

No. 32480¹

STATE OF NEW JERSEY ET AL. v. DELAWARE,
LACKAWANNA & WESTERN RAILROAD COMPANY ET AL.

Decided September 1, 1959

Passenger fares between New York, N.Y., on the one hand, and, on the other, points in New York and New Jersey, over rail and ferry routes via Hoboken, N.J., found not shown to be unjust, unreasonable, or otherwise unlawful. Complaints dismissed.

David D. Furman, Felix G. Forlenza, Henry B. Freefield, William Gural, Joseph P. Lordi, George A. Olsen, Robert B. Pepper, and August W. Heckman for complainants.

Rowland L. Davis, Jr., Richard E. Costello, Richard B. Wachenfeld, M. C. Smith, J. T. Clark, Richard Swan Buell, and Ralph Maffei for defendants.

REPORT OF THE COMMISSION

DIVISION 2, COMMISSIONERS WINCHELL, MCPHERSON, AND WEBB

BY DIVISION 2:

Exceptions to the report proposed by the examiner were filed by the complainant in the title proceeding, to which 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.

By complaint filed on July 21, 1958, the State of New Jersey and the Board of Public Utility Commissioners of that State, hereinafter referred to collectively as the State, allege in the title proceeding that certain passenger fares of The Delaware, Lackawanna and Western Railroad Company, the Erie Railroad Company, and The New Jersey and New York Railroad Company (Horace Banta, trustee), hereinafter called the Lackawanna, the Erie, and the New Jersey & New York, respectively, or collectively the defendants, are unjust and unreasonable in violation of section 1(5) of the Interstate Commerce Act. The considered fares apply between New York, N.Y., on the one hand, and, on the other, certain points on the defendants' lines in New Jersey and New York in connection with ferry service via Hoboken, N.J. They were published to become effective on June 27, 1958, resulting in increases, and, although

¹This report embraces also docket No. 32532, Northern Valley Commuters Organization v. Same.

protested, were permitted to take effect without suspension. The Northern Valley Commuters Organization was permitted to intervene in the title proceeding.

In No. 32532, an identical complaint was filed on September 22, 1958, on behalf of the Northern Valley Commuters Organization, consisting of regular commuter passengers on the defendants' trains, against the same tariff schedules as in the title proceeding. In their answers to both complaints, the defendants generally denied the allegations therein. The two proceedings were heard on a common record, and they will be disposed of in a single report.

At the hearing, the defendants moved to dismiss the State's complaint on the ground that the New Jersey statutes do not grant express authority to institute a proceeding of this type. Also, at the conclusion of the complainants' evidence, the defendants moved for dismissal on the grounds that the complainants had not proved their allegations and thus had failed to sustain the burden of proof. The motions, overruled at the hearing, were subsequently renewed on brief. No substantial right of the defendants has been abrogated, and the motions are overruled.

The ferry is used by local passengers as well as by those brought to the terminal by the trains. A substantial number of the rail commuters cross the Hudson River by bus or the Hudson and Manhattan tubes, instead of the ferry. The New Jersey & New York does not have the facilities to provide ferry service for its passengers and therefore uses the Lackawanna's terminal and ferry at Hoboken. The Erie also has used those facilities since December 1958.

The fare increases which prompted these complaints were authorized on June 2, 1958, as a result of petitions filed by the railroads in dockets Nos. 32421 and 32421 (Sub-No. 1), Increased Commutation Fares, New Jersey and New York. These increases varied in order to meet the different types of passenger situation. For example, 20 cents was added to the one-way fare for ferry trip, and 40 cents for the round trip. The rate for the ferry crossing was increased also on what are called monthly unrestricted fares, which can be used on any day of the month, and on monthly restricted fares, usable only on Monday through Friday and certain holidays. The fares were raised on multiple-ride tickets which cover the rail plus the ferry transportation, although tickets can be bought on the basis that the rail passengers do not use the ferry service. Most of the types of fare increases which were authorized are described above.

The complainants claim that the burden of proof is upon the defendants under section 15(7) of the act, which so provides in 308 I.C.C.

any proceeding involving a change in a rate. In support thereof they cite *Chicago & E. I. R. Co., v. United States*, 107 F. Supp 118, 124; affirmed, 344 U.S. 917. The proposed reduced rate therein was under suspension, but in the instant proceeding the assailed fares are already in effect. Therefore, the burden is upon the complainants to prove their allegations. *Dewey Portland Cement Co. v. Atchison, T. & S. F. Ry. Co.*, 297 I.C.C. 7, 10.

The complainants attempted to prove that these passenger fares are unreasonable because they have increased more than other consumer goods and services. This evidence is based on a so-called consumer price index developed by the New Jersey Department of Labor and Industry which indicates that over the period of June 1939 until October 1958, total goods and services in New Jersey increased an average of 114.1 percent, of which busfares represented a 15-percent increase. By way of comparison, certain types of fares over the Lackawanna have increased about 200 percent since 1939 and another type, 250 percent. The most popular commuter ticket, that of the monthly restricted fare, has not increased to the extent of these others, although such percent of increase is not shown in the record. As the price index does not include rail and ferry fares, its use herein has limited value.

Commuter witnesses indicated in general their dislike for paying increased fares, but they presented no evidence to show that the fares charged were unjust and unreasonable. Nor did they show a diversion of commuter passengers to other means of transportation due to the present fares.

In *Erie R. Co. Ferry Abandonment*, 295 I.C.C. 549, the Commission, on June 26, 1957, authorized the Erie to abandon its ferry between Jersey City and New York City. The Erie claimed that such abandonment would result in annual savings of more than \$1 million. By appeals on behalf of the adverse parties to the courts, the Erie was prevented from abandoning the ferry until December 1958. As the hearings in the instant proceedings were held in January 1959, it was impossible at that time to determine any actual savings to the Erie resulting from the abandonment which might conceivably have some effect on the level of fares.

We find that the assailed passenger fares are not shown to be unjust, unreasonable, or otherwise unlawful. An order will be entered dismissing the complaints.

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