

No. 30067

A. M. LOCKETT & COMPANY, LIMITED v. DELAWARE,  
LACKAWANNA & WESTERN RAILROAD COMPANY ET AL.

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*Submitted November 21, 1949. Decided December 23, 1949*

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Rate charged on power pumps, in carloads, from Harrison, N. J., to Houston, Tex., found applicable. Complaint dismissed.

*W. H. Hendley, Jr.*, for complainant.

*Harold J. Gilmartin* for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS PATTERSON, JOHNSON, AND CROSS

BY DIVISION 3:

The modified procedure was followed. No exceptions were filed to the report proposed by the examiner.

The complainant corporation alleges by complaint originally received September 1, 1948, that the rate<sup>1</sup> charged on two carloads of power pumps shipped from Harrison, N. J., on September 9 and 17, 1946, over defendants' lines to Houston, Tex., was inapplicable. We are asked to award reparation.

The rate of \$1.78 charged was on the basis of the rating applicable on power pumps, n. o. i. b. n.,<sup>2</sup> as published in item 30450 of the western classification. Complainant contends that this rating was not applicable, that the shipments were subject to a classification exceptions rating appearing in Agent D. Q. Marsh's tariff I. C. C. No. 3592, items 190 and 195, and that a rate of \$1.39 was applicable.

The defendants, by motion filed July 18, 1949, ask that the complaint be dismissed upon the ground that the issue has been decided in *Norvell-Wilder Supply Co. v. Beaumont, S. L. & W. Ry. Co.*, 274 I. C. C. 547. In that proceeding, when interpreting the same tariff provisions that are under consideration here, division 3 found that the rate based on the rating published in item 30450 was applicable. In view of our finding hereinafter made, the motion need not be further considered.

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<sup>1</sup> Rates will be stated in this report in amounts per 100 pounds.

<sup>2</sup> Not otherwise indexed by name and not more specifically provided for in the classification.

The complainant has not presented any facts that were not before the division in the cited proceeding, and it is not necessary to discuss again the tariff provisions under consideration. There is no showing that the pumps embraced in these two proceedings differ from each other as to type or kind. A conclusion different from that reached in the cited proceeding is not warranted by the record herein.

We find that the rate assailed was applicable. The complaint will be dismissed.

276 I. C. C.