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EB

SERVICE DATE - DECEMBER 22, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB No. 41628

AUTOMATION ENGINEERING CO.--PETITION FOR DECLARATORY ORDER--  
CERTAIN RATES AND PRACTICES OF  
TRANS-ALLIED AUDIT COMPANY, INC.  
AND CHURCHILL TRUCK LINES, INC.

Decided: December 15, 1997

We dismiss this proceeding as moot.

Automation Engineering Co. (petitioner), a former customer of Churchill Truck Lines, Inc. (Churchill), filed a complaint with the Interstate Commerce Commission (ICC)<sup>1</sup> asking that the ICC rule that it would be an unreasonable practice for Churchill, or its audit company Trans-Allied Audit Company, Inc. (respondents), to attempt collect undercharges from petitioner. The ICC served a copy of the complaint on respondents on October 11, 1995, calling upon the respondents to answer the complaint within 20 days. On November 6, 1995, the ICC set a procedural schedule, and on December 5, 1995, respondents filed a motion to dismiss.<sup>2</sup> No other pleadings have been filed.

While this matter was pending, the ICC issued orders in Anacomp, Inc.; Crest Manufacturing Incorporated; Godfrey Marine; Harrison International Incorporated; Health and Personal Care Distribution Conference, Inc.; National Small Shipments Traffic Conference, Inc.; and Truckpro Parts & Service, Inc.--Petition for Declaratory Order--Certain Rates and Practices of Churchill Truck Lines, Inc. (Trans-Allied Audit Company, Inc.), Docket No. 41573 (served August 7 and November 22, 1995) (Anacomp), finding that respondents' attempts to collect undercharges, under the circumstances of that case, would, indeed, constitute an unreasonable practice. Respondents filed a petition for review of Anacomp, which they later withdrew voluntarily. Churchill Truck Lines, Inc. v. Surface Transportation Board, No. 96-1013 (D.C. Cir., Dec. 6, 1996). Thus, Anacomp is administratively final.

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<sup>1</sup> The ICC was abolished January 1, 1996, pursuant to the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA). The ICCTA transferred certain ICC functions, including the resolution of issues in motor carrier undercharge proceedings, to the newly created Surface Transportation Board (Board). 49 U.S.C. 13709-11. Therefore, the Board acquired jurisdiction over this matter.

<sup>2</sup> Respondents contended that the ICC lacked original jurisdiction to adjudicate undercharge claims. However, the statute plainly gives the Board jurisdiction to determine the issues presented by the complaint. 49 U.S.C. 13709-11.

In the meantime, the United States District Court for the District of Minnesota (relying on Anacom) entered an order enjoining respondents from “attempting to collect additional freight charges from former customers of Churchill.” AVR, Inc., et al. v. Churchill Truck Lines, Inc., et al., No. 4-95-CV-401 (Oct. 22, 1996).

We will dismiss this case. Respondents have been enjoined from pursuing any undercharge claims by a Federal district court. Therefore, they may not pursue their undercharge claims against petitioner.

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

*It is ordered:*

1. Respondents’ motion to dismiss for lack of jurisdiction is denied.
2. This proceeding is dismissed as moot.
3. This decision is effective on the service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary

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