No. 30172

LACKAWANNA BEEF & PROVISION COMPANY v. DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY

Submitted August 19, 1949. Decided January 12, 1950

Claim for reparation on account of alleged inapplicability of the charges collected on numerous carloads of livestock shipped from various points to Scranton, Pa., found barred by the statute. Complaint dismissed.

Joseph H. McDowell and *Manuel Werby* for complainants.
John F. Reilly for defendant.

REPORT OF THE COMMISSION

DIVISION 2, COMMISSIONERS AITCHISON, SPLAWN, AND ALLDREDGE

BY DIVISION 2:

Requested findings not discussed in this report nor reflected in our findings or conclusions have been given consideration and found not justified.

By complaint filed January 26, 1949, on behalf of I. E. Bernstein, Theresa Goldstein Bernstein, Esther Wolkoff, and Sarah Bernstein, copartners, doing business at Scranton, Pa., under the firm name of The Lackawanna Beef & Provision Company, it is alleged that the freight charges collected on numerous carloads of livestock shipped from various points and delivered at Scranton during the period from July 12, 1944, to August 15, 1945, were inapplicable. Specifically it is alleged that the shipments were overcharged in the amount of $5,796.82, representing the difference between the charges collected and those which would have accrued based on the destination hoof weights of the livestock as provided in the applicable tariff. We are asked to award reparation.

It is contended by defendant that the complaint should be dismissed, irrespective of the merits of the claim, because it was not filed within the period specified in section 16 (3) (c) the Interstate Commerce Act, which reads as follows:

> For recovery of overcharges action at law shall be begun or complaint filed with the Commission against carriers subject to this part within two years from the time the cause of action accrues, and not after, * * * except that if claim for the overcharge has been presented in writing to the carrier within the two-year period of limitation said period shall be extended to include six

months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim or any part or parts thereof, specified in the notice.

The complainants submit that the complaint was seasonably filed. On July 12, 1946, they addressed a letter to defendant which they contend constitutes a claim for overcharges within the purview of the above-quoted provision of the act. That alleged claim, they assert, was not disallowed until November 26, 1947. An informal complaint, covering shipments delivered at Scranton during the period July 1, 1944, to September 21, 1945, was filed May 20, 1948, and closed September 7, 1948. The pertinent part of the letter of July 12, 1946, reads as follows:

On September 24, 1945, we entered into an agreement with the Trunk Line Freight Inspection Bureau, for off car weights. For some reason unknown to us, some time in November of the same year the railroad discontinued giving us credit for the net weight as per the agreement.

However, we have been weighing in our livestock as per our original agreement and we are now preparing a claim to collect credit due us on these cars. For your information we have been averaging 75 to 100 cars per month and the difference of the income weight averages anywhere from 1200 to 2000 pounds. Unless some adjustment is made by your company we will be forced to take legal action.

Defendant urges that the above-quoted letter is not a claim, but is merely a notice of a claim to be filed, and points out that no supporting data of any kind was submitted by complainants in support of their alleged claim until the aforementioned informal complaint was filed. However, it is not necessary here to determine whether or not the letter of July 12, 1946, constitutes a claim because, if it is a claim, it was disallowed by defendant in its letter of July 26, 1946, addressed to complainants, reading in part as follows:

With reference to * * * your comunication July 12th, regarding Agreement with the Trunk Line Freight Inspection Bureau, and your Company, for off car weights.

Upon further investigation we find Agreement that was entered by the Trunk Line Inspection Bureau, and your Company, was unauthorized by this Railroad from the fact that carriers serving Scranton have provided that in handling shipments of livestock consigned to the Lackawanna Beef Company, all freight charges must be prepaid. Our company felt that an inbound weight agreement was unnecessary, and in accordance with article (7) of the agreement the contract was cancelled. We sincerely regret this action which, however, has been handled in accordance with the terms of the agreement.

As no complaint was filed with us within 6 months from the date of the letter just quoted, and as the claim was not resubmitted to the carrier or a complaint filed with us within the period provided by the statute, the claim is barred. Defendant's letter to complainants of November 26, 1947, previously referred to, and its letter of December

2, 1947, relate to certain shipments delivered at Scranton in November and December 1944, on which claims were filed with defendant November 21, 1947, after the 2-year statutory period had expired.

We find that complainant's claim for reparation is barred by the statute. The complaint will be dismissed.