No. 29474

GOODWILLIE-GREEN BOX COMPANY v. DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY ET AL.

Submitted January 20, 1947. Decided September 2, 1947

Rates charged on lumber, in carloads, from Emmett, Idaho, to Rockford, Ill., there milled in transit and reshipped as box shooks, in carloads, to Batesville, Ind., East Buffalo, N. Y., and Export, Pa., found inapplicable. Reparation awarded.

C. S. Bather for complainant.
Harold E. Spencer for defendants.

REPORT OF THE COMMISSION

DIVISION 2, COMMISSIONERS AITCHISON, SPLAWN, AND ALLDREDGE

BY DIVISION 2:

Exceptions to the examiners' proposed report were filed by defendants and complainant replied thereto.

Complainant corporation, by complaint filed February 1, 1946, as amended at the hearing, alleges that the rates [1] charged on seven carloads of pine lumber shipped between May 29 and September 10, 1945, from Emmett, Idaho, to Rockford, Ill., there milled into box shooks and reshipped in carloads to Batesville, Ind., East Buffalo, N. Y., and Export, Pa., were and are inapplicable, unreasonable, and unduly prejudicial. Complainant asks us to prescribe lawful rates for the future and award reparation. The controversy is solely one of tariff interpretation and, as the evidence is directed wholly to the question of applicability of the rates charged, the other allegations will not be further considered.

The lumber received by complainant at Rockford was surfaced on two sides. It was from 6 to 16 feet in length and from 4 to 12 inches in width. The shipments were further processed at Rockford by sawing the lumber into shorter lengths and widths of exact dimensions

[1] Rates and differences in rates and transit charge will be stated in amounts per 100 pounds.

for later assembly into boxes at destination. The lumber thus processed in transit was known as box shooks and was ready for use at destination in the assembly of boxes. Cleats were nailed on the ends of some of the shooks in one carload, while the remaining carloads were shipped without cleats being nailed to the end boards. All of the shipments from Rockford were billed and invoiced as box shooks.

The applicable joint through rate on pine lumber from Emmett over the defendants' lines was 72 cents to Rockford and 82 cents to Batesville, East Buffalo, and Export. The complainant paid freight charges on the basis of the 72-cent rate published on the lumber in-bound to Rockford, but the parties differ as to the rates and charges applicable on the shooks reshipped from the transit station. Originally, the complainant was charged the 10-cent difference between the rates of 82 and 72 cents, plus a transit charge of 2.75 cents. Subsequently, the defendants collected from the complainant the difference between the 72-cent rate on the lumber in-bound to Rockford and the joint through rates published on box shooks from Emmett of 86 cents to Batesville and 89.5 cents to East Buffalo and Export. The complainant seeks reparation amounting to $397.65, representing the difference between the rates charged and the rate of 82 cents claimed applicable on 490,320 pounds of shooks to East Buffalo and Export, and 74,700 pounds of shooks to Batesville. The transit charge is not in dispute.

The question for determination is whether the applicable charges on the commodity forwarded from Rockford should be computed on the balance of the through rates on lumber or at the difference between the rates on box shooks provided from Emmett to the ultimate destinations and the 72-cent rate on the lumber in-bound to Rockford. The joint rates on both lumber and box shooks were published in separate sections of Agent Kipp's lumber tariff I. C. C. No. 1511, which alternatively provided for the application of whichever rate resulted in the lower through charge. Under the commodity description of "* * * Lumber * * * Pine * * *," item 510, subject to the higher rates in section 2 of the tariff, provided that such rates would apply on box or crate material manufactured therefrom, described as follows:

* * * Box or Crate Material, including Box or Crate Material, wire or metal bound, or tray Material; K. D. flat, except that ends may be cleated.

* * * * * * *

Box or Crate Material (not cigar box material), wooden, in shooks or panels,

* * * * * * *

Item 2150, in section 4 of the tariff, provided that the joint rate of 82 cents would apply on lumber, and articles taking the same rate, subject to the following description:

Lumber (* * * pine * * *), the product of saw and planing mill plants not further advanced in manufacture than by sawing, resawing, and passing lengthwise through a standard planing machine, cross-cut to length, and end-matched, viz.:

* * * Boards

* * *

Cut Stock for the manufacture of sash, doors and blinds, and other millwork,

* * *

It is complainant's position that the description "boards" in item 2150 accurately described the product reshipped from Rockford in that complainant at Rockford manufactured the lumber into smaller pieces of exact dimensions for assembly into boxes at destination. Consequently, the joint through commodity rate of 82 cents which was in effect on boards, the product of saw and planing mill plants, not further advanced in manufacture than by sawing and planing, from Emmett to the ultimate destinations of the shooks is claimed applicable. As indicated, complainant paid charges at a rate of 72 cents on the lumber in-bound to the transit station, and under its interpretation defendants should have collected additional charges based on the balance of the joint rate of 82 cents, or 10 cents, on the through shipments. Defendants contend that the shipments fall within the description "Box or Crate Material * * * wooden, in shooks or panels," on which the higher joint through rates, subject to item 510, were provided from Emmett to the eastern destinations. They further argue that the shipments were not the products of a sawing or planing plant, but were the product of a box manufacturer; that "boards" were the product which complainant received at Rockford in order to manufacture box shooks, and that the product shipped out-bound from Rockford was manufactured box shooks cut to exact dimensions for later assembly. As the commodity reshipped was further manufactured than the in-bound cut lumber, defendants claim that the facts here closely resemble those in *Bundy Tubing Co.* v. *Michigan Central R. Co.*, 169 I. C. C. 569. Since its product was fashioned out of tubing, the complainant in that proceeding contended that the lower rates applicable on tubing applied. In this respect, division 3 stated, at page 571, as follows:

As its tubing is used not only for automobile feed lines but for other purposes, complainant contends that these shipments could not be accurately identified as automobile parts, * * *. While it is true that complainant's product may be adapted to a variety of uses, it definitely appears that the tubing in these shipments had been bent and cut to size and shape for use as automobile feed lines. It follows that the shipments consisted of automobile parts * * *.

On exceptions, defendants argue that since complainant invoiced its product as box shooks the manufacturers' description should pre-

vail and fix the identity of the article shipped for transportation purposes citing *Mead Johnson & Co.* v. *Atlantic Coast Line R. Co.*, 171 I. C. C. 5, 6. In this connection it is sufficient to say that the record in the instant proceeding clearly establishes that the commodity shipped into the transit point was lumber and that the commodity which moved out of the transit point was box shooks.

Defendants further contend that the question of the applicable rate on complainant's shipments was settled in *Lumber from Pacific Coast to Eastern Points*, 210 I. C. C. 317, 329, wherein the Commission, in giving consideration to the commodity description in a tariff item substantially similar to item 2150, used the following language:

> It was the purpose only to include commodities which moved by water. The description was not intended to, and, in respondents' opinion, did not cover box shooks, so that further specific exclusion was not, in their opinion, required. Furthermore, the transcontinental tariffs publishing the present lumber rates specifically mention box shooks and, since the amended description does not do so, it is clear, in our opinion, that as a matter of interpretation the proposed rates would not apply on box shooks.

We see no difficulty in distinguishing between the exclusive character of the lumber rates as found by the Commission in the proceeding just cited and the applicability of the commodity description in item 2150 to complainant's shipments of lumber milled in transit at Rockford and later reshipped as box shooks to ultimate destination. The question here, concerning which rate was applicable, involves the fiction of continuity of movement under the provisions of a transit tariff providing for the transit service at Rockford and the through rate to be applied under the terms of that tariff. The lumber originating at Emmett moved into Rockford and the box shooks out-bound over the lines of the Illinois Central Railroad Company. As the transit service performed was local to that line, the provisions of that defendant's transit tariff I. C. C. No. A–11446, in effect when the shipments moved from the origin of the lumber governed the through rates applicable on complainant's shipments. Rule 1 of the Illinois Central tariff defined transit arrangements as follows:

> Transit privileges are hereby defined as stopping in transit of shipments of Lumber and other Forest Products specified herein in carloads at transit stations shown herein for Dressing, Drying, Grading, Inspecting, Manufacturing, Resawing, Sawing, Sorting, Splitting, Storing, Trimming, or other processing authorized herein and reshipment in carloads to subsequent destinations provided herein.

Rule 30, relative to the rate applicable to the transit station and the method of settlement, provided, in part, as follows:

> (a) Rate to transit station will be current tariff rate from point of origin.
>
> (b) From transit station to transit destination shipment will be waybilled at rate from transit point to transit destination and adjustment to basis of through

rate from transit origin to transit destination, plus transit charge, if any, will be made by claim. The claim must be filed within two (2) years from the date of the outbound shipment from transit station.

or

(c) If shipper desires, shipment may be waybilled at remainder of through rate from transit origin to transit destination in effect on date of original shipment, plus transit charge * * *.

Under the provisions of paragraph (c), the complainant was entitled to have its shipments waybilled at the remainder of the through rate from transit origin to transit destination, but the rule does not definitely indicate whether the "through rate" to be applied would be the rate published on the product reshipped from Rockford or the rate on the commodity which moved from point of origin into the transit point. Item 50, covering the application of the transit tariff at Rockford, also provided that lumber originating at stations named in Kipp's I. C. C. No. 1511, including the rates from Emmett, could be stopped in transit at Rockford for manufacturing and reshipment to destinations beyond at the "through rate (in effect on date of original shipment from point of origin), from original point of shipment to final destination of out-bound shipment, plus transit charge of 2.75 cents per 100 pounds, minimum $12.50 per car on out-bound weight." On May 10, 1946, the above item 30 was amended so as to provide that charges would be adjusted at the through rate on the commodity reshipped from the transit station, or waybilled from the transit station at the remainder of the through rate, on the commodity reshipped from the transit station in effect on date of original shipment, plus the transit charge.

Transit rests on the fiction that the transportation contract has not been completed and that the entire shipment from point of origin through the transit point to ultimate destination is treated the same as if the shipment had moved through to destination without transit. It contemplates a through shipment under the fiction of continuity of movement at the through rate and, if strictly and impartially observed, requires application of the through rate on the commodity shipped from point of origin, unless the transit tariff provides for a different basis of charges. In *Wheelock & Bierd* v. *Akron, C. & Y. Ry. Co.*, 179 I. C. C. 517, and *Thomas Keery Co., Inc.*, v. *New York, O. & W. Ry. Co.*, 226 I. C. C. 335, the Commission referred to the fact that the Supreme Court in *Central R. Co. of New Jersey* v. *United States*, 257 U. S. 247, recognized that transit services, such as the one here authorized, "rests upon the fiction that the incoming and outgoing transportation services, which are in fact distinct, constitute a continuous shipment of the identical article from point of origin to final destination."

The conditions upon which transit will be granted or denied are local to the line on which the transit station is located or the service is authorized. In this instance the Illinois Central transit tariff set forth all of the conditions upon which transit of lumber would be allowed at Rockford, and provided that complainant's shipments through the transit station should be waybilled at the remainder of the through rate from the transit origin to transit destination. The fact that item 510 specifically included box material at the higher rates charged is not controlling. The applicable tariff, in item 2150, provided a joint through rate of 82 cents published to apply on the identical article shipped from the point of origin of the lumber to the transit destinations of the product. Defendants' tariffs did not authorize the collection of charges beyond the transit station at the remainder of the through rate published to apply on the commodity, in this instance shooks, reshipped from the transit station to ultimate destination until after the shipments moved from point of origin. The shipments were overcharged.

We find that the rates charged were inapplicable; that the applicable rate on the shipments considered was 82 cents from Emmett to the ultimate destinations, and that they were overcharged. It is further found that the complainant made the shipments as described and paid and bore the freight charges thereon at rates herein found inapplicable; that it was damaged thereby in the amount of the difference between the charges collected and those which would have accrued at the rate herein found applicable; and that it is entitled to reparation in the sum of $397.65, with interest.

An order awarding reparation will be entered.