

the Southern Pacific, and the Atchison, Topeka & Santa Fe Railway, seeking authority to continue rates to Deming in contravention of the provisions of the fourth section. The record does not show specific departures in the rates to Deming. The carriers stated, however, that the tariffs would be amended to remove any departures that may exist.

We find that the assailed rate on beans is not unreasonable, unduly prejudicial, or otherwise unlawful, and the complaint will be dismissed.

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No. 11736.

LEHIGH & WILKES-BARRE COAL COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

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*Submitted March 7, 1921. Decided July 22, 1921.*

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Rates on mine props, in carloads, from points in Maryland, Virginia, and Delaware to Plymouth, Pa., found to have been unreasonable. Reparation awarded.

*Charles E. Miller* for complainant.

*Royal T. McKenna* for defendant.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, McCHORD, AND DANIELS.

McCHORD, *Commissioner*:

No exceptions were filed to the report proposed by the examiner. Complainant, a corporation engaged in the mining and selling of anthracite coal with its principal office at Wilkes-Barre, Pa., alleges that the rates charged by defendants for the transportation of numerous carload shipments of mine props which moved between June 25, 1918, and December 27, 1918, from points in Virginia, Delaware, and Maryland, to Plymouth, Pa., were unreasonable, unjustly discriminatory, and unduly prejudicial in violation of sections 1, 2, and 3 of the act to regulate commerce. Rates are stated herein in cents per 100 pounds, and do not include the general increases authorized on July 29, 1920.

The shipments moved over defendant's lines from various points of origin in so-called eastern shore territory, and were delivered by the Delaware, Lackawanna & Western Railroad at Plymouth, which is located in the anthracite coal regions of Pennsylvania. The rate 63 I. C. C.

applicable from all points of origin north of Exmore, Va., was 17 cents and from points south of Exmore, 19.5 cents. A rate in excess of the legal rate was assessed on one shipment from Nassawadox, Va., and on one from Oak Hall, Va., resulting in overcharges. Charges on one shipment from Machipongo, Va., a station south of Exmore, were collected at a rate of 17 cents and the latter shipment was therefore undercharged. Effective December 27, 1918, defendants established on this traffic a 13-cent rate from points of origin in eastern shore territory north of New Church, Va., and a rate of 16 cents from certain points on the New York, Philadelphia & Norfolk Railroad, New Church and south. Reparation is sought on the basis of these subsequently established rates.

In the supplemental report in *Virginia Pine Timber Co. v. N. Y., P. & N. R. R. Co.*, 52 I. C. C., 249, we prescribed rates on mine props from eastern shore territory to points in the anthracite regions of 11.5 cents from points north of New Church, and 13.6 cents from all points on the New York, Philadelphia & Norfolk Railroad in Virginia, New Church to Cape Charles, Va., inclusive, and awarded reparation to that basis on shipments that moved between March 25, and May 17, 1918. These rates were prescribed without prejudice to the 25 per cent increase authorized by general order No. 28. The rates prescribed therein as increased by that order would have been 14.5 and 17 cents, respectively. Our findings in *Bowden Co. v. Director General*, 57 I. C. C., 31, were based upon the case cited.

The Delaware, Lackawanna & Western Railroad, delivering carrier of the shipments in the instant case, was not a party in *Virginia Pine Timber Co. v. N. Y., P. & N. R. R. Co. supra*, and rates to destinations on its lines were therefore not affected by the orders in that proceeding. In *Bowden Co. v. Director General, supra*, no evidence was offered bearing on the reasonableness of the rates to points located on the Delaware, Lackawanna & Western.

No testimony was presented in support of the alleged violations of sections 2 and 3 of the act and in respect to the allegations of the violation of section 1 complainant relies mainly on the rates prescribed in the foregoing decisions and states that the rates subsequently established by defendants to Plymouth were intended to put the rates to that point on the same level as the rates so prescribed to other points in the anthracite regions located on the lines of other carriers.

Defendant offered testimony showing that the rates on mine props from the territory of origin here involved are in some instances lower than the rates on lumber between corresponding points; and that since the testimony in the cases cited was taken, expenses of operation have largely increased. It contends that the rates prescribed by us in these cases were unreasonably low.

The evidence shows that transportation conditions affecting the movement to Plymouth for delivery by the Delaware, Lackawanna & Western are practically the same as those affecting the movement to other points in the anthracite group involved in the cases above cited.

We find that the rates charged on the shipments herein involved were unreasonable to the extent that they exceeded 14.5 cents from points north of New Church and 17 cents from all points on the New York, Philadelphia & Norfolk Railroad in Virginia, New Church to Cape Charles, inclusive; that the complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Upon receipt of a statement prepared in accordance with rule V of our Rules of Practice we will consider the entry of an order awarding reparation.

63 I. C. C.