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IN THE  
 Circuit Court of Marion County  
 State of West Virginia

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LAMBERT RUN COAL COMPANY, *Plaintiff,*

vs.

THE BALTIMORE & OHIO RAILROAD COMPANY,  
*Defendant.*

In Equity No.....

**BILL OF COMPLAINT.**

JOHN A. HOWARD,  
 BUTLER, LAMB, FOSTER & POPE,  
 Solicitors for Plaintiff.

RUSH C. BUTLER,  
 ERNEST S. BALLARD,  
 FRANK E. HARKNESS,  
 Of Counsel.



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Circuit Court of Marion County  
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LAMBERT RUN COAL COMPANY, *Plaintiff*,

vs.

THE BALTIMORE & OHIO RAILROAD COMPANY,  
*Defendant*.

In Equity No. ....

BILL OF COMPLAINT.

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*To the Honorable Judge of the Circuit Court of the County of Marion,  
State of West Virginia, in Equity Sitting:*

Plaintiff respectfully represents:

1. That plaintiff Lambert Run Coal Company, a corporation organized and existing under the laws of the State of West Virginia, with its principal office in the City of Fairmont and County of Marion in said State, brings this, its bill of complaint, on behalf of itself, and also on behalf of such other operators of coal mines served by defendant as are situated similarly to plaintiff and desire relief similar to that herein sought and who shall intervene in this suit.

2. That defendant, The Baltimore & Ohio Railroad Company, is a corporation organized and existing under the laws of the State of

Maryland, and is a common carrier by railroad engaged in the transportation of passengers and property between points in the State of West Virginia, and points in other States, and as such is subject to the Interstate Commerce Act, to-wit: the Act to Regulate Commerce as amended by the Transportation Act, 1920.

3. That this is a suit of a civil nature in equity. This suit necessarily involves and presents for decision the construction of the aforesaid Interstate Commerce Act and particularly paragraph (12) of Section 1 thereof, which said paragraph reads as follows, to-wit:

“(12) It shall also be the duty of every carrier by railroad to make just and reasonable distribution of cars for transportation of coal among the coal mines served by it, whether located upon its line or lines or customarily dependent upon it for car supply. During any period when the supply of cars available for such service does not equal the requirements of such mines it shall be the duty of the carrier to maintain and apply just and reasonable ratings of such mines and to count each and every car furnished to or used by any such mine for transportation of coal against the mine. Failure or refusal so to do shall be unlawful, and in respect of each car not so counted shall be deemed a separate offense, and the carrier, receiver, or operating trustee so failing or refusing shall forfeit to the United States the sum of \$100 for each offense, which may be recovered in a civil action brought by the United States.”

And plaintiff shows that it is entitled under and by virtue of the provisions of said paragraph, during periods when the supply of cars available on defendant's line for transportation of coal does not equal the requirements of the mines served by it, to a distributive share of such cars proportionate to the rating of its mine, and that by the acts of the defendant hereinafter complained of the plaintiff is deprived of such share of cars available for the transportation of coal to its great and irreparable damage as hereinafter more particularly set forth.

4. That plaintiff is, and for thirteen years last past has been, engaged in the business of mining, producing, selling and shipping bituminous coal and owns and operates a mine known as the Clauson Mine, having a maximum daily productive capacity of approximately 600 tons,

and a daily rated capacity according to the ratings established by the defendant as hereinafter more particularly set forth, of 575 tons, which said mine is located upon the line of the defendant in said State and connected therewith by a switch connection and is served exclusively by, and dependent upon, the said defendant as an initial carrier for the transportation of the coal so mined to the purchasers and consumers thereof.

That plaintiff has, in the conduct of its business aforesaid, built up a valuable goodwill, and has an extensive market for the coal produced and mined by it as aforesaid, throughout the State of West Virginia and neighboring States, the preservation of which goodwill and business depends upon the constant production of coal and the uninterrupted conduct of its mining operations. The character of the coal mined by the plaintiff and the location of plaintiff's said mine are such that it is not practicable to store said coal, and in order to maintain and continue its operations it is necessary that it should receive from defendant adequate railroad facilities for the transportation of its coal as and when mined over the lines of the defendant, all as hereinafter more fully set forth.

That in addition to the said mine of the plaintiff there are many other bituminous coal mines served by the defendant, to-wit: above 750, with many of which the plaintiff, in its said business of mining, producing, selling and shipping bituminous coal, is in competition.

5. That for many years last past the defendant has maintained ratings of the capacity of the mines of the plaintiff and of the mines of plaintiff's competitors and all other mines served by the defendant, which ratings are for the purpose of determining the distribution of cars to the said mines and are commonly called mine ratings.

That under paragraph (12) of Section 1 of the said Act the defendant now maintains such mine ratings, the rules governing the establishment and application of which are as set forth in Exhibit A, attached to this bill of complaint and hereby made a part hereof.

That under said rules the defendant has in the past, from time to

time, established mine ratings for the respective mines served by it including a rating of the plaintiff's said mine which said rating as most recently established, to-wit: for the period from May 10 to June 9, inclusive, 1920, was 11.5 fifty-ton cars per day.

That under paragraph (12) of Section 1 of the said Act defendant is obligated and required to make just and reasonable distribution of cars for transportation of coal among coal mines served by it and, during any period when the supply of cars available on its line for transportation of coal does not equal the requirements of the mines served by the defendant, to apply the said mine ratings and count each and every car furnished to or used by any such mine for transportation of coal against that mine; and during any such period, plaintiff is entitled to receive a share of such cars based on the application of the said mine ratings and the counting of each and every car as aforesaid, and is further entitled to the benefit and protection of the provisions of said paragraph 12 of said Section 1 to the end that no other coal mine located on the defendant's line shall receive a greater proportionate share of such cars either because of failure of the defendant to apply said mine ratings or to count each and every car as aforesaid, or for any other cause or reason whatsoever.

6. That for many weeks last past the supply of cars available on the defendant's line for transportation of coal has not been, and is not now, equal to the requirements of the mines served by it, but on the contrary there has been and is an acute shortage of such cars and the supply thereof has been and is inadequate to meet the requirements of the business of the defendant.

That although under paragraph (12) of Section 1 of the said Act the defendant, under the circumstances above alleged is bound, in making distribution of cars available on its line for transportation of coal, among the coal mines served by it, to maintain and apply the mine ratings of such mines and to count each and every car furnished to or used by a mine for transportation of coal against that mine, the

defendant for many weeks last past has failed, refused and neglected, and now fails, refuses and neglects so to do, but on the contrary has for many weeks last past furnished and now furnishes cars for transportation of coal to certain of the mines served by it other than the plaintiff's said mine in excess of the share to which the said other mines were and are entitled under the application of their respective mine ratings and the counting of each and every car furnished to or used by a mine for transportation of coal against that mine, while at the same time failing and refusing to furnish to the said mine of the plaintiff the share of such cars to which the said mine was and is entitled on the said basis, the said unlawful distribution being made and effected by defendant under and in pursuance of certain car distribution rules maintained and applied by it and now in effect, which said rules are as set forth in Exhibit A, attached to this bill of complaint and made a part hereof.

Plaintiff is informed and believes and therefore alleges the fact to be that the acute car shortage hereinbefore referred to is continuing and will continue for a long time to come and that the supply of cars available on the defendant's line for transportation of coal shipped from the mines served by it will not equal the requirements of the said mines but will be inadequate to meet such requirements.

Plaintiff further alleges that it has made earnest and repeated requests upon the defendant and has constantly attempted to persuade and induce the defendant by all lawful means within its power to discontinue the defendant's said unlawful practice with respect to the distribution of cars available on the defendant's line for transportation of coal, among the mines served by it, but the defendant has failed, neglected and declined to cease and desist from the said unlawful practice and intends, proposes and threatens to continue the same without abatement or alteration in any particular and, as plaintiff is informed and believes and therefore alleges, will so continue the same unless restrained by the order of this Court as hereinafter prayed, all to the great and irreparable damage and injury of the plaintiff as hereinafter more fully set forth.

7. Plaintiff is informed and believes and therefore alleges the

fact to be that prior to the assumption by the Federal Government of control of the railroad of defendant and other railroads in the United States (hereinafter referred to as Federal control), it was the general practice of many railroads serving bituminous coal mines, during periods when the supply of cars available on their respective lines for transportation of coal did not equal the requirements of the mines served by them respectively, to deliver cars for the transportation of railway fuel coal, to the mines furnishing such coal, in excess of the share of the cars available on their respective lines for transportation of coal to which such mines would have been entitled under a distribution proportionate to their respective mine ratings, which practice is generally referred to as the practice of assigning cars; that during Federal control the said practice of assigning cars continued in effect until it came to the attention of the United States Fuel Administrator and he thereupon made representations to the Director General of Railroads with respect to its disastrous effect upon the coal mining industry and urged its discontinuance and the substitution therefor of the practice of distributing all cars for transportation of coal in proportion to the ratings of the respective mines; that the Director General of Railroads declined to accede to the representations of the United States Fuel Administrator and thereupon the question was presented to the President and considered by him in conference with the United States Fuel Administrator and the Director General of Railroads, and as a result of the said reference to the President the United States Fuel Administrator issued a statement and order in the words and figures following, to-wit:

“May 24th, 1918.

Ten cents a short ton was stricken from the mine price of all bituminous coal in the United States, by order of Fuel Administrator H. A. Garfield tonight. The new price takes effect at seven o'clock tomorrow morning, and represents an average reduction of nearly five per cent. The order reads as follows:

“THE UNITED STATES FUEL ADMINISTRATOR, acting under authority of an Executive Order of the President dated 23 August, 1917, appointing said Administrator and of subsequent Executive Orders and in furtherance of said Orders and of the Act of Congress therein referred to and approved August 10, 1917.

Hereby orders and directs that all prices for bituminous



coal f. o. b. mines in the coal producing districts throughout the United States fixed by the said Executive Order of the President dated 21 August, 1917, and subsequent orders of the United States Fuel Administrator and in effect at 7 A. M. on the 25th day of May, 1918, shall be and the same hereby are reduced as to all shipments made after 7 A. M. on the 25th day of May, 1918, by the sum of ten cents for each net ton of 2,000 pounds.

This order shall in no way affect the increase contained in the Executive Order of the President, dated 27 October, 1917, adding the sum of forty-five cents to the prices fixed for bituminous coal under the terms and provisions set forth in said last mentioned Order.'

The reduction will mean an annual saving to consumers of a sum estimated by the Fuel Administration at \$60,000,000. The President has directed that the railroads pay the Government price for coal. The increased cost of railroad fuel thereby occasioned is also estimated at \$60,000,000 per annum. The reduction of 10 cents per ton on all coal will, however, reduce the net increased cost to the railroads to \$45,000,000 per annum. Under the President's plan, the railroads will furnish cars to all coal mines alike, without discrimination except as dictated by the prior requirements of the railroads for operating purposes and the needs of domestic consumers and of the war.

Under the present war demands, the maximum output of every mine working at full time would still be insufficient to meet the country's coal needs. The principle of equal car supply has accordingly been adopted so as to make for as steady an operation as possible of all properties, and for continuous employment of men, thus making for maximum output.

The introduction of the principle of even car supply will reduce the general average overhead of mine operation, and thereby justifies the Administration in putting out a price reduction order. It is understood that the mine prices thus fixed will remain undisturbed until the United States Fuel Administrator has before him the cost returns for the twelve months ending August 31, 1918. The returns thus far in are being carefully studied by Fuel Administration accountants and engineers with a view to making the utmost saving to the public that is consistent with a maximum production of coal.

The order issued tonight will have no effect on the price



Philadelphia, Penna.  
 Mr. N. D. Maher,  
 Regional Director, Pocahontas Region,  
 Roanoke, Virginia.

Dear Sir:—

Effective June 24, 1918, the assignment of cars for loading of railroad fuel at mines on the Pennsylvania Railroad, the B. & O. Railroad, Lines East, and their short line connections were cancelled. It is now desired that the assignment of cars for railroad fuel loading shall be cancelled on all other lines in the Eastern, Allegheny and Pocahontas Regions, effective July 5, 1918. This is to request that you so arrange.

The United States Fuel Administration is advised of these instructions and through its District Representatives in the coal producing districts will obtain an adequate current supply of coal of substantially like quality as has heretofore been had unless vital war necessities makes this impossible. In the latter event the Fuel Administration will handle the matter with the Railroad Administration in Washington and the Purchasing Committee here will deal with individual railroads on the subject as may be necessary. Should the result of this order be to deplete the essential coal supply of any road, the Car Service Section should be advised by wire immediately.

We beg to suggest that all the coal producing roads in your territory who will cancel their assigned car orders in accordance therewith, should immediately wire all foreign lines obtaining fuel from mines on their roads, so that such foreign lines will be advised of the change in car distribution.

CAR SERVICE SECTION.

4

CC to Mr. H. B. Spencer,  
 J. D. A. Morrow,  
 A. W. Calloway,  
 W. A. Marsh."

Plaintiff is informed and believes and therefore alleges the fact to be that thereafter and effective July 10, 1918, a similar order was issued by the Director General of Railroads, putting into effect the distribution of all cars available for transportation of coal in proportion to mine ratings, throughout the remainder of the United States, which said order was in the words and figures following, to-wit:

## UNITED STATES RAILROAD ADMINISTRATION

Director General of Railroads,

Washington, July 6, 1918. j

DIVISION OF OPERATION  
CAR SERVICE SECTIONIn reply refer to File  
No. 257-52.

W. C. Kendall, Manager  
 W. L. Barnes  
 A. G. Gutheim  
 W. J. McGarry  
 C. B. Phelps  
 G. F. Richardson  
 Assistant Managers.

Mr. B. L. Winchell,  
 Regional Director, Southern Region,  
 Atlanta, Georgia.

Mr. R. H. Aishton,  
 Regional Director, Northwestern Region,  
 Chicago, Illinois.

Mr. Hale Holden,  
 Regional Director, Central Western Region,  
 Chicago, Illinois.

Mr. B. F. Bush,  
 Regional Director, Southwestern Region,  
 St. Louis, Mo.

Dear Sir:—

Effective July 10th, 1918, please abolish the practice of assigning cars for railroad fuel loading at bituminous coal mines on all lines of railroad in the Southern, Southwestern, Central Western and Northwestern Regions. This will complete the program of abolishment of this practice in the entire country.

The United States Fuel Administration is advised of these instructions and through its District Representatives in the coal producing districts affected will see that the carriers who draw fuel from such districts will obtain an adequate current supply of coal of substantially like quality as has heretofore been had unless vital war necessities make this impossible. In the latter event, the Fuel Administration will handle the matter with the Railroad Administration in Washington, and the Purchasing Committee here will deal with individual railroads on the subject as may be necessary.

Should the result of this order be to deplete the essential coal supply of any road the Car Service Section should be advised by wire immediately.

We beg to suggest that all the coal producing roads in

your territory which will cancel their assigned car orders in accordance therewith, should immediately wire all foreign lines obtaining fuel from mines on their road so that such foreign lines will be advised of the change in car distribution.

#### CAR SERVICE SECTION.

4

CC to Messrs. H. B. Spencer  
 F. M. Whitaker  
 J. D. A. Morrow  
 A. W. Calloway  
 W. A. Marsh."

Plaintiff is informed and believes and therefore alleges the fact to be that thereafter and until the termination of Federal control the said system of distribution of all cars available for transportation of coal in proportion to mine ratings was generally observed on all of the railroads of the United States.

Plaintiff further alleges that after the termination of Federal control and on February 29, 1920, the said practice of distribution of all cars available for transportation of coal in proportion to mine ratings was continued by the defendant and many railroads throughout the United States until on or about April 15, 1920, when the defendant discontinued the said practice and inaugurated the practice hereinbefore described of assigning to certain of the mines served by it, other than the plaintiff's said mine, cars for the transportation of railway fuel coal in excess of the share of cars available on its line for transportation of coal to which the said other mines would have been entitled under the maintenance and application of their respective mine ratings and the counting of each and every car furnished to, or used by, a mine for transportation of coal, against that mine, and distributing to the said mine of the plaintiff fewer cars than it was entitled to on the said basis.

8. That bituminous coal tends to deteriorate if placed in storage after being mined, and is also subject to serious danger from spontaneous combustion when stored, and in many instances storage of coal is impracticable because of the location of the mine producing it and the contour of the ground surrounding the mouth thereof. In the great

majority of instances, for one or more of the reasons aforesaid, it is impracticable or dangerous to store bituminous coal at the mine, and mines therefore cannot usually be operated except when they are able to load and ship coal as and when it is mined. When any such mine is unable to load and ship coal as aforesaid, it is compelled to suspend the mining of coal until cars are furnished in which it can be loaded and shipped.

That the operation of plaintiff's said mine and of all bituminous coal mines involves the incurring of numerous and great overhead expenses which are fixed and constant and accrue whether or not the mine is in operation. The said overhead expenses include interest on the investment in the plant (including mine, buildings, machinery, equipment, etc.); taxes and insurance; depreciation on buildings, machinery and equipment; superintendence (including the wages and expenses of the mine superintendent and his permanent force); ventilating and keeping the mine clear of water (including the maintenance and operation of the pumping machinery and the salaries and expenses of the engineer and his staff); the feeding and care of animals used in the operation of the mine; the salaries and expenses of the sales organization; and the salaries and expenses of the general office organization. All of the said expenses are incurred by the plaintiff daily irrespective of the amount of coal produced or whether the mine is or is not in operation.

That every hour of working time that a mine is closed down for any cause increases the amount of overhead cost properly and necessarily chargeable to each ton of coal produced, and the said overhead cost increases with the increase of idle time.

The necessary effect of failure or refusal on the part of a carrier to maintain and apply mine ratings to all of the mines served by it and count each and every car furnished to or used by each and every such mine for transportation of coal against that mine is that the per ton overhead costs of mines receiving less than their proportionate share of cars increase directly as their car supply decreases.

That the chief incentive of mine labor to continue in the service of a particular mine is the regularity of the employment there afforded. As between neighboring mines or mines in the same or neighboring districts, mine labor will go to and remain at the mine which offers the

most continuous employment and thereby the greatest opportunity for earning. Mines which have a greater proportion of idle time than other mines either in or out of the district, are unable to hold their labor and as a result are compelled to operate, when they can operate at all, with a depleted force of laborers consisting of the lowest and most unreliable grade which is the last to leave on account of unsatisfactory labor conditions. Furthermore a mine with a large proportion of idle time not only loses laborers to other mines having less idle time, but likewise loses laborers to other lines of employment from which it is difficult or impossible to induce them to return to the business of mining.

That the effect of this situation on the spirit and morale of the mine labor is exceedingly injurious and results not only in a shortage of labor but in a distinct and dangerous lowering of the loyalty and assiduity of those who remain, so rendering less efficient the operation of the mine.

That in addition to the effect on overhead cost and mine labor which is above referred to, the idle time of a mine resulting from insufficient car supply has the further serious effect of interfering with its commercial contracts, destroying the good will of its customers, decreasing the number of its patrons, reducing the legitimate profits of its business and generally breaking down and impairing its credit.

That on the other hand, the effect on the operators of mines enjoying assigned cars is to permit the steady operation of the mines and the development and maintenance of their full productive capacity, to decrease the overhead cost of production per ton of coal, to attract labor of the highest grade and furnish it steady and satisfactory employment yielding an adequate annual wage, to build up and maintain their business, increase the number of their customers, enhance the value of their good-will in the trade, and in many other ways to give them advantages over their unfavored competitors which advantages are unlawful and greatly to the detriment and damage of the plaintiff, all others similarly situated and the general public.

9. That the practice of assigning cars has this further effect on the rights and business of the plaintiff and the interests of the public, namely, that cars which are assigned to particular mines are, by reason

of such assignment, frequently held idle awaiting placement at and use by the mine to which they are assigned, with the result that the average daily number of cars available for loading at all mines is decreased and the share of cars to which mines receiving no assigned cars are entitled, is reduced beyond the reduction following directly from the assignment and use of cars on a particular day.

10. That all of the considerations relative to the storage of bituminous coal at the mines set forth in paragraph 8 hereof apply at the plaintiff's said mine, that is to say the coal produced at said mine would deteriorate if placed in storage and would be liable to serious danger of spontaneous combustion, and moreover the location of plaintiff's mine and the contour of the ground surrounding its mouth renders the storage of coal thereat unpracticable, so that when, because of failure of car supply, the coal from its mine cannot be loaded and shipped as and when it is mined, said mine must be shut down and its operation suspended until cars are available for loading and shipping.

That plaintiff incurs in connection with the operation and maintenance of its said mine all the overhead costs mentioned in paragraph 8 hereof, and said overhead costs continue during idle time due to a failure of car supply. That in addition to said overhead costs plaintiff has been and is incurring large expenses during periods of idle time in this, that in order to retain labor at its mine and prevent the disruption of its organization, it has of necessity given its laborers employment not connected with the mining of coal or the operation or maintenance of its said mine, from which employment of such labor the plaintiff derives no profit commensurate with the expense incurred.

11. That because of the acute car shortage that has existed for several months last past, as elsewhere in this bill more particularly set forth, and because of the strike, beginning November 1 and ending about December 15, 1919, which closed practically all of the bituminous coal mines in the United States operated by union labor, there has been ever since November 1, 1919, and prior thereto, and still exists, a demand for coal which cannot be supplied; that there is an actual acute shortage of coal available in yards and at plants and industries of the United States for current use and that the supply of coal on hand available for such current use has been for several weeks last



past and is now diminishing; that because of these facts the plaintiff at all times since April 15, 1920, could have sold and disposed of, in the open market and under contracts at prices which would have realized a profit, all coal which its said mine was capable of producing when running at its full capacity, and plaintiff has at all times during said period been ready, willing and able to load with coal produced at its said mine all cars to which it was entitled under its mine ratings during such period, and could and would have disposed of all such coal at a profit as aforesaid.

12. That the plaintiff herein, as a result of the acts and omissions of the defendant complained of herein in failing and refusing to maintain and apply ratings of the mines served by the defendant and to count each and every car furnished to or used by a mine for transportation of coal against that mine, all in violation of the Interstate Commerce Act, and particularly paragraph (12) of Section 1 thereof, has for many weeks passed suffered and is now suffering, all of the damages, losses and injuries to its property and business which are set forth and described herein. That during March, 1920, plaintiff's said mine was entitled to 152.3 fifty-ton cars and received 165.3 such cars, while during May, 1920, plaintiff's said mine was entitled to 140.14 fifty-ton cars and received 108 such cars; that the per-ton overhead expenses of the plaintiff in the production of coal at its said mine were increased during the month of May, 1920, by reason of idle time growing out of insufficient car supply at least in the amount of 19.5 cents; that the miners remaining to the plaintiff are less industrious and efficient and more prone to discontent and disturbance than prior to the inauguration of the said policy of unlawful distribution; that the general business and good-will of the plaintiff has been seriously hurt and damaged and its customers have become dissatisfied; that the profits to which plaintiff is legitimately entitled on its business of mining, shipping and selling coal have been seriously depleted and diminished; and that because of the unlawful acts of defendant herein complained of the average cost to the plaintiff of producing a ton of coal at its said mine increased from \$2.36 in March, 1920, to \$3.00 in May, 1920.

13. That the acts of the defendant complained of herein in violation of paragraph (12) of Section 1 of the said Act are of a continuing

nature and the only remedy which the plaintiff has at law for enforcing the plaintiff's said rights against the defendant under paragraph (12) of Section 1 of the said Act, is to bring successive suits for damages, which would require the bringing of a multiplicity of suits involving great and burdensome costs and expenses to the plaintiff. Plaintiff further shows that the continuance of said unlawful practices by the defendant will result in the partial or complete disruption of plaintiff's organization and in great and progressively increasing damage to the property, good-will and business of the plaintiff, and a great and permanent decrease in the value thereof, to the irreparable injury of the plaintiff and that the plaintiff is without any adequate remedy at law for such injury, and will continue to suffer all of the said damages, losses and injuries to its property and business as a result of the said threatened and intended continuation of the said unlawful practices of the defendant herein unless defendant is restrained by the order of this court as hereinafter prayed.

14. That there are numerous corporations, firms and individuals operating other mines served by defendant who are in a situation similar to that of the plaintiff as hereinabove set forth, and who have suffered, are suffering and will suffer losses, damages and injuries similar to those suffered by plaintiff as herein alleged and arising out of the aforesaid illegal acts and practices of the defendant; that unless said defendant is restrained and enjoined in this proceeding as prayed herein from continuing said illegal acts and practices as against such of said persons, firms and corporations as desire relief against such acts and practices, there will result a multiplicity of suits and actions, wherefore plaintiff brings this bill on behalf of itself and of all others similarly situated who shall intervene herein and claim the benefit of the relief herein prayed.

FORASMUCH therefore as the plaintiff is without adequate remedy at law the plaintiff avers that the jurisdiction of this court of equity attaches and that an injunction as hereinafter prayed is the sole means whereby the plaintiff can secure the relief to which it is entitled in the premises and that the questions of law which would be presented in any actions at law if instituted as aforesaid for the purpose of enforcing the Interstate Commerce Act would be the same and can be disposed of in this single proceeding in equity and the entire matter herein adjudged and determined and the plaintiff's rights protected against the

unlawful acts of the defendant, thus avoiding a multiplicity of suits, to the end that the said The Baltimore & Ohio Railroad Company which is hereby made party defendant to this the plaintiffs bill of complaint may be required to make full, true and complete answer thereto but not under oath (answer under oath being hereby expressly waived), and that said defendant may be enjoined as hereinafter prayed.

WHEREFORE, the plaintiff prays that the defendant be enjoined, during any period when the supply of cars available on defendant's line for transportation of coal does not equal the requirements of the mines served by defendant, from distributing to any of the mines served by it more cars than the said mines are entitled to under the maintenance and application of their respective mine ratings and the counting of each and every car furnished to or used by a mine for transportation of coal against that mine; and that the defendant likewise be enjoined, during any such period, from distributing to the said mine of the plaintiff a smaller number of cars than the said mine is entitled to under the maintenance and application of its mine rating and the counting against the said mine of each and every car furnished to or used by it for transportation of coal; and that the defendant likewise be enjoined, during any such period, from observing or enforcing its rules Nos. 8, 9 and 10, or any or either of said rules hereinabove referred to, which said Rules Nos. 8, 9 and 10 are as follows, to-wit:

"8. Private cars and cars placed for railroad fuel loading in accordance with the decisions of the Interstate Commerce Commission in Railroad Commission of Ohio, et. al., vs. H. V. R'y Co., 12 I. C. C., 398, and Traer vs. Chicago & Alton Railroad Co., et al., 13 I. C. C. 451, will be designated as 'assigned' cars. All other cars will be designated as 'unassigned cars.'

"9. If the number of assigned cars placed at a mine during any period, as provided in Rule 6, equals or exceeds the mine's pro rata share of the available car supply, it shall not be entitled to any unassigned cars. The assigned cars, together with the mine's requirements, will be eliminated, and the remainder of the available car supply pro rated to the other mines, based on a revised percentage by reason of such elimination.

"10. If the number of assigned cars placed at a mine during any period, as provided in Rule 6, is less than its pro rata share, based on a revised percentage, it shall be entitled

to receive unassigned cars in addition thereto to make up its pro rata share."

or any other rules, regulations or practices having the same or like effect; and that the defendant be ordered and directed to comply with the provisions of paragraph (12) of Section 1 of the said Act and, during any such period, to maintain and apply mine ratings to all of the mines served by the defendant and to count each and every car furnished to or used by the said mines for transportation of coal against the mine using it; and that the defendant be enjoined, during any such period, from adopting or enforcing for any cause, reason or pretext whatsoever any rule, regulation or practice, which, or the result of which, will give to any mine, served by defendant, cars for transportation of coal in an amount the ratio of which to the rated capacity of the said mine is greater or less than or different from the ratio of the total number of cars available on defendant's line for transportation of coal to the total rated capacity of all mines served by defendant.

And the plaintiff further prays that such other and further relief be granted in the premises as equity and justice may require.

And may it please your Honor, to the end aforesaid, and on account of the irreparable loss and damage that will result to the plaintiff unless a temporary order is granted, to grant such temporary restraining order to remain in force until the hearing and determination of the application for a temporary injunction as hereinafter prayed, restraining said defendant, its agents and representatives, as aforesaid.

May it please your Honor that a temporary or interlocutory injunction pursuant to the foregoing prayer to remain in full force until the final hearing of this cause or until the further order of this court, be forthwith entered and granted against the defendant, its agents and representatives.

And may it please your Honor to grant unto the plaintiff the writ of injunction directed to said defendant perpetually restraining and enjoining it, its agents and representatives in manner and form aforesaid. And for this this plaintiff will ever pray.

LAMBERT RUN COAL COMPANY,

Rush C. Butler

Ernest S. Ballard

Frank E. Harkness

Of Counsel.

Plaintiff.

by, John A. Howard,

Butler, Lamb, Foster & Pope,

its Solicitors.

*Secretary and Treasurer*

STATE OF WEST VIRGINIA,  
COUNTY OF MARION,—ss.

Clarence D. Robinson, being duly sworn, on oath deposes and says that he is President of the above named Lambert Run Coal Company, the plaintiff herein; that he has read the foregoing bill of complaint and knows the contents thereof; that the matters and things therein stated are true of his own knowledge except as to such matters as are alleged to be on information and belief and as to those he believes them to be true.

Subscribed and sworn to before me this.....day of

.....A. D. 1920.

Notary Public.

## EXHIBIT A.

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 THE BALTIMORE AND OHIO RAILROAD CO.

Coal &amp; Coke Railway

Morgantown &amp; Kingwood Railroad

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 Transportation Department
 

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Equipment Circular—General Superintendent Transportation No. 4-C  
 .....Circular—Superintendent's No.....Equipment  
 (Cancels Equipment Circular—General Superintendent Transportation No. 4-B)

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These rules are a joint issue of the railroads whose names appear at the top and where the words "above named railroad" or "this railroad" appear in the rules they have reference to the railroad upon which the mine is located.

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RULES GOVERNING THE RATING OF COAL MINES  
 AND CAR DISTRIBUTION TO SUCH MINES  
 Effective April 16, 1920

RULES FOR RATING FOR CAR DISTRIBUTION PUR-  
 POSES COAL MINES, LOADING COAL  
 AT MINE TIPPLES

The following rules shall govern the rating of coal mines as the basis for the distribution of empty cars to such mines:

(a) The daily capacity of each mine (other than mines covered by paragraphs b and c) shall be determined by taking the total coal tonnage shipped by the mine during the preceding month, dividing it by the number of hours worked in producing it (see paragraph e), and multiplying the quotient by the number of hours in the recognized work-day (not more than 10 hours) of the individual mine. The result shall be termed the "daily rating" of such mine and shall be the basis on which cars shall be distributed to it.

(b) The daily capacity of a mine which is served jointly by or for two or more carriers (steam, electric, or water) shall be determined by taking the total tonnage shipped by the mine via all such carriers

during the preceding month, dividing it by the number of hours worked in producing it (see paragraph e), and multiplying the quotient by the number of hours in the recognized workday (not more than 10 hours) of the individual mine. The result shall be termed the "gross daily rating" of such mine and shall be the basis on which cars shall be distributed to it; provided, that if track or other limiting conditions further restrict its ability to ship via above named railroad, such conditions shall be the limiting factor for the above named railroad's daily rating of such mine.

(c) The daily capacity of a mine delivering part of its output to a coking plant, to locomotives at the tipple, or to local trade shall be determined by taking the total coal tonnage shipped in railroad cars during the preceding month, dividing it by the number of hours worked (see paragraph e), and multiplying the quotient by the number of hours in the recognized workday (not more than 10 hours) of the individual mine. The result shall be termed the "daily rating" of such mine and shall be the basis on which cars shall be distributed to it.

(d) When the fires are withdrawn from part (or all) of the ovens at an operation coking part of its output, for the purpose of shipping coal production formerly used in charging ovens, the daily rating of the mine shall be increased to include the average tonnage per day so diverted in the previous month until the beginning of the next rating period, at which time the daily rating of the mine shall be determined in accordance with paragraph a or c, due allowance being made for such average tonnage so diverted in computing the new daily rating. A corresponding decrease of the mine's rating will be made when the ovens are again placed in blast.

When a mine that has been coking its entire output desires to ship coal and the fires are withdrawn from part (or all) of its ovens, it shall be given a daily rating for coal shipments corresponding to the average tonnage of coal formerly coked until the beginning of the next rating period, at which time the daily rating of the mines shall be determined in accordance with paragraphs a or c.

(e) In determining the number of hours worked in each day at a mine, time will be counted from the established time for beginning work (or the actual time if earlier or later than the established time) on

the tipple until the dumping of coal finally ceases for the day, making deductions for the noon intermission when it is taken and for the time lost by reason of being blocked with loads, waiting for additional empty cars, or other railroad disability; provided, that if a greater number of hours is worked in the mine than on the tipple, the mine hours must be reported also, and the number of hours worked in the mine must then be used as the number of hours worked in producing the coal. (See paragraphs a, b and c.) Time may be deducted for railroad disability only when such railroad disability actually reduces the quantity of coal dumped that day. Time may be deducted when tipple is used for dumping coal into locomotives only when the tipple can not be simultaneously operated for loading cars.

(f) Daily ratings determined in accordance herewith will be revised monthly and made effective on the 10th of the month following the month's performance on which the rating is determined.

(g) If a mine be idle for a period of one full calendar month or more, the last rating determined will be the rating when work is resumed, provided the mine conditions be substantially the same as when the mine closed.

(h) Rating for development purposes based on current performance will be assigned to a new operation in previously undeveloped coal. A new mine will be furnished with a supply of cars sufficient to enable it to work freely in the course of development for a period not exceeding 6 months after shipments are begun; provided, that if theretofore its ability to load 150 tons per shift (not, however, to exceed 2 shifts per day) is established, it shall then be rated. A new operation of any other character shall be entitled to a development rating for a period of one month after shipments are begun.

(i) Each mine shall report on a prescribed form to the car distributor of the district promptly at the close of each day:

1. The number of hours in the recognized work day;
2. The established time for beginning the day's work;
3. Actual time work was begun this day on the tipple;
4. If the noon hour intermission is taken, how long;
5. Time lost during the day account:



Waiting for railroad cars or other railroad disability.....	hours;
Strikes or mine labor shortage.....	hours;
Mine disability .....	hours;
No Market .....	hours;
All other causes .....	hours;

6. Time work on tippie ceased for today;
7. Number of hours worked today on the tippie, ..... ;  
and in the mine, ..... (See paragraph e);
8. Number of net tons of coal loaded for shipment via the above  
named railroad.
9. Total number of net tons of coal produced and shipped via  
each other outlet.

Joint mines shall furnish this daily report to each carrier serving them.

If after notice from the railroad an operator persistently fails to furnish this daily report, he will be penalized by curtailment of his car supply to the amount of 25 per cent. of distribution for one week.

(j) At the close of each month the mine manager or superintendent in charge of actual operation shall report under oath on a prescribed form to the General Superintendent of Transportation, B. & O. R. R. Building, Baltimore, Md., separately for each mine for each month, as follows:

1. Number of hours in the recognized work day;
2. Total number of net tons of coal produced;
3. Total number of net tons of coal shipped via the above named  
railroad;
4. Total number of net tons of coal shipped via each other out-  
let;
5. Total number of hours worked during the month. (See para-  
graph e.)

This report must be forwarded not later than the 3d of the month following that for which the statement is furnished; provided, that where the location of the mine makes it inconvenient to furnish a report under oath by that date, a report not under oath may be forwarded, and the sworn report forwarded not later than one week after. Joint mines shall furnish this monthly report to each carrier serving them.

- (k) If an operator declines or persistently fails to make reports

or to make accurate reports to the carrier as required herein, it will be assumed that the mine worked full hours in producing and loading into railroad cars the tonnage shipped, and the daily rating will be computed accordingly.

(1) A statement showing the mine ratings which will govern the car distribution for the succeeding month will be furnished as soon as such ratings are ascertained to such coal mines on this railroad as make application for the same. Such statement will show the mine rating of each mine and the total mine ratings of each coal loading district and the aggregate ratings for all mines and all districts on this railroad, and the percentage of each such figure to the total.

#### RULES GOVERNING THE DISTRIBUTION OF CARS TO COAL MINE TIPPLES.

Whenever the available car supply in any region (or district) is such that all orders for cars can be filled, cars shall be placed at each mine in accordance with its daily order, except that whenever a mine holds unbilled coal loads, it shall be entitled only to empty cars equal in number to the difference between the rating last established for the mine and the number of unbilled coal loads so held. Whenever the available car supply is such that all orders for cars can not be filled, each mine shall be given its pro rata share of cars in accordance with the following rules:

1. The daily rating, or the daily order for cars if less than the rating, shall be the basis for car distribution.

2. Grouping of mines, or pooling of cars as between mines, will not be permitted.

3. On application of mine operators and in the discretion of the railroad, cars may be placed on such days only and at such mines only as may elect to work, and overs and shortages in car supply resulting from this distribution shall be adjusted on succeeding days.

4. Each mine operator shall report to the car distributor at 4 P. M. daily.

(a) Number of unconsigned loads on hand at 7 a. m.

(b) Number of empty and partly loaded cars on hand at 7 a. m.

- (c) Additional number of empty cars received during the day.
- (d) Aggregate number of empty cars received during the day.
- (e) Number of cars loaded during the day.
- (f) Number of empty cars standing over at close of day.
- (g) Number of empty cars standing over at close of day which were received prior to 7 a. m., ..... cars; and prior to 10 a. m., ..... cars.
- (h) Number of partly loaded cars under tippie at close of day.
- (i) Number of unconsigned loads on hand at close of day.
- (j) Additional number of empty cars required for loading following day.
- (k) Actual requirements for loading tomorrow.

Copies of orders for cars for a mine that is joint with any other carrier (steam, electric or water) shall be filed with a designated representative of each such carrier. Such combined requisition must not exceed the gross daily rating of the mine.

5. The recognized standard car for coal car distribution is 50 tons. Others are compared thereto by tenths of a car; i. e., 80,000 pounds capacity equals eight-tenths (.8) of a car; 140,000 pounds capacity one and four-tenths (1.4) cars, etc., and charged accordingly against the mine.

6. (a) All cars placed at a mine during each period of 24 hours ending at 10 o'clock a. m. (or when Sundays or holidays intervene, the longer period ending at 10 o'clock a. m. of the day immediately succeeding the Sunday or holiday) shall be charged against the mine on the day when such period ends; provided, that if the cars placed at 7 o'clock a. m. (not including partly loaded cars) do not equal or exceed in number 25 per cent. of the daily rating (or order if less than the rating) then no cars will be charged against the mine that day except such as are loaded on that day.

(b) Cars placed between 10 o'clock a. m. and the time the mine ceases work for the day, if loaded or partly loaded on the day placed, will be charged against the mine on that day.

(c) All cars of other than railroad ownership (commonly called "private cars") placed for owner's loading and assigned foreign railroad fuel cars will be considered as ordered.

7. The pro rata of cars to which each mine is entitled, except as provided in Rule 9, shall be based on its rating (or order when less

than its rating). When a mine has empty or partly loaded cars which were placed prior to 7 a. m., or unconsigned loads standing over at the close of the day's business, such cars shall be charged against it each service day, thereafter while they are detained, except as otherwise provided in Rule 6.

If on any day a mine be furnished with cars totaling less than 100 per cent. of its rating (or order if less than its rating) and for any cause whatever other than railroad responsibility fails to load the entire number, the mine shall be considered as having been furnished 100 per cent. of its requirements, and its order shall be arbitrarily reduced to the number of cars furnished.

8. Private cars and cars placed for railroad fuel loading in accordance with the decisions of the Interstate Commerce Commission in Railroad Commission of Ohio, et al., vs. H. V. R'y Co., 12 I. C. C., 398, and Traer vs. Chicago & Alton Railroad Co., et al., 13 I. C. C. 451, will be designated as "assigned" cars. All other cars will be designated as "unassigned" cars.

9. If the number of assigned cars placed at a mine during any period, as provided in Rule 6, equals or exceeds the mine's pro rata share of the available car supply, it shall not be entitled to any unassigned cars. The assigned cars, together with the mine's requirements, will be eliminated, and the remainder of the available car supply pro rated to the other mines, based on a revised percentage by reason of such elimination.

10. If the number of assigned cars placed at a mine during any period, as provided in Rule 6, is less than its pro rata share, based on a revised percentage, it shall be entitled to receive unassigned cars in addition thereto to make up its pro rata share.

11. If a mine receives more or less cars than it is entitled to during any period, as provided in Rule 6 (and after eliminating assigned cars as provided in Rule 9), it will be charged with a surplus or credited with a shortage accordingly, and the discrepancy adjusted as promptly as practicable.

12. A statement showing the car distribution for the preceding month will be furnished as soon as such distribution is ascertained, to such coal mines on this railroad as make application for the same. Such statement will show the car distribution of each mine, the total car dis-

tribution of each coal loading district, the aggregate distribution for all mines and all districts on this railroad, and the percentage of each such figure to the total.

W. G. CURREN,  
General Superintendent Transportation.

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