No. 31403

CONDENSER SERVICE & ENGINEERING COMPANY v. DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY ET AL.

Submitted July 6, 1954. Decided August 31, 1954

Charges collected for services performed in transporting a shipment of machinery from Scranton, Pa., to Laredo, Tex., found inapplicable. Reasonable charges determined. Complaint dismissed.

Abner Pollack for complainant.
Richard E. Costello for defendants.

REPORT OF THE COMMISSION

DIVISION 2, COMMISSIONERS ALLDREDGE, ARPAIA, AND FREAS

BY DIVISION 2:

The modified procedure was followed. No exceptions were filed to the report proposed by the examiner. Our conclusions differ somewhat from those recommended by him.

The complainant, a corporation, by complaint filed on November 25, 1953, alleges that the rate[1] and charges collected on a shipment of machinery from Scranton, Pa., to Laredo, Tex., on May 19, 1948, for export, were inapplicable, and unreasonable. An informal complaint containing these allegations was filed on May 3, 1950, and was closed on June 4, 1953, as not susceptible of informal adjustment. Reparation only is sought.

The shipment consisted of steam condensers, circulating pumps, power pumps, and air ejectors, and weighed 37,917 pounds. It moved over the lines of The Delaware, Lackawanna and Western Railroad Company to East Buffalo, N. Y., The New York, Chicago and St. Louis Railroad Company to St. Louis, Mo., thence the Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas, and International-Great Northern Railroad Company (Guy A. Thompson, trustee) to Laredo. At the request of the complainant, the originating carrier had its contact drayman pick up the shipment and haul it to the freight station, where it was loaded into a gondola car by the railroad's employees. At Laredo, the shipment was unloaded and transferred to other equipment for transportation to Durango, Mexico.

[1] Rates herein are stated per 100 pounds.

The complainant paid freight charges totaling $1,661.42, based on a second-class less-than-carload rate of 493 cents on the power pumps, air ejectors, and circulating pumps, and a third-class rate of 406 cents on the steam condensers. All of the articles in the shipment, however, were rated second class for less than carloads.

There were 3 condensers in the shipment, measuring 16 feet 2 inches in length, 7 feet 8 inches in height, and weighing 7,965 pounds each. Rule 27 of the governing classification provided that the owner must load heavy or bulky freight to be carried at less-than-carload rates, and the applicable tariff provided that shipments which the owner is required to load under rule 27 would not be subject to pickup service. The tariff also excluded from pickup service, articles in one piece exceeding 7 feet 6 inches in height.

Rule 14 (1) of the classification provided that carload rates applied only when a carload of freight was shipped and was loaded by the shipper. Rule 16 (1) specified that when both carload and less-than-carload ratings were provided for the same article, the term "LCL" covered shipments in quantities less than the minimum weight provided for carloads, subject to rule 15, which provided that the charge for a less-than-carload shipment must not exceed the charge for a minimum carload of the same freight at the carload rate, except on shipments for which pickup or delivery service had been performed.

As indicated, the stated classification rules contained no provisions for the determination of charges for the services performed in the transportation of this shipment. Reasonable charges must therefore be determined.

The originating carrier paid drayage charges on the shipment at a rate of 15.5 cents, pursuant to a contract and as stated, its employees loaded the gondola car used. The complainant does not deny the defendants' statement that carrier employees unloaded the shipment at Laredo. Rule 15 of the classification provided that if a shipment tendered as less-than-carload freight, and loaded and unloaded by the carrier, is found to be subject to a carload rate which does not include the cost of loading or unloading, charges per 100 pounds of 6.5 cents for loading and 6 cents for unloading, based on the actual weight of the shipment, would be made. As the charges at the carload rate, which would be subject to a minimum of 38,880 pounds, plus the stated charges for the accessorial services, would result in lower charges than those at the less-than-carload rate plus like charges for the accessorial services, the complainant seeks the prescription of the carload basis and an award of reparation to that basis.

In a proceeding concerning a shipment for which pickup and delivery services were performed, *Folding Carrier Corp.* v. *St. Louis-S. F. Ry. Co.*, 293 I. C. C. 291, we found charges at the less-than-carload rate

not shown to have been unjust or unreasonable although charges at the carload rate plus charges for pickup, loading, unloading, and delivery services resulted in a lower total. We said:

> Rules 15 and 16, insofar as here pertinent, were and are designed to prevent the performance for carload shipments, of pickup and delivery services intended only for less-than-carload shipments. The imposition upon carriers of the burden of providing, generally and in any circumstances, facilities required for the handling of carload shipments in the same manner as less-than-carload shipments is not warranted, even though charges may be added for pickup, loading, unloading, and delivery services. * * * As indicated, rules 15 and 16 specifically exclude from the application of carload rates shipments given pickup or delivery service, or for which an allowance is made in lieu of such service. There is here no attack upon those rules for general application, and the evidence before us affords no warrant for an exception thereto in respect of the instant shipment.

In the instant proceeding, for the same reasons, there is also no warrant for a finding inconsistent with the classification rules that were maintained for general application when the shipment moved. The shipment could have been handled, at complainant's request, in the manner in which carload shipments are normally handled when the application of carload rates is desired.

We find that the charges collected were inapplicable and that charges at the second-class rate plus the stated charges for the accessorial services were reasonable. The complaint will be dismissed.

ARPAIA, *Commissioner*, dissenting:

The majority finds that there are no charges named in the tariffs for the accessorial services or the line-haul transportation services. This is correct. However, I cannot agree with the conclusion of the majority as to what constitutes reasonable compensation for transporting this shipment. Had the shipper loaded and the consignee unloaded, the minimum carload charge would have been the maximum charge for this shipment. From the evidence of record, the cost of rendering the pickup, loading, and unloading services were nominal. To allow the carriers $540 as compensation for the accessorial charges under such circumstances borders on the bizarre. The drayage charges were 15.5 cents and the classification names loading charges of 6.5 cents and unloading charges of 6 cents. This would amount to approximately $40 more or less.

The record indicates that this shipment moved as a less-than-carload shipment through inadvertence. The $500 charge thereby becomes punitive in nature. In my opinion this goes far beyond any standard of reasonableness.