

SERVICE DATE - JULY 30, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB No. 41999

PHILIPS LIGHTING CO.—PETITION FOR DECLARATORY ORDER—
CERTAIN RATES AND PRACTICES OF J. K. HUTCH, INC.

Decided: July 25, 1997

This proceeding arises out of the efforts of J.K. Hutch, Inc. (Hutch or respondent) to collect undercharges for certain transportation services performed on behalf of Philips Lighting Co. (Philips or petitioner). The matter is before the Board on referral from the Superior Court of New Jersey, Law Division, Somerset County, in *J.K. Hutch, Inc. v. Philips Lighting Co.*, Docket No. SOM-L-408-96 (referral order dated March 7, 1997).

On April 18, 1997, Philips filed a petition for declaratory order requesting the Board to resolve issues of unreasonable practice, interstate or intrastate commerce, rate reasonableness, and contract carriage. The petition indicated that Hutch had ceased operations on April 19, 1994, and was no longer transporting property. By decision served May 1, 1997, the Board established a procedural schedule for the parties to submit evidence on the matters raised.

In a filing submitted May 23, 1997, Hutch states that it is withdrawing its undercharge claims against Philips based on its filed tariff rate and moves to proceed on undercharge claims premised on alleged shipper fraud.

Hutch maintains that the shipments at issue moved at a discount weight/mileage rate specified in a contract between Hutch and Philips. Respondent states that petitioner required that the subject shipments be palletized. Hutch asserts that it relied on the bills of lading generated by petitioner, which specified the number of packages, product class, and total weight of the subject shipments, in invoicing Philips at the agreed-to weight/mileage rate. Respondent subsequently discovered that the weight total stated in the bills of lading failed to include the weight of the required pallets. Hutch argues that, as its filed tariff rate undercharge claim has been withdrawn, the only issue to be considered by the Board is whether respondent is entitled to undercharges based on the failure of Philips to include the pallet weights in the bills of lading shipment weight total. It requests that the Board issue a new procedural schedule limiting the matters to be considered to the fraud issue.

In a response filed June 23, 1997, Philips asserts that the same statutory defenses that would enable it to challenge respondent's filed tariff rate undercharge claim are available for it to use in challenging other types of undercharge claims. It requests that a new procedural order be issued to enable the Board to resolve the issues referred to it by the court.

In a reply filed July 10, 1997, Hutch asserts that, while its court complaint against Philips also seeks damages for alleged breach of contracts, intentional interference with business relations, and breach of covenant of good faith and fair dealings, these issues are subject to state law and are not within the Board's purview. It reiterates its request that a new procedural schedule be issued in the proceeding limited to undercharges resulting from shipper's alleged fraud.

In view of the determination by Hutch to withdraw its filed rate undercharge claim and limit its claim to allegations of shipper fraud based on a contractual agreement, Board jurisdiction over this matter is questionable. In withdrawing its claim based on its filed tariff rate, Hutch admits that it may not assert that undercharges are due it under the filed rate. What remains is Hutch's claim that Philips committed fraud in connection with billings for shipments under a contract between Hutch and Philips. Issues involving allegations of fraud and interpretation of contracts may be resolved by the court without a determination by the Board. Accordingly, the parties will be directed to show cause within 30 days why the Board should not dismiss this proceeding.

It is ordered:

1. Within 30 days of the service date of this decision, the parties are directed to show cause to why this proceeding should not be dismissed. To the extent either party wishes to respond to a filing by the other party, it may do so within 50 days of the service date of this decision.

2. This decision is effective on the date served.

3. A copy of this decision will be mailed to:

The Honorable Victor Ashrafi
Superior Court of New Jersey
Law Division, Somerset County
P. O. Box 3000
Somerville, NJ 08876

Re: Docket No. SOM-L-408-96

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary