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SERVICE DATE - AUGUST 4, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB DOCKET NO. ISM 35002

AMEND THE UNIFORM STRAIGHT BILL OF LADING AND ACCOMPANYING
CONTRACT TERMS AND CONDITIONS

Decided: July 29, 1998

In a decision served December 24, 1997, the Board declined to suspend and investigate an amendment to the Uniform Straight Bill of Lading proposed to become effective December 27, 1997, in Supplement 3 to Tariff STB NMF 100-X, issued by the National Motor Freight Traffic Association, Inc. (NMFTA), Agent. The National Small Shipments Traffic Conference, Inc. (NASSTRAC), and the Health and Personal Care Distribution Conference, Inc., (together, Shipper Conferences) filed a joint petition requesting the Board to reopen the proceeding for the limited purpose of striking certain language that they contend is gratuitous, harmful to the interests of all shippers, and not necessary to the issuance of the decision. Filings in support of the petition were made by the Transportation Consumer Protection Council, Inc., and the National Industrial Transportation League (NITL). Replies in opposition to the petition were filed by NMFTA, and the Distribution and LTL Carriers Association.¹

Shipper Conferences contend that a decision denying a suspension is traditionally limited to stating that the petition for suspension is denied and that, since there is no judicial appeal allowable from a suspension decision, an opinion or rationale is not necessary. They state that, with the completion of motor carrier deregulation by the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA), there is very little in that Act which affords shippers any protection as to motor freight shipments, and that the Carmack Amendment, as brought forward therein, is its single most important provision for the protection of shippers of motor freight. According to Shipper Conferences, the gratuitous language in the Board's decision, reading 49 U.S.C. Section 14706 as allowing carriers to set unilateral value limits on recovery for loss and damage without a written declaration or agreement by the shipper, would strip away that protection. They argue that the Board should level the playing field by removing that language from its decision.

Shipper Conferences state that NASSTRAC was one of the architects of the revised bill of lading, and that it would not have agreed to including a "Note (2)" on the bill of lading that it interpreted as taking away the option of the shipper as to whether or not to release the value of its freight. In Shipper Conferences' view, the provision was designed to simply give notice on the

¹ NMFTA filed a separate reply in response to the NITL filing.

bill of lading of the statutory section embracing the Carmack Amendment in the ICCTA, without injecting the interpretation of either shippers or carriers, thereby leaving it up to the courts to interpret the Carmack Amendment in the context of a real dispute, if and when an appropriate loss and damage case should arise.

In its reply, NMFTA raises procedural issues with Shipper Conferences' petition, contends that the Board's rationale has been customarily included as an integral and necessary part of all of its decisions on protests (particularly those involving the Uniform Bill of Lading), and argues that the cited language in the Board's decision is completely consistent with applicable law and the clearly expressed intent of Congress. NMFTA disputes Shipper Conferences' assertion that the language in "Note (2)" was intended merely to make reference to the statute, and contends that the carrier members of the Ad Hoc Committee were absolutely adamant in insisting that "Note (2)" must continue to perform its intended purpose of notifying shippers of the presence of inadvertence clauses in the carriers' tariffs.

The parties on both sides of the issue present extensive arguments supporting their positions. An extensive review of these arguments is not necessary for our purposes, however, because our rationale for not suspending and investigating the amendment to the Uniform Bill of Lading was not based upon whether the failure to declare a value on the bill of lading could or could not result in the application of released value rates. To the contrary, our rationale was based on our conclusions that the amendment (1) alerted shippers to the possibility of incorporated provisions and provided that such provisions were available to shippers on request, and (2) did not run afoul of the statutory prohibition against collective discussion of rules to limit liability.²

As we noted in our December 24 decision, disputes regarding motor carrier liability and the enforcement of incorporated provisions must be resolved by the courts. In these circumstances, we believe it is preferable that we take no position on either side of the issue at this time. We will, therefore, modify our December 24, 1997 decision to limit the discussion to our rationale for not suspending and investigating the proposed amendment to the Uniform Straight Bill of Lading.

It is ordered:

1. The second and third paragraphs on page 2 of our decision in this docket served on December 24, 1997, are revised to read as follows:

² An earlier NMFTA proposal was suspended by the Board on the grounds that (1) it "may be an unreasonable practice to subject bills of lading to non-filed-tariff provisions . . . without ensuring . . . that information regarding such provisions is readily available to shippers", and (2) it "may violate the statutory prohibition against collective establishment of rates relating to limitation of liability."

“In our view, the statute permits carriers to establish rates, rules and regulations applicable to shipments tendered to them in common carriage under bills of lading such as the one proposed. Unless carriers are allowed to incorporate provisions from other sources, the sheer volume of provisions that they would have to include in bills of lading would likely render them unusable in their current form. We believe NMFTA’s amendment to the Uniform Straight Bill of Lading assists in alerting shippers to incorporated provisions and the carriers’ responsibility to make them available upon request.”

2. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary