

28684
EB

SERVICE DATE - JANUARY 2, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB No. 41574

CMI CORPORATION--PETITION FOR DECLARATORY ORDER--
CERTAIN RATES AND PRACTICES OF
TRANS-ALLIED AUDIT COMPANY, INC.
AND CHURCHILL TRUCK LINES, INC.

Decided: December 15, 1997

We dismiss this proceeding as moot and for the parties' failure to submit status reports as required by a prior order.

CMI Corporation (petitioner), a former customer of Churchill Truck Lines, Inc. (Churchill), sought a declaratory order from the Interstate Commerce Commission (ICC)¹ finding that it would be an unreasonable practice for Churchill, or its audit company Trans-Allied Audit Company, Inc. (respondents), to attempt collect undercharges from petitioner. On June 27, 1995, the ICC issued an order holding the proceeding in abeyance pending the outcome of a separate proceeding in which it was examining the same issue raised by petitioner. Anacomp, Inc.; Crest Manufacturing Incorporated; Godfrey Marine; Harrison International Incorporated; Health and Personal Care Distribution Conference, Inc.; National Small Shipments Traffic Conference, Inc.; and Truckpro Parts & Service, Inc.--Petition for Declaratory Order--Certain Rates and Practices of Churchill Truck Lines, Inc. (Trans-Allied Audit Company, Inc.), Docket No. 41573 (Anacomp).

The ICC's decisions in Anacomp (served August 7 and November 22, 1995) found that respondents' attempts to collect undercharges, under the circumstances of that case, would, indeed, constitute an unreasonable practice. Respondents filed a petition for review of Anacomp, which they later withdrew voluntarily. Churchill Truck Lines, Inc. v. Surface Transportation Board, No. 96-1013 (D.C. Cir., Dec. 6, 1996). Thus, Anacomp is administratively final.

¹ The ICC was abolished January 1, 1996, pursuant to the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA). The ICCTA transferred certain ICC functions, including the resolution of issues in motor carrier undercharge proceedings, to the newly created Surface Transportation Board (Board). 49 U.S.C. 13709-11. Therefore, the Board acquired jurisdiction over this matter.

In the meantime, the United States District Court for the District of Minnesota (relying on Anacom) entered an order enjoining respondents from “attempting to collect additional freight charges from former customers of Churchill.” AVR, Inc., et al. v. Churchill Truck Lines, Inc., et al., No. 4-95-CV-401 (Oct. 22, 1996).

On December 13, 1995, the ICC issued an order in this proceeding requiring the parties to submit a status report within 30 days, and indicating that if no such report was filed, the proceeding would be dismissed. The parties have not filed a status report or any other pleading since that time.

We will dismiss this case. First, respondents have been enjoined from pursuing any undercharge claims by a Federal district court. Therefore, they could not pursue their undercharge claims against petitioner. Second, the parties have not filed a status report or other pleading responding to the ICC’s order requiring them to do so and indicating that the proceeding would be dismissed if they did not 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. This proceeding is dismissed.
2. This decision is effective on the service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

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