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SERVICE DATE - DECEMBER 23, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB No. 41674

CLIMATE MASTER, INC.; L&S BEARING CO.;
INTERNATIONAL ENVIRONMENTAL CORPORATION, AMERICAN BEARING
DIVISION; APR CORPORATION; IBI CORPORATION;
HART INDUSTRIAL MACHINERY & SUPPLY CO.; AND GO INDUSTRIES, INC.--
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.

Climate Master, Inc.; L & S Bearing Co.; International Environmental Corporation, American Bearing Division; APR Corporation; IBI Corporation; Hart Industrial Machinery & Supply Co.; and Go Industries, Inc. (petitioners), former customers of Churchill Truck Lines, Inc. (Churchill), sought a declaratory order from the Interstate Commerce Commission (ICC)¹ finding that it would be an unreasonable practice for Churchill, or its audit company Trans-Allied Audit Company, Inc. (respondents), to attempt to collect undercharges from petitioners.² The certificate of service attached to the petition indicates that a copy of it was served on counsel for respondents. No other pleadings have been filed.

Just before petitioners filed their request for a declaratory order, 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

¹ 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.

² Petitioner APR Corporation also seeks damages under 49 U.S.C. 11705 (b) and (c) for the amount it paid respondents in response to an undercharge claim. However, section 11705 is not applicable to the facts and circumstances of this case. General Mills, Inc. — Petition for Declaratory Order, 8 I.C.C.2d 313, 325 (1992).

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.

Before respondents dismissed their petition for review of Anacomp, the United States District Court for the District of Minnesota (relying on Anacomp) 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 petitioners.

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

It is ordered:

1. This proceeding is dismissed as moot.
2. This decision is effective on the service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary