INVESTIGATION AND SUSPENSION DOCKET NO. 7129

FREIGHT, ALL KINDS, FROM NEW YORK TO CHICAGO, DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY

Decided October 14, 1959

Proposed trailer-on-flatcar rates on freight, all kinds, from New York, N.Y., to Chicago, Ill., found not shown to be just and reasonable. Schedules ordered canceled, and proceeding discontinued.

Richard E. Costello for respondent.

Homer S. Carpenter and *J. G. Quisenberry* for protestants and interveners in opposition.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS FREAS, WALRATH, AND MCPHERSON

BY DIVISION 3:

The parties waived the issuance of a proposed report. Requested findings not discussed in this report nor reflected in our findings or conclusions have been considered and found not justified.

By schedules filed to become effective on March 11, 1959, The Delaware, Lackawanna and Western Railroad Company, hereinafter referred to as the respondent or the Lackawanna, proposed to establish trailer-on-flatcar rates[1] applicable on freight, all kinds, from New York, N.Y., to Chicago, Ill., 902 miles. Upon protest of The Eastern-Central Motor Carriers Association and individual motor common carriers operating in eastern-central territory, the proposed schedules were suspended to and including October 10, 1959. Certain other individual motor carriers intervened in opposition at the hearing.

The proposed schedules cover a complete door-to-door service using railroad equipment, including pickup of the trailer from the shipper and delivery to the consignee. This service is commonly known and will be referred to herein as Plan II TOFC service.

The respondent proposes a rate of $1 subject to a minimum weight of 70,000 pounds, with a rate of 75 cents on any weight in excess of the minimum. The suspended schedules require that a minimum of five different commodities be shipped, and that no single commodity constitute more than 60 percent of the total weight. While it is

[1] Rates are stated per 100 pounds.

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provided that not more than two trailers may be used, another item in the tariff containing the suspended matter provides that if the loading of a trailer would result in a greater gross weight than is permitted by state or municipal laws or regulations, the charges will be computed at the applicable rate and designated minimum weight, or actual weight if greater, regardless of the number of semitrailers used to transport the shipment.

A shipment tendered under the proposed rates would normally move in two trailers. Each trailer would be loaded onto separate flatcars at the Lackawanna's yard in Hoboken, N.J., and then moved as a unit to Buffalo or Black Rock, N.Y., and interchanged with The New York, Chicago and St. Louis Railroad Company, hereinafter called the Nickel Plate, or with the Wabash Railroad Company. One of the latter two carriers would effect delivery to consignee at Chicago.

The respondent now maintains a Plan II TOFC commodity rate of $1.91, minimum 20,000 pounds, applicable on freight, all kinds, between New York and Chicago. In addition, it maintains Plan II TOFC rates applicable on specific commodities from New York to Chicago. Representatives of these are rates of $1.02, minimum 30,000 pounds, on candy; $1.48, minimum 23,000 pounds, on books; $2.10, minimum 20,000 pounds, on toy novelties; and $2.44, minimum 18,000 pounds, on talking machine records. In general, motor common carriers parties to tariffs of the Eastern-Central Motor Carriers Association maintain substantially the same rates on those commodities as the respondent. However, Midwest Haulers, Inc., a motor common carrier authorized to transport general commodities which are at the time moving on bills of lading of freight forwarders, maintains a rate of $250 per trailer, minimum 20,000 pounds, applicable on freight, all kinds, between New York and Chicago. A rate of $1 is applicable on weight in excess of 20,000 pounds. These rates of Midwest Haulers, Inc., were established to meet Plan III TOFC commodity rates of the railroads.[2]

Both the respondent and the protestants submitted studies designed to show the cost to the respondent of providing the transportation service covered by the suspended rates. Each of these studies was prepared by making adjustments in the territorial average costs for the eastern district as shown in statement 5–58 prepared by the cost finding section of the Commission, for the purpose of reflecting the operating characteristics of Plan II TOFC traffic. While in both studies the adjustments covered substantially the same services, the differences in those adjustments lead to substantially different results. The table below shows the estimates made by the

[2] Plan III TOFC service is from railroad terminal to railroad terminal, with the shipper providing the trailer and arranging for the pickup and delivery of the trailer.

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respondent and the protestants, and our restatement of those costs which is explained following the table:

Service group	Respondent's estimate of costs with return on investment	Protestants' estimate of costs with return on investment	Restated estimate of costs with return on investment
Terminal	$27.29	$29.40	$29.40
Line haul	144.86	185.50	168.00
Additional cost of one interchange	14.51	15.75	14.51
Pickup and delivery	85.36	121.10	85.36
Tie down and untying	7.57	16.47	9.00
Loss and damage	2.57	15.40	2.57
Trailer expense	11.57	38.85	17.50
Total cost for one trailer on one flatcar	293.73	422.47	326.34

A minor disparity of $2.11 exists in the cost estimate of the parties with respect to terminal costs. This is occasioned primarily by the exclusion from the respondent's study of the costs incurred for train supplies and expenses. The elimination of this expenditure was not explained by the respondent, and it should be reflected in the costs.

A disparity of $40.64 exists in the estimates of the parties with respect to line-haul expenses. The respondent improperly excluded intratrain and intertrain switching expenses, and made no allowance for the line-haul expenses in connection with the return of empty trailers. The protestants, on the other hand, used an empty-return ratio of 31 percent, the average boxcar empty-return ratio for the Lackawanna and the Nickel Plate, in lieu of the appropriate ratio of 19 percent for flatcars in TOFC service in the eastern district. The higher interchange expense shown by the protestant is also due primarily to the use of the higher empty-return ratio. In addition, the protestants assumed that the traffic would require the use of three units of motive power (diesels) rather than the eastern-district average of 2.4 units. There is no substantial basis for this assumption.

A difference of $35.74 exists in the estimates of the parties with respect to pickup and delivery expenses. The respondent's estimate is based on an agreement between the Lackawanna and the Nickel Plate as to the amount of money to be allowed for this service before a division of revenues is made between the carriers. It is supported by an estimate that the average amount paid to a local cartage company by the Lackawanna in the New York area ranges from $40 to $46, or a total cost of from $80 to $92 per trailer for pickup and delivery. The protestants' estimate, based on a study of pickup and delivery expenses of the Pan-Atlantic Steamship Corporation in the New York area, is less valid for the traffic under consideration.

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With respect to tiedown and untying expenses, the respondent's estimate is based on special studies by the Lackawanna at Hoboken, showing loading and tiedown expenses of $5.81, and by the Nickel Plate at Chicago indicating release and unloading expenses of $1.76. However, the estimate does not include any allowance for tie-down costs associated with the return of empty trailers. Based on a 19 percent empty-return ratio, an additional expense of about $1.43 would be incurred. The protestants' estimate, based on the assumption that the delivering carrier's cost at Chicago would be the same as that of the Lackawanna at Hoboken, and the computation of additional expense for return of empty trailers at a ratio of 31 percent, overstates tiedown costs by $7.47.

In estimating loss and damage expenses, the respondent uses the composite loss and damage experience of the Lackawanna and the Nickel Plate on TOFC traffic for the 12-month period beginning October 1957. The protestants argue that the period used is too short to be reliable, and they computed loss and damage expenses by taking one-half of the average for freight-forwarder shipments for the year 1957. The respondent's estimate of loss and damage payments is more acceptable, since it is directly related to the traffic under consideration.

The respondent underestimated trailer per diem and rental expense by disregarding the ownership and maintenance expenses incurred on trailers owned by the Lackawanna. On the other hand, the protestants overestimated trailer expense by using a per diem rental of $7.50 for each trailer and assuming that each trailer would be used 4 days. The normal rental paid by the respondent for trailers used in Plan II TOFC service is $5 a day, and the considered traffic normally requires a trailer's use from 3 to 4 days. An estimated cost of $17.50 per trailer appears to be reasonable.

It is contended by the respondent that the combined total of station clerical and interchange costs would be reduced by about $24 since the two trailers and the two flatcars required to transport each shipment would move as a single unit. There is no sound basis for this assumption. It appears that any reduction in such expenses would be insignificant.

While the cost of providing the service which would be accorded at the proposed rates cannot be determined precisely on the evidence of record, we find that a reasonable approximation of the out-of-pocket cost per trailer, which includes return[3] on investment, is

[3] A 4-percent allowance for return on 50 percent of road property and 100 percent of the equipment. The return on property at 4 percent constitutes about 9 percent of the out-of-pocket costs.

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$326.34, and of the fully distributed costs,[4] $398.19. The proposed rates generally would yield minimum revenue averaging $350 per trailer.

A large number of shippers, including freight consolidators, use the respondent's present Plan II TOFC rates. The proposed rates are intended to attract additional traffic, particularly that of the pool-car operators and shipper associations which consolidate shipments in carload and truckload quantities. Much of the traffic of these consolidators consists of commodities in the manufactures and miscellaneous category, a class of traffic in which the railroads' participation, due largely to motor competition, generally has been declining since World War II, although they still transport a large volume. The gross freight revenue received by the Lackawanna for the transportation of manufacture and miscellaneous freight was approximately $30,900,000 in 1958. As a whole, commodities in this group transported by the railroads move at rates substantially above fully distributed costs.

The respondent maintains that, under section 15a(3) of the Interstate Commerce Act, primary consideration must be given to the effect which the proposed rates would have on the movement of traffic over its lines, and that we are "prohibited from establishing any particular minimum basis in order to protect the traffic of competing modes of transportation." The position of the protestants is that high-grade traffic must produce revenue substantially greater than out-of-pocket costs if the railroads are to obtain the funds they need to enable them to continue operations, and that the proposed rates constitute destructive competition contrary to the national transportation policy.

With the exception of cost data, little evidence was submitted by the respondent. Among other factors which must be considered in determining whether competitive rates are just and reasonable are the effect of such rates on the movement of traffic over the proponent's lines, as the respondent itself recognizes, and the net revenue effect which might be expected. The record is devoid of substantial evidence bearing on those matters. We are left to speculate as to the extent to which traffic now moving over the respondent's lines at higher rates would move at the lower proposed rates, and the extent to which the proposed rates would attract new traffic. Although the respondent claims that the proposed rates would increase its net revenue, the evidence of record does not support such a conclusion. The determination of this proceeding thus does not

[4] The fully distributed costs are the out-of-pocket costs, plus the remaining freight operating expenses, rents, and taxes, allowance for return not included in the out-of-pocket costs, and passenger and less-than-carload deficits distributed statistically on a ton and ton-mile basis.

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turn on the protection of the traffic of competing modes of transportation as argued by respondent.

We have frequently permitted carriers, in the exercise of their managerial discretion, to establish rates which, as here, are only slightly in excess of the out-of-pocket costs. In so doing, however, we have consistently required the proponents to show that special circumstances existed which justified their establishment at such a level. While the respondent requests a finding that the proposed rates are needed for the intended purpose of attracting traffic to its rails, the record furnishes no support for such a finding. Compare *Paint and Related Articles in Official Territory*, 308 I.C.C. 439.

We find that the proposed rates are not shown to be just and reasonable. An order will be entered requiring their cancellation and discontinuing the proceeding.

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