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SERVICE DATE - LATE RELEASE JANUARY 28, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42011

MICHELIN NORTH AMERICA, INC.  
--PETITION FOR DECLARATORY ORDER--  
CERTAIN RATES AND PRACTICES OF PJAX, INC.

Decided: January 28, 1998

By petition filed July 22, 1997, Michelin North America, Inc. (petitioner), seeks a declaratory order to resolve a dispute over whether certain shipments transported by PJAX, Inc. (PJAX), an interstate motor common and contract carrier of property and intrastate common carrier of property,<sup>1</sup> moved in interstate commerce or in intrastate commerce. These shipments are the subject of a lawsuit pending before Chief Judge Donald E. Ziegler of the United States District Court for the Western District of Pennsylvania, in PJAX, Inc. v. The Uniroyal Goodrich Tire Company and Michelin Tire Corporation, Civil Action Nos. 96-0071 and 96-0072.

According to petitioner, the shipments in question were billed as services provided by PJAX as a contract carrier in interstate commerce. The lawsuit is based on the allegation that the shipments, in fact, moved in intrastate commerce. PJAX apparently has rebilled the shippers according to its higher intrastate, common-carrier rates, and now seeks to collect \$528,915.20 in undercharges.<sup>2</sup>

DISCUSSION AND CONCLUSIONS

Under 5 U.S.C. 554(e), the Board has discretionary authority to issue a declaratory order to terminate controversy or remove uncertainty.

It appears that the Board does not have jurisdiction over the issues raised in this matter. The ICC Termination Act of 1955, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA) abolished the Interstate Commerce Commission (ICC) and established the Board. In so doing, not all functions within the ICC's jurisdiction were transferred to the Board and only narrowly circumscribed jurisdiction was given to the Board over motor carriers. The pre-ICCTA motor carrier licensing function (old 49

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<sup>1</sup> PJAX is authorized to operate in intrastate commerce by the Pennsylvania Public Utilities Commission.

<sup>2</sup> This total includes undercharges in the amount of \$447,077.92 claimed against Uniroyal Goodrich Tire Company and \$81,837.28 claimed against Michelin Tire Corporation. Petitioner is the successor by merger to both of these companies.

U.S.C. 10922 and 10923) was replaced with motor carrier “registration,” and that function has been transferred to the Secretary of the Department of Transportation (49 U.S.C. 13902). Accordingly, the pre-ICCTA determinations concerning whether operations were interstate or intrastate in nature, which were routinely made by the ICC in the context of its motor carrier licensing function, are hypothetically questions for the Secretary and not the Board.<sup>3</sup> The reason that these are hypothetical questions is that claims based on undercharges for shipments that may have moved in intrastate commerce have been extinguished by the Federal Aviation Administration Authorization Act of 1994, Pub L. No. 103-105, 105 Stat. 1605, 49 U.S.C. 14501(c). See Pennsylvania Power & Light Company--Petition for Declaratory Order--Certain Rates and Practices of Friedman’s Express, Inc. et. al., STB Docket No. 41936 (STB served Jan. 28, 1998) and St. Johnsbury Trucking Co., Inc. v. Mead Johnson, 199 B.R 84, 87 (S.D.N.Y. 1996).

Based on the facts as presented in the petition, and for the reasons discussed above, it does not appear that a declaratory order proceeding is necessary to terminate a controversy or remove uncertainty. Thus, a declaratory order proceeding will not be instituted.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition for a declaratory order is denied and the proceeding is discontinued.
2. This decision is effective on its service date.
3. A copy of this decision will be served on:

United States District Court for the Western District of  
Pennsylvania  
(Attn: Chief Judge Donald E. Ziegler)  
(RE: Civil Action Nos. 96-0071 and 96-0072)  
Room 649  
U.S. Post Office & Courthouse  
700 Grant Street  
Pittsburgh, PA 15219

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<sup>3</sup> Even though the transportation services material to this case were performed pre-ICCTA, there was never a pending case before the ICC. Under section 204(b)(1) of ICCTA, only those proceedings that were pending before the ICC at the time of enactment of ICCTA, and that related to transferred functions, were transferred to the Board.

STB Docket No. 42011

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary

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