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SERVICE DATE - OCTOBER 2, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 41996

ASSOCIATED TRAFFIC SERVICES, INC.--PETITION FOR DECLARATORY ORDER--
CERTAIN RATES AND PRACTICES OF SAIA MOTOR FREIGHT LINE, INC.

Decided: September 30, 1998

In a pleading filed June 1, 1998, Saia Motor Freight Line, Inc. (Saia) seeks reconsideration of our decision in this proceeding served May 8, 1998 (May 8 decision). Associated Traffic Services, Inc. (ATS) replied on June 15, 1998. ATS is the assignee of Warner/Elektra/Atlantic Corporation (WEA), the shipper and payer of freight charges to Saia.

In its request for reconsideration,¹ Saia claims that the Board erred when it (1) asserted jurisdiction over the rate applicability of post-TIRRA shipments; (2) held that evidence of the intent of the parties was admissible; (3) found the agreement of the parties to be ambiguous; (4) found that the 53% discount of Item 1414 and the class 70 rate of Item 1444 applied; and (5) asserted jurisdiction over the applicability issue after that authority was allegedly delegated to the Office of Compliance and Enforcement. Saia has not justified reconsideration of the May 8 decision.

BACKGROUND

This controversy was referred to the Board by the United States District Court for the Northern District of Georgia, Atlanta Division, in Associated Traffic Services, Inc. v. Saia Motor Freight Line, Inc., No.1:96-CV-856-JTC (referral order dated January 31, 1997). ATS requested a declaratory order addressing certain rates and practices of Saia. In response, the Board in its May 8 decision declared that, for shipments that moved between April 26, 1994, and May 23, 1995, a 53% discount applied to class 70 exception rates.

Our finding was based on our consideration of Item 1444 and Item 1414 of Saia's tariff ICC SAIA 669-F. Effective May 10, 1993, WEA had signed up to participate in Item 1444, described in

¹ Saia calls its request a "Motion for Reconsideration," alleging that our prior decision "committed substantial and prejudicial error." We will accept the filing under 49 CFR 1115.3 governing "petitions for reconsideration." Such petitions are granted upon a showing of material error, new evidence, or substantially changed circumstances.

part as “DISCOUNT AND EXCEPTIONS CLASS RATING.” Note A of Item 1444 indicated that the terms of the discount item applied only when the shipper was notified in writing by Saia that it is a participant in the item. The record contained a document indicating that the exception class 70 rates would apply on WEA traffic from Atlanta, GA, and that the rates would be discounted by 48% (Notification I).

Effective April 26, 1994, WEA signed up to participate in another of Saia’s discount tariffs, pursuant to Item 1414 of tariff ICC SAIA 669-F. Item 1414 is described in part as “DISCOUNT ON CLASS RATED SHIPMENTS.” Note B of the item also indicated that the discount would apply when a shipper was notified in writing that it was a participant in the discount plan. The record contained an undated document to WEA indicating that, effective April 26, 1994, the 53% discount of Item 1414 would apply on all of its shipments between Atlanta, GA (Notification II). This notification stated that it

serves as a commitment in writing that Saia Motor Freight Line, Inc. will allow a 53% discount on all shipments serviced direct by this carrier as published within Item 1414.

After the 53% discount became effective on April 26, 1994, Saia discontinued the application of the class 70 exceptions rates on WEA’s shipments and applied class 85 or class 100 rates. This resulted in rates that were higher than those previously charged. Subsequently, after discussions among the parties, Saia resumed the use of class 70 exception rates, to which it applied the 53% discount, thus charging WEA what it expected to be charged when it first signed up for the 53% discount.

The Board in its May 8 decision considered Items 1414 and 1444 and their notifications and stated that the class 70 rates delineated in Notification I were never canceled. Finding that the items and notifications were ambiguous, and that ambiguous tariffs are to be construed against the framer of the tariff and in favor of the shipper, we concluded that the 53% discount should have applied to the class 70 exception rates all along.

DISCUSSION AND CONCLUSIONS

Saia argues that it operated as a contract carrier in this controversy, and that the Board does not have authority to determine the applicability of contract provisions. It submits that the authority under 49 U.S.C. 13710(a)(2) to determine the reasonableness and applicability of rates under tariff pertains to common carriers.

Our May 8 decision indicated (at 2) that “the transportation agreement encompassed rates in tariff format” and “we clearly do have authority to interpret tariffs for the benefit of a court with jurisdiction” We did not make a finding as to whether the shipments moved under common or contract carriage. This was unnecessary, because we were responding to the court’s referral. The

court noted that, after our decision, it could “revisit the issue, armed with the fullness of time and a more complete record.” Id.

Saia also argues that we erred in stating that “the intent of the parties can be probative in analyzing an ambiguous tariff . . .” May 8 decision at 2-3, n. 3. Intent, according to Saia, is irrelevant to tariff interpretation, and our use of intent shows the contract nature of this controversy.

We believe that intent can be relevant in analyzing ambiguous tariffs. While ambiguities in tariffs are generally resolved against the framer of the tariff, strict construction against the tariff framer is not always appropriate if it “ignores a permissible, reasonable construction which conforms to the intention of the framers of the tariff, . . . and accords with the practical application given by shippers and carriers alike.” National Van Lines, Inc. v. U.S., 355 F.2d 326, 333 (7th Cir. 1966).

Even if Saia’s arguments about using intent in tariff interpretation were correct, however, it would not change the result of our decision. We found that Items 1414 and 1444 and the notifications were ambiguous, and that ambiguities should be interpreted against the tariff framer. This was the predicate for our declaring that the 53% discount in Item 1414 should be applied to the class 70 exception rates. Although we stated that this tariff interpretation was “also consistent with the intent of the parties,” it would have been an appropriate result in interpreting the ambiguous tariff even if we had not considered intent.²

Finally, Saia argues that the Board does not have the authority to decide this matter because, under our regulations, the Board delegated to the Office of Compliance and Enforcement the authority to make motor common carrier applicability determinations under 49 U.S.C. 13710(a)(2). 49 CFR 1011.8(d)(4). This argument has no merit. Under 49 CFR 1011.2(b), the Board has the authority “to bring before it any matter assigned to an . . . employee board.”

² This is not the only permissible interpretation of the tariff issue. It would not be unreasonable to conclude that Item 1414 provides for a 53% discount off the applicable class rates for the articles contained in the shipments; that class 85 or class 100 rates would generally apply; and that, under Notification II, the 53% discount will apply “on all shipments . . . as published within Item 1414.” Under this approach, it could be found that there are two tariff items in effect that are applicable: Item 1444, with its 48% discount on class 70 rates, and Item 1414, with its 53% discount applicable on class 85 or 100 rates. A rule of tariff interpretation is that, where two tariffs are applicable, the shipper is entitled to have the lower rate apply. See U.S. v. Gulf Ref. Co., 268 U.S. 542, 546 (1925). Under that analysis, the applicable rates would be the lower rates contained in Item 1444. Although the court can reasonably apply either analysis in making its final determination on the merits, our prior decision was clearly not incorrect.

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

It is ordered:

1. The May 8 decision is modified and clarified.
2. This decision is effective on its service date.
3. A copy of this decision will be mailed to:

The Honorable Jack T. Camp
United States District Court for the Northern
District of Georgia, Atlanta Division
Room 2142
75 Spring St. SW
Atlanta, GA 30303-3361

Re: No. 1:96-CV-856-JTC

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary