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The Lake Cargo Coal Rate Controversy

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the managing partners, and under a well established rule of mining partnership, the plaintiff would not be affected thereby. *Manville v. Parks*, 7 Colo. 128, 2 Pac. 212, 30 Cyc. 481; *Page on Contracts*, 1479; *Irwin v. Williar*, 110 U. S. 499, 28 L. ed. 225, 4 Sup. Ct. 160.

—Lester C. Hess.

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**The Lake Cargo Coal Rate Controversy.**—The most valuable natural resource of the state of West Virginia is its bituminous coal. A very large proportion of the population of the state is directly or indirectly dependent upon the mining of this coal and its profitable sale. It has long been recognized that large year around production of coal is necessary to a healthy economic condition in the industry. A very considerable part of the total summer production of coal is marketed at the Lake Erie ports for transshipment over the lakes to other points. This coal is known as "lake-cargo coal" as distinguished from coal shipped to the same points for local consumption.

Since lake cargo coal is marketable only during the period of open navigation on the lakes it aids greatly in keeping up summer production in the mines, serving to prevent a seasonal slump in production. It is over this market that a controversy exists. It is thought that a short discussion on this controversy, based principally on the recent decision of the Interstate Commerce Commission in *Lake Cargo Coal Rates*¹, may be acceptable to the profession, especially since the original reports are not readily available, and since there is widespread interest in the subject now. That the question is of vital importance is apparent when the firmly established Pittsburgh and Ohio producers, who have large local markets while we have none, find it necessary to make such a determined effort to capture this additional market.

In *Lake Cargo Coal Rates*, *supra*, associations of coal operators in the Pittsburgh district of Pennsylvania and the

¹ 128 I. C. C. 309 (1927).
Ohio No. 8 district of Ohio join in a general complaint wherein they allege that lake-cargo coal rates from their districts to lake ports are unreasonable per se, relatively unreasonable as compared with rates from all other districts\(^2\) to the same ports, and unduly prejudicial as compared with rates from all other districts listed as preferred districts.

The railways serving the complaining districts and the alleged preferred districts are made defendants thereto and according to the practice obtaining before the Interstate Commerce Commission must affirmatively show the legality of the rates challenged.

The rates complained of are alleged to be illegal (unreasonable) for the following reasons: 1. That rates established in 1912 have been increased more proportionately for the complaining districts than for the alleged preferred districts to the same lake ports.\(^3\) 2. That other commodity rates generally have sustained proportionately less increase. 3. That transportation costs have decreased since the last rates were established and that this justifies a decrease in rates from the complaining districts. 4. That the rates are relatively unreasonable as gauged by the cost of service and length of haul from the southern points of origin. 5. That the high rates now in effect from the complaining districts materially contribute to the difficulties under which these two districts now labor and is partly responsible for the decreased tonnage of lake-cargo coal shipped from such districts. 6. That complainants should benefit by the fact that the cars returning from lake ports to their districts are available for carrying iron ore from the ports to those districts.

The carriers serving the complaining districts answer the allegations of the complainants by showing that the present rate proceeds from that established in 1912 in the case of *Boil√_au v. P. & L. E. R. R. Co.*,\(^4\) as being reasonable and legal and includes only additions and deductions made under

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\(^2\) All the rest of Pennsylvania and Ohio, western Maryland, West Virginia, southwestern Virginia, eastern Kentucky and Tennessee. (The complaint, however, is principally aimed at the districts of southern West Virginia, Kentucky and Tennessee.)

\(^3\) Increases by percentage over 1912 rates are: Ohio No. 8 117.3 per cent; Pittsburgh 112.8 per cent; New River, Tug River and Pocahontas 83.9 per cent; Big Sandy, Kanawha, Kenova, Thacker and Kentucky 96.9 per cent; Fairmont 101.1 per cent.

\(^4\) 22 L. C. C. 940 (1912).
competent Federal authority which have been determined to be reasonable. The differentials here complained of were established by this method and have been carefully maintained through all rate changes. It is further shown that the rates on lake-cargo coal are lower than on any other large class of freight traffic moving in any direction from the complaining districts. Many of the defendant carriers serving the complaining districts protest against a decrease in rates on the ground that such action would injuriously affect their revenues.

Railways serving the alleged preferred districts contend, and offer evidence tending to show, that their revenues from the proportionately lower rates from those districts are adequate to give them a fair and reasonable return on the service. This is attributed to the longer haul, heavier loading of and more economical operation of trains, smaller terminal charges per ton-mile, and the general adaptation of their lines to that class of traffic.\(^5\)

Interveners from the complaining districts attempt to relate the depressed condition in the coal industry there in part to the present rates, alleging that the differentials so favor the southern producers that they are able to dominate the lake export market for coal. It is admitted by the southern districts that the percentage of the total lake-cargo coal which is shipped from the southern districts has greatly increased in recent years but they contend that this is due to other causes than the rate structure.\(^6\) It is also urged that the proposed increased spread of the differentials sought by the complaining districts would seriously affect the competitive market now existing at the lake ports for this coal. This contention is supported by the interveners representing northwest coal consumers, with one exception. It is manifestly clear that the northwest consuming public wishes the competitive status of to be maintained.\(^7\) Exhibits show that for some years after the present differentials were established the Pittsburgh and Ohio No. 8 districts

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\(^5\) The proportion of coal to all freight is larger on southern lines than on those of carriers serving the complaining districts.

\(^6\) Attributed to superior quality of coal, fewer labor disputes, lower mining costs, more efficient mining equipment, and freedom from competition with any other large labor market in securing labor for the mines.

\(^7\) In the Bolleau Case, supra, one of the reasons assigned by the Commission for not establishing a lower rate from Pittsburgh to the lake was that it might stifle competition from the southern producing centers.
maintained their leadership in lake markets and that only very recently have the southern producing districts reached their present competitive position in that field.\(^8\) The differentials in effect at the time of this hearing were established in 1917, during the Federal operation of the railways. Rates herein complained of are: Pittsburgh 1.66, Ohio No. 8 1.63, Southern West Virginia 2.06, Kanawha 1.91. It is shown that these rates are proportionately lower, as compared with the rate from Ohio No. 8 as a base, from the southern districts than from the complaining districts. This is used by the complainants as evidence of relative unreasonableness, but in reply the southern interveners assert that the rates were made as a group structure and that the differential was always regarded as the important consideration. It is true that the haul is longer from the southern points of origin but it has long been a recognized principle of rate making that the rate does not ordinarily increase in direct ratio with the distance of haul.

The Commission finds that rates on lake-cargo coal are properly lower than on other similar traffic on account of favorable conditions for hauling it; that the rates from the complaining districts are higher proportionately than rates from the alleged preferred districts; that the cost of service from the complaining districts warrants a reduction in the rate. Other factors given weight in the decision are the present depression in the complaining districts, and the large gains recently made by the southern producers in lake shipments. It was therefore held that the rates complained of were relatively unreasonable insofar as they exceeded 20 cents per ton under the present rates from Pittsburgh and Ohio No. 8 districts. It was held that there was no undue prejudice which there was a legal basis for removing.\(^9\) It was therefore ordered that the existing rate

<table>
<thead>
<tr>
<th>District</th>
<th>1909</th>
<th>1911</th>
<th>1913</th>
<th>1921</th>
<th>1923</th>
<th>1924</th>
<th>1925</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pittsburgh</td>
<td>7.8</td>
<td>10.0</td>
<td>12.2</td>
<td>6.2</td>
<td>8.6</td>
<td>3.7</td>
<td>2.8</td>
</tr>
<tr>
<td>Ohio No. 8</td>
<td>1.3</td>
<td>1.9</td>
<td>2.9</td>
<td>3.6</td>
<td>3.7</td>
<td>2.8</td>
<td>1.3</td>
</tr>
<tr>
<td>Sou. West Va.</td>
<td>3.0</td>
<td>5.4</td>
<td>6.0</td>
<td>6.5</td>
<td>7.8</td>
<td>9.7</td>
<td>12.2</td>
</tr>
<tr>
<td>Kanawha</td>
<td>1.7</td>
<td>3.1</td>
<td>2.9</td>
<td>3.6</td>
<td>4.5</td>
<td>6.7</td>
<td>7.8</td>
</tr>
<tr>
<td>All Kentucky</td>
<td>0.0</td>
<td>0.3</td>
<td>2.6</td>
<td>3.2</td>
<td>3.5</td>
<td>5.6</td>
<td></td>
</tr>
<tr>
<td>Total all districts</td>
<td>15.3</td>
<td>21.6</td>
<td>28.3</td>
<td>22.3</td>
<td>29.8</td>
<td>22.9</td>
<td>26.3</td>
</tr>
</tbody>
</table>

\(^8\) District of origin. \(^9\) Complaining districts and alleged preferred districts are not served by the same carriers. Where lines which do not participate in traffic from the complaining districts form independent lines from the alleged preferred districts there is no undue prejudice. Ashland Fire Brick Co. v. S. Ry. Co., 22 L. C. C. 116 (1911).
from Pittsburgh (1.66) be cut to 1.46, and the rate from Ohio No. 8 (1.63) be cut to 1.48. The carriers serving the southern districts were admonished not to cut their rates to meet the newly established ones on the old basis by a statement to the effect that a decrease in the rates from the southern districts was at present unwarranted. The differentials thus established are: Pittsburgh 45 cents and Ohio No. 8 48 cents per ton over the Kanawha field and 60 cents and 63 cents respectively over the southern West Virginia fields.

Commissioner Hall, with whom concurs Commissioner Woodlock, in his dissent points out that the rates complained of were fixed by competent Federal authority as being reasonable and that as judged by the usual standards applied by the commission the rates are still reasonable.

It is respectfully submitted that the evidence does not support the conclusion of the Commission as to relative unreasonableness; that the Commission has rather unwisely burdened itself with the correction of economic conditions in the complaining districts; and that the probable consequences of the act will be injurious to the economic interest of West Virginia, as well as to the interests of the north-west consuming public.

It is well known that the difference in freight rates has been absorbed by the producer of coal by the process of selling his coal at the lake delivered to meet the price of the nearer producing centers. At the present time in West Virginia the profit on a ton of coal is negligible. The result of the increased differential will be to shut the door of the lake market in the face of the Southern operators. The carriers serving the districts injured by the new differential have now agreed voluntarily to reduce their rates to re-establish the old status. This will, of course mean a revenue loss to them, but they prefer that to a loss of the major part of the revenue from lake-cargo coal which they are at the present time carrying.10 These carriers stand ready to prove, moreover, that they are prepared to handle the traffic at the reduced rates profitably. Their right to reduce rates on their own initiative, thereby destroying the effect

10 In 1925 these carriers handled about 27 millions of tons of coal of this class at rates varying from 1.91 to 2.06 per ton. Approximate revenue of $55,600,000.
of the order of the Commission in *Lake Cargo Coal Rates*,\(^\text{11}\) is now in process of determination by the Commission.

The struggle for the lake market has been long and bitterly fought. The end is not yet in sight. As always, a great deal of the future prosperity of the districts affected rests in the hands of the Commission. West Virginians are cognizant of the greater political strength of the Pennsylvania and Ohio producers, which has on various occasions been well demonstrated. We await the outcome of this present battle with mingled curiosity and apprehension.

—R. PAUL HOLLAND.

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**FALSE PRETENSES—WORTHLESS CHECK ACT—EFFECT OF POSTDATING.**—Defendant was indicted for issuing and delivering a check without sufficient funds on deposit to pay the same, in violation of §34, ch. 145, CODE. The check was issued and delivered to the agent of the payee on April 10, 1926, bearing the date April 12, 1926. The statute is as follows: "If any person make, issue and deliver to another for value any check or draft on any bank, and thereby obtain from such other any credit, money, goods or other property of value, and have no funds, or insufficient funds, on deposit to his credit in said bank with which such check or draft may be paid, he shall be guilty of a misdemeanor, if the amount of such check or draft be under twenty dollars, and upon conviction thereof be fined not exceeding one hundred dollars and confined to the county jail not less than one day nor more than thirty days, and if the amount of such check or draft be twenty dollars or over he shall be guilty of a felony and confined in the penitentiary not less than one year nor more than two years, and the drawer of such check or draft shall be prosecuted in the county in which he delivers the same. Provided, however, that if the person who makes, issues and delivers any such check shall, within twenty days after he receives actual notice, verbal or written, of the protest of such check, pay the same, he

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\(^{11}\) 126 I. C. C. 309 (1927).