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SURFACE TRANSPORTATION BOARD

DECISION

NOM - 42000
[Special Docket No. 7528]

ROADWAY EXPRESS, INC. - PETITION TO REOPEN

Decided: May 21, 1997

The Surface Transportation Board (Board) has received a petition from Roadway Express, Inc. (Roadway), seeking to reopen a special docket proceeding (Special Docket No. 7528)(SD 7528)) and, upon reconsideration, to revoke the authority granted in SD 7528 to depart from the filed rate. The special docket authority was initially sought from the Interstate Commerce Commission (ICC) by Anchor Wire Corporation (Anchor) on October 3, 1995.[1] At issue are approximately 90 shipments handled by Roadway between May 19, 1994 and February 25, 1995.

Background

At the time the request to depart from the filed rate was received by the ICC, section 4 of the Negotiated Rates Act of 1993 (NRA), Pub. L. 103-180 (49 U.S.C. 11712), provided that:

> "[s]ubject to Commission review and approval, motor common carriers subject to the jurisdiction of the Commission * * * [other than household goods carriers] and shippers may resolve, by mutual consent, overcharge and undercharge claims resulting from incorrect tariff provisions or billing errors arising from the inadvertent failure to properly and timely file and maintain agreed upon rates, rules, or classifications in compliance with [49 U.S.C.] 10761 and 10762 of this title."

These statutory provisions were implemented by the ICC in Ex Parte No. MC-219, *Implementation of Section 4 of the Negotiated Rates Act of 1993*, not printed, served January 10, 1995. Under the tariff reconciliation regulations adopted at 49 CFR 1130.2(g) pursuant to the NRA, and when requested by either a shipper or carrier, the ICC could approve a departure from the filed rate when (1) the departure was necessary to settle overcharge or undercharge claims resulting from incorrect tariff provisions or billing errors arising from the carrier's inadvertent failure to properly and timely file and maintain agreed upon rates; and (2) the shipper and carrier have agreed on the rate relief sought.

Applicability of Special Docket Procedures

Enactment of the Trucking Industry Regulatory Reform Act of 1994 (TIRRA), Pub. L. 103-311, reduced the need for the remedy authorized by the NRA and the Ex Parte No. MC-219 regulations because it substantially eliminated tariff filing requirements for most independently determined motor carrier rates. The provisions of TIRRA, which became effective on August 26, 1994, essentially provided that most independently established rates (which are what appear to be at issue in SD 7528) were no longer subject to the "filed rate doctrine." They also provided that any tariff on file with the ICC on August 26, 1994, that was no longer required to be filed was null and void. A review of the shipments involved in SD 7528 revealed that only ten moved prior to August 26, 1994. Thus, it appears that only those ten shipments were subject to the "filed rate doctrine" and the Ex Parte No. MC-219 procedures.

The regulations at 49 CFR 1130.2(g) require that requests by either party to depart from filed motor carrier rates must be served on all parties to the petition, and must be accompanied by a certification that parties concur with the requested relief. Any objections to a proposed tariff reconciliation must be filed within 30 days after the proposal (letter of intent) is filed. If the

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[1] Pursuant to the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, the Board succeeded the ICC with respect to certain aspects of motor carrier regulation.

proposal is not contested or investigated, approval is deemed granted 45 days after receipt of the letter of intent. Because approval can only extend to (pre-TIRRA) shipments subject to the "filed rate doctrine," the only adjustments which were authorized in SD 7528 were for the ten shipments which moved prior to August 26, 1994.

Discussion and Conclusions

Roadway indicates that it did not learn of Anchor's special docket request, in which it did not concur, until December 28, 1995. However, by that time, Roadway could no longer contest the requested relief. Anchor, by contrast, states that it served the request on Roadway and had reason to believe that Roadway did, in fact, concur in the request.[2]

While we could reopen the proceeding to explore further whether Roadway agreed to Anchor's proposal, we will not do so because Roadway is not prejudiced by anything that has transpired in this proceeding. Thus, we will deny Roadway's petition for reopening and reconsideration. As we have noted, our approval of a special docket request does not mandate a departure from the filed rate; rather, it simply allows the parties to ignore the filed rate, if they so agree. Therefore, if all parties here do not agree with Anchor's letter of intent to depart from the filed rate, the special docket proceeding does not create an obligation for any party to do so. As such, there is no basis upon which to reopen SD 7528 now.

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 by Roadway to reopen is denied.

2. This decision is effective on May 28, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

[2] Anchor also disputes the propriety and reasonableness of the rates assessed by Roadway; however, these issues are not relevant to this proceeding and a request filed under the regulations at 49 CFR 1130.2(g). As noted, those regulations exist only to permit a carrier or shipper, with concurrence, to depart from the filed rate.