

SERVICE DATE - SEPTEMBER 19, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB No. 41994

FRANK W. WINNE & SONS, INC.

v.

WILLIG FREIGHT LINES, INC.

Decided: September 16, 1997

Frank W. Winne & Sons, Inc. (Winne or complainant) filed a complaint with the Board against Willig Freight Lines, Inc. (Willig or defendant) pursuant to the order of the United States Bankruptcy Court for the Northern District of California, in Willig Freight Lines, Inc. v. Frank W. Winne and Sons, Inc., Case No. ND 95-33940-DM, Adv. No. 96-3606-DM. By decision served May 9, 1997 (May 9 decision), a procedural schedule was established in this proceeding.

The May 9 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 May 9 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 July 24, 1997, complainant filed a motion for dismissal for failure of the defendant to provide the required discovery. Contending that defendant failed to furnish the pertinent discovery material by May 29, 1997, as directed by the May 9 decision, complainant seeks a finding that the defendant has failed to comply with the Board's May 9 decision regarding the Vertex II material. 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 May 9 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 May 9 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 October 9, 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 November 10, 1997.

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

The Honorable Dennis Montali
United States Bankruptcy Court for
the Northern District of California
P. O. Box 7341
San Francisco, CA 94120

Re: Case No. ND 95-33940-DM, Adv. No. 96-3606-DM

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) <u>Classification or</u> <u>Exception Rating</u>	Rating Unit			(4) <u>Per Unit</u> <u>Rate</u>	(5) <u>Discount</u> <u>Factor</u>	<u>TOTAL</u>
		<u>Weight</u>	(2) <u>Miles</u>	(3) <u>Other</u>			
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) <u>Classification or</u> <u>Exception Rating</u>	Rating Unit			(4) <u>Per Unit</u> <u>Rate</u>	(5) <u>Discount</u> <u>Factor</u>	<u>TOTAL</u>
		<u>Weight</u>	(2) <u>Miles</u>	(3) <u>Other</u>			
A. Line Haul							
B. Accessorial							

TARIFF AUTHORITIES:

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