

SURFACE TRANSPORTATION BOARD

DECISION

STB No. 41911

INFINITY SYSTEMS, INC.--PETITION FOR DECLARATORY ORDER--
CERTAIN RATES AND PRACTICES OF SUPERIOR FAST FREIGHT, INC.

Decided: January 21, 1997

This proceeding arises out of the efforts of Superior Fast Freight, Inc. (SFF or respondent), to collect undercharges for certain transportation services performed on behalf of Infinity Systems, Inc. (Infinity or petitioner). This matter is before the Board on referral from the United States Bankruptcy Court for the Central District of California, for the Board's determination as to (1) whether SFF operated as a freight forwarder or as a motor carrier, and (2) whether SFF's failure to adopt the tariffs of its predecessor results in the absence of a filed tariff on which to support its alleged undercharge claims. The court also referred petitioner's unreasonable practice, rate unreasonableness, and other regulatory defenses to the Board for consideration.¹

On September 13, 1996, Infinity, pursuant to the court order, filed a petition for declaratory order seeking Board determination of the court-referred issues. By decision served October 30, 1996, this matter was set for handling under the modified procedures rules of 49 CFR 1112, and a procedural schedule was established.² Because this proceeding was acknowledged to be the lead docket for numerous related undercharge proceedings, and because the threshold issues raised by petitioner--SFF's status as a freight forwarder or a motor carrier (Status Issue), and the impact of SFF's failure to adopt the tariffs of its predecessor on its ability to pursue its asserted undercharge claims (Adoption Issue)--were recognized as possibly dispositive of all of the related proceedings, the procedural schedule was bifurcated. The procedural decision directed that the initial phase of the proceeding focus on the two stated threshold issues. The decision further noted that a second procedural phase under a new procedural schedule would be instituted should it become necessary, after disposition of either or both of the threshold issues, to consider the unreasonable practice, rate reasonableness, and other issues.

¹ By order entered April 12, 1996, the court designated this proceeding as lead docket for Case Management filings and for the issuance of orders adopting further procedures for all SFF undercharge proceedings filed in the court. By order entered August 8, 1996, the court granted motions for stay of judicial proceedings to enable referral of certain issues to the Board.

² The procedural decision also included an order requiring respondent, if it had not already done so, to provide petitioner with certain pertinent information of the sort described in Vertex Corp.-Pet. for Decl. Order-Rates and Practices, 9 I.C.C.2d. 688 (1993)(Vertex).

On November 13, 1996, SFF filed a motion to rescind the procedural schedule and requested a status hearing for the purpose of further bifurcating the proceeding. Respondent maintains that the Adoption Issue involves a set of facts concerning SFF alone; requires little, if any, discovery; can be briefed within a reasonable period of time; and lends itself to a lead case approach. On the other hand, SFF asserts that consideration of the Status Issue, in that it will necessitate a significant factual review of the "holding out" of services by SFF to the shipping public and require extensive efforts to produce documents and declarations and to take depositions from a myriad of shippers, does not lend itself to the lead case approach. Respondent requests that the Status Issue be held in abeyance until such time as the Adoption Issue is resolved and that a procedural schedule directed at the resolution of the Adoption Issue be issued.³

In a response filed December 3, 1996, Infinity challenges SFF's assertion that the Status Issue does not lend itself to a lead case approach and opposes rescission of the October 30 procedural decision.⁴ It argues that the SFF proposal is contrary to the referring court's order; that the basis for resolving the Status Issue, which will depend on a determination of how the carrier held itself out to the public, does not require extensive discovery from a myriad of shippers; and that the threshold issues should proceed together.

SFF's motion will be denied. While consideration of the Status Issue calls for an evaluation of the manner in which SFF held itself out to provide transportation service to the general public, it will be resolved, as the court anticipated, using the lead case approach. Thus, resolution of this issue with respect to this proceeding will depend on SFF's conduct in its business relationship with Infinity rather than with any other shipper. Accordingly, development of the record in this proceeding does not call for extensive discovery from any shipper other than

³ On November 25, 1996, ITT Snyder Company and 19 other shippers submitted a letter in support of respondent's motion. In a petition to intervene filed December 10, 1996, Guardian Products, Inc., and Reliable Automatic Sprinkler Co. express their agreement with the basic position advocated by SFF in its motion.

⁴ Infinity also contends that SFF has failed to produce certain Vertex documents called for in the procedural order. Specifically, petitioner identifies Tariff ICC SUFF 240 and Tariff ICC SUFF 617-B issued by SFF as documents that have not been provided as required by the Vertex order. Infinity requests that SFF be held in default for failure to produce these documents. In a reply filed December 23, 1996, SFF asserts that it has already provided Infinity with the balance due bills, that it will provide additional necessary Vertex documents when appropriate, that the documents being sought by Infinity are not documents that fall within the scope of the Vertex order, and that the need for Vertex materials does not arise in the context of the threshold issues. While the documents identified by Infinity may be appropriate items subject to discovery should a later phase of this proceeding become necessary, they are in fact in-house unpublished tariffs not subject to the filed rate doctrine, and do not fall within the scope of the Vertex order. The request by Infinity to hold SFF in default is denied.

Infinity. Because SFF's status will be tested on the basis of its business relationship with Infinity, any statements filed by shipper defendants who have joined in the petition will be considered only as they pertain to the Infinity-SFF business relationship.

It is ordered:

1. The motion of SFF to rescind the procedural schedule is denied.

1. This decision is effective on the service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary