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SERVICE DATE - MAY 12, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. MC-C-35000

TRIPLE E TRANSPORT, INC.--  
PETITION FOR DECLARATORY ORDER

Decided: May 7, 1998

By petition filed January 15, 1998,<sup>1</sup> Triple E Transport, Inc. (petitioner), seeks a declaratory order to resolve a dispute over whether a certain shipment of property by motor carrier moved in common carriage or in contract carriage. The issue arises from a pending court action, although the court has not referred the matter to the Board.<sup>2</sup> United States Pipe and Foundry Company (U.S. Pipe) has filed an objection and motion to dismiss the petition, and petitioner has replied. For the reasons discussed below, the petition will be denied and a declaratory order proceeding will not be instituted. Accordingly, the motion to dismiss is moot.

Petitioner holds operating authority, originally issued by the Interstate Commerce Commission (ICC) in Docket No. MC-198497, to operate both as a motor common carrier of property and as a motor contract carrier of property. On or about March 1, 1992, petitioner signed a "Master Transportation Agreement" (the agreement) with U.S. Pipe. The agreement purports to be a transportation contract under which U.S. Pipe agreed to use petitioner's contract carrier services, at rates specified in the agreement.

On October 18, 1993, U.S. Pipe tendered an interstate shipment of ductile iron pipe to petitioner, moving pursuant to a standard, short-form, uniform straight bill of lading. Petitioner's vehicle was involved in an accident in which an individual was killed, and the decedent's estate brought a wrongful death action against U.S. Pipe, petitioner, petitioner's driver, and another driver who had been involved in the accident. That litigation was settled in May 1996, with U.S. Pipe paying \$250,000.

The agreement includes a provision requiring petitioner to reimburse U.S. Pipe for its legal payment. In the pending court action, U.S. Pipe seeks reimbursement by petitioner of the amount it paid in settlement of the wrongful-death action. Petitioner asks us to rule that the shipment in

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<sup>1</sup> The petition was submitted for filing on December 30, 1997, but the applicable filing fee was not received until January 15, 1998.

<sup>2</sup> U.S. Pipe v. Triple E Transport, Inc., CV96-3625 JDC, before the Circuit Court of Jefferson County, Alabama.

question actually moved in common carriage and not in contract carriage. According to petitioner, if the traffic moved in common carriage, the reimbursement provision would not apply.

### DISCUSSION AND CONCLUSIONS

Under 5 U.S.C. 554(e), the Board has discretion in determining whether to issue a declaratory order to terminate a controversy or remove uncertainty. The petition is not persuasive that the controversy presented here involves a matter in which our special expertise is required.

Petitioner claims that, under 49 U.S.C. 13710(b),<sup>3</sup> the Board is required to resolve this dispute. That is not the case. That provision was intended to apply to disputes over rates and charges. Section 13710(b) was originally enacted as section 8 of the Negotiated Rates Act of 1993, Pub. L. No. 103-180 (NRA), as 49 U.S.C. 11101(d). The NRA was enacted to “provide a statutory process for resolving disputes for claims involving negotiated transportation charges brought about by trustees for non-operating motor carriers for past transportation services.” H.R. Rep. No. 359, 103rd Cong., 1st Sess. at 7 (1993). When the provision was recodified in the ICC Termination Act of 1995, Pub. L. No. 104-88, it was inserted into Chapter 137 of Title 49, which deals with “Rates and Through Routes,” as section 13710, the title of which is “Additional billing and collecting practices”. Chapter 137 deals with rates for motor carrier transportation. In particular, section 13710, as a whole, deals with billing and collecting practices. In this context, resolution of disputes over the status of certain transportation as common or contract carriage is an inherent part of a determination of the rate applicable to that transportation. The purpose of section 13710(b), accordingly, is to permit a determination of which rate applies, common or contract.

There is no allegation in the petition of any dispute over the rate applicable to the service. This dispute involves, rather, issues of civil liability and potential subrogation rights under the contract, matters of general law as to which we have no special expertise to bring to bear.

Accordingly, the declaratory relief requested will not be granted and a proceeding will not be instituted.

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<sup>3</sup> RESOLUTION OF DISPUTES OVER STATUS OF COMMON CARRIER OR CONTRACT CARRIER.—If a motor carrier (other than a motor carrier providing transportation of household goods) that was subject to jurisdiction under subchapter II of chapter 105, as in effect on the day before the effective date of this section, and that had authority to provide transportation as both a motor common carrier and a motor contract carrier and a dispute arises as to whether certain transportation that was provided prior to the effective date of this section was provided in its common carrier or contract carrier capacity and the parties are not able to resolve the dispute consensually, the Board shall resolve the dispute.

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

It is ordered:

1. The petition for a declaratory order is denied.
2. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary