

SURFACE TRANSPORTATION BOARD¹

DECISION

No. MC-247354 (C) and (P)

ALLEN FREIGHT TRAILER BRIDGE, INC., COMMON AND CONTRACT
CARRIER APPLICATION

No. 40783

MARINE TRANSPORTATION SERVICES SEA BARGE GROUP, INC.

v.

ALLEN FREIGHT TRAILER BRIDGE, INC.

Decided: August 25, 1997

As a result of significant statutory changes made by the ICCTA that directly affect the major issues presented in these proceedings, we are issuing this show cause order to determine whether these proceedings should be discontinued.

BACKGROUND

On October 15, 1991, Trailer Bridge, Inc., predecessor in interest to Allen Freight Trailer Bridge, Inc. (Trailer Bridge),² filed an application in Docket No. MC-247354 (C) and (P) for motor common and contract carrier authority to transport general commodities (with exceptions) between points in the United States (except Alaska and Hawaii). Marine Transportation Services Sea Barge Group, Inc. (Sea Barge), filed a protest to the application. Applicant replied.

Trailer Bridge began operations under temporary authority on February 5, 1992. It conducts intermodal operations between interior points in the United States mainland and Puerto Rico. To provide this service, applicant operates motor carrier service between points in the continental United States and operates a barge transportation service between Jacksonville, FL, and San Juan, PR, using multi-deck barges, each capable of accommodating approximately 266 trailers. Each barge is towed by a seagoing tug under charter to Trailer Bridge. The carrier provides one southbound and one northbound sailing each week.

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board), effective January 1, 1996. Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to the Board's jurisdiction pursuant to 49 U.S.C. 13501, 13521, and 13702. Other licensing-related functions that were involved in the proceeding, such as those governed by 49 U.S.C. 13902, have not been transferred to the Board. In this decision, we will address both old and new law, as appropriate.

² The merger of Allen Freight Lines, Inc. (AFL), into Trailer Bridge, Inc., was approved by the ICC in Docket No. MC-FC-86166. Trailer Bridge, Inc., changed its name to Allen Freight Trailer Bridge, Inc. (AFTB), on November 1, 1992. On November 16, 1992, AFL's operating authorities were reissued to AFTB in Certificate No. MC-164771 (Sub-No. 5) and Permit No. MC-164771 (Sub-No. 6).

Trailer Bridge's noncontiguous domestic trade common carrier service is provided pursuant to tariff STB TRBR 200 series.³ Its motor common carrier service was provided pursuant to tariff ICC AFTB 201 series.⁴ Both intermodal and motor contract services are conducted pursuant to written contracts with its shippers.⁵

In Docket No. 40783, Sea Barge filed a complaint alleging that Trailer Bridge's operations under temporary authority were unlawful. Specifically, the complaint alleges that applicant had filed unlawful tariffs, deviated from the filed tariffs, and was conducting unlawful contract carriage operations. Trailer Bridge filed a motion to dismiss the complaint, and Sea Barge replied to the motion.

By decision served September 15, 1992, the ICC consolidated Trailer Bridge's application for motor common and contract carriage authority with Sea Barge's complaint, reopened the record in Docket No. MC-247354 (C) and (P) for the receipt of additional evidence, and requested comments from the Federal Maritime Commission (FMC) and other interested parties.⁶ Comments were filed by the FMC, the United States Department of Transportation, Puerto Rico Marine Management, Inc. (PRMMI),⁷ Matson Navigation Company, Inc., S.E.L. Maduro (Florida), Inc. (Maduro), and Crowley American Transport, Inc.

DISCUSSION AND CONCLUSIONS

In the ICCTA, Congress made several significant changes that appear to have largely resolved the major points of contention in these proceedings. First, a major issue presented in these proceedings was whether the ICC or the FMC could or should regulate Trailer Bridge's water carrier service. Formerly, through-route and joint-rate arrangements were subject only to the ICC's jurisdiction, while port-to-port movements with subsequent terminal delivery service was subject to FMC jurisdiction under the Intercoastal Shipping Act, 1933, 46 U.S.C. 843-48 (Shipping Act). *Alaska Steamship Co. v. FMC*, 399 F.2d 623 (9th Cir. 1968). The ICCTA transferred exclusive jurisdiction over operations in the noncontiguous domestic trade to the Board, thus ending this bifurcation of jurisdiction. *See* new 49 U.S.C. 13501 and 13521. Accordingly, this jurisdictional question does not appear to be an issue any longer.

A second issue was whether a single carrier could perform both motor and water intermodal service in the noncontiguous domestic trade. Some of the commenting parties have contended that tariff filing regulations only allowed for joint-line operations involving two separate carriers, and did not permit a single carrier to provide both services. After passage of the ICCTA, however, these tariff regulations were repealed, and replaced by more flexible tariff rules that gave carriers additional latitude in designing their tariffs and that reflected recent statutory changes, in *Regulations for the Publication, Posting and Filing of Tariffs for the Transportation of Property by or with a Water Carrier in the Noncontiguous Domestic Trade*, STB Ex Parte No. 618 (STB served Apr. 17, 1997), ___ STB ___ (1997). In that decision, we also affirmed that the same carrier may provide both line-haul land and water transportation. Slip op. at 2. Accordingly, this question may no longer be at issue.

³ Trailer Bridge's first tariff, Tariff ICC TBCY 200, became effective on December 16, 1991.

⁴ Under former 49 U.S.C. 10762(a)(5), this tariff became null and void on August 26, 1994.

⁵ Formerly, Trailer Bridge's port-to-port service between Jacksonville, FL, and San Juan, PR, was provided pursuant to its FMC-F No. 1-series tariff.

⁶ Additionally, the September 15, 1992 decision specifically authorized Trailer Bridge to continue its operations until a final decision is reached in these proceedings.

⁷ PRMMI is the general agent for Puerto Rico Maritime Shipping Authority (PRMSA) and filed comments on PRMSA's behalf.

Some of the commenting parties have contended that Trailer Bridge may not provide transportation under both common carrier rates and private contracts in its service to and from Puerto Rico.⁸ Indeed, Trailer Bridge's competitors have complained that Trailer Bridge's improper use of contract services place them at a competitive disadvantage.⁹ The ICCTA, however, appears to have mooted these issues. In adopting new 49 U.S.C. 14101, Congress specifically contemplated that all carriers operating in the noncontiguous domestic trade could offer both common and contract rates and services. *See* H.R. Rep. No. 422, 104 Cong., 1st Sess. 215 (1995). Thus, although water carrier operations are still differentiated with respect to common and contract carriage (unlike surface trucking operations),¹⁰ and although joint water-motor common carrier rates in the noncontiguous domestic trade are still subject to the tariff filing requirements of 49 U.S.C. 13702(b), it appears that nothing in the law prevents Trailer Bridge from combining its untariffed motor contract operations with its untariffed water operations to provide an untariffed motor/water contract operation in the noncontiguous domestic trade. Under those circumstances, it does not appear that there is any reason to continue these proceedings.

Sea Bridge's complaint also challenges Trailer Bridge's fitness to provide these transportation services by alleging that Trailer Bridge was engaged in other unlawful activities. The Board has no authority to revoke a trucking license on fitness grounds, as all aspects of licensing are subject to the authority of the Secretary of Transportation.¹¹ But in any event, it appears that these allegations are not substantiated. Trailer Bridge answered Maduro's claim that Trailer Bridge transported household goods without appropriate authority by providing un rebutted evidence¹² that it handled household goods only as general freight, and not as a specialized household goods transporter.¹³ Sea Barge's allegation that Trailer Bridge accepted unlawful coupon discounts for its barge service overlooks the fact that Trailer Bridge's tariff ICC TBCY 200, Item 571.1 makes specific provision for the discount coupon offer. For these reasons, and because neither the ICC nor the Board has received one complaint from any of Trailer Bridge's shippers, even if we had the authority to do so, it does not appear that there would be any reason for us to find that Trailer Bridge is unfit to hold its authorities.

⁸ The commenting parties cite, for example, *Transportation by Mendez & Company, Inc., Between Continental United States and Puerto Rico*, 2 U.S.M.C. 717 (1944), which found that a water carrier subject to FMC regulation could not operate both as a common and contract carrier on the same voyage; *Caribe Trucking Company, Inc.*, MC-187160 (Sub-No. 3-1)TA (ICC served Jan. 2, 1986), which found that contract carriage is not permitted in the off-shore trade to Puerto Rico; and *Activities, Tariff Filing Practices and Carrier Status of Containerships, Inc.*, FMC No. 1216 (served Sept. 28, 1965)(reprinted at 6 SRR 483, 495-96), which found that contract carriage was inconsistent with the purposes of the Shipping Act.

⁹ Objections were raised by some parties to Trailer Bridge's providing what amounted to joint-line contract carriage, which formerly had been prohibited. *See Holmes Contract Carrier Application*, 8 M.C.C. 391 (1938).

¹⁰ For land transportation, the ICCTA eliminated the statutory distinction between common and contract carriers. *See* former 49 U.S.C. 10102(4), which defined common carriers, and former 49 U.S.C. 10102(6), which defined contract carriers. The ICCTA groups all motor carriers into one class and defines a motor carrier as "a person providing motor vehicle transportation for compensation." 49 U.S.C. 13102(10).

¹¹ Under 49 U.S.C. 13902(a)(1), the Secretary of Transportation may register a motor carrier only "if the Secretary finds that the person [seeking registration] is willing and able to comply with--(A) this part, and the applicable regulations of the Secretary and the Board"

¹² *See* Sea Barge's Reply, filed November 23, 1994.

¹³ *See* Verified Statement of Robert van Dijk, Vice President Pricing of Trailer Bridge, filed November 17, 1994.

Because most of the issues in contention appear either to be outside of our jurisdiction or to have been largely resolved by the ICCTA, we see no reason to continue these proceedings. However, we will accept pleadings filed within 20 days of the date of service of this decision, addressing whether we should continue these proceedings. Any such pleading seeking to continue these proceedings must indicate specifically what relief is contemplated in light of our lack of authority over licensing, and given the other regulatory changes occasioned by the ICCTA. Unless a party files a pleading demonstrating that there is a good reason to continue these proceedings, they will be dismissed. After reviewing any pleadings that may be filed, we will issue a decision either dismissing these proceedings or indicating how we intend to proceed.

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

It is ordered:

1. Pleadings addressing whether we should continue these proceedings are due September 24, 1997.
2. Replies to any such pleadings that may be filed are due October 14, 1997.
3. This decision is effective on September 4, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary