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SERVICE DATE - JANUARY 6, 1998

SURFACE TRANSPORTATION BOARD¹

DECISION

Docket No. 41192

THE TJX COMPANIES, INC.—PETITION FOR DECLARATORY ORDER—
CERTAIN RATES AND PRACTICES OF SWEENEY TRANSPORTATION, INC.,
AND KNICKERBOCKER EAST-WEST, INC.

Decided: December 12, 1997

On January 21, 1994, The TJX Companies, Inc. (TJX or petitioner), a shipper, filed a petition for declaratory order asking us to resolve a number of billing disputes that have arisen between it and a motor carrier, Sweeney Transportation, Inc. (Sweeney or respondent).² The disputes led to a court proceeding, which has been stayed to allow us to consider certain issues. The TJX Companies, Inc. v. Sweeney Transportation, Inc., et al., Civil Action No. 93-10087-REK (U.S.D.C. D. Mass.).

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be continued and shall be decided under the law in effect prior to January 1, 1996. References to statutory and regulatory provisions will be to those that existed prior to enactment of the ICCTA, except where noted.

² We will use the term “Sweeney” to refer to Sweeney Transportation, Inc., in its own right, and to that entity as successor to motor carriers Sweeney Brothers, Inc., and Sweeney Nationwide, Inc.

TJX also named Sweeney’s affiliate, freight forwarder Knickerbocker East-West, Inc., as a respondent. However, effective December 21, 1986, the Freight Forwarder Deregulation Act of 1986, Pub. L. No. 99-521, 100 Stat. 2993, deregulated nonhousehold goods freight forwarders. Since that date, such freight forwarders have not been subject to the tariff filing and rate reasonableness requirements of the statute. Nevertheless, TJX contends that Knickerbocker was subject to Federal regulation because former 49 U.S.C. 10701(a) provided that a “practice related to transportation” must be reasonable. In our view, that provision does not bring statutorily exempt freight forwarders within Federal regulation. Service by Sweeney’s affiliated freight forwarder will be relevant to this proceeding only to the extent the forwarder provided it as an agent for Sweeney.

After having established a procedural schedule and directed Sweeney to provide TJX with documents supporting its undercharge claims under Vertex Corp. Pet. Dec. Order Rates and Practices, 9 I.C.C.2d 688, 697-98 (1993) (Vertex II), the ICC issued a decision vacating the procedural schedule and holding the proceeding in abeyance. This decision disposes of pending motions, provides an outline of the standards we will use to resolve the issues presented, and establishes a new procedural schedule.

BACKGROUND

This dispute appears to have arisen in May 1992. For some 6 years prior to that time, Sweeney had transported a substantial number of shipments of unspecified commodities between unnamed points for TJX, a retailer of apparel and housewares. Sweeney charged certain rates for those shipments, and TJX paid the amounts billed. TJX states that, in 1992, it reached the conclusion that the rates Sweeney had been charging it were not filed with the ICC and were unreasonably high due to Sweeney's repeated bribery of a key TJX employee.³

TJX also contends that when this matter was brought to Sweeney's attention in May 1992, Sweeney filed Tariff SWEY 605 to apply to TJX's shipments and began charging TJX the mileage rates contained in that tariff. TJX paid Sweeney nearly \$2 million in freight charges billed under that tariff for transportation performed between May and November 1992.

In November 1992, TJX stopped paying Sweeney's freight bills. It claimed that it could set off against current freight bills overcharges on prior shipments resulting from Sweeney's bribery and application of unreasonable rates. It also contended that the SWEY 605 tariff is void because Sweeney failed to participate in an appropriate distance guide tariff.⁴

Sweeney, in turn, demanded that TJX pay an additional \$6 million in undercharges for shipments between June 1990 and May 1992. It apparently contended that those shipments should have been billed at higher class rates contained in Tariff SWEY 500.⁵

³ TJX provided evidence: (1) that Sweeney had made over \$40,000 in payments to American Express on behalf of the TJX Assistant Vice President responsible for awarding transportation contracts and approving freight rates, and (2) that the rates TJX paid Sweeney from 1986 to 1992 were as much as 40% higher than the market rate.

⁴ See Security Serv., Inc. v. KMart Corp., 511 U.S. 431 (1994) (KMart) (upholding the validity of the void-for-nonparticipation rule).

⁵ Although Sweeney apparently has not identified the class rate tariff, TJX indicates that Sweeney appears to rely on its 500 series class rates for the 1990-1992 traffic. See TJX Petition for Declaratory Order, at 5.

(continued...)

Sweeney initially had moved to divide the proceeding into phases. One of the phases would have involved resolution of Sweeney's claim for undercharges. Sweeney's motion prompted the filing of a series of motions and replies. However, by a pleading filed September 2, 1997, to which TJX replied on October 17, 1997, Sweeney withdrew its claim for undercharges and requested that the issues be narrowed.⁶ The initial series of motions concerning bifurcation have been largely mooted by the recent request, and we will not discuss the substance of those motions.⁷

This decision reflects our determination of the issues that are now before us. The various positions and arguments of the parties, although not all specifically addressed here, have been considered.

In brief, TJX asks us to determine whether it is entitled to overcharges: (1) for the period June 1986 to May 1992 because (a) Sweeney engaged in an unreasonable practice by bribing a key TJX employee to give traffic to Sweeney, and (b) the rates originally charged by Sweeney were unreasonably high or exceeded the lawfully applicable rates; and (2) for the period from May 1992 to January 1993, because the mileage rates charged by Sweeney, under tariff SWEY 605, are unlawful as a result of Sweeney's failure to have on file a mileage tariff by which distances could be determined, in violation of 49 CFR 1312.30(c)(1).

DISCUSSION AND CONCLUSIONS

We outline below the considerations we will take into account in resolving each of the issues raised by the petition. We direct the parties to focus their evidentiary presentation and legal argument on the matters outlined here.

Overcharges for June 1986 to May 1992

⁵(...continued)

The parties apparently had originally conducted business as if those shipments moved under contract carriage. TJX now appears to deny that it had a valid contract arrangement with Sweeney, claiming that any such agreement was induced by Sweeney's criminal acts and is, therefore, void. In any event, it is unclear whether a contract was ever signed.

⁶ On November 19, 1997, Sweeney tendered a reply to TJX's reply. A reply to a reply is not permitted under our rules of procedure. 49 CFR 1104.13(c). Further, a permissible pleading would have been due November 6, 1997, 20 days after the filing of the pleading addressed. 49 CFR 1104.13(a). For these reasons, Sweeney's tendered pleading will not be considered.

⁷ We note, however, that some of the pleadings filed during that stage of the proceeding were replies to replies. Again, we remind the parties that such pleadings are not permitted and should not be filed.

It is our preliminary conclusion that we should not attempt to determine whether Sweeney bribed a TJX employee. To do so would, in our judgment, interfere with the court's jurisdiction to resolve what is essentially an issue of state law. The court is better equipped to resolve factual issues of this nature. Moreover, the ICC and the Board have never, to our knowledge, attempted to resolve such questions, and we will not attempt to do so here.

We will, however, entertain the rate reasonableness and applicability questions, as they are within our primary jurisdiction.⁸ In determining rate reasonableness, we will apply a modified market-based analysis applied to motor carrier rates charged in the past under Georgia-Pacific Corp. - Petition for Declaratory Order - Certain Rates and Practices of Oneida Motor Freight, Inc., 9 I.C.C.2d 103 (1992) (GPac-I); 9 I.C.C.2d 796 (1993) (GPac-II); 9 I.C.C.2d 1052, aff'd sub nom., Oneida Motor Freight v. ICC, 45 F.3d 503 (D.C. Cir. 1995). Under Georgia-Pacific, we determine the reasonableness of a challenged rate by comparing it with a "market-based cluster of price/service alternatives for the issue traffic" or, in other words, rates "at which a shipper was willing to ship and a carrier was willing to transport the goods." GPac-I, 9 I.C.C.2d at 156.

The Georgia-Pacific standards were developed to guide the ICC (now the Board) in making rate reasonableness determinations when defunct carriers seek undercharges and a rate prescription for future traffic is not required. Although Sweeney is apparently an operating carrier, the court has nevertheless stayed its proceeding to give us an opportunity to consider the reasonableness of rates charged by Sweeney in the past, just as we would with undercharge claims by defunct carriers. The Georgia-Pacific standards are well-suited to that purpose. Thus, the parties should submit rate comparison evidence in accordance with the standards outlined in GPac-I, 9 I.C.C.2d at 156-57; see also GPac-II, 9 I.C.C.2d at 806-09.

Because Sweeney is an operating carrier, we will also consider the criteria set forth in 49 U.S.C. 10701(e). Therefore, the parties may present evidence concerning the "honest, economical, and efficient management" standards of that section.

The parties should, of course, present evidence showing the rates that TJX was in fact charged. If either party wants to rely on a tariff as part of its presentation under Georgia-Pacific, it

⁸ The parties dispute the issue of whether and to what extent some of TJX's claims may be time-barred. Sweeney argues that, because 49 U.S.C. 11706(c)(2) gives a shipper 2 years in which to seek damages for unreasonable rates, TJX, when it filed its suit on January 15, 1993, could sue only on shipments moving since January 15, 1991. TJX, on the other hand, contends that the statute of limitations was tolled until May 1992, when it learned of the bribery of its employee, and that, as it filed its suit within 8 months, none of its claims is barred. As we are simply providing advice to the court on rate reasonableness and applicability, and have no authority to order the payment of money, we will leave it to the court to consider whether equitable tolling principles ought to apply here.

should submit a copy of that tariff as well as evidence supporting the applicability or relevance of that tariff.

As noted above, it is unclear from the pleadings now on file whether any of the subject transportation was conducted pursuant to a valid contract carrier agreement, as a result of which no filed tariff rates would apply and findings as to reasonableness would be significantly affected. If either party seeks to establish that the transportation was by contract carriage, it should submit evidence relating to whether Sweeney held contract carrier authority, whether Sweeney and TJX had a contract carrier agreement under which the shipments moved, and whether the transportation was consistent with the statutory definition of contract carriage (49 U.S.C. 10102(16)). In Re Transcon Lines, 89 F.3d 559, 566 (9th Cir. 1996). Moreover, the parties should address whether the agreement was in writing, as required by ICC regulations during that time period. 49 CFR 1053.1 (1992).

Overcharges for May 1992 to January 1993

Just as with the prior time period, we will use the Georgia-Pacific methodology to determine whether, as TJX alleges, Sweeney's rates during this period were unreasonable.

To determine whether those rates were unlawful for Sweeney's failure to have a mileage tariff on file, as charged by TJX, we will apply the principles of KMart and Jasper Wyman & Son, et al. — Petition for Declaratory Order, 8 I.C.C.2d 246 (1992). Sweeney could not apply mileage rates if their computation depended upon distances listed in a tariff filed by another carrier or agent, unless Sweeney was a participant in the distance tariff. KMart, 511 U.S. at 444. The parties should submit the relevant tariffs for our examination and explain their positions on this issue.

If, as alleged by TJX, Sweeney did not properly participate in a governing distance tariff as required by 49 CFR 1312, then tariff SWEY 605 is void. That does not mean, however, that Sweeney is entitled to no compensation. Georgia-Pacific, 9 I.C.C.2d at 821. Rather, as the ICC held (id.), to the extent that the carrier has already received compensation for its services at a reasonable level agreed to by the shipper, the compensation would not be retroactively altered. Thus, so long as the rates that have been paid based on a void mileage rate were not unreasonable, we would not find them unlawful.

Unpaid Transportation from November 1992 to January 1993

If TJX has not paid freight charges billed to it for transportation during this period, then Sweeney is entitled to collect the unpaid amount from TJX. As noted above, shippers are not entitled to free transportation. Moreover, the Interstate Commerce Act, under which this transportation occurred (see n. 1), required payment on delivery (49 U.S.C. 10743) and did not provide shippers with any set-off rights.

Therefore, if TJX has not paid freight bills issued for this transportation, it is obligated to do so. We will, of course, consider TJX's contentions that the rates sought are unreasonable, or that they are void for nonparticipation, using the standards outlined above.⁹

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

It is ordered:

1. Sweeney's request to withdraw its undercharge claim is granted, with prejudice.
2. The parties must make evidentiary submissions consistent with this decision.
3. Petitioner's opening statement is due February 5, 1998.
4. Respondent's reply statement is due March 9, 1998.
5. Petitioner's rebuttal statement is due March 27, 1998.
6. This decision is effective on its service date.

⁹ While we will determine whether Sweeney has charged reasonable rates for the time periods involved here, we do not intend to re-rate freight bills or examine individual corrected freight bills.

Docket No. 41192

7. A copy of this decision will be mailed to

The Honorable Robert E. Keeton
United States District Court for the District of Massachusetts
John W. McCormack Post Office & Courthouse
Room 306
Boston, MA 02109

Re: Civil Action No. 93-10087-REK

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

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TJX also named Sweeney’s affiliate, freight forwarder Knickerbocker East-West, Inc., as a respondent. However, effective December 21, 1986, the Freight Forwarder Deregulation Act of 1986, Pub. L. No. 99-521, 100 Stat. 2993, deregulated nonhousehold goods freight forwarders. Since that date, such freight forwarders have not been subject to the tariff filing and rate reasonableness requirements of the statute. Nevertheless, TJX contends that Knickerbocker was subject to Federal regulation because former 49 U.S.C. 10701(a) provided that a “practice related to transportation” must be reasonable. In our view, that provision does not bring statutorily exempt freight forwarders within Federal regulation. Service by Sweeney’s affiliated freight forwarder will be relevant to this proceeding only to the extent the forwarder provided it as an agent for Sweeney.

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Therefore, if TJX has not paid freight bills issued for this transportation, it is obligated to do so. We will, of course, consider TJX's contentions that the rates sought are unreasonable, or that they are void for nonparticipation, using the standards outlined above.⁹

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

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The Honorable Robert E. Keeton
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Re: Civil Action No. 93-10087-REK

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

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BACKGROUND

This dispute appears to have arisen in May 1992. For some 6 years prior to that time, Sweeney had transported a substantial number of shipments of unspecified commodities between unnamed points for TJX, a retailer of apparel and housewares. Sweeney charged certain rates for those shipments, and TJX paid the amounts billed. TJX states that, in 1992, it reached the conclusion that the rates Sweeney had been charging it were not filed with the ICC and were unreasonably high due to Sweeney's repeated bribery of a key TJX employee.³

TJX also contends that when this matter was brought to Sweeney's attention in May 1992, Sweeney filed Tariff SWEY 605 to apply to TJX's shipments and began charging TJX the mileage rates contained in that tariff. TJX paid Sweeney nearly \$2 million in freight charges billed under that tariff for transportation performed between May and November 1992.

In November 1992, TJX stopped paying Sweeney's freight bills. It claimed that it could set off against current freight bills overcharges on prior shipments resulting from Sweeney's bribery and application of unreasonable rates. It also contended that the SWEY 605 tariff is void because Sweeney failed to participate in an appropriate distance guide tariff.⁴

Sweeney, in turn, demanded that TJX pay an additional \$6 million in undercharges for shipments between June 1990 and May 1992. It apparently contended that those shipments should have been billed at higher class rates contained in Tariff SWEY 500.⁵

³ TJX provided evidence: (1) that Sweeney had made over \$40,000 in payments to American Express on behalf of the TJX Assistant Vice President responsible for awarding transportation contracts and approving freight rates, and (2) that the rates TJX paid Sweeney from 1986 to 1992 were as much as 40% higher than the market rate.

⁴ See Security Serv., Inc. v. KMart Corp., 511 U.S. 431 (1994) (KMart) (upholding the validity of the void-for-nonparticipation rule).

⁵ Although Sweeney apparently has not identified the class rate tariff, TJX indicates that Sweeney appears to rely on its 500 series class rates for the 1990-1992 traffic. See TJX Petition for Declaratory Order, at 5.

(continued...)

Sweeney initially had moved to divide the proceeding into phases. One of the phases would have involved resolution of Sweeney's claim for undercharges. Sweeney's motion prompted the filing of a series of motions and replies. However, by a pleading filed September 2, 1997, to which TJX replied on October 17, 1997, Sweeney withdrew its claim for undercharges and requested that the issues be narrowed.⁶ The initial series of motions concerning bifurcation have been largely mooted by the recent request, and we will not discuss the substance of those motions.⁷

This decision reflects our determination of the issues that are now before us. The various positions and arguments of the parties, although not all specifically addressed here, have been considered.

In brief, TJX asks us to determine whether it is entitled to overcharges: (1) for the period June 1986 to May 1992 because (a) Sweeney engaged in an unreasonable practice by bribing a key TJX employee to give traffic to Sweeney, and (b) the rates originally charged by Sweeney were unreasonably high or exceeded the lawfully applicable rates; and (2) for the period from May 1992 to January 1993, because the mileage rates charged by Sweeney, under tariff SWEY 605, are unlawful as a result of Sweeney's failure to have on file a mileage tariff by which distances could be determined, in violation of 49 CFR 1312.30(c)(1).

DISCUSSION AND CONCLUSIONS

We outline below the considerations we will take into account in resolving each of the issues raised by the petition. We direct the parties to focus their evidentiary presentation and legal argument on the matters outlined here.

Overcharges for June 1986 to May 1992

⁵(...continued)

The parties apparently had originally conducted business as if those shipments moved under contract carriage. TJX now appears to deny that it had a valid contract arrangement with Sweeney, claiming that any such agreement was induced by Sweeney's criminal acts and is, therefore, void. In any event, it is unclear whether a contract was ever signed.

⁶ On November 19, 1997, Sweeney tendered a reply to TJX's reply. A reply to a reply is not permitted under our rules of procedure. 49 CFR 1104.13(c). Further, a permissible pleading would have been due November 6, 1997, 20 days after the filing of the pleading addressed. 49 CFR 1104.13(a). For these reasons, Sweeney's tendered pleading will not be considered.

⁷ We note, however, that some of the pleadings filed during that stage of the proceeding were replies to replies. Again, we remind the parties that such pleadings are not permitted and should not be filed.

It is our preliminary conclusion that we should not attempt to determine whether Sweeney bribed a TJX employee. To do so would, in our judgment, interfere with the court's jurisdiction to resolve what is essentially an issue of state law. The court is better equipped to resolve factual issues of this nature. Moreover, the ICC and the Board have never, to our knowledge, attempted to resolve such questions, and we will not attempt to do so here.

We will, however, entertain the rate reasonableness and applicability questions, as they are within our primary jurisdiction.⁸ In determining rate reasonableness, we will apply a modified market-based analysis applied to motor carrier rates charged in the past under Georgia-Pacific Corp. - Petition for Declaratory Order - Certain Rates and Practices of Oneida Motor Freight, Inc., 9 I.C.C.2d 103 (1992) (GPac-I); 9 I.C.C.2d 796 (1993) (GPac-II); 9 I.C.C.2d 1052, aff'd sub nom., Oneida Motor Freight v. ICC, 45 F.3d 503 (D.C. Cir. 1995). Under Georgia-Pacific, we determine the reasonableness of a challenged rate by comparing it with a "market-based cluster of price/service alternatives for the issue traffic" or, in other words, rates "at which a shipper was willing to ship and a carrier was willing to transport the goods." GPac-I, 9 I.C.C.2d at 156.

The Georgia-Pacific standards were developed to guide the ICC (now the Board) in making rate reasonableness determinations when defunct carriers seek undercharges and a rate prescription for future traffic is not required. Although Sweeney is apparently an operating carrier, the court has nevertheless stayed its proceeding to give us an opportunity to consider the reasonableness of rates charged by Sweeney in the past, just as we would with undercharge claims by defunct carriers. The Georgia-Pacific standards are well-suited to that purpose. Thus, the parties should submit rate comparison evidence in accordance with the standards outlined in GPac-I, 9 I.C.C.2d at 156-57; see also GPac-II, 9 I.C.C.2d at 806-09.

Because Sweeney is an operating carrier, we will also consider the criteria set forth in 49 U.S.C. 10701(e). Therefore, the parties may present evidence concerning the "honest, economical, and efficient management" standards of that section.

The parties should, of course, present evidence showing the rates that TJX was in fact charged. If either party wants to rely on a tariff as part of its presentation under Georgia-Pacific, it

⁸ The parties dispute the issue of whether and to what extent some of TJX's claims may be time-barred. Sweeney argues that, because 49 U.S.C. 11706(c)(2) gives a shipper 2 years in which to seek damages for unreasonable rates, TJX, when it filed its suit on January 15, 1993, could sue only on shipments moving since January 15, 1991. TJX, on the other hand, contends that the statute of limitations was tolled until May 1992, when it learned of the bribery of its employee, and that, as it filed its suit within 8 months, none of its claims is barred. As we are simply providing advice to the court on rate reasonableness and applicability, and have no authority to order the payment of money, we will leave it to the court to consider whether equitable tolling principles ought to apply here.

should submit a copy of that tariff as well as evidence supporting the applicability or relevance of that tariff.

As noted above, it is unclear from the pleadings now on file whether any of the subject transportation was conducted pursuant to a valid contract carrier agreement, as a result of which no filed tariff rates would apply and findings as to reasonableness would be significantly affected. If either party seeks to establish that the transportation was by contract carriage, it should submit evidence relating to whether Sweeney held contract carrier authority, whether Sweeney and TJX had a contract carrier agreement under which the shipments moved, and whether the transportation was consistent with the statutory definition of contract carriage (49 U.S.C. 10102(16)). In Re Transcon Lines, 89 F.3d 559, 566 (9th Cir. 1996). Moreover, the parties should address whether the agreement was in writing, as required by ICC regulations during that time period. 49 CFR 1053.1 (1992).

Overcharges for May 1992 to January 1993

Just as with the prior time period, we will use the Georgia-Pacific methodology to determine whether, as TJX alleges, Sweeney's rates during this period were unreasonable.

To determine whether those rates were unlawful for Sweeney's failure to have a mileage tariff on file, as charged by TJX, we will apply the principles of KMart and Jasper Wyman & Son, et al. — Petition for Declaratory Order, 8 I.C.C.2d 246 (1992). Sweeney could not apply mileage rates if their computation depended upon distances listed in a tariff filed by another carrier or agent, unless Sweeney was a participant in the distance tariff. KMart, 511 U.S. at 444. The parties should submit the relevant tariffs for our examination and explain their positions on this issue.

If, as alleged by TJX, Sweeney did not properly participate in a governing distance tariff as required by 49 CFR 1312, then tariff SWEY 605 is void. That does not mean, however, that Sweeney is entitled to no compensation. Georgia-Pacific, 9 I.C.C.2d at 821. Rather, as the ICC held (id.), to the extent that the carrier has already received compensation for its services at a reasonable level agreed to by the shipper, the compensation would not be retroactively altered. Thus, so long as the rates that have been paid based on a void mileage rate were not unreasonable, we would not find them unlawful.

Unpaid Transportation from November 1992 to January 1993

If TJX has not paid freight charges billed to it for transportation during this period, then Sweeney is entitled to collect the unpaid amount from TJX. As noted above, shippers are not entitled to free transportation. Moreover, the Interstate Commerce Act, under which this transportation occurred (see n. 1), required payment on delivery (49 U.S.C. 10743) and did not provide shippers with any set-off rights.

Therefore, if TJX has not paid freight bills issued for this transportation, it is obligated to do so. We will, of course, consider TJX's contentions that the rates sought are unreasonable, or that they are void for nonparticipation, using the standards outlined above.⁹

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

It is ordered:

1. Sweeney's request to withdraw its undercharge claim is granted, with prejudice.
2. The parties must make evidentiary submissions consistent with this decision.
3. Petitioner's opening statement is due February 5, 1998.
4. Respondent's reply statement is due March 9, 1998.
5. Petitioner's rebuttal statement is due March 27, 1998.
6. This decision is effective on its service date.

⁹ While we will determine whether Sweeney has charged reasonable rates for the time periods involved here, we do not intend to re-rate freight bills or examine individual corrected freight bills.

Docket No. 41192

7. A copy of this decision will be mailed to

The Honorable Robert E. Keeton
United States District Court for the District of Massachusetts
John W. McCormack Post Office & Courthouse
Room 306
Boston, MA 02109

Re: Civil Action No. 93-10087-REK

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary