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SERVICE DATE - MAY 8, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 41996

ASSOCIATED TRAFFIC SERVICES, INC.--PETITION FOR DECLARATORY ORDER--
CERTAIN RATES AND PRACTICES OF SAIA MOTOR FREIGHT LINE, INC.

Decided: May 1, 1998

By petition filed April 11, 1997, Associated Traffic Services, Inc. (ATS or petitioner) requested a declaratory order addressing certain rates and practices of Saia Motor Freight Line, Inc. (Saia or respondent). This proceeding is before the Board on referral from the United States District Court for the Northern District of Georgia, Atlanta Division, in Associated Traffic Services, Inc. v. Saia Motor Freight Line, Inc., No.1:96-CV-856-JTC (referral order dated January 31, 1997). In a decision served September 22, 1997, we established a procedural schedule and required ATS to furnish Saia with copies of certain documents. The parties, in response, have filed pleadings.

Resolution of this controversy turns on whether (a) exception class 70 or (b) class ratings 85 and 100 of the National Motor Freight Classification are applicable to shipments that moved between April 26, 1994, and May 23, 1995.¹ As explained below, we find that the class 70 exception rates are applicable.

PRELIMINARY MATTERS

In court, Saia resisted referral to the Board, contending that we lack jurisdiction over this dispute. In its view, this case presents solely a question of contract law and, as such, does not implicate our jurisdiction to determine "whether [motor carrier] . . . rates . . . are reasonable under section 13701 or applicable." 49 U.S.C. 13710(a)(2).² In referring the underlying dispute to us for

¹ Classifications are broad groupings of commodities with similar transportation characteristics. Classifications are not rates themselves, but carriers, in their individual rate publications, may establish different rates for the different classifications. An exception rate is usually lower than the otherwise applicable rate assigned to a shipper's commodities.

² Section 13710(a)(2) provides:

When the applicability or reasonableness of rates and related provisions billed by a motor carrier is challenged by the person paying the freight charges, the Board shall determine whether such rates and provisions are reasonable under section 13701 or applicable based on the record before it.

a preliminary ruling, the court left open the jurisdictional question and suggested that we might also rule on the question. We believe we do have limited jurisdiction over the question presented.

Traditionally, the Interstate Commerce Commission (ICC) exercised general jurisdiction over the reasonableness and applicability of tariff rates that carriers filed with it. However, the Transportation Industry Regulatory Reform Act of 1994, Pub. L. No. 103-311 (TIRRA), relieved most carriers of the requirement that they file tariffs, effective August 26, 1994; and the ICC Termination Act of 1995, Pub. L. No. 104-88 (Termination Act), abolished the ICC. In turn, the Termination Act created the Board and, as indicated, vested it with jurisdiction to determine the reasonableness of certain rates and their applicability. In our view, under section 13710(a)(2) we have jurisdiction to determine the reasonableness of rates that are subject to section 13701, i.e., those applicable to either household good transportation or the noncontiguous domestic trade and those made collectively by motor carriers under an approved rate bureau agreement. But, as to those shipments which moved after the effective date of TIRRA, the rates involved here are not subject to our rate reasonableness jurisdiction because, being individually set rates for ground transportation of general freight, they are not subject to section 13701. Moreover, though some of these shipments moved before the effective date of TIRRA, the parties presented no evidence regarding their reasonableness. Therefore, we will not address rate reasonableness in this case.

On the other hand, we believe we do have jurisdiction to determine the applicability of motor carrier rates, whether or not they are subject to section 13701. See Yellow Freight System, Inc. of Indiana--Petition for Declaratory Order--Weighing Shipments, ICC Docket No. 40853 (ICC served Jan. 9, 1995) and National Association of Freight Transportation Consultants, Inc.--Petition for Declaratory Order, STB Docket No. 41826 (STB served Apr. 21, 1997). Here, the parties agree that the transportation which is the subject of this dispute was performed pursuant to an agreement between Saia and ATS, and, as a general rule, we do not become involved with disputes over motor carrier contract rates. However, the transportation agreement encompassed rates in tariff format, and, while we have no authority to order payment of money in motor carrier cases, or to order carrier compliance with tariffs, we clearly do have authority to interpret tariffs for the benefit of a court with jurisdiction, and to express our view as to which movements are governed by which tariff rates. Therefore, although the court hearing the contract case will not be bound to give deference to our ruling, or to reverse it under traditional standards of judicial review, as would a court reviewing a Board order directing a particular action on the part of an aggrieved party, we believe we do have jurisdiction to express our view as to the applicability of the tariff rates to this transportation.³

³ Under 49 CFR 1104.8, "The Board may order that any redundant, irrelevant, immaterial, impertinent, or scandalous matter be stricken from any document." We will grant Saia's motion to strike the language in part C of ATS's reply beginning with the first full paragraph on page 11 through page 12, which addresses questions of contract law. We will apply tariff applicability (continued...)

BACKGROUND

ATS is the assignee of Warner/Elektra/Atlantic Corporation (WEA), the shipper and payer of freight charges to Saia. ATS seeks overcharges of \$36,534.36 from Saia for shipments transported for WEA.

Pre-April 26, 1994 Shipments. ATS states that, effective May 10, 1993, WEA signed up to participate in Item 1444 of Saia's tariff ICC SAIA 669F. This item is described in part as "DISCOUNT AND EXCEPTIONS CLASS RATING." Note A of Item 1444 indicates that the discount applies only when the shipper is notified in writing by Saia that it is a participant in the item. This notification is to contain (a) the percentage discount and (b) the exceptions class rating to which the percentage discount would apply. ATS submitted a document dated May 14, 1993, indicating that, effective March 10, 1993, the exception class 70 rates would apply on the relevant traffic and that the rates would be discounted by 48% (Notification I).

Shipments at Issue. ATS also submits that, effective April 26, 1994, WEA signed up to participate in Item 1414 of tariff ICC SAIA 669-F, another of Saia's discount tariffs. Item 1414 is described in part as "DISCOUNT ON CLASS RATED SHIPMENTS." Note B of the item indicates that the discount applies only when the shipper is notified in writing by Saia that it is a participant in the item. ATS submitted an undated Saia document indicating that, effective April 26, 1994, the 53% discount of Item 1414 would apply on the relevant traffic (Notification II). Although this notification specified the percentage discount, it did not indicate the rate to which the discount would apply. However, after the 53% discount became effective, Saia, rather than continuing to apply the discount to class 70 exception rates to WEA's shipments, began applying it to class 85 or class 100 rates.

According to ATS, on or about April 16, 1995, ATS advised WEA that Saia had been using the higher rates. On April 18, 1995, WEA's warehouse manager and branch controller met with a Saia sales representative who allegedly admitted the billing mistake and indicated he would try to correct it. Verified Declaration of Doug MacDonald, Warehouse Manager for WEA at 2. ATS also submits a Verified Declaration of Donald R. Carnahan, president of ATS, contending that Glen Thibodeaux, General Traffic Manager of Saia, told him in a telephone conversation on April 24, 1995, that the salesman had failed to put the class 70 rating on the rate request. Attached to Mr. Carnahan's declaration are copies of his notes of the telephone conversation and a letter/fax to Mr.

³(...continued)

principles to both pre-TIRRA and post-TIRRA shipments. However, we will deny Saia's motion to strike the portions of ATS's reply dealing with the parties' intent. The evidence is relevant because the intent of the parties can be probative in analyzing an ambiguous tariff, such as the one involved here.

Thibodeaux that were allegedly sent on April 24, 1995.⁴ Effective May 23, 1995, Saia resumed the use of class 70 exception rates on WEA's shipments, to which it applied the 53% discount.

ATS submitted an overcharge claim to Saia asserting that WEA was entitled to exception class 70 rates on the shipments transported by Saia from April 26, 1994, to May 23, 1995. Saia declined to pay the overcharge claim. ATS sued and the court referred the matter to us.

Contentions of the Parties. Saia submitted an affidavit of Glen Thibodeaux. Mr. Thibodeaux contends that, beginning April 26, 1994, all WEA traffic moved without objection under item 1414 for almost a year and that the discount in that item applied only "on class rated shipments." Saia argues that WTS is seeking to create a tariff item that was never published - the 53% discount of Item 1414, applied to the exception class 70 rate of Item 1444.

ATS contends that Saia's representations and the intentions of the parties demonstrate that class 70 rates were the base rates to which the 53% (as opposed to the previously applied 48%) discount would be applied. Doug MacDonald testifies that on or about April 22, 1994, he met with a Saia representative and requested that Saia increase WEA's discount to reflect the greater volume of business that it was tendering. This request was allegedly agreed to, as shown by Notification II. According to Mr. MacDonald, "[i]t was intended by all parties to continue the class 70 exception rating because, otherwise, WEA's freight costs would have increased." MacDonald Verified Declaration at 1.

ATS argues that ambiguous tariffs must be construed in favor of the shipper, and that both Item 1444 and Item 1414 applied. Relying on our September 22 decision, ATS contends that, absent a specific cancellation of the provisions of Item 1444 and Notification I, the terms of both items and notifications must be taken into account in determining the applicable rates. Accordingly, ATS claims that because the class 70 exceptions rating applied as a result of participation in Item 1444, and because that item was not canceled and WEA was never notified that its traffic was subject to any other class rating, WEA is entitled to overcharges to the extent that Saia applied the 53% discount to class rates higher than class 70.

DISCUSSION AND CONCLUSIONS

Ambiguities in tariffs are generally resolved against the carrier as framer of the tariff and in favor of the shipper. See Reconsideration of Special Tariff Authorities Authorizing the Publication of Customer Account Codes in Tariffs, Docket No. 40888 (ICC served Apr. 20, 1994), and Rebel Motor Freight, Inc. v. ICC, 971 F.2d 1288, 1294 (6th Cir. 1992).

⁴ The letter/fax stated that the overcharge claim "cover[ed] the period from 4-22-94 to 12-31-94." There was no mention of the 1995 shipments.

Items 1414 and 1444, together with the notifications, are ambiguous. Item 1414 indicates that, once a shipper is notified that it is a participant, a 53% discount will apply on class rated shipments. However, the written notification (Notification II) indicates that the discount is to apply on all shipments. As we stated in the September 22 decision (at 2):

Items 1414 and 1444 do not indicate that a shipper may only participate in one discount plan, nor do they provide that participation in a new plan would completely eliminate the application of other previously applicable discount provisions. . . . [Notification II] does not include advice that the use of class 70 rates on WEA's shipments would be discontinued Absent a specific cancellation of the terms of the original Item 1444 notification in the tariff or in the later Item 1414 notification, the terms of both items and notifications must be considered in determining the applicable rates for WEA's shipments.

When both items and notifications are considered, we find that the 53% discount is applicable, and, construing the ambiguity against the carrier, we find that it applies to all shipments, as indicated in Notification II, because the arrangement memorialized in Notification I was never canceled.

This interpretation of the tariff is not only permissible, it is also consistent with the intent of the parties. According to the Verified Declaration of Mr. MacDonald, he requested the increased discount to reflect the greater volume of business WEA was tendering. Yet, the 53% discount without the class 70 exception rating resulted in higher freight charges than what would have applied if the parties had kept the 48% and the class 70 exception rating. Verified Statement of Carnahan at 15. ATS also submits verified statements, not contradicted by Saia, that indicated that on two occasions in April 1995, Saia representatives stated that the class 70 exceptions rating should have been used. Finally, effective May 23, 1995, Saia resumed using on WEA shipments the class 70 exception rates with the 53% discount.

On the basis of the evidence submitted and the tariffs involved, we find that Saia should have applied the 53% discount to the class 70 exception rates.

This action will not affect significantly either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Saia's motion to strike is granted in part as described in this decision, and denied in part.
2. Saia should have applied the class 70 exception rate and the 53% discount.

3. This decision is effective on its service date.
4. A copy of this decision will be mailed to:

The Honorable Jack T. Camp
United States District Court for the Northern
District of Georgia, Atlanta Division
Room 2142
75 Spring St. SW
Atlanta, GA 30303-3361

Re: No. 1:96-CV-856-JTC

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary