

30922
EB

SERVICE DATE - LATE RELEASE APRIL 5, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 41997

NSL, INC., v. OWEN EUGENE WHITLOCK, et al.

STB Docket No. 41998

GRANITE CITY STEEL DIVISION OF
NATIONAL STEEL CORPORATION v.
OWEN EUGENE WHITLOCK, et al.

Decided: April 3, 2000

In a decision served November 18, 1999 (November 1999 decision), we responded to requests for declaratory order filed by NSL, Inc. (NSL), and Granite City Steel Division of National Steel Corporation (GCS) (to which we referred collectively as “the Steel Company”). The Steel Company has been sued in Federal court for allegedly unpaid detention charges by trucking companies working for GCS and by truck drivers working for GCS’s affiliate NSL (parties to which we collectively referred as “the truck drivers”). The Steel Company, at the directive of the trial court hearing the detention charges case, asked us to issue a declaratory order that would address the issues before the court. In our November 1999 decision, we addressed the principles that would guide the trial court in bringing this matter to resolution, and we interpreted some of the specific detention provisions in the record.

NSL and GCS have now sought reconsideration of our November 1999 decision. They argue that we should have ruled that all of the individual claims arising after a certain date are barred by the so-called “180-day rule”;¹ that we failed to comply with the statute and the referral order by declining to rule on every one of the individual detention claims that may be before the

¹ The carrier has an obligation to notify the shipper of a billing change within 180 days. Section 13710(a)(3)(A) provides, in pertinent part:

A carrier must issue any bill for charges in addition to those originally billed within 180 days of the receipt of the original bill in order to have the right to collect such charges.

Under an analogous provision, section 13710(a)(3)(B), “[a] shipper must contest the original bill or subsequent bill within 180 days of receipt of the bill in order to have the right to contest such charges.”

court; and that we erred in concluding that the court is better equipped than we are to handle the class action claims that have been raised in the case.² We will deny reconsideration.

The 180-Day Rule. In 1994, in response to the “undercharge crisis” in which the trustees of many bankrupt motor carriers sought to collect extra charges from shippers long after transportation was completed, Congress enacted the Transportation Industry Regulatory Reform Act of 1994, Pub. L. No. 103-311 (TIRRA). One of the provisions of TIRRA required carriers to rebill within 180 days of the original bill in order to preserve the right to collect additional charges.

Many of the parties seeking detention charges in the court case, whose claims the Steel Company alleges are barred by the 180-day rule, are not motor carriers, but are owner operators who worked for NSL and other carriers. It does not appear to us that the 180-day rule - either section 13710(a)(3)(A) or (B) - directly applies to them at all. In any event, while the court can address the relationship between a carrier and its drivers, we can not. The owner operators’ relationship with NSL or other motor carriers, and their claims that NSL did not properly seek to collect detention from its affiliate GCS, are beyond our jurisdiction.³

Some of the parties seeking detention charges in this case are motor carriers. They have alleged that they were discouraged by GCS from filing specific claims. Our November 1999 decision concluded that, under the circumstances of this case, the motor carriers appear to have complied with the 180-day rule by filing their class action lawsuit, which was directed at both past and future movements, before the 180-day rule was enacted.

NSL and GCS ask us to reconsider this finding. They recognize that the class action was pending before the 180-day rule became law, and that the lawsuit put them on actual notice that the Steel Company’s refusal to pay demurrage was being challenged. Yet, they argue that the letter of

² The Transportation Consumer Protection Counsel, Inc. (TCPC) filed a petition to intervene on behalf of the Steel Company in opposition to the Board’s determination concerning the 180-day provision. TCPC states that it is a not for profit organization of more than 500 firms dedicated to serving the shipping community on issues concerning the transportation of goods. Because TCPC’s petition addresses only the 180-day provision, it will not unduly broaden the issues and will be accepted.

³ GCS recognizes that the drivers themselves cannot file detention claims, but it suggests (petition at 3 n.1) that, if a motor carrier such as NSL simply refuses to file detention claims with GCS (NSL’s affiliate), then the 180-day rule will preclude the drivers from ever recovering from anyone. It does not appear to us that the 180-day rule directly addresses this issue or is relevant to the relationship between carrier and driver, over which the court has authority.

the law requires every individual carrier and driver seeking additional charges to make a claim regarding every individual movement as to which demurrage is not paid.⁴

The Steel Company finds fault with the reference in our November 1999 decision to National Association of Freight Transportation Consultants, Inc. - Petition for Declaratory Order, STB Docket No. 41826 (STB served Apr. 21, 1997) at 6, 7 (NAFTC). We recognize that NAFTC dealt with charges disputed by a shipper and that, in the usual case, a carrier would need to rebill. See 49 U.S.C. 13710(a)(3)(A). However, under the particular circumstances of this case, where the carriers had filed (pre-TIRRA) a class action seeking unpaid detention charges for past and future shipments, and where there were allegations that the Steel Company deprived the carriers of the documentation showing how long they were detained by requiring that the truck drivers turn in time slips when leaving the facility, the court may find that the provisions of 49 U.S.C. 13710(a)(3)(A) were met.

TCPC also submits that rebilling is required. It argues that a carrier that sues a shipper for past accessorial charges on all prior shipments is denying the shipper the notice and opportunity to protect itself against an unexpectedly large liability. Had the carrier rebilled, the shipper could have stopped doing business with the carrier, resolved the dispute, or ignored the bills at its own peril. Yet, our prior decision simply found that in this case, in which the class action-type litigation was initiated before TIRRA, and in which relief was requested pendente lite, the shipper had notice and the ability to protect itself. A court action would certainly focus the attention of a shipper on the need to stop using the carrier, settle the dispute, or proceed at risk.

NSL, GCS, and TCPC have not demonstrated that we should reverse our decision in this regard. But more importantly, they do not need a ruling on this issue from us. In NAFTC at 5, we reminded parties of our limited role in motor carrier billing cases. We pointed out that courts, rather than the Board, have the authority to require payment of charges, and thus we indicated that, while we would provide our opinion in cases presented to us, “it is ultimately up to the courts to apply the 180-day rule in individual cases.” If the Steel Company disagrees with our interpretation of the 180-day rule, it need simply argue its position to the court, which is the only entity with jurisdiction to apply the rule in any case.

Compliance With the Statute and the Remand. In its referral order, the court asked us to review the reasonableness and applicability of demurrage rates on movements within our

⁴ Although the truck drivers appear to be challenging a pattern and practice in their class action suit, NSL (petition at 7-8) argues that the failure to file repetitive individual claims thwarts the 180-day rule by not giving the Steel Company the opportunity to review “the unique facts surrounding the particular delay,” or by not “put[ting] NSL on notice that detention is due.” The unique facts surrounding particular movements are issues that we believe that the court is best suited to sort out.

jurisdiction. In the first instance, we did rule on reasonableness issues dealing with charges of unreasonable practice. See November 1999 decision at 6-7. The question of jurisdiction, we also noted in our November 1999 decision, is complex. For applicability, we would have to determine, for thousands of individual movements, whether the carrier operated in interstate or intrastate commerce, whether the service was performed in a commercial zone, and whether a particular movement was performed in common or contract service. And given that, apart from the 180-day issue, the court case involves principally issues of contract interpretation, we found that it would not be efficient for us to rule on every individual movement. We stated:

We recognize that, at least in theory, we could review the circumstances surrounding each contested movement to determine those as to which we technically do have “jurisdiction.” We then could determine whether, under the governing tariff or contract, a particular charge should or should not have applied. However, given that the reasonableness of individual rates, over which we do have primary jurisdiction and substantial expertise, is not being raised as a defense, we do not believe it would ultimately be helpful to the court — which has the authority over, and undoubtedly far more experience than we do, with contract-type issues — if we sought to rule on individual claims in this manner. Such action could provide an initial decision as to some of the claims before the court, but in the end, we could not come close to providing a complete resolution of the matters before the court. Indeed, our decision — including any determinations we might reach on the difficult question of which movements are technically subject to our jurisdiction — would surely be appealed back to the referring court. The court would then have to review our decision as to our jurisdiction over specific movements, and our contract law-grounded rulings on whether charges are due for movements over which we found jurisdiction. Finally, if we were to make rulings on those specific claims that we found to be jurisdictional, after completing its appellate review, the court would still have to decide de novo whether the detention charges should be paid for those individual claims over which we would find no jurisdiction and thus would not specifically rule. Such an approach would be quite cumbersome for the court and for the parties, and would delay the resolution of the proceeding unnecessarily.

GCS and NSL argue that the law requires us to rule on all of the specific movements that may be at issue in their court case, but we disagree.⁵ Our role in this proceeding is to assist the court, and our November 1999 decision was intended to do just that. In its initial referral order, and in the orders it has issued since our 1999 decision, the court has not put any specific movements

⁵ Indeed, as we noted in our November 1999 decision at 5, under 49 U.S.C. 13710, the Board can rule on applicability only when the motor carrier charges are challenged by the payor of the charges. In the case of NSL, the dispute is between it and the contracting providers of service, a dispute that only the court can resolve.

before us for resolution. To the contrary, noting that “[t]he doctrine of primary jurisdiction is a court-made instrument to effect efficient allocation of judicial resources,”⁶ the court has, over the objections of GCS and NSL, decided to move forward with the processing of the court case. We stand ready to resolve any specific question that the court may ask of us, but unless the court wants us to do so, we will not attempt to handle the merits of the case while the court with jurisdiction is moving it forward.

Our Facility With Class Actions. Citing Vertex Corporation Petition for Declaratory Order, 9 I.C.C.2d 688 (1993) and 10 I.C.C.2d 367 (1994) (Vertex), the Steel Company argues that our decision improperly found that we are not well equipped to handle class action-type proceedings. The types of cases to which Vertex applied were far less complicated than this one. But in any event, as we have noted, we stand willing to assist the court in any way it sees fit, and if it asks us to conduct proceedings under Vertex-type procedures, we will certainly do so.

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

It is ordered:

1. The petition to intervene is granted.
2. The petitions for reconsideration are denied.
3. This decision is effective on its service date.

⁶ Owen Eugene Whitlock, et al. v. Granite City Steel, et al., Civil Action No. 93-0516-PER-H (S.D. Ill. filed Jan. 5, 2000), at 1.

4. A copy of this decision will be served on:

United States District Court for the Southern District
of Illinois
(Attn: District Judge David R. Herndon)
(RE: No. 93-CV-0516-PER-H)
U.S. Courthouse
750 Missouri Avenue
East St. Louis, IL 62201.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams
Secretary