

19605  
EB

SERVICE DATE - DECEMBER 30, 1997

SURFACE TRANSPORTATION BOARD<sup>1</sup>

DECISION

No. 40976

AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.—PETITION  
FOR DECLARATORY ORDER—CERTAIN RATES AND PRACTICES OF  
YELLOW FREIGHT SYSTEM, INC.

Decided: December 19, 1997

This decision responds to a referral from the District Court of Johnson County, Kansas Civil Court Department in Case No. 91C 7308, American Express Travel Related Services Company, Inc. v. Yellow Freight System, Inc. (referral order dated Mar. 25, 1993). The court asked the ICC to resolve a number of issues related to a suit for damages,<sup>2</sup> based on breach of contract and fraud by misrepresentation under Kansas state law, that American Express Travel Related Services Company, Inc. (AERTS), brought against Yellow Freight Systems, Inc. (Yellow). Initially, in an ICC decision served June 11, 1993, the parties were directed to clarify the matters in dispute and respond to a number of questions. After their responses were received and the discovery phase of the proceeding was completed, the parties filed simultaneous opening and reply statements. We are now issuing a decision responsive to the court's referral.<sup>3</sup>

---

<sup>1</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Because, under 49 U.S.C. 13710(a)(3), the Board has some (although very limited) jurisdiction over motor carriage billing disputes, this matter has been transferred from the ICC to the Board.

<sup>2</sup> AERTS seeks damages for freight charges allegedly paid in error and reimbursement for expenses, costs, and attorney fees; it also suggests that punitive damages are appropriate.

<sup>3</sup> The court referred 11 specific questions, 6 proposed by Yellow and 5 proposed by AERTS.

## BACKGROUND

Commencing on November 18, 1985, AERTS, through its distribution agent, Directel, Inc. (Directel), began using Yellow, an ICC-certificated motor common carrier, to move a series of shipments from Directel's warehouse and freight distribution center in Columbus, OH, to various points within the East, and, as pertinent here, to points within the New York City metropolitan area (NYCMA). The shipments arose out of a direct marketing campaign under which catalogue merchandise, primarily light-weight consumer electronics, was sold and delivered nationwide to American Express cardholders at their individual residences.

Directel was designated an "independent contractor" under its contract with AERTS, and Automated Fulfillment, Inc. (AFI), one of Directel's subsidiaries, was given sole discretion and authority to control the transportation.<sup>4</sup> AFI selected the carriers, negotiated the rates, and monitored the shipping process; and, in turn, AFI was billed for the shipments and bore sole responsibility for payment. Under its contract with Directel, AERTS established and maintained an "imprest fund," which AFI was to use, and did use, to pay freight bills, including those submitted by Yellow. Yellow had no contract or course of direct dealing with AERTS; it was one of the carriers selected by AFI to provide transportation for AERTS's shipments, and it dealt primarily with AFI.

Upon entering into the arrangement with AFI, Yellow immediately engaged Arflo Trucking, Inc. (Arflo), a local cartage company that operated within the NYCMA, to perform local delivery service, and to provide any special handling and accessorial services that were necessary or requested.<sup>5</sup> Arflo held no operating authority from, and had no tariffs on file with, the ICC. AERTS's shipments that were destined to the New York City area were transported by Yellow to its local warehouses, from which they were, in many cases, tendered to Arflo for local residential delivery.

To complete the transportation, it appears that Arflo was to contact the consignees and arrange for delivery. Initially, Arflo billed Yellow its local cartage charge for each delivery made

---

<sup>4</sup> Apparently AFI handled "fulfillment" type customers such as the American Express catalogue accounts. Directel had at least two other subsidiaries: (1) Distribution Services, Inc.; and (2) Distribution Centers, Inc. (DCI), which set up its own subsidiary department, DCI Transportation Services, Inc. (DCITS), to provide transportation services for the clients of both AFI and DCI.

<sup>5</sup> Mr. Jerome R. Cannata, the branch manager for Yellow's Brooklyn, NY, freight terminal, states that he was responsible for engaging Arflo to deliver AERTS's shipments and perform additional services, which included after-hours delivery, weekend or holiday delivery, residential delivery, inside/upstairs delivery, redelivery, additional notification, special equipment, and/or additional labor (helpers or extra drivers).

and additional charges for any special handling or accessorial services that were necessary or requested but not included under Yellow's line-haul tariff rate or prepaid under the bill of lading. Arflo would contact Yellow to explain the delivery circumstances and the need or request for additional services, and Yellow would calculate the additional charges and contact AFI to see if it would pay them. If AFI agreed to pay the additional charges, Yellow would authorize Arflo to deliver the shipments and perform the additional services, and Arflo would bill Yellow, which, in turn, would bill Directel for both the linehaul movements and the additional services. If AFI declined to pay for additional services provided by Arflo outside the tariff rate or bill of lading, Yellow would collect the charges from the consignee. (Yellow Opening Statement, Verified Statement of Mr. Jerome R. Cannata at 3.)

The applicable linehaul tariff rates were properly filed in Yellow's tariffs, and it is not disputed that Yellow collected the proper tariff charges.<sup>6</sup> From November 18, 1985, the date shipments commenced, through May 25, 1986, the applicable class rate for prepaid shipments was discounted 12% under Item 5748-1036 of Tariff YFSY 675-E. Any additional services that were not covered by the tariff rate or prepaid by AFI were charged collect to the consignee under Yellow's Tariff ICC YFSY 115, General Rules and Exceptions to Rules in NMFC. Included under Tariff YFSY 115 were charges for the following services: (1) residential delivery to specific zip codes in the NYCMA under Item 753 [and Tariff YFSY 675-E, Item 5748-1036]; (2) inside/upstairs delivery under Item 566; (3) Sunday and holiday delivery and redelivery under Item 754; and (4) extra labor under Item 830.

From May 26 through October 28, 1986 (the disputed shipments began on June 23, 1986), the applicable class rates for prepaid shipments were discounted 33% under Item 5906-2052 of Tariff YFSY 675-E. The prior residential delivery charge and other accessorial service charges continued to apply except that the extra charges applicable to single shipments, inside/upstairs delivery, and additional notification had been removed. From October 29, 1986, through February 25, 1987, and from February 26 through March 31, 1987 (the last date the shipments were tendered to Yellow), the 33% discount remained in effect under Item 5988-2158 of Tariff YFSY 675-E and Item 6006-3190 of Tariff YFSY 675-F, respectively, and the accessorial charges continued as before, except that the residential delivery charge that had applied to specific NYCMA zip codes had been removed. According to Yellow, its freight bills and records show that AFI was not charged for single shipments, inside deliveries, or additional notifications after May 26, 1986, or for residential deliveries after October 28, 1986. Prior to October 28, residential delivery charges were billed and paid.

---

<sup>6</sup> Only minor discrepancies, totaling less than \$500, were found for the shipments that moved from November 18, 1985, through June 23, 1986. (AERTS Opening Statement, Appendix B at 3.) These shipments are not at issue in the court proceeding.

The principal dispute in this case involves the extent to which Yellow could, and in fact did, use a local delivery agent to complete the transportation. Yellow states that its tariffs permitted it to effect delivery through a local cartage agent, that AFI had specifically acknowledged that a cartage agent could be used,<sup>7</sup> and that AFI actually knew that Arflo was being used by Yellow to deliver AERTS's shipments to private residences.<sup>8</sup> Yellow also states that its tariffs permitted shippers to waive carrier local delivery, and instead to arrange for local delivery themselves. Yellow notes that the line-haul charges for the disputed shipments were the same with or without residential delivery.<sup>9</sup> According to Yellow, on June 23, 1986, Arflo informed it that it would no longer need to assess and collect accessorial charges from AFI on AERTS's shipments, because Arflo had arranged to provide the accessorial services directly for AFI.<sup>10</sup> Although it has not been established on this record, it is

---

<sup>7</sup> In a letter dated November 11, 1985, Ms. Belinda K. Holland, Customer Service Manager for AFI, informed Yellow that it had been selected to transport AFI's shipments to New York and New Jersey, in addition to the New England States and, in summarizing a number of previously discussed details, specified that the terms of the agreement applied to "Yellow Freight and/or the cartage company working as the agent." Mr. John Robinson, Manager, Operation Systems for Directel at the time of the disputed shipments, on the other hand, claimed that AERTS wanted Yellow, and not an agent, to make the residential deliveries, and that Ms. Holland, to the best of his knowledge, did not have actual or apparent authority to authorize Yellow's use of a cartage agent.

<sup>8</sup> Yellow submitted into evidence testimony from Mr. Russell Anderhalt, Jr., Manager of Transportation Services for DCITS. Mr. Anderhalt testified that he started working for DCITS in April 1986 and was responsible for ensuring that AERTS's products were delivered to the customers. He stated that it was a common practice for motor carriers such as Yellow to use local cartage agents in large metropolitan areas such as New York City, and that he was not surprised, and indeed knew, that Yellow was using Arflo to provide local cartage for AFI's shipments in the NYCMA. Additionally, he stated that it was not uncommon for him to turn over for research bills from unknown entities, that he would have turned Arflo's bills over for research, particularly because of the large sums of money involved, if it was an unknown entity, and that he would have remembered if this had happened.

<sup>9</sup> In fact, the shipper, AFI, paid the rate that applied to the line-haul movement, regardless of whether residential delivery was requested. If residential delivery was requested, Yellow assessed a separate additional charge until October 29, 1986, when Item 5988-2158 of Tariff YFSY 675-E became effective. Thereafter, residential delivery was included as a service under Yellow's line-haul rate without a separate, additional charge.

<sup>10</sup> In his verified statement, Mr. Cannata stated that he received a phone call from Arflo's proprietor, Mr. Artie Leone, Sr., informing him of the direct arrangement between Arflo and AFI. Mr. Cannata asserted, but presented no evidence to support his statement, that he spoke to "someone  
(continued...)

possible that Arflo's apparent arrangement with AFI — or, at least, what Yellow seemingly perceived as Arflo's arrangement with AFI — may explain why Yellow modified its tariff to eliminate the various accessorial charges.

Yellow states that, after it was informed of Arflo's arrangements to work directly with AFI, it (Yellow) continued to bill and collect the tariff charges applicable to the line-haul services provided for AFI. It states that it also continued to engage Arflo to make the actual deliveries, but that it no longer engaged Arflo to perform special handling and accessorial services (in its view, any such services were now being separately conducted by Arflo pursuant to its separate arrangement with AFI). (Yellow Opening Statement at 5 and Verified Statement of Mr. Cannata at 4 and Yellow Reply Statement at 8.) Mr. Cannata testified that he knew Arflo was billing AFI separately, but that he did not know what AFI was being billed for. (AERTS Opening Statement, Deposition of Mr. Cannata.) Yellow states that Arflo's bills were submitted to AFI pursuant to an alleged contract under which Arflo would seek approval and payment directly from AFI for the accessorial services it provided. Yellow denies having known anything about the specific nature of Arflo's bills, but it asserts that they covered only accessorial services provided by Arflo that were not covered under the tariff rate and that there is no evidence of record to show that Arflo billed AFI for any transportation included within Yellow's freight charges.<sup>11</sup> (Yellow Opening Statement at 5.) Yellow states that after June 23, 1986, it was no longer contacted by Arflo to calculate or pay accessorial charges, and it no longer prepared balance due bills to present to AFI. Additionally, Yellow denies that it was involved with, or received any compensation from, the charges that Arflo collected from AFI.<sup>12</sup>

---

<sup>10</sup> (...continued)

at [AFI] on several occasions and they confirmed that they were doing business directly with [Arflo] regarding their special delivery needs.”

<sup>11</sup> From a review of Arflo's freight bills to AFI, it is not apparent what services were being provided. Copies of the 8 Arflo freight bills that Yellow submitted into the record (Yellow Reply Statement) and 6 of the 7 Arflo freight bills that AERTS submitted into the record (AERTS Opening Statement, Appendix D) include a single "helper charge." Because each of these freight bills appears to include charges for shipments to different consignees, the basis for assessing a single helper charge for all the shipments it is not apparent. Moreover, in the November 11, 1985 letter, supra note 7, Ms. Holland specified that “two drivers [were to be provided] to make deliveries if the product and/or the cardmember require the service” and that no additional charges would be assessed for the service. The understanding between Yellow and AERTS apparently was reflected in Ms. Holland's letter. While it would not have bound Arflo in any private arrangement it reached with Directel, it suggests that Arflo might have billed Directel for services that may have been included within Yellow's line-haul rate.

<sup>12</sup> Yellow states that its practice is to discard or destroy bills of lading, freight bills, and delivery receipts not required to be kept under 49 CFR part 1220, and, as a consequence, it has no  
(continued...)

AERTS denies that it or any of the possible shippers entered into a separate arrangement with Arflo and contends that Yellow never informed it or Directel that Arflo was being used to deliver its shipments. Additionally, AERTS states that Yellow has not denied that it stopped paying Arflo to perform residential deliveries as of June 23, 1986, and it asserts that Yellow stopped using Arflo to deliver AERTS's shipments but retained the full tariff charge, notwithstanding that the charge included residential delivery. Further, AERTS asserts that Yellow knew about and acquiesced in the arrangement that allowed Arflo to bill AFI directly, that Yellow permitted its original bill of lading or delivery receipt, signed by the consignee, to be attached to each invoice that Arflo submitted to Directel, and that Directel, as a consequence, was deceived and mistakenly paid the charges.

According to AERTS, Yellow and Arflo were paid a total of \$100,279.86, and \$133,515.86, respectively, for 1,735 shipments that moved from June 23, 1986, through March 31, 1987.<sup>13</sup> AERTS states that it did not learn of the alleged "conspiracy" and "double billing" until October 1989, when Freight Traffic Services, Inc. (FTS), an auditing firm, examined the freight bills. On November 7, 1989, FTS submitted a claim to Yellow on behalf of AERTS for \$2,248.36. Yellow denied the claim on November 22, 1989, contending that it should have been filed with Arflo. FTS resubmitted its claim on December 15, 1989, and submitted an additional claim on April 12, 1990, for a total of \$133,465.86.<sup>14</sup> Yellow denied these claims on May 1, 1990, contending that the statute of limitations had expired. The court action was filed by AERTS on June 20, 1991.

---

<sup>12</sup> (...continued)

delivery documents or bills of lading available to demonstrate the circumstances surrounding the disputed charges.

<sup>13</sup> While Yellow notes that AERTS has not documented what amount AFI actually paid Arflo or presented evidence of the payments, it does not seriously contest that the payments were made.

<sup>14</sup> There is no explanation of record for the \$50 discrepancy between the \$133,465.86 claim FTS filed with Yellow and the \$133,515.86 AERTS claims was mistakenly paid to Arflo.

## DISCUSSION AND CONCLUSIONS

It may be that Arflo collected sums to which it may not have been entitled. However, whether Yellow should be responsible for Arflo's actions depends on the resolution of the two basic factual issues in this case: (1) whether the services for which Arflo billed AFI separately were in fact covered by the tariff charges that AFI had already paid to Yellow; and (2) if so, whether Arflo acted as Yellow's agent in collecting such charges. If Arflo acted as Yellow's agent, then Yellow should be responsible for Arflo's actions. If Arflo did not act as Yellow's agent, and if the court finds that Yellow acted reasonably in releasing the shipments to Arflo on the basis of Yellow's conclusion that AFI had contracted separately with Arflo, then any relief due AFI could only come from Arflo.

Yellow argues that this case is really an overcharge claim, and that, as such, the statute of limitations has already run. If in fact this is an overcharge claim, then Yellow may be correct. AERTS filed the court action more than 4 years after movements of the disputed shipments ceased. However, under 49 U.S.C. 11706(g) [now 49 U.S.C. 14705(g)], a claim related to a shipment of property accrues on delivery or tender of delivery by the carrier. Therefore, although the courts (rather than the Board) enforce statutes of limitations in motor carrier cases, the 3-year statutory period for seeking overcharges under the Interstate Commerce Act, as amended by the ICCTA, may have expired, and overcharge relief may be barred.

AERTS, however, argues that this case involves fraud or breach of contract, rather than the more typical claim for overcharges, and the court has allowed the case to proceed on this basis. State statutes of limitations apply when state courts rule on claims that are not subject to Federal law. See Schaefer, Inc. v. Conklin Truck Line, 43 M.C.C. 333, 334 (1944) (decided before enactment of these statutes of limitations with respect to motor carrier transportation). Cf. Schou-Gallis Co. v. International Forwarding Co., 268 I.C.C. 591, 593 (1947).

Although the court appears to be proceeding on the basis of state fraud or breach of contract of law, Federal law is not irrelevant. To the contrary, Federal motor carrier regulation recognizes the same type of agency principles that are relevant to a state court's agency/breach of contract analysis. Thus, delivery by motor vehicle within a "terminal area" under 49 U.S.C. 10523(b)(1) [now 49 U.S.C. 13506(b)] is exempt from Federal regulation "when the transportation . . . (B) is provided by a person as an agent or under other arrangement for . . . (ii) a motor carrier subject to [Federal economic regulatory] jurisdiction. . . ." And because of the agency arrangement that a terminal area operator has with its principal, under 49 U.S.C. 10523(b)(2), terminal area transportation is considered, for Federal regulatory purposes, to be transportation provided by the line-haul carrier.

Transportation within a local delivery area that is not performed under an agency arrangement with the line-haul carrier is also exempt from Federal regulation under the "commercial zone" exemption of 49 U.S.C. 10526(b)(1) [now 49 U.S.C. 13506(b)(1)]. Unlike terminal area transportation, however, which, consistent with the agency arrangement, is regulated

as part of the line-haul, transportation under the commercial zone exemption, which does not involve an agency arrangement, is not regulated by the Federal government at all. Instead, it is considered to be a local service separate from the interstate service performed by the line-haul carrier.

AFI argues that Yellow did not have authority to release the shipments to Arflo. Under both its tariffs and the law governing terminal area services performed on behalf of the line-haul carrier, Yellow plainly did have authority to use Arflo as its delivery agent. Of course, that does not resolve the question of the extent to which Arflo was in fact acting as Yellow's agent at the time of each of the disputed shipments. If AFI and Arflo did not enter into a separate contract, then Arflo may have been acting as Yellow's agent. Given the course of dealing between the parties, and depending on its factual conclusions, the court could find that Yellow continued to employ Arflo as its agent and would therefore be liable for Arflo's conduct. However, if the court were to find that Yellow no longer paid Arflo, then it could find that Arflo ceased to be Yellow's agent. In that event, the court could find Yellow liable for Arflo's actions only if it concluded that Yellow failed to act reasonably by tendering the disputed shipments to Arflo without fully confirming the alleged arrangement between AERTS and Arflo.

If, by contrast, Arflo did have a separate contract with AFI, then Arflo was not acting as Yellow's agent, and, even if Arflo charged for a service that could have been performed directly by Yellow at the rate in Yellow's tariff, only Arflo could be held responsible for any overcharge that may have been assessed.

These questions are largely factual. Unfortunately, the record developed in this case, while not physically insubstantial, does not permit us to make that factual determination. Each side has asserted facts that might support its theory of recovery, but there is no way on this record for us to determine clearly which side's version of the facts is right or wrong. Rather, that is a determination that the court will have to make.<sup>15</sup>

---

<sup>15</sup> The record is conflicting as to the relationship of the parties after June 23, 1986; it is not clear whether Yellow continued to engage and pay Arflo to deliver AERTS's shipments and/or whether an arrangement actually existed between Directel and Arflo. For example, Yellow's contention that, after June 23, Directel and Arflo entered into a separate, direct arrangement for delivery services is based on the verified testimony of Mr. Cannata and seems to be made in good faith, but it is not otherwise supported by evidence of record. By the same token, AERTS has denied any arrangement with Arflo, but its denial fails to take into account Mr. Anderhalt's testimony and the consistent course of payments made by Directel. Moreover, AERTS's claim that Yellow retained the entire linehaul charge (which included delivery service) and no longer paid Arflo to make the deliveries fails to take into account Yellow's contention and Mr. Cannata's verified testimony that Yellow continued to "engage" Arflo after June 23, but that the arrangement extended only to delivery and accessorial services that were included under the tariff rate. Additionally, it  
(continued...)

We hope that this analysis, although not dispositive of the case, will be of some help to the court, and may at least narrow the issues to be resolved. Moreover, although the 11 questions that the court referred — six as proposed by the defendant (Yellow) and five as proposed by plaintiff (AERTS) — are largely self-serving, we will attempt to answer each for the benefit of the court. Our answers may seem brief, as they may simply reflect matters that we have already discussed in this decision.

The questions and our answers follow.

- (1) **EXEMPTIONS: COMMERCIAL ZONE vs. TERMINAL AREA.** *Does the term "carrier participation in transportation" as found in [former] 49 CFR 105[1].2 include one who is providing exempt motor vehicle transportation in either a terminal area or a commercial zone?*

As our discussion above has made clear, this regulation would not apply to a carrier providing only commercial zone or terminal area services, although the services of a terminal area operator would be included in those of the line-haul operator.

- (2) **FREIGHT BILL REQUIREMENTS.** *Does [former] 49 CFR 105[1].2 require a motor common carrier to list on a freight bill any charges for special services, and the point at which such service was rendered, when the charges and service were performed by one providing exempt motor vehicle transportation in a terminal area or a commercial zone?*

Again, the services of a terminal area operator are imputed to the line-haul carrier, while those of a commercial zone operator are not. In any case, there is no requirement — either by statute or by regulation — that services included in the line-haul rate be listed on the freight bill, even if they are performed by a local cartage agent rather than by the line-haul carrier. During the time when the shipments at issue here moved, it was the tariff that controlled whether such services were included in the line-haul rate or not, and the freight bill can neither add nor detract from the provisions of the tariff. In some instances, tariffs required that particular notations appear on the freight bill as a condition to the applicability of a particular rate, but that is not the situation in this case.

---

<sup>15</sup> (...continued)

does not account for a March 31, 1987 letter from Yellow to Directel indicating that the discount for AERTS's shipments was being removed because the delivery costs exceed the revenues generated. It is difficult to make sense of the letter if Yellow was not paying Arflo to make the deliveries after June 23, 1986.

- (3) **STRICT DELIVERY LIABILITY.** *Is a motor carrier who bills and collects no more than the applicable rate set forth in the filed tariff liable for an overcharge which results from a direct billing to a shipper by a local cartage company performing exempt motor vehicle transportation in either a terminal area or a commercial zone?*

It depends. If there is a common arrangement between the line-haul carrier and the local cartage agent for through transportation, then under the terminal area exemption, the line-haul carrier may be held liable for the actions of its agent. If, by contrast, the local cartage agent has no common arrangement with the line-haul carrier for through transportation, then the transportation falls under the commercial zone exemption, and the line-haul carrier, in that case, unless it acts unreasonably in turning the shipment over to the cartage agent, is not liable for the activities of the local cartage agent.

- (4) **FILED RATE DOCTRINE.** *Assuming a motor carrier bills the shipper the filed tariff rates for freight services, then an exempt cartage company also bills the shipper for charges which were already subsumed in the carrier's charges, is an action against the carrier to obtain a refund of the local cartage charges, in effect, a claim to pay less than the applicable tariff rate, and therefore in violation of the filed rate doctrine?*

The filed rate doctrine, which has been largely abolished, applied during the periods at issue here. If the local cartage company was acting as the line-haul carrier's agent, then the extra charges assessed by the local cartage company would result in collection of more than the filed rate. If, by contrast, the delivery carrier was not acting as the line-haul carrier's agent, then the extra charges assessed by the local cartage company would not be covered by the filed rate doctrine.

- (5) **STATUTES OF LIMITATIONS.** *Assuming a cause of action as described in No. 4 above is permissible, is it an action for overcharges subject to the three year statute of limitations or is it an unreasonable practice subject to the two year statute of limitations?*

It could be viewed as an action for overcharges, although, as we have indicated, it appears that the court is viewing the matter as an action for damages arising from fraud or from breach of contract, not covered by either of these Federal statutes of limitations.

- (6) **STANDING TO SUE.** *Assuming a third party who is neither the shipper nor receiver enters into a contractual relationship with a shipper whereby the third party is required to reimburse the shipper for transportation costs, does the third party have standing to assert a claim for overcharges, if neither the shipper nor receiver has asserted such a claim within the applicable period of limitations?*

In our view, nothing in the jurisdiction of the Board — or in the former jurisdiction of the ICC — affects the standing of a third party on whose behalf a shipper or consignee made arrangements with a carrier to sue or assert a claim against the carrier.

- (7) **TARIFF INTERPRETATION.** *Does a rate charged by a common carrier embrace all charges legally due on each shipment including delivery charges?*

There is no universal rule to answer this question; the answer depends upon the terms of the applicable shipping documents. Under the particular tariff applicable to this transportation, the rate included delivery and, for part of the time period in question, the tariff provided separately for certain accessorial charges. The tariff, however, also permitted the shipper or consignee to pick up the shipment at the line-haul carrier's warehouse by engaging the services of an unregulated cartage agent for delivery service within a commercial zone, and then paying charges that are a matter legitimately beyond the tariff rate charged by the line-haul carrier.

- (8) **CARTAGE AGENT'S CHARGES.** *Are separate charges, billed by a cartage agent, lawful when charges for the complete movement have already been billed by the motor carrier?*

If the "charges for the complete movement" have already been paid, then of course separate charges are not lawful. The question in any given case is how to define "charges for the complete movement", and who might be liable if excess charges are collected.

- (9) **DELIVERY RESPONSIBILITY.** *Are a cartage agent's charges, when making delivery of an interstate shipment, embraced in the charges assessed the shipper by the carrier?*

As we have noted, if the cartage agent has a common agreement with the carrier for through transportation in a terminal area, then its rates are embraced in those charged by the line-haul carrier. If, by contrast, the local carrier's delivery of the shipments is under a separate agreement with the shipper, then the service falls under the commercial zone exemption, and its charges are not embraced in the tariff rate of the line-haul carrier.

- (10) **TERMINAL AREA EXEMPTION.** *Are the rates and charges assessed by a cartage agent exempt from regulation when the transportation is under a common arrangement for a continuous carriage to or from a place outside a municipality or zone?*

If the cartage agent had a common arrangement with a line-haul carrier for through transportation during the time period in question here, its charges would not have been regulated directly, but rather would have been included as part of the rates and charges of the line-haul carrier, which were subject to regulation.

- (11) **BREACH OF CONTRACT.** *Are separate charges billed by a cartage agent (with the knowledge and acquiescence of the carrier) for delivery services, which charges have been previously billed by the carrier, in violation of the carrier's bills of lading contract, as to the rates that can lawfully be charged for the shipment?*

Regardless of the knowledge and acquiescence of the line-haul carrier, if there had been a legitimate, separate arrangement between the cartage agent and the shipper, the line-haul carrier would not be liable. If there was no separate arrangement with the shipper, then the responsibility of the line-haul carrier could be liable for the actions of its agent.

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 discontinued.
2. This decision is effective on its service date.
3. A copy of this decision will be mailed to:

District Court of Johnson County  
Civil Court Department  
Johnson County Courthouse  
P.O. Box 1600  
Olathe, KS 66061

Re: Case No. 91C 7308

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary