

INVESTIGATION AND SUSPENSION DOCKET No. 4667  
LOADING OF MULTIPLE CARS ON DELAWARE, LACKAWANNA & WESTERN RAILROAD

*Submitted October 14, 1939. Decided July 1, 1940*

Proposed graduated minimum rule in lieu of rule 24 of official classification, for application at Buffalo, East Buffalo, and Black Rock, N. Y., in connection with all-commodity rates, found not justified. Suspended schedule ordered canceled, and proceeding discontinued.

*W. J. Larrabee* for respondent.

*Glenwood W. Rouse* for Interstate Commerce Commission.

REPORT OF THE COMMISSION

PORTER, *Commissioner*:

By schedule filed to become effective July 17, 1939, respondent, the Delaware, Lackawanna and Western Railroad Company, proposed to establish different minima when two or three cars less than 41 feet in length are loaded with a single shipment through various freight-station facilities of respondent at Buffalo, East Buffalo, and Black Rock, N. Y. Upon our own motion we suspended the operation of the schedule until February 17, 1940. Respondent has voluntarily further postponed the effective date of the schedule for a sufficient period to enable us to determine its lawfulness.

Respondent proposed to establish the following rule on freight received by it at Columbia Street Station, Buffalo, East Buffalo, and Black Rock, when moving at all-commodity rates:

Where cars less than 41 feet in length, inside measurement, are used, the requirements of Rule 24 of Official Classification that each car except the car carrying the excess, must be loaded as heavily as loading conditions will permit and to the marked capacity of the car if practicable, and each car so loaded charged at the actual or authorized estimated weight, subject to established minimum carload weight and at the carload rate or rating applicable, will not apply, and each car will be charged at actual weight and at the rate applicable under this tariff, subject to minimum weight of 35,000 pounds for entire shipment when two cars are used, and minimum weight of 52,500 pounds where three cars are used. No series shall consist of more than three cars.

If more than three cars are used, the additional car or cars shall be considered as a new series.

Where cars 41 feet or over in length, inside measurement, are used, Rule 24 of the Official Classification will apply.

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The substantial effect of this rule is to accord the all-commodity rates, subject to a minimum of 17,500 pounds per car, to 2-car or 3-car shipments, provided that the cars used are less than 41 feet in length.

The proposed rule would waive the requirements under rule 24 that the so-called lead car must be loaded as heavily as loading conditions will permit, and that minimum charges thereon will be collected at the minimum weight of 30,000 pounds applicable on this traffic. Under rule 24 it is contemplated that carriers may load other freight in or on the car carrying the tonnage which cannot be loaded in or on the lead car. As a matter of practice, however, the railroads seldom, if ever, use the excess space in the so-called overflow car for other freight, and certainly not for forwarder freight. The purpose of the proposed rule is three-fold: (1) To relieve congestion at Pier 26, East River, New York, N. Y., to which most of this forwarder traffic loaded in more than one car moves, (2) to minimize claims for damage because of the loading requirements under rule 24, and (3) to reduce labor costs at Pier 26 because of the additional time required in unloading cars which are filled to full visible capacity.

In trunk-line territory, stopping in transit for partial unloading is not permitted on shipments loaded in more than one car under the authority of rule 24. The proposed rule, by exempting this traffic from rule 24, would permit stop-offs. In New England territory, stop-offs are now permitted on traffic subject to rule 24.

At the points of origin the freight is brought to the freight stations in varying quantities throughout the working day, most of it arriving in the late afternoon. It is not practicable to assemble an entire carload of this traffic on the station platform, so the freight must be loaded as it is received. Frequently the more fragile packages are received and placed in the car several hours before the heavier ones are received and loaded. Therefore, when the cars are loaded to full visible capacity, there is considerable pressure upon the packages at the bottom, sometimes resulting in damage claims.

The contents of the cars are similar to the merchandise described in catalogs of some of the larger mail-order houses, and include packages of differing shapes, sizes, and weights, and of heavy and light densities, some of which are fragile and others not. The weights range from less than a pound per package to units of machinery weighing as much as 2 tons. Much of this freight is in cartons or in slatted or solid wooden containers, and some of it has practically no protective covering. The practice of loading the initial car to the roof with such miscellaneous freight, in many instances

with the lighter and more fragile shipments at the bottom, and of requiring respondent's unloading force to climb over the loads, tends to damage the freight and retards unloading.

The East Buffalo station is used primarily for local freight. An especially large volume of forwarder traffic is handled at Black Rock, which is used principally as a transfer station for east-bound and west-bound freight.

A witness for respondent described in detail the method of unloading these cars at its pier stations in New York. The cars are floated from Hoboken, N. J., to Pier 26 and remain on floats while unloading takes place. Frequently there is no way for the unloading force to get into the cars except by climbing to the top of the load after making a space for a foothold. Because of the limited pier facilities, it is sometimes impracticable to unload during the working day all the cars that are on the floats. This necessitates resealing the cars, lightering them back to Hoboken, and returning them to the pier station on the following morning.

The traffic here under consideration is shipped principally by Acme Fast Freight, Inc., and, as stated, moves at all-commodity rates. The all-commodity rates are, per 100 pounds, from Buffalo, to New York, Newark, N. J., and Philadelphia, Pa., 44 cents, and to Boston, Mass., 53 cents. The minimum weight of 30,000 pounds applying in connection with these rates is generally applicable with all-commodity rates in both trunk-line and central territories. All-commodity rates were first published by respondent to meet the competition of other eastern railroads using specially constructed merchandise containers. This competition has largely disappeared, and motor-carrier competition is now the controlling influence in the maintenance of these rates. This latter competition moved witness for respondent to express the view that the minimum under the all-commodity rates is too high, but that other carriers serving these territories hold a different view, and that publication of the rule herein proposed by respondent is a practical method of meeting the problem.

Under respondent's tariffs, Pier 13, North River, and Pier 26, East River, for the receipt and forwarding of New York freight, are regarded as one station. Respondent's freight stations at Buffalo, East Buffalo, and Black Rock are also treated as one origin or destination station. Under the proposed rule, traffic originating at Buffalo, East Buffalo, and Black Rock could be loaded in such a manner as to divide the business between Pier 13 and Pier 26 at New York and, in addition and as a part of the single consignment, provide for a stop-off car at Newark.

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During the week of August 21, 1939, Acme Fast Freight, Inc., shipped 27 consignments to itself under the all-commodity rates from respondent's stations at Buffalo and Black Rock to New York, Newark, Philadelphia, and Boston, of which 15 went to New York, 2 to Newark, 3 to Philadelphia, and 7 to Boston. Twelve of the shipments to New York, 7 to Boston, 2 to Newark, and 2 to Philadelphia moved in 2-car batteries, and the few remaining shipments moved in single-car lots. All of the freight in the lead cars either weighed more than the minimum of 30,000 pounds or was billed at the minimum weight. The freight in the trailer cars to New York ranged in weight from 13,283 to 32,194 pounds, or an average of 21,958 pounds, those to Newark weighed 1,677 and 9,555 pounds, those to Philadelphia 10,899 and 30,682 pounds, and those to Boston 2,903, 4,972, 7,259, 7,264, 14,377, 18,264, and 20,854 pounds.

The ton-mile earnings under the 44-cent rate from Buffalo to New York, for example, 400 miles, are 22 mills, and the car-mile earnings on the basis of a single car at 30,000 pounds are 33 cents. Under the proposed rule, when either two cars or three cars are used the car-mile earnings would average 19.25 cents.

Assuming three carloads of mixed freight of such density that 17,500 pounds will fill a 40-foot car, moving one car from Buffalo to Pier 13, North River, one car from East Buffalo to Pier 26, East River, and one car from Black Rock to Newark: If these three cars were shipped by separate consignors under the all-commodity rate, the charges would be \$132 on each of the cars, or a total of \$396. If they were turned over to a forwarder, under the tariffs as they now stand the charges would be \$132 on the car from Buffalo to Pier 13, \$77 on the car from East Buffalo to Pier 26, and \$132 on the car from Black Rock to Newark, or a total of \$341, so that the forwarder now has an advantage in freight charges of \$55. If the suspended schedule became effective the charges to the separate consignors would remain the same, but the charge to the forwarder or other large shipper would be \$77 on each of the cars, a total of only \$231 for the three cars, or an advantage in freight charges over the ordinary shippers of \$165. Aside from the use of three bills of lading in one instance and one bill of lading in the other, the transportation services performed for the three consignors would be identical with those performed for the forwarder or other large shipper.

Respondent's witness estimated that under the proposed rule relatively few more cars would be used than under the present rule, and that, even if an extra car or two were used occasionally, that practice would be fully compensated by the greater economy in

unloading and in the avoidance of congestion at Pier 26. In 7 of the above-mentioned 27 shipments, 3 cars could have been used if a rule similar to that proposed had been in effect.

Although no evidence of discrimination or prejudice was here offered, it is clear that the proposed schedule fails to accord equal treatment to all carload shippers of the same commodities from and to these points, in that it affords forwarders, and probably a very few other large shippers who are in a position to and do offer not less than 5,000 pounds more than the single-car minimum weight, a different and greater service per unit of weight than would be accorded other shippers under substantially similar circumstances and conditions. This is proposed to be accomplished by grading the minimum according to the aggregate weight of the freight to be transported rather than by the cubical capacity of the cars used in the service. See *Middle Atlantic States M. C. Conf., Inc., v. C. R. Co. of N. J.*, 232 I. C. C. 381, reopened, wherein a similar disregard for car capacity was condemned. There is no question but that the principal, if not the only, traffic which would be carried under the proposed schedule would be that offered by forwarders. The mere fact that forwarders might ordinarily furnish a volume of traffic greater than but identical in kind with that furnished by individual shippers does not justify the more favorable treatment of forwarders reflected in the schedule under suspension.

As stated, no individual shippers are here complaining. That was true also in *Chicago and Wisconsin Points Proportional Rates*, 17 M. C. C. 573, wherein we found certain suspended proportional rates not justified on the ground, among others, that they would unjustly discriminate in favor of forwarders and possibly a few large shippers and against other shippers. In sustaining, on that ground, our order requiring cancelation of the suspended schedules, the Supreme Court said in *United States v. Chicago Heights Trucking Co.*, 310 U. S. 344:

The fact that the Commission acted on its motion without complaints by individual shippers did not detract from the Commission's power to protect and maintain a transportation system free from partiality to particular shippers. The Commission acted in its capacity as a public agency and carried out duties imposed upon it by Congress in the interest of shippers generally, the national transportation system, and the public interest. Its order was the embodiment of the Commission's judgment that the proposed tariff was a discrimination prohibited by the Act.

There is upon this record a clear indication that some modification should be made in the rules with which we are here concerned. Either the carload minimum under the all-commodity rates should

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be changed so that it will reflect more nearly the quantity of merchandise freight which can reasonably be loaded into one car without damage or undue delay to the traffic, or all carload minimum weights on this traffic should be eliminated and in lieu thereof a method established for computing a minimum charge for a single carload on the basis of the amount of such freight which can reasonably be loaded into a car.

We find that the proposed rule would accord to shippers in position to ship two or more carloads on one bill of lading, charges which would be more favorable than the charges accorded competing shippers of single carloads, and therefore would be unjustly discriminatory and unduly preferential. Accordingly, we conclude that the suspended schedule has not been justified. An appropriate order will be entered requiring its cancelation and discontinuing the proceeding.

COMMISSIONERS MAHAFFLE, ROGERS, ALLDREDGE, and PATTERSON concur in the result.

EASTMAN, *Chairman*, dissenting:

The evidence shows clearly and without dispute that the proposed change would enhance both the economy and efficiency of respondent's operations. Nor is there evidence or reason to believe that it would result in injury to anyone. The refusal to permit the change will, therefore, not only be barren of good results but actually stand in their way. I do not believe that we are required to interpret and apply the law in so theoretical and impractical a fashion. Such action rests on a basic misconception of the situation. The forwarder produces nothing but service and is in competition with no other shippers of carload freight, except such as may be serving in a similar capacity. As a shipper, it is merely acting in the stead of and for many consignors of small lots of packages who, through the agency of the forwarder, gain the benefit of a collective handling of their shipments and the consequent concentration and integration of the traffic. It is these small consignors who are the real shippers, rather than the forwarder who serves as their agent and representative, and it is the failure to understand and appreciate this fact which leads to the conjuring up of hypothetical possibilities of discrimination between forwarders and other shippers which have no relation to reality.

I do agree, however, that respondent has chosen an awkward and illogical method of correcting a practical situation which demands correction in the interest of economy and efficiency. The trouble

arises out of a carload minimum under the all-commodity rates which is plainly too high, as a witness for respondent conceded. A reduction in this minimum to fit the traffic which is handled would clearly be desirable and appropriate.

COMMISSIONERS AITCHISON and MILLER did not participate in the disposition of this proceeding.

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