

diate point, in those instances where rates have not been or are not in the future prescribed or approved by this Commission on like property between the more distant points; and (4) relief shall not apply to any rate that yields less than 5 mills per ton-mile where the carload minimum weight is 40,000 pounds or more, or 10 cents per car-mile where the carload minimum is less than 40,000 pounds.

An appropriate order will be entered.

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No. 28479

GENERAL MOTORS CORPORATION v. DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY ET AL.

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*Submitted April 3, 1941. Decided June 23, 1941*

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Rates charged on automobile-axle housings of the banjo type, in carloads and less than carloads, from Cleveland, Ohio, Buchanan, Mich., and Utica, N. Y., to Detroit and Flint, Mich., and Harriet, N. Y., found applicable, and not shown to have been unreasonable. Complaint dismissed.

*Denton Jolly and Robert C. Carson* for complainant.

*Leo P. Day* for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS MAHAFFIE, ALLDREDGE, AND JOHNSON

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner, and the proceeding was orally argued. Our conclusions differ from those recommended by the examiner.

Complainant corporation alleges, by complaint filed May 16, 1940, as amended, that the class rates charged, since March 15, 1937, on articles which it describes as unfinished iron automobile axles of the banjo type, in carloads and less than carloads, from Cleveland, Ohio, to Flint, Mich., from Buchanan, Mich., to Harriet, N. Y., and from Utica, N. Y., to Detroit, Mich., were inapplicable and unreasonable. Complainant asks us to prescribe reasonable rates for the future and to award reparation. Claims on shipments delivered or tendered for delivery prior to May 16, 1938, are barred by the statute with respect to the issue of unreasonableness. Rates will be stated in amounts per 100 pounds.

The issues in this proceeding are whether the described articles, as shipped by complainant from and to the above-named points, are entitled to rates applicable on iron or steel axles, as complainant insists,

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or class rates subject to classification description and ratings on axle housings, as claimed by defendants, and, if the latter, whether such resulting rates are unreasonable.

Complainant attacks the classification description, rating, and resulting class rates only to the extent that they were and are applied on the described article, hereinafter referred to as a banjo axle, from and to the named points. The evidence introduced relates almost entirely to the section 6 allegation. The parties stipulated on the record that complainant paid and bore the charges on the described shipments. Charges were collected at the class rates applicable on axle housings.

The official classification is generally applicable in the described territory. It provides under the general heading "Vehicle Parts," and in the subordinate heading thereto covering automobile parts, a commodity description and rating on axle housings, iron unfinished, of fourth class in less than carloads and fifth class, minimum 36,000 pounds, in carloads. The same rating is provided for in another item of this classification, under the general heading above mentioned, on "Axles, automobile or trailer, without external or internal attachments or movable parts." Defendants' tariff naming exceptions to the above classification provides for a rating of 40 percent of first class on articles of iron or steel manufacture, in less than carloads, as described in note 55 thereof. This note, among other articles named therein, includes "Axles, railway car, locomotive or vehicle, without bearings, gears, knuckles, torque, tubes, or other steering or power attachments." Similar descriptions, subject to a minimum of 40,000 pounds, are also provided for in other tariffs of defendants which name carload commodity rates on various kinds of iron and steel articles including axles, between the considered points.

From Cleveland to Flint the present fourth-class rate is 42 cents, the column 40 rate is 33 cents, the fifth-class rate is 29 cents, and the carload commodity rate on various iron and steel articles, including axles, is 24 cents. In the same order the described rates from Utica to Detroit are 56, 45, 39, and 36 cents; and from Buchanan to Harriet they are, respectively, 59, 47, 41, and 35 cents.

The cylinders and crankshaft of an automobile are at right angles with the rear axle, making it necessary to employ the use of gears in differential, so that the power developed by the motor can be transmitted at right angles, and thence by the use of rotating axles transmitted to the driving rear wheels, which are attached to the rear axle. The double chain drive was formerly used in passenger automobile vehicles, and is still employed to some extent in certain types of commercial motor vehicles. In the double chain drive method a jackshaft or live axle parallel to the rear axle is attached to the center frame

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of the vehicle. This jackshaft revolves and by means of chains and sprockets transmits the power to the rear driving wheels. Automotive engineers developed other types of rear axles, to be used in connection with driving rods and gears through a rear differential gear arrangement, and thence by revolving rods, extending at right angles to the motor. Such a device, known as a De Dion patent drive, was developed and used rather generally in various improved forms on passenger automobiles up to 1936. This device, or axle, was used to carry the weight of the vehicle, and also used as a support for the described driving gears and rods. The banjo axle here considered is an improvement over the De Dion axle. It was developed in 1936 and functions to some extent as a rear dead automobile axle, but serves primarily as a housing for the protection of the described power gears, live axles, and other rear rotating power parts of the automobile. A photograph of the axle assemblage, including the article under consideration, introduced as an exhibit, shows all external parts of the assemblage ready for attachment to the automobile. This assemblage is complete for function both as an axle and as a housing. A photograph of the unfinished banjo axle was also introduced. The articles, of which the above exhibits are photographs, were on display at the hearing. The axle assemblage depicted in the first exhibit referred to is made up of the torque or third member assemblage which is fitted to the banjo axle at a right angle. This torque encloses the driving gear, pinions, and bearings, which are attached to an enclosed propeller shaft. This assemblage is mounted on the banjo axle with cap screws. The main shaft and parts thereof, together with the brakes, are assembled into the differential and bolted on to the banjo-axle shaft. The described propelling gears, axles, and rotating parts are enclosed in the banjo axle.

As indicated, it is the position of defendants that the banjo axle here considered is not an axle, but an axle housing, and therefore subject to above-described classification rating and resulting class rates on axle housings, iron unfinished. As to the classification of such articles, defendants state that they have endeavored to keep abreast of developments in the automobile industry. They introduced exhibits of classification changes in commodity descriptions which were made following conferences with shippers. These exhibits indicate the classification changes from 1908 to 1927. Defendants, therefore, submit that such classification changes were made after agreement with complainant and other shippers so as to provide specific descriptions for automobile axles with external or internal attachments or movable parts, as well as the axle housings ultimately used for enclosing automobile rear axles. Defendants have consistently applied the assailed

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axle-housing description, and resulting class rating, to these banjo-type axles. They refer to catalogs of complainant and others, showing finished axles and housings, in support of their contention that the article under consideration is an unfinished axle housing, and that the class rates under the classification description on axle housings as charged and collected on the described shipments were and are applicable and not unreasonable.

Although the article under consideration functions, to some extent, as a dead axle, it serves, primarily, as a housing for an axle, is generally known by the trade as a housing, and is so described in automobile-parts catalogs. The record is convincing that complainant's shipments consisted of automobile-axle housings, and we so find. No substantial evidence was introduced to support the allegation of unreasonableness, and that allegation is not sustained.

We find that the rates charged were applicable, and that they are not shown to have been unreasonable. The complaint will be dismissed.

COMMISSIONER ALLDREDGE dissents.

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