

No. 31632

CEMENTOS ANAHUAC, S. A. v. DELAWARE, LACKAWANNA
AND WESTERN RAILROAD COMPANY ET AL.

Decided March 5, 1956

Combination rate charged on grinder parts, in two cars, from Danville, Pa., to Laredo, Tex., for export to Mexico, found inapplicable. Applicable rate determined and reparation awarded.

Howell W. Adams for complainant.

W. C. Beaman for defendants.

REPORT OF THE COMMISSION

DIVISION 2, COMMISSIONERS FREAS, WINCHELL, AND MURPHY

BY DIVISION 2:

The modified procedure was followed. No exceptions were filed to the report proposed by the examiner. Requested findings not specifically discussed in this report nor reflected in our findings or conclusions have been considered and found not justified.

The complainant corporation, by complaint filed on September 20, 1954, alleges that the rate¹ charged on cement grinder parts shipped as two carloads under separate bills of lading on March 30, 1951, from Danville, Pa., and delivered April 13 and 16, 1951, to connections at Laredo, Tex., for export to Mexico, was and is inapplicable, unjust, and unreasonable. An informal complaint containing the same allegations was filed on March 5, 1953. The informal proceeding was closed on March 24, 1954, without adjustment. We are asked to determine the applicable and lawful charges and award reparation.

The shipments weighed 81,101 and 103,676 pounds and moved over lines of carriers and via junctions specified by the complainant as follows: The Delaware, Lackawanna and Western Railroad Company, Buffalo, N. Y., The Pennsylvania Railroad Company, Chicago, Ill., The Atchison, Topeka and Santa Fe Railway Company, Fort Worth, Tex., thence the lines of the Southern Pacific Company and The Texas Mexican Railway Company to Laredo. Charges were collected based on a through rate of \$2.84 which included a class rate of 116 cents to Chicago and a 168-cent commodity rate beyond. East of Chicago it was intended to charge the column 40 rate of 114 cents

¹ Rates are herein stated per 100 pounds.

to Chicago, based on an item in the official classification under the generic heading of "Machinery or Machines, or parts named," which reads as follows:

Parts, machine, machinery, army tractor tank, traction engine or tractor, noibn :
Iron or steel.

The complainant, a manufacturer of portland cement, purchased a tube mill which was disassembled and shipped as cement grinder parts. This type of mill can be used for pulverizing many types of material including stone used in the manufacture of cement. It is contended that the applicable rate was a one-factor fifth-class rate of \$2.38 based on the rating in an item in the western classification under the aforementioned generic heading as follows:

Crusher, breaker, or grinder parts, coal, ore or stone, noibn, loose or in packages,

The defendants introduced evidence that the Eastern Weighing and Inspection Bureau, upon whose advice earlier claims made by the complainant were paid, now takes the position that the shipments should have been classified under the classification item above first quoted. They refer to a description for which also a column 40 rating is provided in the official classification under the same generic heading in the classification, which reads:

Mills:

Crushing, grinding or pulverizing, noibn (mills for crushing or for reducing material to meal or flour by grinding or pulverizing) loose or in packages.

This applies on complete mills. They contend that for the parts shipped the rating is provided by the item embracing machine and machinery parts. The classification description "Crusher, breaker or grinder parts," is more specific, however, and therefore takes precedence over the general classification description, "Parts, machine, machinery."

The tariff which contained the one-factor fifth-class rate provided for specific routing which did not embrace the route over which the complainant's shipments moved. The lowest combination of rates, therefore, was applicable which consisted of the column 37.5 class rate of 109 cents on crusher, breaker, or grinder parts, in carloads, to Chicago, as provided by the official classification, and the commodity rate of 168 cents from Chicago to Laredo.

No evidence other than that relating to applicable rates was introduced.

We find that combination rate charged was inapplicable.

We further find that the complainant made the shipments as described and paid and bore the charges thereon; that it was damaged thereby in the amount of the difference between the charges paid and

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those which would have accrued at the combination rate herein found applicable, and that it is entitled to reparation in the sum of \$129.33, with interest.

An order requiring the payment of reparation will be entered.

No. 31694

TRUAX-TRAER COAL COMPANY v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.

Decided March 28, 1956

Applicable rate on lignite screenings, in carloads, from Kincaid, N. Dak., to Plymouth, Mich., found not shown to have been unjust or unreasonable. Complaint dismissed.

Wesley E. Keller for complainant.

Joseph C. Kauffman, Eldon M. Martin, L. E. Torinus, and Curtis H. Berg for defendants.

REPORT OF THE COMMISSION

DIVISION 2, COMMISSIONERS ARPAIA, FREAS, AND WINCHELL

By DIVISION 2:

The modified procedure was followed. Exceptions were filed by the defendants to the report proposed by the examiner. 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 December 21, 1954, the complainant alleges that rates¹ charged on 5 carloads of lignite screenings, moved during June and August 1953, from Kincaid, N. Dak., to Plymouth, Mich., were inapplicable, unjust, and unreasonable. Reparation and a just and reasonable combination rate for the future are sought. As no probability of a future movement is indicated, the request for the prescription of a future rate will not be considered. The carriers refunded \$38.41 through informal adjustment, but, not being susceptible of complete settlement, the informal proceeding was closed on October 29, 1954.

The lignite screenings were used as a light-weight aggregate for construction purposes. The shipments weighed 93,500 pounds or more, and moved over the lines of the Great Northern Railway Company to Minneapolis, Minn., the Chicago, Burlington & Quincy Rail-

¹ Rates are herein stated per net ton.