

INVESTIGATION AND SUSPENSION DOCKET No. 4613¹
STOP-OFF TO LOAD AND UNLOAD ON DELAWARE,
LACKAWANNA & WESTERN RAILROAD

Submitted August 14, 1939. Decided October 3, 1939

Schedules authorizing stopping of shipments to complete loading or to partly unload at intermediate points on the Delaware, Lackawanna & Western Railroad and other railroads found justified. Proceedings discontinued.

W. J. Larrabee, R. W. Barrett, P. G. Martin, Jr., and L. H. Strasser for respondents.

Glenwood W. Rouse for Interstate Commerce Commission.

REPORT OF THE COMMISSION

PORTER, *Commissioner*:

By schedules filed to become effective April 10 and 24, 1939, The Delaware, Lackawanna and Western Railroad Company and the Wabash Railway Company proposed to establish certain rules affecting the stopping of cars at intermediate points to complete loading and to partly unload, as set forth in the appendix hereto. These schedules of the two respondents named were postponed until November 10 and 24, 1939, respectively.

The Lehigh Valley Railroad Company established, effective April 10, 1939, similar rules, also indicated in the appendix hereto. The schedules published by this respondent were made the subject of investigation in No. 28266, and the three proceedings were heard upon the same record.

Respondents Delaware, Lackawanna & Western and Wabash take the position that, under their present tariffs authorizing the stopping of cars at intermediate points to complete loading, they are not authorized to furnish an empty car at such intermediate point and load therein additional freight which would otherwise be loaded in a car of the same consignment from the origin point if stopped at the intermediate point to complete loading. They contend that, if such additional freight to be loaded at the intermediate point should be entitled to be billed as overflow freight, the present tariffs are mandatory that an empty car be hauled from the origin point to the

¹ This proceeding also embraces Investigation and Suspension Docket No. 4622, Stop-Off to Unload on Wabash Railway, and No. 28266, Stop-Off to Load and Unload on Lehigh Valley Railroad.

stop-off point instead of setting in an empty car at the latter point to accommodate the overflow freight.

Likewise they take the position that, under their present tariffs authorizing the stopping of cars at intermediate points to partly unload, they are not authorized to terminate any of the cars in a battery of cars comprising a single consignment at intermediate points for partial or complete unloading, although by doing so they may avoid the wasteful transportation of a number of partly loaded cars by transferring small lots of freight to other cars moving from the intermediate points to the final billed destination.

The Lehigh Valley schedules under investigation were published for similar reasons.

The subject of stop-off arrangements and the limited revenues yielded on shipments moving in a battery of several cars was discussed in *Freight Forwarding Investigation*, 229 I. C. C. 201. The practices there condemned were incident to the stop-off arrangements and concerned inefficient loading to accommodate shipments which were stopped off to complete loading or to partly unload. For example, quoting from pages 243 and 244 of that report:

A battery of six cars was billed from Boston to Chicago. Only two of these cars moved through from Boston to Chicago; one was loaded with freight for Cincinnati and Toledo, Ohio, Detroit, Indianapolis, and Louisville, but billed to stop off at Detroit for partial unloading; and the remaining three cars were billed for a stop to complete loading at Springfield, Gardner, and Worcester, respectively. The weights in the first three cars were 15,832, 6,198, and 10,237 pounds, respectively, totaling 32,267 pounds. The master waybill disclosed that the three cars stopped to complete loading did not contain any revenue freight from Boston to the stop-off points. There was loaded into these three cars 6,222 pounds at Springfield, 1,944 pounds at Gardner, and 5,752 pounds at Worcester, totaling 13,918 pounds. Transportation charges in the sum of \$355.62 were collected on the six cars, aggregating 46,185 pounds, at the fourth-class rate of 77 cents, minimum 30,000 pounds. The total distance traveled by the six cars aggregated 6,011 miles, the average weight was 3.8 tons per car, and the earnings per car-mile 5.9 cents. In addition to the transportation rate a charge of \$6.30 was collected for each car stopped.

A number of the practices which were condemned in *Freight Forwarding Investigation*, *supra*, were made possible by virtue of the stop-off arrangements authorized in respondents' tariffs. Quite a few of these have been discontinued without the discontinuance of the stop-off arrangement itself. The present record discloses the limited amount of freight loaded in many cars representing a single consignment. The record establishes that the primary cause of favoritism to any class of shippers such as the forwarders is not the stop-off rule, which simply authorizes stops to partially load or unload, but the practices incident to the application of that rule,

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such as inefficient loading of equipment which leads to wasteful transportation.

The presence or absence of the proposed rules in respondents' tariffs cannot compel efficient loading of shipments. Plainly respondents should not be required to haul empty equipment from place to place in order to meet their conception of the present stop-off regulations.

However, these schedules are part and parcel of respondents' stop-off rules, and this record shows that the wasteful transportation indulged in because of the absence of the schedules here in issue is of minor consequence compared with that performed and the revenues dissipated under the stop-off rules in behalf of the forwarders. For example, out of 26 shipments shown to have been billed from Brooklyn, N. Y., over the Delaware, Lackawanna & Western to Buffalo, N. Y., under the all-commodity rate of 44 cents, minimum 30,000 pounds, 6 of them included 30,000 pounds each and one 48,000 pounds, loaded at Newark, N. J., a stop-off point. Out of 20 shipments from New York, N. Y., to St. Louis, Mo., 10 were stopped at Newark for the loading of over 30,000 pounds each, and in 2 instances the freight added was 50,000 pounds. Out of 17 shipments from New York to Chicago, Ill., 16 were stopped at Newark for the loading of more than 30,000 pounds each. In 5 of the latter instances over 50,000 pounds was added, and in 1 instance over 80,000 pounds. In March 1939 the Lehigh Valley billed from New York to Chicago 27 shipments, all of which were stopped at Newark to complete loading and in each instance more than 30,000 pounds was added, in several over 80,000 pounds, and in one 132,000 pounds. In the reverse direction, and at other intermediate points, the practices are similar. All these were shipments of forwarder freight.

The use of the privileges of stop-off under such circumstances is a misapplication of the term. Stop-off is accorded ordinary shippers in order to permit them to load or unload part of a carload, but here the "added" traffic is in many instances a carload and in some several carloads.

Again, the schedules here being considered are or were intended to be parts of tariff rules which are in effect exceptions to rule 24 of the classification, which provides that when a shipment, the authorized minimum weight for which is 30,000 pounds or more, cannot be loaded in one car, each car except that containing the excess must be loaded as heavily as loading conditions will permit. As stated in *Follow-Lot Cars to Texas*, 232 I. C. C. 197, "the object of the rule is, of course, to preserve the integrity of the applicable minimum and to permit the use of more than one car only when such shipment

cannot be loaded in a single car." The forwarder freight "added" at Newark in the month of March 1939 weighed approximately 3,745,000 pounds, and was loaded in 185 cars, so that the average was about 20,240 pounds. Many of these cars, of course, were loaded much below the average. The average minimum was not less than 30,000 pounds. The stop-off rule as applied by respondents thus encourages the wasteful use of additional equipment, in contravention of the multiple-car principle, and results in lower charges than would apply if these "added" cars were shipped separately, thus dissipating the revenues of respondents.

We are not unmindful of the fact that respondents at New York for example, under tariff authority, load and unload carload freight and that, if the schedules under consideration are canceled, under the promiscuous-loading rule respondents can, if they see fit, ostensibly for their convenience, load a shipment in two or more cars even though it could readily be loaded into one car, and at the request of the shipper can stop one or all of the cars at Newark or some other intermediate point for additional loading, as is done now. That tariff responsibility of respondents, however, affords no excuse for, but rather aggravates the seriousness of, the wasteful practices above referred to. Rail carriers generally now doing so should cease engaging in such practices, not only because they result in loss of revenue, but also because they breed unjust discrimination and undue prejudice as between shippers. See *Follow-Lot Cars to Texas, supra*, page 200.

The foregoing is not directed against legitimate stop-off practices, either to partly load or unload, which can be enjoyed by any shipper who employs carrier equipment in accordance with rule 24. It is directed against the practice of using stop-off arrangements in complete disregard of rule 24 and in such fashion as to encourage wasteful transportation and the dissipation of respondents' revenues. No good reason appears, simply because a forwarder or other shipper orders a stop-off on a portion of his consignment, why respondents should permit the loading of cars with less freight than if no stop-off were made. A second car should not be used unless the freight cannot be loaded into one car.

As indicated, the schedules here considered are in themselves not objectionable, for plainly they promote economy in operation by avoiding the needless hauling of empty cars between the billing point and the intermediate stop-off point, and accordingly we see no sufficient reason for condemning them. Most of the wasteful practices above referred to are the outgrowth of the promiscuous-loading rule and the multiple-car rule as applied by respondents, and those rules are not here in issue.

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We find that the schedules under investigation have been justified. Orders will be entered vacating the suspension orders and discontinuing these proceedings.

EASTMAN, *Chairman*, concurring:

I concur in the conclusions reached, but not in much of the discussion which precedes the conclusions. I am authorized to say that COMMISSIONERS MAHAFFIE and SPLAWN concur in this expression.

CASKIE, *Commissioner*, dissenting:

I cannot reconcile the findings herein with the findings in *Follow-Lot Cars to Texas*, 232 I. C. C. 197.

The report condemns the perversion of legitimate stop-off practices and concludes that the condemned practices should cease, not only because they cause dissipation of revenues, but also because "they breed unjust discrimination and undue prejudice as between shippers," citing *Follow-Lot Cars to Texas*, *supra*. It also concludes that the proposed rules are "part and parcel" of respondents' stop-off rules which, as now applied, are the cause of wasteful transportation and dissipation of revenues, compared with which the saving probable under the proposed rules is inconsequential. These conclusions being sound, it is a mere sophistry to say that the proposed amendatory parts of the stop-off rules "in themselves are not objectionable" because they will enable respondents to avoid some needless hauling of empty cars under a semblance of legality while they continue to flout the underlying purpose of legitimate stop-off practices. Respondents can readily accomplish the alleged purposes of the proposed rules by exercising reasonable diligence when cars are loaded by them, and by the maintenance of and strict adherence to reasonable and nondiscriminatory stop-off, loading, and multiple-car rules.

The real question here is whether we should, by finding the schedules justified, make it easier for respondents to continue the condemned practices. I am unwilling to give them the sanction implied by such approval.

COMMISSIONER PATTERSON did not participate in the disposition of these proceedings.

APPENDIX

Schedule proposed by Delaware, Lackawanna & Western

PORTION OF FREIGHT TO BE LOADED OR UNLOADED AT STOP-OFF POINTS MAY BE HANDLED
IN SEPARATE CARS ORIGINATED OR TERMINATED AT STOP-OFF POINT

(a) When a carload shipment loaded in more than one car pursuant to tariff authority, is ordered by the shipper to be stopped off at an intermediate point on the line of this Company for partial unloading, the car or cars containing
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the portion of the shipment to be so unloaded may be completely unloaded and released at the stop-off points, and in such case the shipment and the computation of the charges thereon shall in all respects be treated as though the car or cars made empty at the stop-off point had moved through to final destination.

(b) When a carload shipment delivered to this company at one of its pier stations in New York, N. Y., or Brooklyn, N. Y., is ordered by the shipper to be stopped off at Hoboken-Jersey City, N. J., or Newark, N. J., for completion of loading under the provisions of this rule, this Company may, for operating convenience, place a separate car at Hoboken-Jersey City, N. J., or Newark, N. J., to be loaded with the freight that would otherwise be loaded there into the car or cars containing the shipment ordered to be stopped, and such shipment and the car so loaded at Hoboken-Jersey City, N. J., or Newark, N. J., shall be treated in all respects as though such car had been partially loaded at such New York or Brooklyn pier station and actually stopped off at Hoboken-Jersey City, N. J., or Newark, N. J., for completion of loading.

(c) The charge for stop-off for partial unloading will be assessed only on the car or cars actually stopped at the stop-off point and there partially or entirely unloaded. The charge for stop-off for partial loading will be assessed only on the car or cars actually stopped at the stop-off point and there partially loaded, or, in lieu of such stopping-off, on the separate car or cars placed and so partially loaded at the stop-off point.

Schedule proposed by the Wabash

Carload consignments which move under rules as provided * * * in Items 75 or 80 of Wabash Tariff I. C. C. No. 7075, may include freight for an intermediate point, if covered by tariffs lawfully on file with the Interstate Commerce Commission authorizing stopping in transit for partial unloading and such freight for such intermediate point may be loaded in a separate car to be completely unloaded at such intermediate point.

Except as otherwise provided; when a carload consignment is loaded in more than one car under rules as provided in tariffs, * * * any car or cars containing any part of such consignment may be completely unloaded and terminated at an intermediate point, en route to ultimate destination, and the charge as provided in Rule 7 (\$6.93 per car) will be assessed.

Schedules of the Lehigh Valley

The schedules of the Lehigh Valley here under investigation are substantially similar to those proposed by the Delaware, Lackawanna & Western, as previously set forth herein, and are contained in Lehigh Valley tariff I. C. C. No. C-8934, page 23 thereof.

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