



241687

ENTERED
Office of Proceedings
October 5, 2016
Part of
Public Record



September 19, 2016

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, SW
Washington, DC 20423

Re: Docket Number ISM 35008
Transportation and Logistics Council
Petition for Suspension and Investigation NMFC 100-AP Supplement 2

Dear Ms. Brown:

TPS Logistics is a full-platform logistics management company providing services to customers in a number of industries, worldwide. Serving our customers and protecting their interests is our number one priority.

We write to you regarding the recent changes to the Uniform Straight Bill of Lading by the National Motor Freight Traffic Association. If the changes are allowed to remain in effect it will make it virtually impossible for shippers to recover claims filed against carriers for lost or damaged shipments.

Section 1(b) of the "new" bill of lading contains the most egregious of the changes, which change the legal burdens of proof:

(b) No carrier shall be liable for any loss or damage or for any delay caused by an Act of God, the public enemy, the authority of law, the act or default of the shipper, *riots or strikes, or any related causes*. Except in the case of negligence of the carrier, the carrier shall not be liable for loss, damage or delay which results: when the property is stopped and held in transit upon request of the shipper, owner or party entitled to make such request; or from faulty or impassible highway, or by lack of capacity of a highway, bridge or ferry; or from a defect or vice in the property. **The burden to prove carrier negligence is on the shipper.**



A LOGISTICS COMPANY

September 19, 2016

Page Two

This change shifts the carrier's burden for proving freedom from negligence to the shipper who now must prove that the carrier was negligent. It is contrary to over a century of law involving the interpretation and application of the "Carmack Amendment", now codified at 49 USC 14706. As the Supreme Court stated in *Missouri Pacific R.R. Co. v. Elmore & Stahl*, 337 U.S. 134 (1964):

. . . a carrier, though not an absolute insurer, is liable for damage to goods transported by it unless it can show the damage was caused by (a) the act of God; (b) the public enemy; (c) the act of the shipper himself; (d) public authority; or the inherent vice or nature of the goods... Accordingly, under federal law, in an action to recover from a carrier for damage to a shipment, the shipper establishes his prima facie case when he shows delivery in good condition, arrival in damaged condition, and the amount of damages. **Thereupon, the burden of proof is upon the carrier to show both that it was free from negligence and that the damage to the cargo was due to one of the excepted causes relieving the carrier of liability.**

It is obvious for the reasoning for not requiring the shipper to prove negligence. Once the shipper tenders his goods to the carrier, he has no way to know what the carrier does with the goods. It would be virtually impossible for the shipper to prove that the cause of damage or loss was the carrier's "negligence".

The change to a negligence standard conflicts with the strict liability standard implemented by the Carmack Amendment (i.e., good condition at origin, damaged condition at destination and the amount of damages). The Carmack Amendment was enacted to do away with forcing shippers to prove a carrier was negligent for the reasons stated above. Fundamentally, this new provision is unconscionable and clearly runs counter to the Carmack Amendment.

The NMFC Uniform Straight Bill of Lading applies to virtually all shipments transported by all carriers that are participants in the NMFC except shipments that are subject to a prior written contract between the carrier and the shipper. The major LTL carriers and TL carriers as well as several hundred smaller carriers are participants in the NMFC.

The FBI estimates that losses costs shippers roughly \$10 billion per year. If these changes are allowed to remain in effect, the losses will increase dramatically.



September 19, 2016
Page Three

Accordingly, Argus respectfully requests that the Board stop these grossly unconscionable changes to the Uniform Straight Bill of Lading from taking effect.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey Lau", written in a cursive style.

Jeffrey Lau
Chief Operating Officer

I certify that I have this day served copies of document upon all parties of record in this proceeding, by [U.S. Mail or E-mail].

Signature Drew Janney Date 10-5-2016