

No. 30786 (SUB-NO. 1)

SOMERVILLE IRON WORKS v. DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY ET AL.

Submitted September 5, 1952. Decided December 23, 1952

Rates on pig iron, in carloads, from Cleveland, Ohio, and from Buffalo, East Buffalo, and Harriet, N. Y., to Somerville, N. J., found not shown to have been unreasonable, but found unreasonable for the future. Reasonable basis of rates prescribed.

Malcolm D. Miller for complainant.

John C. Lyon for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS PATTERSON, JOHNSON, AND KNUDSON

BY DIVISION 3:

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

By complaint filed on March 27, 1951, it is alleged that the rates¹ on pig iron, in carloads, from Cleveland, Belt Junction, Ohio, and from Buffalo, East Buffalo, and Harriet, N. Y., to Somerville, N. J., were and are unjust, unreasonable, and unduly prejudicial and preferential. An informal complaint filed on November 22, 1950, and closed on January 16, 1951, contained similar allegations. The allegation of undue prejudice and preference was withdrawn at the hearing. We are asked to prescribe lawful rates for the future and to award reparation on 18 carload shipments which moved from these origins on and between November 15, 1948, and March 9, 1949. If any of the shipments were delivered or tendered for delivery more than 2 years prior to the filing of the informal complaint, consideration of the complaint as to such shipments is barred by statute.

Five of the shipments were billed on and between November 28, 1948, and February 20, 1949, from Cleveland to Somerville, at an exceptions sixth-class rate (27.5 percent of first class) of \$10.92 per ton of 2,000 pounds which, pursuant to tariff authority, was applicable to gross tons of 2,240 pounds. This rate per gross ton equaled

¹ Rates stated herein are per gross ton of 2,240 pounds, unless otherwise indicated.
287 I. C. C.

48.75 cents per 100 pounds, and approximated 24.6 percent of the exceptions first-class rate per 100 pounds. It was subject to a minimum of 56,000 pounds. Authorized increases were included in the transportation charges on shipments that moved after January 10, 1949. The exceptions rate was applicable because it produced lower transportation charges than an alternating commodity rate from and to the same points, minimum 56,000 pounds.

The complainant contends that the applicable rate from Cleveland to Somerville was an aggregate-of-intermediates rate of \$10.01, composed of a commodity rate of \$7.62, which applied from Cleveland to Binghamton, N. Y., but was applicable also to Allentown, Pa., an intermediate point over a tariff route other than that over which complainant's shipments moved, and a commodity rate of \$2.39 from Allentown to Somerville, minimum weight in each instance 56,000 pounds. The defendants agree that the single-factor exceptions rate alternated with and displaced the higher single-factor commodity rate, but they contend that the exceptions rate did not alternate with the aggregate of the intermediate rates arrived at under item 10-A of the class-rate tariff. That item contains the following paragraph:

If the aggregate of separately established * * * rates contained in tariffs lawfully on file with the Interstate Commerce Commission (and which would apply in the absence of rates published herein) via any route via which the rates named in this tariff apply, produces a lower charge on any shipment than the charge under the rates contained in this tariff * * * such lower charge will be the legal charge to apply via all routes authorized in this tariff, AND THE THROUGH RATE PUBLISHED IN THIS TARIFF HAS NO APPLICATION AS TO THAT SHIPMENT

The quoted matter precludes the use of the aggregate-of-intermediates rate sought by the complainant to be applied as the legally applicable rate, since it mentions only the aggregate of separately established rates "which would apply in the absence of rates published herein." If no single-factor exceptions rate had been published, the single-factor commodity rate (not an aggregate of intermediates) would have been the legally applicable rate on the shipment originated on November 28, 1948. The tariff route via Allentown to Binghamton was canceled on December 1, 1948, and was not available when the remaining four shipments from Cleveland were made. No additional carloads of pig iron have been shipped from Cleveland to Somerville by the complainant.

For the transportation of 13 shipments from Buffalo, East Buffalo, and Harriet, all in the same rate group, to Somerville, a commodity rate of \$7.57 was charged, plus authorized increases for shipments made after January 10, 1949. Ten additional carloads were shipped from Buffalo to Somerville by the complainant in 1951.

287 I. C. C.

SOMERVILLE IRON WORKS v. DELAWARE, L. & W. R. CO. 397

The complainant contends that the assailed rates from Cleveland to Somerville were, and for the future will be, unreasonable to the extent of their excess over rates made 21 percent of the exceptions first-class base rates in effect on June 30, 1946, converted to rates per net ton and applied to gross tons instead of net tons, plus authorized increases. It seeks specified reductions, hereinafter indicated, in the commodity rates on pig iron from the other origins to Somerville.

In the following table, compiled from the complainant's exhibits, there are shown in line (1) the exceptions sixth-class rates from Cleveland to Somerville in effect on June 30, 1946, and increased as thereafter authorized; (2) rates on the basis proposed by the complainant; (3) alternating commodity rates; (4) commodity rates from Buffalo, East Buffalo, and Harriet to Somerville, in effect at designated periods; and (5) commodity rates proposed by the complainant for application from those three origins to Somerville:

To Somerville, N. J.	Rates per ton of 2,240 pounds, minimum 56,000 pound					
	June 30, 1946	May 6, 1948	Jan. 11, 1949	Sept. 1, 1949	Apr. 4, 1951	Aug. 28, 1951
From Cleveland, Ohio:						
1. Exceptions rates.....	\$7.00	\$10.92	\$11.58	\$12.01	\$12.49	\$13.09
2. Rates proposed.....	5.40	8.42	8.93	9.26	9.63	10.09
3. Commodity rates.....	7.37	11.49	12.18	12.64	13.15	13.78
From Buffalo, N. Y., and others:						
4. Commodity rates.....	4.85	7.57	8.02	8.33	8.66	9.08
5. Rates proposed.....	4.40	6.86	7.27	7.56	7.86	8.23

The base rates per gross ton as of June 30, 1946, proposed by the complainant for shipments of pig iron to Somerville from Cleveland and Buffalo, are equal to 18.83 and 18.53 percent, respectively, of the exceptions first-class rates per gross ton in effect on June 30, 1946, from and to those points. These percentages are lower by either 2.17 or 2.47 percentage points than the 21-percent basis which was prescribed by division 3 in *Lynchburg Foundry Co. v. Chicago, B. & Q. R. Co.*, 281 I. C. C. 407, 411, decided June 28, 1951, as reasonable for future application on pig iron, in carloads, minimum 56,000 pounds, from designated origins in Illinois, Michigan, and Ohio, and from Buffalo, to Lynchburg, Va. The finding therein did not authorize the application of net-ton rates to gross tons.

For the five carloads from Cleveland, averaging 51.7 net tons, the yield average \$524.43 a car, \$10.14 a net ton, 84.6 cents a car-mile, and 16.4 mills a net-ton-mile, for the distance of 620 miles over the route of movement. For the 13 carloads from Buffalo, East Buffalo, and Harriet, averaging 54.8 net tons, the yield averaged \$387.24 a carload, \$7.07 a net ton, 92.4 cents a car-mile, and 16.9 mills a net-ton-mile, for 419 miles over the route of movement.

287 I. C. C.

The complainant contends also that fourth-section departures occur because lower rates are available for the transportation of pig iron from Cleveland and Buffalo over designated routes to Jersey City, N. J., and nearby points, than from the same origins to Somerville. Where there are departures from the provisions of section 4 of the act, as indicated by the complainant, there is a presumption of unreasonableness. However, the points of origin and destination are in the same rate territories as those from and to which the exceptions sixth-class rates for a net ton, applied to a gross ton, were found not unreasonable in the past in *Lynchburg Foundry Co. v. Chicago, B. & Q. R. Co.*, *supra*, and there is no warrant for the prescription for the past or future of a rate level lower than therein found lawful. The decision in that proceeding rebuts any presumption of unreasonableness by reason of any fourth-section departures.

We find that the assailed rates are not shown to have been unreasonable, but that for the future they will be unreasonable to the extent that they may exceed 21 percent of the corresponding present first-class rates subject to classification exceptions. This finding does not contemplate the application to gross tons of net-ton rates.

An order for the future will be entered.

287 I. C. C.