

SURFACE TRANSPORTATION BOARD

DECISION

STB No. 41993

ILLINOIS TOOL WORKS, INC. d/b/a SIGNODE PACKAGING SYSTEMS
a/k/a IMSA SIGNODE S.A.

v.

BE-MAC TRANSPORT, INC.

Decided: July 16, 1997

Illinois Tool Works, Inc. d/b/a Signode Packaging Systems a/k/a IMSA Signode S.A (ITW or complainant) filed a complaint with the Board against Be-Mac Transport, Inc. (Be-Mac or defendant) pursuant to the order of the United States District Court for the Eastern District of Missouri, Eastern Division, in *Be-Mac Transport, Inc. v. Illinois Tool Works, Inc.*, Case No. 4:95-CV-1301 (CEJ), dated January 28, 1997. By decision served April 3, 1997 (April 3 decision), a procedural schedule was established in this proceeding.

The April 3 decision specifically directed defendant to furnish complainant with tariff and other documentation, listed in Appendix A to the decision, called for in *Vertex Corp. Pet. Declar. Order Rates and Practices*, 9 I.C.C.2d 688 (1993) (*Vertex II*), modified at 10 I.C.C.2d 367 (1994) (*Vertex III*). The *Vertex II* material is needed to determine accurately the specifics of the transportation provided. Without the material, the Board would not be able to determine the applicability of the assessed rates. The April 3 decision stated that failure of defendant to provide the relevant information may cause the Board to advise the court that defendant is in default and should not be permitted to collect undercharges from complainant.

On May 16, 1997, complainant filed a motion for default or, in the alternative, for postponement of procedural deadlines. Contending that defendant failed to furnish the pertinent material by April 23, 1997, as directed by the April 3 decision, complainant seeks a finding that defendant is not entitled to collect any undercharges or, alternatively, an order compelling defendant to supply the information previously ordered and extending the deadlines set forth in the April 3 decision. Defendant has not filed a reply.

This course of action will be followed here. Defendant will be directed to provide the *Vertex II* material identified in Appendix A of this decision to complainant and also file it with the Board. If respondent fails to produce the requested materials, or show cause why it should not be required to do so, the Board will advise the court that respondent has not shown itself to be entitled to collect any undercharges and dismiss this proceeding.

The procedural schedule established in the April 3 decision will be vacated. Should the *Vertex II* material identified in Appendix A be timely provided by defendant, a new procedural schedule will be established as set forth below.

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

It is ordered:

1. The procedural schedule established in the April 3 decision is vacated.
2. Defendant is directed to furnish to complainant all material called for in Appendix A hereto, or show cause why it should not be required to do so, by August 11, 1997. Defendant must also file a copy of the material with the Board.
3. Should defendant timely comply with the directives set forth in the preceding paragraph, the following procedural schedule is established:

- a. Complainant's opening statement must be filed by September 10, 1997.
 - b. Defendant's reply must be filed by October 10, 1997.
 - c. Complainant's rebuttal must be filed by October 30, 1997.
4. This decision is effective on its service date.
 5. A copy of this decision will be mailed to:

The Honorable Carol E. Jackson
United States District Court for the
Eastern District of Missouri, Eastern Division
U. S. Court & Custom House
1114 Market Street, Room 828
St. Louis, MO 63101

Re: Case No. 4:95-CV-1301 (CEJ)

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

APPENDIX A

To facilitate effective and timely evaluation of issues involved in undercharge proceedings claimants should furnish the involved shippers the following information for each claim for undercharges (or representative claims in the event of multiple claims for repetitive shipments of identical traffic):¹

- carrier name, license number (MC number);
- carrier operating status; if nonoperating, date of cessation;
- range of dates that shipments moved;
- the name of claimant and the amount of undercharge and interest, if any, sought;
- a copy of the original shipping order;
- a description of the goods shipped (if not fully and accurately described on the shipping order);
- the quantity of goods shipped (if not accurately presented on the shipping order);
- the point of origin and the point of destination (and points of stop-off for pickup and delivery, if pertinent);
- the classification or exception rating assigned the goods, in the case of class rates;
- the mileage from origin to destination (via stop-off points, if pertinent) in the case of mileage rates;
- the discount factor, if any, applied in the original billing compared with the discount factor, if any, applied in re-billing;
- the per-unit line-haul rate as originally billed compared with the per-unit line-haul rate as re-billed;
- the rate or charge for accessorial services, if any, originally billed compared with the rate or charge for accessorial services as re-billed;
- total shipment charges as originally billed compared with total shipment charges as re-billed;
- complete tariff authority (e.g., item number, page number, rule number, etc.) of specifically cited tariffs (all) used in the calculation of applicable rates and charges as originally billed and as re-billed;
- freight bill payment information (including identity of payers); and
- all other documents or data which is believed by claimant to substantiate its claim(s).

Appendix B contains a *suggested* format for furnishing this information.

¹ This information should be readily available to claimants because without it, they cannot properly formulate their claims. These requirements were modeled on the provisions of 49 CFR 1008.4 (Documentation of Claims) which sets forth the information required by carriers as they investigate overcharge claims filed by shipper interests. See *Vertex II* at 697, n.1.

APPENDIX B

Part I

Claimant _____ Amount sought: Undercharge ____; Interest ____;
 Bill of Lading No. _____ Amount Paid ____ by [] consignor, [] consignee, or [] third party.
 Original Freight Bill No. _____
 (If not attached, provide explanation)
 Description of Goods: _____ see bill of lading; otherwise, _____
 Weight of Shipment: _____ see bill of lading; otherwise, _____
 Origin: _____
 Destination: _____
 Stop-off Points: _____

Part II

ORIGINAL BILLING

| SERVICE | (1) Classification or Exception Rating | Rating Unit | | | (4) Per Unit Rate | (5) Discount Factor | TOTAL |
|----------------|---|-------------|-----------|-----------|----------------------|------------------------|-------|
| | | Weight | (2) Miles | (3) Other | | | |
| A. Line Haul | | | | | | | |
| B. Accessorial | | | | | | | |

TARIFF AUTHORITIES:

- (1) A.
- B.
- (2) A.
- B.
- (3) A.
- B.
- (4) A.
- B.
- (5) A.
- B.

Part III

REASONS FOR RE-BILLING (EXPLAIN)

| | | | |
|-------|--------------------------------------|-------|----------------------------------|
| _____ | FREIGHT MISDESCRIBED | _____ | TARIFF-STATED CONDITIONS NOT MET |
| _____ | MATHEMATICAL ERROR | _____ | ORIGINAL DISCOUNT DISALLOWED |
| _____ | TARIFF-REQUIRED NOTATIONS OMITTED | _____ | OTHER |

Explanation:

Part IV

REBILLING

| SERVICE | (1) Classification or Exception Rating | Rating Unit | | | (4) Per Unit Rate | (5) Discount Factor | TOTAL |
|----------------|---|-------------|-----------|-----------|----------------------|------------------------|-------|
| | | Weight | (2) Miles | (3) Other | | | |
| A. Line Haul | | | | | | | |
| B. Accessorial | | | | | | | |

TARIFF AUTHORITIES:

- (1) A.
- B.
- (2) A.
- B.
- (3) A.
- B.
- (4) A.
- B.
- (5) A.
- B.