No. 32354

BOYERTOWN BURIAL CASKET COMPANY v. DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY ET AL.

Decided November 26, 1958

Rate sought to be collected on a mixed carload of grave vaults from Columbus, Ohio, to Harrisburg, Pa., found not shown to be unjust, unreasonable, or unduly prejudicial. Complaint dismissed.

Elmer F. Streib for complainant.

Alfred W. Hesse, Jr., for defendants.

REPORT OF THE COMMISSION

DIVISION 2, COMMISSIONERS WINCHELL, MURPHY, AND GOFF

BY DIVISION 2:

The modified procedure was followed. The complainant filed exceptions to the report proposed by the examiner, and the defendants replied. Exceptions and requested findings not specifically discussed in this report nor reflected in our findings or conclusions have been considered and found not justified.

The complainant, a corporation, alleges by complaint filed on January 7, 1958, that the rate [1] and charges which the defendants seek to collect on a mixed carload of steel and copper grave vaults shipped from Columbus, Ohio, to Harrisburg, Pa., on January 9, 1956, are unjust, unreasonable, and unduly prejudicial, and that the failure of the defendants to establish and maintain the route of movement as an authorized route is an unreasonable practice. An action at law filed by a defendant to collect additional charges is being held in abeyance pending a decision in this proceeding.

The mixed carload, weighing 21,542 pounds, was delivered to The New York Central Railroad Company at Columbus. The bill of lading contained the shipper's routing instructions: "Big 4–NKP-DL&W-Reading." No interchange or junction points between the connecting lines through which the shipment was to move were designated by the shipper, nor was the rate to be charged shown on the bill of lading. This imposed upon the carrier the normal duty of selecting the route over which the lowest rate from and to these points applied. *National Salvage Co.* v. *Chesapeake & O. Ry. Co.*, 289 I. C. C. 89, 91. The interchange points to be used were inserted in the

[1] Rates and charges are stated per 100 pounds.

freight bill as follows: "NYC C Cleve NKP Bflo Rupt DLW Rdg," and the shipment moved over that route, which is the New York Central to Cleveland, Ohio, The New York, Chicago and St. Louis Railroad Company (Nickel Plate) to Buffalo, N. Y., The Delaware, Lackawanna and Western Railroad Company to Rupert, Pa., and the Reading Company to Harrisburg. Charges were collected based on the through single-factor class rate of $1.37. There was, however, no authorized route over the above-named four carriers from Columbus to Harrisburg at that rate. Subsequently, the Reading Company brought suit to collect alleged undercharges based on the difference between the charges collected and those based on the lowest applicable combination of rates, $1.40 to Rupert and 71 cents beyond. As noted, that suit is pending in court.

The complainant admits that the through one-factor rate of $1.37 did not apply over the 771.1-mile route specified by the shipper. It points out, however, that the rate did apply over a route 3 miles longer, with the addition of another carrier, The Central Railroad Company of New Jersey, between Taylor, N. Y., and Allentown, Pa. This indicates, according to the complainant, that the actual route of movement was neither unduly circuitous nor unnatural, and it contends that the applicable charges, which exceed by 54 percent the charges collected, are unjust and unreasonable. It contends also that the failure of the defendants to establish and maintain the route through Rupert was and is an unreasonable practice, resulting in undue prejudice.

There were available 135 routes between the considered points over which the class rate of $1.37 applied, but the route specified by the shipper was not included. The rate of $2.11 was the lowest available rate over the route of movement. The mere fact that one of the routes, over which the $1.37 rate applied, is 3 miles longer than the route of movement does not establish the unjustness or unreasonableness of the combination rate. *United Carbon Co.* v. *Detroit, T. & I. R. Co.*, 229 I. C. C. 405. Nor has the complainant established that the route of movement was or is necessary or desirable in the public interest. Such a showing is necessary, under section 15 (3) of the Interstate Commerce Act, as a condition precedent to a requirement by the Commission that a through route be established. It follows that the failure of the defendants to establish the route sought is not an unreasonable practice, nor is there any indication that the complainant was subjected to undue prejudice.

We find that the rate sought to be collected is not shown to be unjust, unreasonable, or unduly prejudicial. The complaint will be dismissed.