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SERVICE DATE - FEBRUARY 19, 1998

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. 41935

ABBOTT LABORATORIES; ACME LINEN COMPANY; AMERICAN DRUG STORES, INC.; ARAMARK CLEANROOM SERVICES, INC.; BERLIN PACKAGING; BIO CLINIC CORPORATION; BUGLE BOY INDUSTRIES, INC; CIBA-GEIGY CORPORATION; DANA CORPORATION D/B/A WIX DIVISION; DANISCO INGREDIENTS USA, FKA GRINDSTED PRODUCTS, INC.; DERBY CYCLE CORPORATION; ELECTRONIC BALLAST TECHNOLOGY, INC.; FINDLEY ADHESIVES, INC.; H.B. FULLER COMPANY; H&R BLOCK TAX SERVICES, INC.; HARROW PRODUCTS, INC.; HEALTH O METER, INC.; HOMAC MFG. COMPANY; HUNTSMAN FILM PRODUCTS CORPORATION; INFINITY SYSTEMS, INC.; INTERNATIONAL PAPER COMPANY; KIMBERLY-CLARK CORPORATION; LAKESHORE EQUIPMENT COMPANY, INC. D/B/A LAKESHORE LEARNING MATERIALS; LUCKY STORES, INC.; MAKITA U.S.A., INC.; MATTEL, INC.; MAXELL CORPORATION OF AMERICA; MCP INDUSTRIES, INC.; MITSUI-SOKO (U.S.A.) INCORPORATED; PACCAR PARTS, A DIVISION OF PACCAR INC.; PACKAGING INDUSTRIES GROUP, INC.; PHILIPS LIGHTING COMPANY, A DIVISION OF PHILIPS ELECTRONICS NORTH AMERICA CORPORATION; SENTINEL PRODUCTS CORP.; SPORTMART INC.; THE STANLEY WORKS, INC.; THE STATE CHEMICAL MANUFACTURING COMPANY; THOMAS & BETTS CORPORATION; TTX COMPANY; ULBRICH OF CALIFORNIA, INC.; VAN ZYVERDEN BROS., INC.; YOKOHAMA TIRE CORPORATION FKA THE MOHAWK RUBBER COMPANY; AND ZURN INDUSTRIES, INC.--PETITION FOR DECLARATORY ORDER--CERTAIN RATES AND PRACTICES OF INDUSTRIAL FREIGHT SYSTEM, INC. AND ITS CORONA TRUCKING DIVISION¹

Decided: February 11, 1998

We find that collection of the undercharges sought in this proceeding would be an unreasonable practice under 49 U.S.C. 13711. Because of our finding under section 13711, we will not reach the other issues raised in this proceeding.

BACKGROUND

¹ During the course of this proceeding, the following Petitioners have withdrawn from the case: Abbott Laboratories; Aramark Cleanroom Services, Inc.; Bio Clinic Corporation; Dana Corporation dba Wix Division; and Ciba-Geigy Corporation.

This matter arises out of court actions in the United States Bankruptcy Court for the Central District of California,² instituted by Duke Salisbury, trustee of the Bankruptcy Estate of Industrial Freight System, Inc. (Industrial or Respondent),³ a former motor common and contract carrier. Respondent seeks to collect undercharges of varying amounts allegedly due from 42 shippers (shippers or Petitioners), in addition to amounts previously paid by the shippers, for the interstate transportation of shipments of miscellaneous commodities from and to various points in the United States, between 1991 and 1994. On or about September 17, 1996, the bankruptcy court approved a stipulation between Industrial and the shippers to allow the parties to proceed before us to resolve the transportation issues raised in the court cases.

Pursuant to the court's approval, Petitioners filed a joint petition for declaratory order requesting that the Board resolve those issues. The Board issued procedural schedules, and Petitioners filed their opening statement. Industrial submitted a reply, and Petitioners filed a rebuttal.

Petitioners assert that Respondent's attempts to collect the claimed undercharges constitute unreasonable practices under section 13711(a). Petitioners maintain that the freight charges originally billed by Industrial and paid by each shipper were rates mutually agreed upon by the parties, and that each shipper relied on the agreed-upon rates in tendering its traffic to Industrial to the exclusion of services provided by other carriers.

Attached as exhibits to the shippers' opening statement are declarations from officials of each shipper, copies of letters issued by Respondent asserting the undercharge claims against each, as well as Statements of Account (SOA), setting forth Respondent's claims by freight bill number, together with the original billing dates, the amounts originally paid, and balance due amounts claimed for each shipment. Also attached to each of the declarations are samples of the "balance due" bills issued by Respondent to each shipper, which reflect originally issued freight bill data, as well as revised balance due amounts. Many of the shipper representatives (such as Derby Cycle Corporation, H.B. Fuller Company, and Mitsui-Soko (U.S.A.) Incorporated), attached copies of letters, agreements, tariffs or other documentation reflecting Industrial's agreement to apply stated discounts off of tariff rates.⁴

² The Appendix identifies these proceedings, listing the names of the shippers/Petitioners, and the respective bankruptcy court docket numbers for each.

³ In 1993, Industrial filed for bankruptcy under Chapter 7 of the United States Bankruptcy Code, in the United States Bankruptcy Court for the Central District of California, Case No. LA 93-41245-ER.

⁴ Danisco Ingredients USA, Inc. (Danisco); International Paper Company (IPC); and Zurn Industries, Inc. (Zurn) submitted copies of what they claim are agreements by Respondent to provide service as a contract, rather than a common, carrier. They contend that Respondent, as a contract
(continued...)

Each of the shipper's representatives testifies that the rates originally charged by Industrial were rates mutually agreed upon by the parties, and that each shipper relied on the agreed-upon rates in tendering its traffic to Industrial to the exclusion of services provided by other carriers. In each case, the SOA was the first notice shippers received that Industrial was disavowing the rates originally billed. The originally issued freight bills, according to each witness, reflect the discounts that each of the Petitioners had negotiated with Industrial. On their face, the revised bills indicate that Industrial disallowed the discounts and rates that Industrial originally applied to the shipments because they were not contained in tariffs, and that Industrial then re-rated the shipments using tariff-based charges.

Respondent, rather than attempting to counter the voluminous evidence submitted by the shippers by submitting rebuttal evidence, instead relies solely on argument of counsel. First, Industrial contends that the shippers proffered no written evidence of the original rate charged, the agreement to charge that rate, or Petitioners' reasonable reliance on the rate. Second, Respondent contends that section 13711(a) does not pertain to its claims because it cannot be applied retroactively to claims which were pending when that section was enacted as section 2(e) of the Negotiated Rates Act of 1993 (NRA), Pub. L. No. 103-180, 107 Stat. 2044 (1993).

⁴(...continued)

carrier, is not entitled to collect the tariff rates it seeks. While this documentation buttresses each of these shippers' unreasonable practices defenses, they do not, in all cases, show that the transportation moved as contract carriage. The Danisco agreement relates only to transportation between points in California and so would not appear to apply to the interstate shipments which are the subject of this proceeding. The document relied on by Zurn contains none of the contract terms normally associated with contract carriage. See *In re Transcon Lines*, 89 F.3d 559, 566-70 (9th Cir. 1996). The IPC agreement, on the other hand, contains terms indicating that a valid contract carrier arrangement existed. *Id.* However, we do not address the contract carrier issue here. See n. 5, *infra*.

DISCUSSION AND CONCLUSIONS

We will dispose of these proceeding under section 13711. Accordingly, we do not reach the other issues raised.⁵

Section 13711(a) provides, in pertinent part, that “It shall be an unreasonable practice for a motor carrier of property . . . providing transportation subject to [the jurisdiction of the Board] . . . to attempt to charge or to charge for a transportation service the difference between (1) the applicable rate that was lawfully in effect pursuant to a [filed] tariff . . . and (2) the negotiated rate for such transportation service if the carrier . . . is no longer transporting property . . . or is transporting property . . . for the purpose of avoiding application of this section.”

It is undisputed that Industrial no longer transports property.⁶ Accordingly, we may proceed to determine whether Respondent's attempts to collect undercharges (the difference between the applicable filed rate and the negotiated rate) constitute an unreasonable practice.

Initially, we must address the threshold issue of whether, in each case, sufficient written evidence of a negotiated rate agreement exists to make a section 13711(a) determination. Section 13711(f) defines the term “negotiated rate” as one agreed upon by the shipper and carrier “through

⁵ Typically, a court hearing undercharge cases will direct or allow shippers to bring to the Board all defenses that have been raised in court. As a result, in addition to section 13711 issues, petitioners before the Board, like these Petitioners, typically raise issues such as contract carriage and rate reasonableness. When it is able to resolve a case fully on section 13711 grounds, however, the Board does not address those other more complex issues. *See, e.g., Rhinelander Paper Company v. The Bankruptcy Estate of Murphy Motor Freight Lines, Inc.*, No. 40837 (STB served October 23, 1997). We will not address the other more complex issues raised here because our section 13711 findings fully resolve the question of Petitioners' liability for the rates sought.

We decline to rule on Petitioners' contention that Industrial must produce verification of transportation and billing on shipments for which it claims to have received no payment, because neither party addressed the question and because such evidentiary questions are within the Court's province. Having found against Respondent on its undercharge claims, we find no basis for imposing fees, costs, or interest on Petitioners, as requested by Respondent. We also decline to find that Petitioners are entitled to fees and costs. *See General Mills, Inc.--Petition for Declaratory Order*, 8 I.C.C.2d 313, 325 (1992), *aff'd sub nom. Bankruptcy Estate of United Shipping Co. v. General Mills, Inc.*, 34 F.3d 1383 (8th Cir. 1994). Finally, we deem it unnecessary to resolve the dispute over the intrastate or interstate nature of transportation for certain shippers, because section 13711(a) declares it an unreasonable practice to depart from negotiated rates, regardless of the basis for the attempted departure.

⁶ Prior to filing for bankruptcy, Industrial held motor common and contract carrier operating authority, issued by the Interstate Commerce Commission.

negotiations pursuant to which no tariff was lawfully and timely filed and for which there is written evidence of such agreement.” Thus, section 13711(a) cannot be satisfied unless there is written evidence of a negotiated rate agreement.

Here, each Petitioner has submitted a list of the shipments subject to Respondent’s collection efforts, as well as sample revised freight bills. That evidence indicates that the rates originally charged by Industrial were consistently and substantially below those that Respondent is now seeking to assess and were in conformity with the rates assertedly agreed to by the parties. We find this evidence sufficient to satisfy the written evidence requirement. *E.A. Miller, Inc.--Rates and Practices of Best*, 10 I.C.C.2d 235 (1994). See *William J. Hunt, Trustee for Ritter Transportation, Inc. v. Gantrade Corp.*, C.A. No. H-89-2379 (S.D. Tex. March 31, 1997) (finding that written evidence need not include the original freight bills or any other particular type of evidence, as long as the written evidence submitted establishes that specific amounts were paid that were less than the filed rates and that the rates were agreed upon by the parties).⁷ Moreover, the correspondence, rate quotations and agreements submitted by various shippers constitute additional written evidence as to their agreements with Industrial to apply a negotiated rate.

Not only do these lists, along with the written freight bills, satisfy the “written evidence” requirement of the statute, but, together with the unrefuted testimony of each shippers’ representative, they provide evidence establishing that the original rates assessed by Industrial and paid by the shippers were rates agreed to in negotiations between the parties. The original freight bills issued by Respondent for the subject shipments, as well as the additional evidence, support Petitioners’ contentions and reflect the existence of negotiated rates. The evidence indicates that the shippers relied on Industrial’s agreement to charge the negotiated rates, and that the shippers would not have used Industrial had it quoted the rates it now seeks to collect.

In exercising our jurisdiction under section 13711(b), we are directed to consider five factors: (1) whether the shipper was offered a transportation rate by the carrier other than the rate legally on file [section 13711(b)(2)(A)]; (2) whether the shipper tendered freight to the carrier in reasonable reliance upon the offered rate [section 13711(b)(2)(B)]; (3) whether the carrier did not properly or timely file a tariff providing for such rate or failed to enter into an agreement for contract carriage [section 13711(b)(2)(C)]; (4) whether the transportation rate was billed and collected by the carrier [section 13711(b)(2)(D)]; and (5) whether the carrier or the party representing such carrier now demands additional payment of a higher rate filed in a tariff [section 13711(b)(2)(E)].

⁷ Industrial, at p. 5 of its reply statement, contends that each Petitioner has failed to provide “written evidence of the original rate charged or that Petitioners reasonably relied on this rate.” It argues that the absence of such written evidence defeats Petitioners’ assertions. But section 13711(f) requires merely that there be written evidence of an agreement to charge the agreed-upon rate, and as noted, the lists of claims, the sample freight bills and other documentation submitted by Petitioners constitute written evidence of those agreements.

The evidence submitted by each Petitioner establishes that a negotiated rate was offered to each shipper by Industrial; that each shipper reasonably relied on the offered rate in tendering its traffic to Industrial; that the negotiated rate was billed and collected by Industrial; and that Industrial now seeks to collect additional payments based on a higher rate filed in a tariff.

Therefore, under 49 U.S.C. 13711, we find that it is an unreasonable practice for Industrial to attempt to collect undercharges from the Petitioners for transporting the shipments at issue in this proceeding.⁸

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 the service date.

⁸ With respect to Respondent's claim that section 13711 cannot be applied retroactively, we point out that the courts have consistently held that that section, by its own terms, may be applied retroactively against the undercharge claims of defunct, bankrupt carriers that were pending on the NRA's enactment. *See, e.g., Gold v. A.J. Hollander Co. (In re Maislin Indus.)*, 176 B.R. 436, 443-44 (Bankr. E.D. Mich. 1995); *Jones Truck Lines, Inc. v. Scott Fetzer Co.*, 860 F.Supp. 1370, 1375-76 (E.D. Ark. 1994); *North Penn Transfer, Inc. v. Stationers Distributing Co.*, 174 B.R. 263 (N.D. Ill. 1994); *Allen v. National Enquirer*, 187 B.R. 29, 33 (Bankr. N.D. Ga. 1995); *cf. Jones Truck Lines, Inc. v. Phoenix Products Co.*, 860 F.Supp. 1360 (W.D. Wisc. 1994). Moreover, if, as Petitioners claim, Industrial did not begin to file its claims until 1994, after the NRA had been enacted, application of the NRA here is not retroactive.

3. A copy of this decision will be mailed to:

The Honorable Ernest M. Robles
United States Bankruptcy Court for
the Central District of California
Edward Roybal Federal Building and Courthouse
255 East Temple Street
Los Angeles, CA 90012

Re: See Appendix

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

APPENDIX

Petitioner-Shipper	Adversary Proceeding No.
ABBOTT LABORATORIES	AD 95-03550 ER
ACME LINEN COMPANY	AD 95-02433 ER
AMERICAN DRUG STORES, INC.	AD 95-02461 ER
ARAMARK CLEANROOM SERVICES, INC.	AD 95-03427 ER
BERLIN PACKAGING	AD 95-02827 ER
BIO CLINIC CORPORATION	AD 95-02437 ER
BUGLE BOY INDUSTRIES, INC.	AD 95-02449 ER
CIBA-GEIGY CORPORATION	AD 95-02454 ER
DANA CORPORATION, doing business as WIX DIVISION	AD 95-03184 ER
DANISCO INGREDIENTS USA, INC., formerly known as GRINDSTED PRODUCTS, INC.	AD 94-04581 ER
DERBY CYCLE CORPORATION	AD 95-02323 ER
ELECTRONIC BALLAST TECHNOLOGY, INC.	AD 95-03266 ER
FINDLEY ADHESIVES INC.	AD 95-02350 ER
H.B. FULLER COMPANY	AD 95-04073 ER
H&R BLOCK TAX SERVICES, INC.	AD 95-02439 ER
HARROW PRODUCTS, INC.	AD 95-02664 ER
HEALTH O METER, INC., formerly known as MR. COFFEE, INC.	AD 95-03446 ER
HOMAC MFG. COMPANY	AD 95-03182 ER
HUNTSMAN FILM PRODUCTS CORPORATION	AD 95-02356 ER
INFINITY SYSTEMS, INC.	AD 95-03326 ER
INTERNATIONAL PAPER COMPANY	AD 95-03331 ER
KIMBERLY-CLARK CORPORATION	AD 95-03543 ER
LUCKY STORES, INC.	AD 95-02472 ER

Petitioner - Shipper	Adversary Proceeding No.
LAKESHORE EQUIPMENT COMPANY, INC., doing business as LAKESHORE LEARNING MATERIALS	AD 95-02445 ER
MAKITA U.S.A., INC.	AD 95-02816 ER
MATTEL, INC., formerly known as KRANSCO	AD 95-04024 ER
MAXELL CORPOATION OF AMERICA	AD 95-03363 ER
MISSION RUBBER COMPANY, a division of MCP INDUSTRIES, INC., formerly known as MISSION RUBBER COMPANY, INC.	AD 95-03385 ER
MITSUI-SOKO (U.S.A.) INCORPORATED	AD 95-03556 ER
PACCAR PARTS, a division of PACCAR, INC.	AD 95-03534 ER
PACKAGING INDUSTRIES GROUP, INC.	AD 95-03157 ER
PHILIPS LIGHTING COMPANY, a division of PHILIPS ELECTRONICS NORTH AMERICA CORPORATION	AD 95-03442 ER
SENTINEL PRODUCTS CORP.	AD 95-03153 ER
SPORTMART INC.	AD 95-02353 ER
THE STANLEY WORKS, INC.	AD 95-03140 ER
THE STATE CHEMICAL MANUFACTURING COMPANY	AD 95-04059 ER
THOMAS & BETTS CORPORATION	AD 95-03425 ER
TTX COMPANY	AD 95-03145 ER
ULBRICH OF CALIFORNIA, INC.	AD 95-02088 ER
VAN ZYVERDEN BROS, INC.	AD 95-03143 ER
YOKOHAMA TIRE CORPORATION formerly known as THE MOHAWK RUBBER COMPANY	AD 95-03438 ER
ZURN INDUSTRIES, INC.	AD 95-04129 ER

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SURFACE TRANSPORTATION BOARD

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Decided: February 11, 1998

We find that collection of the undercharges sought in this proceeding would be an unreasonable practice under 49 U.S.C. 13711. Because of our finding under section 13711, we will not reach the other issues raised in this proceeding.

BACKGROUND

¹ During the course of this proceeding, the following Petitioners have withdrawn from the case: Abbott Laboratories; Aramark Cleanroom Services, Inc.; Bio Clinic Corporation; Dana Corporation dba Wix Division; and Ciba-Geigy Corporation.

This matter arises out of court actions in the United States Bankruptcy Court for the Central District of California,² instituted by Duke Salisbury, trustee of the Bankruptcy Estate of Industrial Freight System, Inc. (Industrial or Respondent),³ a former motor common and contract carrier. Respondent seeks to collect undercharges of varying amounts allegedly due from 42 shippers (shippers or Petitioners), in addition to amounts previously paid by the shippers, for the interstate transportation of shipments of miscellaneous commodities from and to various points in the United States, between 1991 and 1994. On or about September 17, 1996, the bankruptcy court approved a stipulation between Industrial and the shippers to allow the parties to proceed before us to resolve the transportation issues raised in the court cases.

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Respondent, rather than attempting to counter the voluminous evidence submitted by the shippers by submitting rebuttal evidence, instead relies solely on argument of counsel. First, Industrial contends that the shippers proffered no written evidence of the original rate charged, the agreement to charge that rate, or Petitioners' reasonable reliance on the rate. Second, Respondent contends that section 13711(a) does not pertain to its claims because it cannot be applied retroactively to claims which were pending when that section was enacted as section 2(e) of the Negotiated Rates Act of 1993 (NRA), Pub. L. No. 103-180, 107 Stat. 2044 (1993).

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carrier, is not entitled to collect the tariff rates it seeks. While this documentation buttresses each of these shippers' unreasonable practices defenses, they do not, in all cases, show that the transportation moved as contract carriage. The Danisco agreement relates only to transportation between points in California and so would not appear to apply to the interstate shipments which are the subject of this proceeding. The document relied on by Zurn contains none of the contract terms normally associated with contract carriage. *See In re Transcon Lines*, 89 F.3d 559, 566-70 (9th Cir. 1996). The IPC agreement, on the other hand, contains terms indicating that a valid contract carrier arrangement existed. *Id.* However, we do not address the contract carrier issue here. *See* n. 5, *infra*.

DISCUSSION AND CONCLUSIONS

We will dispose of these proceeding under section 13711. Accordingly, we do not reach the other issues raised.⁵

Section 13711(a) provides, in pertinent part, that “It shall be an unreasonable practice for a motor carrier of property . . . providing transportation subject to [the jurisdiction of the Board] . . . to attempt to charge or to charge for a transportation service the difference between (1) the applicable rate that was lawfully in effect pursuant to a [filed] tariff . . . and (2) the negotiated rate for such transportation service if the carrier . . . is no longer transporting property . . . or is transporting property . . . for the purpose of avoiding application of this section.”

It is undisputed that Industrial no longer transports property.⁶ Accordingly, we may proceed to determine whether Respondent's attempts to collect undercharges (the difference between the applicable filed rate and the negotiated rate) constitute an unreasonable practice.

Initially, we must address the threshold issue of whether, in each case, sufficient written evidence of a negotiated rate agreement exists to make a section 13711(a) determination. Section 13711(f) defines the term “negotiated rate” as one agreed upon by the shipper and carrier “through

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We decline to rule on Petitioners' contention that Industrial must produce verification of transportation and billing on shipments for which it claims to have received no payment, because neither party addressed the question and because such evidentiary questions are within the Court's province. Having found against Respondent on its undercharge claims, we find no basis for imposing fees, costs, or interest on Petitioners, as requested by Respondent. We also decline to find that Petitioners are entitled to fees and costs. *See General Mills, Inc.--Petition for Declaratory Order*, 8 I.C.C.2d 313, 325 (1992), *aff'd sub nom. Bankruptcy Estate of United Shipping Co. v. General Mills, Inc.*, 34 F.3d 1383 (8th Cir. 1994). Finally, we deem it unnecessary to resolve the dispute over the intrastate or interstate nature of transportation for certain shippers, because section 13711(a) declares it an unreasonable practice to depart from negotiated rates, regardless of the basis for the attempted departure.

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negotiations pursuant to which no tariff was lawfully and timely filed and for which there is written evidence of such agreement.” Thus, section 13711(a) cannot be satisfied unless there is written evidence of a negotiated rate agreement.

Here, each Petitioner has submitted a list of the shipments subject to Respondent’s collection efforts, as well as sample revised freight bills. That evidence indicates that the rates originally charged by Industrial were consistently and substantially below those that Respondent is now seeking to assess and were in conformity with the rates assertedly agreed to by the parties. We find this evidence sufficient to satisfy the written evidence requirement. *E.A. Miller, Inc.--Rates and Practices of Best*, 10 I.C.C.2d 235 (1994). See *William J. Hunt, Trustee for Ritter Transportation, Inc. v. Gantrade Corp.*, C.A. No. H-89-2379 (S.D. Tex. March 31, 1997) (finding that written evidence need not include the original freight bills or any other particular type of evidence, as long as the written evidence submitted establishes that specific amounts were paid that were less than the filed rates and that the rates were agreed upon by the parties).⁷ Moreover, the correspondence, rate quotations and agreements submitted by various shippers constitute additional written evidence as to their agreements with Industrial to apply a negotiated rate.

Not only do these lists, along with the written freight bills, satisfy the “written evidence” requirement of the statute, but, together with the unrefuted testimony of each shippers’ representative, they provide evidence establishing that the original rates assessed by Industrial and paid by the shippers were rates agreed to in negotiations between the parties. The original freight bills issued by Respondent for the subject shipments, as well as the additional evidence, support Petitioners’ contentions and reflect the existence of negotiated rates. The evidence indicates that the shippers relied on Industrial’s agreement to charge the negotiated rates, and that the shippers would not have used Industrial had it quoted the rates it now seeks to collect.

In exercising our jurisdiction under section 13711(b), we are directed to consider five factors: (1) whether the shipper was offered a transportation rate by the carrier other than the rate legally on file [section 13711(b)(2)(A)]; (2) whether the shipper tendered freight to the carrier in reasonable reliance upon the offered rate [section 13711(b)(2)(B)]; (3) whether the carrier did not properly or timely file a tariff providing for such rate or failed to enter into an agreement for contract carriage [section 13711(b)(2)(C)]; (4) whether the transportation rate was billed and collected by the carrier [section 13711(b)(2)(D)]; and (5) whether the carrier or the party representing such carrier now demands additional payment of a higher rate filed in a tariff [section 13711(b)(2)(E)].

⁷ Industrial, at p. 5 of its reply statement, contends that each Petitioner has failed to provide “written evidence of the original rate charged or that Petitioners reasonably relied on this rate.” It argues that the absence of such written evidence defeats Petitioners’ assertions. But section 13711(f) requires merely that there be written evidence of an agreement to charge the agreed-upon rate, and as noted, the lists of claims, the sample freight bills and other documentation submitted by Petitioners constitute written evidence of those agreements.

The evidence submitted by each Petitioner establishes that a negotiated rate was offered to each shipper by Industrial; that each shipper reasonably relied on the offered rate in tendering its traffic to Industrial; that the negotiated rate was billed and collected by Industrial; and that Industrial now seeks to collect additional payments based on a higher rate filed in a tariff.

Therefore, under 49 U.S.C. 13711, we find that it is an unreasonable practice for Industrial to attempt to collect undercharges from the Petitioners for transporting the shipments at issue in this proceeding.⁸

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 the service date.

⁸ With respect to Respondent's claim that section 13711 cannot be applied retroactively, we point out that the courts have consistently held that that section, by its own terms, may be applied retroactively against the undercharge claims of defunct, bankrupt carriers that were pending on the NRA's enactment. *See, e.g., Gold v. A.J. Hollander Co. (In re Maislin Indus.)*, 176 B.R. 436, 443-44 (Bankr. E.D. Mich. 1995); *Jones Truck Lines, Inc. v. Scott Fetzer Co.*, 860 F.Supp. 1370, 1375-76 (E.D. Ark. 1994); *North Penn Transfer, Inc. v. Stationers Distributing Co.*, 174 B.R. 263 (N.D. Ill. 1994); *Allen v. National Enquirer*, 187 B.R. 29, 33 (Bankr. N.D. Ga. 1995); *cf. Jones Truck Lines, Inc. v. Phoenix Products Co.*, 860 F.Supp. 1360 (W.D. Wisc. 1994). Moreover, if, as Petitioners claim, Industrial did not begin to file its claims until 1994, after the NRA had been enacted, application of the NRA here is not retroactive.

3. A copy of this decision will be mailed to:

The Honorable Ernest M. Robles
United States Bankruptcy Court for
the Central District of California
Edward Roybal Federal Building and Courthouse
255 East Temple Street
Los Angeles, CA 90012

Re: See Appendix

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

APPENDIX

Petitioner-Shipper	Adversary Proceeding No.
ABBOTT LABORATORIES	AD 95-03550 ER
ACME LINEN COMPANY	AD 95-02433 ER
AMERICAN DRUG STORES, INC.	AD 95-02461 ER
ARAMARK CLEANROOM SERVICES, INC.	AD 95-03427 ER
BERLIN PACKAGING	AD 95-02827 ER
BIO CLINIC CORPORATION	AD 95-02437 ER
BUGLE BOY INDUSTRIES, INC.	AD 95-02449 ER
CIBA-GEIGY CORPORATION	AD 95-02454 ER
DANA CORPORATION, doing business as WIX DIVISION	AD 95-03184 ER
DANISCO INGREDIENTS USA, INC., formerly known as GRINDSTED PRODUCTS, INC.	AD 94-04581 ER
DERBY CYCLE CORPORATION	AD 95-02323 ER
ELECTRONIC BALLAST TECHNOLOGY, INC.	AD 95-03266 ER
FINDLEY ADHESIVES INC.	AD 95-02350 ER
H.B. FULLER COMPANY	AD 95-04073 ER
H&R BLOCK TAX SERVICES, INC.	AD 95-02439 ER
HARROW PRODUCTS, INC.	AD 95-02664 ER
HEALTH O METER, INC., formerly known as MR. COFFEE, INC.	AD 95-03446 ER
HOMAC MFG. COMPANY	AD 95-03182 ER
HUNTSMAN FILM PRODUCTS CORPORATION	AD 95-02356 ER
INFINITY SYSTEMS, INC.	AD 95-03326 ER
INTERNATIONAL PAPER COMPANY	AD 95-03331 ER
KIMBERLY-CLARK CORPORATION	AD 95-03543 ER
LUCKY STORES, INC.	AD 95-02472 ER

Petitioner - Shipper	Adversary Proceeding No.
LAKESHORE EQUIPMENT COMPANY, INC., doing business as LAKESHORE LEARNING MATERIALS	AD 95-02445 ER
MAKITA U.S.A., INC.	AD 95-02816 ER
MATTEL, INC., formerly known as KRANSCO	AD 95-04024 ER
MAXELL CORPOATION OF AMERICA	AD 95-03363 ER
MISSION RUBBER COMPANY, a division of MCP INDUSTRIES, INC., formerly known as MISSION RUBBER COMPANY, INC.	AD 95-03385 ER
MITSUI-SOKO (U.S.A.) INCORPORATED	AD 95-03556 ER
PACCAR PARTS, a division of PACCAR, INC.	AD 95-03534 ER
PACKAGING INDUSTRIES GROUP, INC.	AD 95-03157 ER
PHILIPS LIGHTING COMPANY, a division of PHILIPS ELECTRONICS NORTH AMERICA CORPORATION	AD 95-03442 ER
SENTINEL PRODUCTS CORP.	AD 95-03153 ER
SPORTMART INC.	AD 95-02353 ER
THE STANLEY WORKS, INC.	AD 95-03140 ER
THE STATE CHEMICAL MANUFACTURING COMPANY	AD 95-04059 ER
THOMAS & BETTS CORPORATION	AD 95-03425 ER
TTX COMPANY	AD 95-03145 ER
ULBRICH OF CALIFORNIA, INC.	AD 95-02088 ER
VAN ZYVERDEN BROS, INC.	AD 95-03143 ER
YOKOHAMA TIRE CORPORATION formerly known as THE MOHAWK RUBBER COMPANY	AD 95-03438 ER
ZURN INDUSTRIES, INC.	AD 95-04129 ER