lading and billed as rough and finished castings, moved in car D. L. & W. 65917 and consisted of the following articles:

	Pounds
Spider and valve body for float regulator	475
Seven pipe collars and funnel, rough castings	418
One caustic-pot cover, rough casting	3,900
Two star dischargers complete	23,000
One filter complete	27,000

The filter in this shipment and those in the other shipments were dismantled insofar as necessary for convenience of loading and shipping. The fifth-clas rate of $1.18 was charged on this carload. Complainant claims that the sixth-class rate of $1.05 was applicable. All the articles in the shipment were rated sixth class, either specifically or by use of the analogous rule of the classification. The weights of the articles shown above aggregate 54,793 pounds, but the charges were based on a weight of 54,818 pounds. Complainant does not question the accuracy of the latter weight, which was the weight shown by it on the bill of lading. This shipment was overcharged $71.26. The applicable sixth-class rate was orginally or ultimately charged on the other shipments, which consisted of such articles as filters, caustic-pot covers, small bailing pumps, and cast-iron flanges, tank bushings, and counterweight collars and shafts. The class rates referred to were established pursuant to the findings in the southern class-rate revision.

Complainant contends that the applicable rate was unreasonable to the extent that it exceeded the combination rate of 91 cents, composed of the fifth-class rate of 40 cents to Richmond, Va., and a commodity rate of 51 cents beyond. The official classification rating of fifth class governed the rate to Richmond. The 40-cent factor applied over two routes to Richmond and the 51-cent factor applied over the route of the Southern Railway Company and certain of its connections. The distances over these routes are 1,714 and 1,756 miles. Complainant states that, when the shipments were made, it understood that the rates and charges "were on an equal basis via all reasonable routes," and owing to this the shipments were specifically routed. The mere showing of a lower rate over a different route is insufficient to condemn the applicable rate over the used route, and, since the shipper is charged with knowledge of the applicable rate, the testimony indicating that it thought the rate was the same over all

reasonable routes is immaterial. The applicable rate over the used route yielded average car-mile earnings of 27.1 cents and the ton-mile earnings were 12.3 mills. The rate sought would yield 23.5 cents and 10.7 mills respectively, over the used route and 23 cents and 10.5 mills, respectively, based on the average distance of 1,735 miles through Richmond. All car-mile earnings are based on the average weight of the shipments, 43,964 pounds. The weight of each shipment exceeded the minimum under rule 34.

Defendants, in addition to showing that the applicable rate was prescribed by the Commission, state that there are no commodity rates in effect on castings or on machinery from Syracuse to points in southern territory or to southern or southwestern gateways such as Richmond, Cincinnati, Ohio, or St. Louis, Mo. Complainant contends that defendants have not shown that the rate assailed was reasonable as required by the statute. The applicable rate assailed has been increased since 1910 and the burden is on defendants to establish its lawfulness. Defendants' evidence, however, is sufficient to sustain that burden of proof. Moreover, no presumption of unreasonableness attaches to the joint rate over the route of movement because a lower combination was in effect over another route. *Prairie Pipe Line Co.* v. *Missouri Pac. R. Co.*, 139 I. C. C. 187.

We find that the rate charged on the shipment in car D. L. & W. 65917 was inapplicable; that the applicable rate was $1.05; that the applicable rate on all the shipments has not been shown to have been unreasonable; that complainant made the shipment in car D. L. & W. 65917 and paid and bore the charges thereon at the rate found inapplicable herein; and that it was damaged thereby and is entitled to reparation in the sum of $71.26, with interest. An order awarding reparation will be entered.