

INTERSTATE COMMERCE COMMISSION REPORTS

No. 30685

NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY v. DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY ET AL.

Submitted September 6, 1951. Decided December 27, 1951

Rate on pig iron, in carloads, from Lackawanna, Harriet, and Buffalo, N. Y., to Newport News, Va., found not shown to have been or to be unreasonable. Complaint dismissed.

Malcolm D. Miller for complainant.

Paul V. Miller, Richard T. Wilson, Jr., and Edward A. Kaier for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS PATTERSON, JOHNSON, AND CROSS

BY DIVISION 3:

Exceptions to the report proposed by the examiner were filed by the complainant, and the defendants replied. Exceptions and requested findings not discussed in this report nor reflected in our findings or conclusions have been given consideration and found not justified.

The complainant, a corporation, alleges by complaint filed October 4, 1950, that the rates¹ on pig iron shipped from Lackawanna, Harriet, and Buffalo, N. Y.,² to Newport News, Va.; delivered or tendered for delivery on and after May 22, 1948, were and are unreasonable. An informal complaint containing the same allegation was filed May 22, 1950, and was pending when the formal complaint was filed. We are asked to prescribe reasonable rates and award reparation.

The applicable commodity rate from the three origins was \$10.60 on May 6, 1948, when authorized interim increases became effective; for concurrent application the complainant seeks a rate of \$9.05.

¹ Unless otherwise noted, the rates stated herein are per ton of 2,240 pounds and do not include authorized increases that became effective after September 1, 1949.

² The three origins named are within a few miles of each other and have the same class rate and the same commodity rate on pig iron to Newport News.

Effective September 1, 1949, the rate increased as then authorized became \$11.66; for concurrent application the complainant seeks a rate of \$9.96.

The average weight of the complainant's shipments was 85,554 pounds, or 38.2 gross tons per car, and the average haul 629 miles. At the rate of \$11.66, the average yield was \$445.34 per car, 70.71 cents per car-mile and 18.5 mills per ton-mile. At a rate of \$9.96 similar yields would be \$380.41, 60.40 cents, and 15.8 mills, respectively.

The rate of \$11.66 is 20.98 percent of the first-class rate subject to the exceptions to the classification. The complainant seeks the application of a basis of 21 percent of the first-class rate in effect on June 30, 1946, multiplied by 20 to produce a rate per net ton but to be applied per gross ton, and increased as subsequently authorized. The resulting rate, \$9.96, is 18.76 percent of the first-class rate subject to the classification exceptions.

Rates on pig iron, in carloads, to Lynchburg and Radford, Va., from Buffalo and certain points in central territory, including Chicago, Ill., Detroit, Mich., Indianapolis, Ind., and Cleveland, Ohio, were considered by us in *Lynchburg Foundry Co. v. Chicago, B. & Q. R. Co.*, 281 I. C. C. 407, decided June 28, 1951. A basis of 21 percent of the exceptions first-class rates but without application of the amount per net ton on a gross-ton basis, was prescribed for the future, and the rates assailed were found not unreasonable in the past. We referred therein to *Colorado Fuel & Iron Corp. v. Ahnapee & W. Ry. Co.*, 274 I. C. C. 239, wherein division 3 prescribed rates on pig iron from Minnequa, Colo., to 31 destinations in Illinois, adjoining States, and Minnesota which averaged 20.9 percent of the first-class rates for like distances in official territory subject to the classification exceptions, and said, at page 411, that a higher level from origins in central territory and Buffalo to Lynchburg and Radford is not warranted for the future.

In the prescription of the rates to Lynchburg and Radford, we considered evidence, like that in the instant proceeding, which included comparisons with short-haul rates on pig iron in official territory substantially lower than the 21-percent basis, many as low as, and some lower than, 15 percent of the exceptions first-class rates; and comparisons with rates, lower than on the 21-percent basis, to points, and between points, in New England, and also from and to other points in official territory. Many of the rates for the longer hauls in official territory are higher than on the 21-percent basis prescribed as the reasonable maximum for application from Buffalo and specified origins in central territory to Lynchburg and Radford.

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Comparisons are made by the complainant also with many rates on various commodities for distances generally greater than 300 miles within trunk-line territory at rates ranging from 32 to 71 cents per 100 pounds, with minima varying from 24,000 to 80,000 pounds, resulting in average car-mile earnings of 43.95 cents and 22.6 mills per ton-mile based on the respective carload minima. The relation of these commodity rates to first class is shown to average 25.4 percent. The many comparisons with rates on pig iron are of greater weight in the determination of the reasonableness of the rates assailed.

It is the defendants' position that as the short-haul rates on pig iron in official territory reflect commercial conditions in partial disregard of differences in the transportation service actually performed, these rates, or averages thereof, cannot be recognized as standards by which maximum reasonable rates to Newport News may be determined. Proposals have been made from time to time to place the rates on pig iron on a uniform distance-scale basis applicable throughout large portions of official territory. The defendants state such proposals have never received wide support either from the carriers or the shippers. Rates lower than 20 percent of first class from Buffalo to much of the territory to which pig iron moves were established because of competition with water transportation by way of the Erie Canal.

Short-haul rates, in central territory, were considered in *Pig Iron in Central Territory* 126 I. C. C. 111, decided March 15, 1927, wherein division 3 stated that the rates on pig iron between points in that territory were established from time to time to keep pace with the growth of the pig-iron industry; that carriers, producers, and consumers upheld the maintenance of rates with primary regard for commercial and competitive conditions; and that satisfactory relations between the rates from the shipping points were the important considerations. In the granting of fourth-section authority required for the establishment of rates on pig iron from points in the eastern part of trunk-line territory to points in the western part of that territory, including border line points in central territory, division 2 said, in *Pig Iron and Billets in the East*, 258 I. C. C. 459, 461:

It appears that the present rates on this traffic are satisfactory to both carriers and shippers; that a continuance of these rates is essential if the present origin and destination relations are to be maintained; that such relations could not be maintained if the rates were made a percentage of the class rates; and that a disruption of the existing adjustment would create a chaotic situation not only with respect to the rates but with respect to commercial conditions as well.

As is indicated by the observations and comparisons made, many of the rates on pig iron in official territory are upon relatively low levels because of competitive influences and other commercial consid-

erations. In determining a reasonable maximum level, a consideration of importance is the maximum basis prescribed as reasonable for scrap iron, which is used in the production of pig iron. In *Newport News Shipbuilding & Dry Dock Co. v. B. & O. R. Co.*, 160 I. C. C. 620, division 3 stated, at page 624, that so far as transportation characteristics alone are concerned, rates on scrap iron should be at least as low as those on pig iron. This, of course, referred to maximum reasonable rates, not rates affected by the competitive influences. The scrap iron basis in official territory, prescribed in many proceedings concerning individual rates, is 70 percent of the prescribed scale of rates on manufactured iron and steel articles within that territory. The average loading of scrap iron is substantially lower than that of pig iron. The rate on scrap iron from Buffalo to Newport News is \$11.64. The 70-percent basis, computed in the manner stated in *Platnick Bros., Inc., v. Baltimore & O. R. Co.*, 238 I. C. C. 218, 221, results in a rate of \$11.55, or 20.8 percent of the exceptions first-class rate.

The prescription of rates on pig iron in the instant proceeding, lower than on the reasonable maximum basis prescribed in *Lynchburg Foundry Co. v. Chicago, B. & Q. R. Co.*, *supra*, is not warranted.

We find that the assailed rates are not shown to have been or to be unreasonable. The complaint will be dismissed.

COMMISSIONER PATTERSON, being necessarily absent, did not participate in the disposition of this proceeding.

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