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SERVICE DATE - DECEMBER 24, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB DOCKET NO. ISM 35002

AMEND THE UNIFORM STRAIGHT BILL OF LADING AND ACCOMPANYING  
CONTRACT TERMS AND CONDITIONS  
(National Motor Freight Classification)

Decided: December 19, 1997

In Supplement 3 to Tariff STB NMF 100-X, the National Motor Freight Classification (NMFC), issued by the National Motor Freight Traffic Association, Inc. (NMFTA), Agent, an amendment to the Uniform Straight Bill of Lading is proposed to become effective December 27, 1997.<sup>1</sup> The amendment is proposed pursuant to an approved collective action agreement. A protest requesting suspension and investigation of the amendment was filed by the Transportation Consumer Protection Council, Inc. (TCPC). NMFTA filed a reply to the protest.

TCPC contends that, if the proposed changes are permitted to become effective, carriers will have created a new "unfiled rate doctrine" through incorporation of unfiled tariffs by reference in the bill of lading. TCPC also contends that the proposal will result in unreasonable practices contrary to the public interest, in that (1) carriers will be collectively establishing liability limitations published in the NMFC in violation of 49 U.S.C. 14706(c)(1)(C); (2) the statute does not permit carriers to incorporate liability limitations in unfiled tariffs absent written agreement of the shipper; and (3) a large percentage of the shipping public lacks sufficient expertise or personnel to request and review tariffs from carriers before shipping. TCPC contends that the common law requires a carrier to obtain the shipper's informed written consent, before shipping, in order to limit its liability.

In its reply, NMFTA states that the proposed bill of lading is the result of a cooperative effort between NMFTA and the National Small Shipments Traffic Conference (NASSTRAC), and that it is intended to reflect changes implemented by the Trucking Industry Regulatory Reform Act of 1994 and the ICC Termination Act of 1995, as well as to simplify, modernize and streamline the provisions of the prior version. NMFTA indicates that the proposed bill of lading has received public support from shippers as well as carriers, and that TCPC's protest is motivated by TCPC's pecuniary interest in a competing bill of lading that it is aggressively marketing to potential buyers.

After giving careful consideration to the issues raised in the protest and reply, we find that the amendment should not be suspended and investigated. It will, therefore, be permitted to become effective as proposed.

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<sup>1</sup> The effective date was postponed from December 20, 1997, to December 27, 1997, by Supplement 4.

In our view, the statute permits carriers to establish rates, rules and regulations applicable to shipments tendered to them in common carriage under bills of lading such as the one proposed, without any further written agreements with shippers. We recognize that section 14706(c)(1)(A) provides that released rates generally are triggered by an express declaration or agreement of the shipper. However, that general provision is subject to the language of paragraph (B), which permits carriers to establish released rates in documents they maintain at their facilities, so long as they provide those documents to shippers on request. Unless carriers are allowed to incorporate provisions from other sources, the sheer volume of provisions that they would have to include in bills of lading would likely render them unusable in their current form. Nevertheless, in the absence of filed tariffs and the “filed rate doctrine,” carriers clearly have a greater responsibility to ensure that shippers are made aware of the applicable provisions, and courts may well disallow attempts to enforce incorporated provisions where it can be shown that the carrier failed to provide adequate notice of such provisions to shippers. See H.R. Rep. No. 422, 104<sup>th</sup> Cong., 1<sup>st</sup> Sess. 222-23 (1995) (Pending completion of Department of Transportation Study, intent of statute is to permit motor carriers to establish released rates, so long as they provide to shippers, on request, “the rate, classification, rules, and practices upon which any rate applicable to a shipment is based.”). We believe NMFTA’s amendment to the Uniform Straight Bill of Lading assists in alerting shippers to the carriers’ responsibility of disclosure.

NMFTA’s bill of lading would prominently disclose to the shipper in note 2 the fact that limitations on liability may exist and that information regarding these and other non-filed-tariff provisions is available. We assume that carriers will fully and promptly respond to all shipper requests for copies of the relevant provisions. Although the courts have ultimate responsibility for resolving such issues, we believe that, should any carrier fail to provide shippers with the full notice required by law, they should be barred from enforcing those limitations against the shipper.

Finally, we do not believe that the amendment runs afoul of the statutory prohibition against collective discussion of rules to limit liability. In our view, the amendment relates

STB Docket No. ISM 35002

simply to ways of incorporating provisions into the bill of lading from other sources, and the fact that certain of the incorporated provisions might relate to liability limitations contained in individual carriers' rules does not constitute collective discussion of rules to limit liability.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary