

No. 29262

STANDARD CAP AND SEAL CORPORATION v. DELAWARE,  
LACKAWANNA & WESTERN RAILROAD COMPANY ET  
AL.

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*Submitted April 16, 1948. Decided June 8, 1948*

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Upon further hearing, finding in prior report, 264 I. C. C. 801, that the rates on wood pulpboard, in carloads, from Beaver Falls, N. Y., to Jersey City, N. J., on waste paper, and empty wooden skids, in mixed carloads, and on waste paper, in straight carloads, from Jersey City to Beaver Falls, were unreasonable, and the award of reparation, found not to embrace the shipments of wood pulpboard, which moved from Beaver Falls to Jersey City over a certain route via Utica, N. Y.

*Chester E. Emanuelson, Harry Teichner, and L. V. Brandt* for complainant.

*Harold J. Gilmartin and J. Edgar McDonald* for defendants.

REPORT OF THE COMMISSION ON FURTHER HEARING

DIVISION 3, COMMISSIONERS MILLER, PATTERSON, AND BARNARD

BY DIVISION 3:

Exceptions were filed by complainant and defendants to the report, on further hearing, proposed by the examiner, and the issues were argued orally. Exceptions and requested findings not specifically discussed in the report have been given consideration and found not justified.

In the prior report, 264 I. C. C. 801, it was found, under the shortened procedure,<sup>1</sup> that the rates charged on wood pulpboard, on skids, in carloads, from Beaver Falls, N. Y., to Jersey City, N. J., and on waste paper, in bales, and empty wooden skids, in mixed carloads, and waste paper, in bales, in straight carloads, from Jersey City to Beaver Falls were unreasonable. Reasonable rates for the future were prescribed and reparation was awarded. Complainant was instructed to comply with rule 100 of the General Rules of Practice and to include in the statement shipments made during the pendency of the proceeding.

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<sup>1</sup> Under the authority of section 17 (2) of the Interstate Commerce Act the proceeding was referred to Commissioner Patterson for consideration and disposition.

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Upon petition by complainant the proceeding was reopened for further hearing with respect to the rates and the claim for reparation on certain shipments excluded by the amended order therein hereinafter referred to, and the proceeding has been further heard orally. Subsequent to the further hearing defendants filed a petition for further hearing, argument, and reconsideration, and vacation or modification of the orders entered in this proceeding, to which complainant replied, and which has been denied by the Commission. The facts stated in the prior report will be restated only to the extent deemed necessary in the interest of clarity.

With respect to the routes mentioned in the complaint the prior report contains the following:

Complainant's plant is served only by the Delaware, Lackawanna and Western Railroad Company, hereinafter called the Lackawanna. During the period from May 14, 1943, to October 22, 1943, complainant received at its factory in Jersey City numerous shipments of wood pulpboard, on skids, in carloads, from Beaver Falls. The shipments moved over the lines of The Lowville and Beaver River Railroad Company to Lowville, N. Y., The New York Central Railroad Company and West Shore Railroad (The New York Central Railroad Company, lessee) to Weehawken, N. J., the Erie Railroad Company to Bergen Junction, N. J., and the Lackawanna to Jersey City, 296.3 miles. \* \* \* During the period from June 15, 1943, to October 18, 1943, inclusive, 10 mixed carloads of waste paper and empty wooden skids, and 6 straight carloads of waste paper moved from complainant's factory at Jersey City to Beaver Falls. \* \* \* The shipments moved over the lines of the Lackawanna to Utica, N. Y., the New York Central to Lowville, and the Lowville and Beaver River beyond, 417.1 miles.

The rule 100 statement filed by complainant listed 22 shipments of wood pulpboard which moved over the 5-line route from Beaver Falls to Jersey City, mentioned above, and 112 shipments of waste paper and empty wooden skids which moved between the same points in the reverse direction over the afore-mentioned 3-line route. The amounts of reparation claimed on shipments moved over these routes were \$1,128.13 and \$3,364.30, respectively. The statement also included a claim for reparation of \$12,075.89 on 244 shipments of wood pulpboard which moved from Beaver Falls to Jersey City over a third route, which is the Lowville and Beaver River to Lowville, the New York Central to Utica, and the Lackawanna beyond. The defendants certified the statement, and an order of reparation including the 3 amounts stated was entered. Later defendants objected to the inclusion of the claim for \$12,075.89 on the ground that it represented reparation on shipments that moved over a route not considered in the proceeding, and the order was amended by excluding it. The proceeding was reopened and assigned for further hearing with respect to that claim.

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The evidence introduced at the further hearing shows that the 244 shipments of wood pulpboard under consideration were made by complainant on and after July 31, 1943, and that the charges thereon were paid or borne or paid and borne by complainant.

While the complaint herein, respecting shipments of wood pulpboard, refers only to shipments that moved over the route of the Lowville & Beaver River to Lowville, the New York Central and West Shore to Weehawken, the Erie to Bergen Junction, and the Lackawanna beyond, complainant points out that those defendants are named in the complaint, together with the allegation that their failure to publish and maintain joint class rates between Beaver Falls and Jersey City over any route which includes the Lackawanna results in unreasonable rates. It contends, therefore, that the complaint is broad enough to cover all shipments made by complainant from Beaver Falls to Jersey City over all routes composed of defendants' lines, which include the Lackawanna as the delivering carrier, whether the interchange is made at Utica or Bergen Junction.

Defendants insist that since there is only one route mentioned in the complaint from Beaver Falls to Jersey City, namely, the five-line route via Bergen Junction, which therein is described in full, including all junction points, that shipments over any other route are not embraced in the complaint. They refer to rule 28 of the General Rules of Practice which provides that formal complaints should be so drawn as fully and completely to advise the parties defendant and the Commission in what respects the provisions of the act have been or are violated, and should set forth briefly and in plain language the facts claimed to constitute such violation. To show that complainant apparently was in doubt as to whether its formal complaint included the considered shipments, defendants refer to an informal complaint still pending, No. 174139, claiming reparation on the same shipments, which complainant filed subsequent to the decision in the prior report.

The Commission has frequently found that when the question of damages is involved and reparation is sought, the defendants have a right to be informed with reasonable definiteness of the grounds on which the claim is based, and put on notice of the issues they are called upon to meet. *Weinberg & Gilbert v. Atlantic Coast Line R. Co.*, 208 I. C. C. 749. See also *Clinton Sugar Refining Co. v. Chicago & N. W. Ry. Co.*, 28 I. C. C. 364.

As noted above the complaint did not refer to shipments of wood pulpboard from Beaver Falls to Jersey City over the Lowville & Beaver River to Lowville, the New York Central to Utica, and the Lackawanna beyond. As a result of the failure of complainant to  
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refer specifically to such shipments, or with sufficient particularity to definitely include them, defendants were not served with the notice to which they were entitled. In the circumstances, therefore, it must be concluded that the prayer for reparation on shipments of wood pulpboard was limited to those shipments that moved over the Lowville & Beaver River to Lowville, the New York Central and West Shore to Weehawken, the Erie to Bergen Junction, and the Lackawanna beyond.

We find that the complaint in this proceeding does not embrace the shipments of wood pulpboard, in carloads, from Beaver Falls to Jersey City which moved over a route composed of the lines of the Lowville and Beaver River to Lowville, the New York Central to Utica, and the Lackawanna beyond. No order is required.

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