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SERVICE DATE - APRIL 3, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB DOCKET NO. ISM 35007

PETITION FOR RECONSIDERATION AND STAY

Decided: March 28, 2000

In a decision served on January 21, 2000, the Board declined to suspend and investigate the revisions to Items 49265 and 49540, et al., proposed in Supplement 3 to Tariff STB NMF 100-Z (National Motor Freight Classification), issued by the National Motor Freight Traffic Association, Inc. (NMFTA), Agent. The revisions became effective January 22, 2000, and made the classification of shipments of Cloth, Fabric or Piece Goods, which were covered by the former Item 49265, dependent upon the density of the shipments.¹

On February 1, 2000, the American Textile Manufacturers Institute (ATMI) filed a petition for reconsideration and stay of the Board's decision. NMFTA filed a reply to the petition.

ATMI contends that NMFTA's National Classification Committee (NCC) unlawfully and unreasonably combined National Motor Freight Classification (NMFC) Items 49265 and 49540, and applied full-scale density provisions to the combination. According to ATMI the change imposed extensive and unnecessary burdens upon shippers without affording them a reasonable period of time within which to adjust to the new provisions.

ATMI notes that it filed a protest on January 7, 2000, requesting the Board to suspend and investigate the proposed change, and that in its protest it pointed out (1) that the studies on which the NCC based its proposal were outdated and employed questionable methodology, and (2) that shippers needed more time to adjust to the administrative burdens the change would impose.² ATMI states that the Board's decision declining to suspend and investigate the change in Docket No. ISM 35007 noted the Board's general view that density-based rating are desirable and that the proposal appeared to be reasonable, but that the decision did not address the short period of time that affected shippers were given to adjust to the change.

¹ The proposal combined the former Items 49265 and 49540 into a revised Item 49265, and included and expanded in the revised item the density provisions that were formerly limited to the products listed in Item 49640.

² While ATMI alleges that it did not receive adequate notice of the change, it acknowledges that it received correspondence from NCC regarding the change in a letter dated September 2, 1999.

Making the change effective immediately, according to ATMI, is forcing shippers to institute complex procedures and to make costly software upgrades at the same time they are dealing with Y2K challenges. ATMI asserts that shippers are incurring extraordinary expenses in the form of updating and reprogramming computer systems and making manual changes to bills of lading; that some shippers will be forced to discard their current stocks of bills of lading and order new bills of lading; that shippers will have to develop complex new systems for density measurement; and that they will have to hire employees (or reschedule existing employees) and incur other costs to ensure that incoming shipments are classified correctly, that additional paperwork is completed properly, and that the new systems are updated regularly to reflect changes in product lines. ATMI contends that, by contrast, staying the effective date of the change until all legal proceedings in connection with this matter have been completed will not work any substantial harm on NCC or the public, and will prevent unnecessary harm to the affected shippers.

In its reply to the protest, NMFTA states that over the past twelve months proposed reclassifications of the cloth products involved have been thoroughly reviewed and discussed in detail by the shippers and manufacturers, as well as the carriers who transport them; that no less than three proposals for reclassification of the products have been considered at length during six meetings of the NCC and its Panels; and that the NCC's proposals for amending the classification of the products have been the subject of two decisions by the Board. NMFTA indicates that it not only adhered scrupulously to the requirements of its procedures as approved by the Board, but that it went well beyond those procedures in an effort to insure that any interested person had more than ample notice and opportunity to participate in the involved proposal. In these circumstances, NMFTA asserts that ATMI's contention that it did not have notice or an opportunity to participate is completely unsupported.

NMFTA also argues that it demonstrated the reasonableness of the proposal in its reply to the protest in STB Docket No. ISM 35007, and that the products in the combined item are similar for transportation purposes in that they do not impose any unusual burdens on the carriers with respect to their stowability, handling, or liability characteristics. Thus, density is the controlling characteristic, for all of the products. NMFTA contends that ATMI's allegation that it acted unreasonably in making the proposal effective on 30 days notice is frivolous in that it fails to consider that the 30-day "statutory notice" has been recognized as the applicable legal standard since before its agreement was approved in 1956. Further, NMFTA argues that the shipper costs for implementing the change are not unusual and that, if the only permissible changes were those that could be implemented with no adjustment expense on behalf of the carriers or shippers, virtually no changes would be possible and the classification would be frozen.³

³ NMFTA also argues that "rejection" of an effective tariff under the circumstances presented here would be unprecedented. "Rejection" of the tariff has not been requested and, to the best of our knowledge, is not an issue. Thus, we do not need to respond to NMFTA's arguments about the circumstances under which we might reject a tariff, or under which we might exercise the authority
(continued...)

After giving careful consideration to the issues raised in the petition and reply, we will deny the petition. In our decision declining to suspend the proposed provisions, we outlined our rationale for concluding that the proposed classifications were not unreasonable and that the procedures followed by NMFTA were not inappropriate. We find ATMI's other arguments similarly unpersuasive.

NMFTA is correct in its observation that the requirement for 30 days' notice has been the norm for decades. Virtually all changes to the NMFC have been filed on 30 days' notice, including those that introduced density-based ratings. Further, in this instance, shippers should have been aware of the likelihood of the changes implemented on January 22, 2000, well in advance of 30 days before implementation.⁴ Additionally, the data submitted by ATMI does not give us a sound basis to determine whether the shipper costs and difficulties it alleges are typical or realistic. However, given the importance of shipment density in motor carrier transportation, and the existing extensive use of density-related classifications in other parts of the NMFC, we do not believe it would be reasonable to preclude the application of such provisions because of the alleged and unsupported difficulties.⁵

While we believe the data suggests that there are wide variations in density for the shipments affected by the proposed amendments, we would observe that, even if this is not the case, the establishment of density-related classification ratings would not result in unreasonable classifications.⁶ In any event, it is clear that overcoming problems of product misclassification does not constitute the sole justification for the proposed amendments, as alleged by ATMI.

It is ordered:

1. The petition for reconsideration and stay filed by ATMI is denied.

³(...continued)
that the current statute gives us to suspend currently effect provisions.

⁴ Indeed, it should have been clear from a reading of our decision in STB Docket No. 35004, served July 15, 1999, that the reason for suspending that proposal was **the failure to offer additional density options**.

⁵ Under the statute, it is the carrier that is required to issue a receipt or bill of lading for the shipments it accepts. While we are aware that many shippers elect to print and use their own bills of lading, in lieu of those supplied by carriers, the flexibility they include in their programs to adapt to changes could vary widely from shipper to shipper, and any shipper electing to use its own bills of lading must necessarily accept the responsibility for implementing changes.

⁶ To the contrary, many of the classifications in the NMFC that are not subject to density-based ratings could be unreasonable, if shipments of the products described move at densities significantly above or below those contemplated in the classifications.

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2. This decision is effective on the date of service.

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

Vernon A. Williams
Secretary